

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

October 8, 2015

*Immediately following the Special Establishment and Project Review Committee
(which is scheduled to begin immediately following the Committee on Codes, Regulations
and Legislation scheduled for 9:30 a.m.)*

- *90 Church Street 4th Floor, Room 4A & 4B, New York City*
- *New York State Department of Health Offices at the Triangle Building,
335 East Main Street, 1st Floor Video Conference Room, Rochester, NY 14604*

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

Exhibit #1

August 6, 2015

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Sally Dreslin, M.S., R.N., Executive Deputy Commissioner of Health

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

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

C. Report of the Office of Health Insurance Programs Activities

Elizabeth Misa, Medicaid Deputy Director, Office of Health Insurance Programs

D. Report of the Office of Quality and Patient Safety Activities

Patrick Roohan, Director, Office of Quality and Patient Safety

E. Report of the Office of Public Health Activities

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

IV. PUBLIC HEALTH SERVICES

Report on the Activities of the Committee on Public Health

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

V. **HEALTH POLICY**

Report on the Activities of the Committee on Health Planning

John Rugge, M.D., Chair of the Health Planning Committee

VI. **REGULATION**

Report of the Committee on Codes, Regulations and Legislation

Exhibit #2

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

For Emergency Adoption

15-14 Addition of Part 4 to Title 10 NYCRR – (Protection Against Legionella)

*****To be distributed under separate cover*****

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

For Adoption

13-21 Amendment of Part 405 of Title 10 NYCRR
(Hospital Observation Services)

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

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

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

Report of the Committee on Establishment and Project Review

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

A. **APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES**

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

CON Applications

Acute Care Services - Construction

Exhibit #3

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151204 C	Vassar Brothers Medical Center (Dutchess County)	Contingent Approval

Hospice Services - Construction

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151270 C	Hospice Buffalo Inc (Erie County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

Acute Care Services - Construction

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151213 C	Strong Memorial Hospital (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish/Construct

Exhibit #6

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151216 E	Columbia Memorial Hospital (Columbia County)	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct

Exhibit #7

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151201 E	Crystal Run Ambulatory Surgery Center of Middletown (Orange County)	Contingent Approval
2.	151246 B	Mid-Bronx Endoscopy Center (Bronx County)	Contingent Approval
3.	151288 B	Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region (Albany County)	Contingent Approval
4.	152036 E	AGCNY East, LLC d/b/a Endoscopy Center of Central New York (Onondaga County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #8

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151250 B	LISH, Inc. (Suffolk County)	Contingent Approval
2.	152015 B	Community Health Initiatives, Inc. (Kings County)	Contingent Approval

Dialysis Services – Establish/Construct**Exhibit #9**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151269 B	Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center (Schenectady County)	Contingent Approval
2.	151298 E	Pelham Parkway Dialysis Center (Bronx County)	Contingent Approval
3.	151308 B	Brooklyn Gardens Dialysis Center (Kings County)	Contingent Approval
4.	152025 E	Mohawk Valley Dialysis Center (Montgomery County)	Contingent Approval

Residential Health Care Facility – Establish/Construct**Exhibit #10**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151180 E	ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center (Rensselaer County)	Contingent Approval
2.	151196 E	Daleview Care Center (Nassau County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications**Acute Care Services – Establish/Construct****Exhibit #11**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	152008 E	NYU Hospitals Center (Kings County) Dr. Kalkut – Recusal	Contingent Approval

Ambulatory Surgery Centers – Establish/Construct**Exhibit #12**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151008 B	Pittsford Pain Center LLC (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal	Contingent Approval
2.	151200 E	South Shore Surgery Center (Suffolk County) Mr. Kraut – Recusal	Contingent Approval
3.	151226 E	DHCH, LLC d/b/a Digestive Health Center of Huntington (Suffolk County) Mr. Kraut - Recusal	Contingent Approval
4.	151258 E	Suffolk Surgery Center, LLC (Suffolk County) Mr. Kraut - Recusal	Contingent Approval

Residential Health Care Facilities – Establish/Construct**Exhibit #13**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151131 E	Latta Road Nursing Home West, LLC (Monroe County) Mr. Robinson – Recusal	Contingent Approval
2.	151133 E	Latta Road Nursing Home East, LLC (Monroe County) Mr. Robinson – Recusal	Contingent Approval
3.	151134 E	Hamilton Manor Nursing Home, LLC (Monroe County) Mr. Robinson – Recusal	Contingent Approval

Certified Home Health Agency – Establish/Construct**Exhibit #14**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151099 E	HCR (Monroe County) Ms. Hines – Interest Mr. Robinson – Interest	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Exhibit #15

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151186 B	Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Erie County) Mr. Holt – Interest Dr. Brown – Abstained at EPRC	Contingent Approval

Residential Health Care Facilities – Establish/Construct

Exhibit #16

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151060 E	Warren Operations Associates, LLC d/b/a Warren Center for Rehabilitation and Healthcare (Warren County) Mr. Fassler – Recusal Dr. Ruge – Interest Dr. Berliner – Abstained at EPRC	Contingent Approval

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

HOME HEALTH AGENCY LICENSURES

Exhibit #17

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1909 L	MedPro Homecare Agency, Inc. (Queens, New York, Kings, Richmond, Bronx, and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2042 L	Touch of Love Homecare Agency Inc. (Bronx, Richmond, Kings, New York, Queens, and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2059 L	Victory Home Care Services, Inc. (Suffolk and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2133 L	Theresa Home Care, Inc. (New York, Kings, Bronx, Queens, Richmond, and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2184 L	Kirenaga Home Care Brooklyn, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2186 L	Kirenaga Home Care Queens, Inc. (New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2193 L	Imo's Nursing Agency, Inc. (Queens, New York, Kings, Richmond, and Bronx Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation

2260 L	ABR Homecare of NY, Inc. (Suffolk and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2293 L	Loyal Home Care, Inc. (Kings, Bronx, Queens, Richmond and New York Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2362 L	HT&T Corporation d/b/a HT&T Home Care (Queens, Kings, Brooklyn, Richmond, New York and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2381 L	Sundance Home Care, Inc. (Kings, Queens, New York, Bronx, Richmond, and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2405 L	Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 (Queens, New York, Bronx, Richmond, Kings and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2414 L	Collins Anyanwu-Mueller d/b/a Angelic Touching Home Health Care Agency (Westchester and Rockland Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2437 L	Artful Home Care, Inc. (Suffolk and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2452 L	Companion Angels Home Care Solutions, LLC (New York, Queens, Bronx, Richmond, and Kings Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation

2459 L	Family First Home Companions of New York, Inc. (Suffolk, Nassau, and Queens Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2467 L	1 st Home Care of NY Corp. (Queens, New York, Bronx, Richmond, Kings and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2469 L	Zenith Home Care of NY, LLC (Westchester, Putnam, and Bronx Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2474 L	Acute Care Experts of New York, Inc. (Nassau, Rockland, Suffolk, Sullivan, Dutchess, Ulster, Orange, Westchester, and Putnam Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2475 L	SR Miracle Care Agency, Inc. (Bronx, Queens, New York, Richmond, Kings, and Westchester Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2485 L	Qualycare Home Care (Bronx, New York, and Queens Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2490 L	ZaQia Chaplin, LLC d/b/a Trusting Hands Homecare Agency (Nassau, Suffolk, and Queens Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2492 L	Trivium of New York, LLC Queens, Bronx, Kings, Richmond, New York and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2493 L	Brookside Home Care Inc. (Nassau, Suffolk and Queens Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation

2503 L	L. Woerner, Inc. d/b/a HCR/HCR Home Care (Schoharie, Otsego, and Delaware Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2504 L	L. Woerner, Inc. d/b/a HCR/HCR Home Care (Clinton, Hamilton, St. Lawrence, Franklin, Warren, Essex and Washington Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2505 L	L. Woerner, Inc. d/b/a HCR/HCR Home Care (Madison, Oswego, Onondaga, Jefferson, Cayuga and Cortland Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2521 L	GM Family Resources, Inc. (Richmond, New York, Kings, Bronx, Queens, and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2546 L	Edira Family Home Care LLC (Queens, Bronx, Kings, Richmond, New York and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2573 L	Exceptional Home Care Services, Inc. (Bronx, Richmond, Kings, New York and Queens Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2300 L	Albemarle Terrace, Inc. d/b/a Terrace Home Care (Bronx, Queens, Kings, New York and Richmond Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2605 L	Samuel Konig d/b/a Park Inn Home Care (Queens, New York, Bronx, Richmond, Kings and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation

2188 L	Marquis Home Care, Inc. (Queens, Bronx, Kings, Richmond, New York and Westchester Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2436 L	Paramount Homecare Agency, Inc. (Kings, New York, Queens, Richmond, Bronx, and Nassau Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2441 L	Kirenaga Home Care Manhattan, Inc. d/b/a Synergy Homecare (New York, Kings, Bronx, Richmond, Queens, and Westchester Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2501 L	CareGuardian, Inc. d/b/a Hometeam (New York, Kings, Queens, Bronx, and Richmond Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2542 L	Better Choice Home Care, Inc. (Bronx, Richmond, Kings, Nassau, New York, and Queens Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2547 L	All Boro Home Care, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2554 L	Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency (Bronx, Queens, Nassau, Richmond, New York, and Kings Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2592 L	Hakuna, Inc. (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation

151264 E	Allcare Family Services, Inc. (Erie County)	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2280 L	CDS Monarch, Inc. (Monroe and Wayne Counties) Ms. Hines – Interest	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2158 L	Azor Care at Home, Inc. d/b/a Azor Home Care (New York, Bronx, Kings, Richmond, Queens, and Westchester Counties) Mr. Fassler - Interest	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2606 L	L Woerner, Inc. d/b/a HCR/HCR Home Care (Genesee, Wyoming, Monroe, Orleans, Orleans, Livingston, Wayne, and Ontario Counties) Ms. Hines – Interest	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation
2456 L	America Homecare Agency Services Corporation (Schenectady, Rensselaer, Warren, Saratoga, Schoharie, Albany and Washington Counties) Dr. Ruge - Recusal	To be presented at the Special Establishment/Project Review Committee on 10/8/15 No Recommendation

Certificates

Exhibit #18

Restated Certificate of Incorporation

Applicant

Housing Works Health Services III, Inc.

E.P.R.C. Recommendation

To be presented at the Special
Establishment/Project Review
Committee on 10/8/15
No Recommendation

Certificate of Amendment of the Certificate of Incorporation

Applicant

Samaritan Village, Inc.

The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

Brookdale Family Care Centers, Inc.

Urban Strategies/Brookdale Family Care Center, Inc.

E.P.R.C. Recommendation

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

Certificate of Dissolution

Applicant

River Hospital Foundation, Inc.

E.P.R.C. Recommendation

To be presented at the Special Establishment/Project Review Committee on 10/8/15
No Recommendation

VIII. PROFESSIONAL

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

One Case arising under PHL 2801-b

IX. NEXT MEETING

November 19, 2015 - ALBANY

December 10, 2015 – ALBANY

X. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
August 6, 2015

The meeting of the Public Health and Health Planning Council was held on Thursday, August 6, 2015 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York Chairman, Mr. Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner	Dr. Gary Kalkut
Dr. Jo Ivey Boufford	Mr. Jeffrey Kraut
Dr. Lawrence Brown	Dr. Glenn Martin
Ms. Kathleen Carver-Cheney	Ms. Ellen Rautenberg
Mr. Michael Fassler	Mr. Peter Robinson
Ms. Kim Fine	Dr. Theodore Strange
Dr. Carla Boutin-Foster	Dr. Patsy Yang
Dr. Angel Gutierrez	

DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|-------------------------|------------------------|
| Mr. Charles Abel | |
| Mr. Udo Ammon | Ms. Karen Madden |
| Ms. Anna Colello | Mr. JP O’Hare |
| Mr. Alex Damiani | Mr. Jeong Oh |
| Ms. Barbara DelCogliano | Mr. Justin Pfeiffer |
| Mr. Christopher Delker | Ms. Sylvia Pirani |
| Mr. James Dering | Ms. Linda Rush |
| Ms. Alejandra Diaz | Mr. Michael Ryan |
| Ms. Sally Dreslin | Mr. Timothy Shay |
| Ms. Kathleen Ericson | Mr. Daniel Sheppard |
| Mr. Kenneth Evans | Ms. Lisa Thomson |
| Mr. Mark Furnish | Ms. Lisa Ullman |
| Ms. Yvonne Lavoie | Mr. Justin Vinciguerra |
| Ms. Colleen Leonard | Mr. Richard Zahnleuter |

INTRODUCTION

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

RESOLUTION OF APPRECIATION FOR MR. CHRISTOPHER DELKER

Mr. Kraut announced Mr. Delker’s upcoming retirement from state service and thanked him for his hard work through the years. Mr. Kraut read and presented a Resolution of Appreciation.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Mr. Kraut introduced Ms. Dreslin to the give the Department of Health Activities Report.

Legionella

Ms. Dreslin began her report to update the members on legionella in New York City. There has been an outbreak in the Bronx that has resulted in 97 cases including 8 deaths as of August 5, 2015. Since the trend was identified, Wadsworth Laboratories has been testing samples both environmental and human to support the City's investigation. This is sophisticated testing that our Wadsworth Center excels at. The Department continues to see some more cases although the persistently hot and humid weather that promotes the bacterial growth is abating and in addition the identified contaminated cooling towers have been disinfected. The Department would like healthcare providers to consider legionella and conduct patient testing whenever they might suspect the disease. Legionella is a bacterial disease that can cause mild respiratory illness but it can also cause pneumonia and lead to death. So some symptoms include muscle aches, headache, tiredness, dry cough followed by a high fever, chills, and occasionally diarrhea. Legionella is more likely to affect the elderly and people who have compromised immune systems but important to note the disease does not spread from person to person. The Department will continue working with New York City and monitor the situation closely and updating as necessary.

Medical Marijuana

Ms. Dreslin spoke on the topic of medical marijuana. The Department has selected five organizations out of the 43 that applied to be issued registrations to manufacture and dispense medical marijuana. The selection of the five registered organizations is a major step forward in New York's accelerated time table to implement the medical marijuana program by January 2016. New York is working to launch the program and begin providing care to patients faster than any other state has previously done. The five organizations are Bloomfield Industries, Columbia Care New York, Empire State Health Solutions, Attain, and Pharmacann. Each organization will manufacture in one location and operate four dispensing facilities across the State. In selecting the organizations, the Department made sure the proposed dispensaries were geographically dispersed in a way that will meet the needs of all certified patients. The Department will continue to monitor patient demand, in order to make sure that all patients who meet the requirements of the compassionate care act will indeed benefit from the program.

Ms. Dreslin noted that only certain forms of medical marijuana are permitted and all products will be tested for quality and consistency. The Department's goal has always been to ensure that all New Yorkers have access to the best and safest treatments possible. This medical marijuana program meets that goal and by making this therapy available in the safest way possible we will hopefully alleviate suffering from many New Yorkers with debilitating diseases.

Synthetic Cannabinoids

Ms. Dreslin stated that in the month of July, Governor Cuomo initiated a push for stronger regulations to combat the sale of synthetic cannabinoids in New York. These dangerous man-made compounds have resulted in a dramatic increase in reports of emergency department visits and poison control center calls. During April 1 to June 30 New York State saw more than 1900 emergency department visits and more than 680 poison control center calls due to adverse health effects associated with synthetic cannabinoid use. This is more than a 10-fold increase over the same time period in 2014. It is alarming that of those people going to emergency departments more of them are going to critical care units. Nationally there have been 15 synthetic cannabinoid related deaths reported to poison control centers in the first five months of this year, but so far no deaths have occurred in New York State and we're trying to keep it that way. That is why the Department is expanding the existing list of banned substances to include two more chemical compounds that drug producers have begun to make since 2012. The Governor Cuomo banned the sale of possession of dozens of synthetic cannabinoids and bath salts in 2012.

Naloxone

Ms. Dreslin advised that the Department is also working to avoid fatal opioid overdoses. There are now more than 220 registered overdose programs in the State. They are training individuals to respond appropriately to opioid overdose. In addition to calling 911, people can be trained to administer a naloxone. Naloxone is a medication that can reverse the deadly effects of heroin and other opioids. It works by temporarily blocking the effects of the opioid, whether illicit or prescription allowing the individual to regain consciousness and resume normal breathing. It poses no danger to anyone who otherwise might come into contact with it. More than 65,000 citizen responders have been trained so far, and nearly 1300 naloxone administrations have been reported to the Department. Another 500 additional administrations have been reported by law enforcement personnel who are also receiving training. The Department has joined forces with the New York State Division of Homeland Security and Emergency Services, and the New York State Office of Alcoholism and Substance Abuse Services to provide free naloxone training to fire departments as well across the State. Firefighters are often the first to arrive on the scene of a suspected opioid overdose and that is why it is critical that non-EMS fire departments and all emergency responders receive this training. After completing the training naloxone will be made available free of charge to participating fire departments. The training, a component of Governor Cuomo's Combat Heroin and Prescription Drug Abuse Campaign is funded and administered by the Department of Health. The Department is also collaborating with other state agencies to train inmates who are about to be released, their family and friends as well as school nurses and school employees. Most people who are trained will have the option to receive a naloxone kit free of charge and taken together, these efforts will enhance the safety of New Yorkers who have succumbed to this terrible addiction.

50th Anniversary of Medicaid and Medicare

Ms. Dreslin announced that in July, the Department joined the nation in celebrating the 50th anniversary of Medicaid and Medicare. In 1965 when President Lyndon Johnson signed into law these two pieces of legislation that have truly altered the face of healthcare in our country. The anniversary came just after Governor Cuomo's announcement that New York's Medicaid per person spending had fallen to a 13 year low over this past year. This significant decrease has saved billions of dollars for New York's taxpayers and the drop in spending happened even as we added new beneficiaries to the Medicaid program. The credit goes to the reforms implemented in 2011 by the Medicaid Redesign Team, and the savings from the revamped program are now being reinvested through DSRIP into 25 performing provider systems. These networks which involve hospitals, private physicians, community service groups and more are all working to decrease avoidable hospital admissions and improve our State's safety net system and the healthcare system at large.

Tick-Borne Diseases and Mosquito-Borne Diseases

Ms. Dreslin stated that summertime often means increased exposure to ticks and mosquitos and Lyme is not our only tick-borne challenge in the warm weather. Every summer New York has about 1000 cases of other tick-borne diseases. All of this on top of nearly 7000 cases of Lyme each year, and at the same time we're dealing with mosquito-borne diseases. This summer three counties, Onondaga, Oswego, and Madison have all identified West Nile Virus and EEE, which is Eastern Equine Encephalitis. Onondaga County has six pools test positive for EEE, Madison has had four pools and Oswego has had three. The State has approved the three counties to receive imminent threat to public health status which enables the State reimbursement formula to increase so that the county has more resources for combating these diseases. We are also seeing West Nile Virus around the State. There have been 35 positive pools this summer with 20 of those in Suffolk County on Long Island. The Department continues to be vigilant about these disease and work together with local health departments in combating.

Capital for a Day

Ms. Dreslin noted that this summer also marked the debut of Capital for a Day. Governor Cuomo launched this initiative in Rochester on July 9. Capital for a day was created to bring State government directly to the people it serves. The day-long event partners state officials with residents, local leaders and stakeholders to examine first hand the needs of the community. What grew out of this were several new initiatives to better connect New York Schools to local growers and producers across the State working with the Office of General Services, of Agriculture and Markets, the Department of Health is promoting the use of fresh healthy foods in school meals across the State while at the same time giving a boost to the State's agricultural industry. The Department of Health also announced grants to 26 organizations statewide which will allow local organizations to combat obesity and other chronic diseases in high-need school districts and surrounding communities. The grant recipients will work with school districts and school retailers to improve access to nutritious food and increase opportunities for daily physical activity.

New York State's Declining Smoking Rates

Ms. Dreslin announced good news that there is a decline in New York's smoking levels which are now at their lowest rate in recorded history. The Department's data shows that for the last four years the smoking rate among high school students has dropped 42 percent and now remains at 7.3 percent. Meanwhile the adult smoking rate has dropped to 14.5 percent and remains below the national average which is 17.8 percent. Attributed to these drastic reductions is the State's wide-ranging tobacco control efforts which includes the prevention agenda and comprehensive cancer control program. These programs focus on the use of evidence-based strategies to encourage people to stop smoking as well as aggressive public awareness campaigns. The State also promotes policies that make tobacco less accessible to youth. This includes the State's Adolescent Tobacco Use Prevention Act (ATUPA), which combats illegal sales to minors through sting operations across the State.

Health Exchange Market Place

Ms. Dreslin next advised that there was also some good news about the health exchange market place, the New York State of Health. The report was released recently and as of February 28, 2015, more than 2.1 million people have enrolled in health insurance coverage through the New York State of Health. This represents more than a two-fold increase from the first open enrollment period where we enrolled more than 960,000 people. 89 percent of the people who had enrolled said that they had previously been uninsured. By providing more New Yorkers with affordable health insurance coverage we are giving them greater access to healthcare that bodes well for the health of all New Yorkers.

Mr. Dreslin concluded her report. Mr. Kraut thanked her and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 6 through 18 of the attached transcript.

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

Next, Mr. Kraut introduced Mr. Sheppard to give her report on the Activities of the Office of Primary Care and Health Systems Management.

Mr. Sheppard noted that the Department looks forward to working with PHHPC over the next months and years on updating and modernizing our regulations to better align with an evolving healthcare delivery system, the Department is working to find some paths within the current framework to accommodate requests from the industry who, clearly the pace of change is rapid and we get almost on a daily basis increasingly innovative complex, certificate of need and other proposals that require our most excellent staff's attention.

Mr. Sheppard stated that the Department is looking at how to facilitate the opening of small clinics within homeless shelters and other non-traditional community-based settings to increase access to primary care and healthcare services, very often for some of our most fragile citizens. This effort involves working with our policy people, our planning and licensure folks, most particularly the Department's architecture bureau in trying to navigate within the regulations both state and federal that we have to operate within trying to find paths that with patient safety first and foremost we can move primary care as rapidly as possible into

communities. Colocation and shared space, separate apart from integrated behavioral health services, colocation and shared space is a dominant issue and a policy, at a regulatory level for the Department. Mr. Sheppard spoke on the topic of health systems network and integrating the natural synergies between types of licensed providers and how to handle in a way that is compliant with regulation statute and patient safety as well as financial integrity on public payment side, how to bring these entities together and allow these natural collaborations and relationships to grow for the benefit of patients, again, within a regulatory framework that we have to operate in now and then from that what are the ideas, what are the proposals that again will engage with PHHPC, with legislature, with CMS on an ongoing basis to try to modernize our healthcare system.

Mr. Sheppard discussed the activity surround the requests for applications for a number of projects both an unprecedented amount of capital dollars that the Department has been given the responsibility of administering to the industry. The Department is in the process of currently reviewing, over 640 applications for \$1.2 billion of capital restructuring financing program funding. There are teams evaluating these awards and the Department is expecting decisions by the October/November timeframe.

Mr. Sheppard stated that the Department is also in the process of reviewing well over 100 applications for 3400 assisted living program slots and OPHCSM staff are in the process of evaluating those applications with decisions expected also in the fall timeframe. Doctors Across New York, the applications for both practice support and the loan payment programs are coming in for the next cycle and the Department is evaluating those. The Department is finalizing RFAs for an additional \$1.3 billion of new capital funding for healthcare transformation projects that were provided in the most recent budget, and I think, move forward on that. An additional activity that the Department is working with over 30 hospitals statewide. These are financially struggling hospitals on sustainability plans. This is connected to transitional, transformational, transitional funding that was in the budget and again, it's both small, rural, urban, small, large, there are a number of facilities out there that need to try to chart a path forward and working with them to do that.

Mr. Sheppard spoke on the topic of trauma center verification. The work by Lee Burns and her staff is critical, and they are real professionals. A big recent accomplishment that I want to acknowledge there is that the following facilities have been successfully verified as trauma centers. North Shore University was verified as a level one adult trauma center; South Side Hospital, a level two adult trauma center; Westchester Medical Center, a level one adult and pediatric trauma center; Upstate University Hospital, a level one adult and pediatric center; Erie County Medical Center, level one adult; and Strong Memorial Hospital, level one adult. There are going to be five additional hospital centers set to have their verification visits in 2015. There are two more centers scheduled for visits in March 2016. Additionally, there are four new trauma centers who were provisionally designated, New York Methodist Hospital, Orange Regional Medical Center, St. Luke's Cornwall and Canton-Potsdam Hospital and approximately about 15 community hospitals have expressed interest in level four designation and there are a handful more that have expressed interest in level three designation.

Mr. Sheppard closed his report by acknowledging Mr. Delker's contributions and publically thanked him for his guidance. To read the complete report please see pages 19 through 24 of the attached transcript.

APPROVAL OF THE MINUTES OF JUNE 11, 2015

Mr. Kraut asked for a motion to approve the June 11, 2015 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval, Dr. Gutiérrez seconded the motion. The minutes were unanimously adopted. Please refer to page 24 of the attached transcript.

Report of the Office of Public Health Activities

Mr. Kraut introduced Ms. Pirani to give the report of the activities of the Office of Public Health.

Ms. Pirani began her report by giving an update on the Prevention Agenda which was discussed at the most recent Public Health Committee meeting where we reported on the fact that we have met 16 of the 96 outcome objectives in the Prevention Agenda and substantial progress has been made on an additional 22 indicators. We discussed our ongoing efforts to help coordinate local prevention agenda efforts with activities and hospitals have underway related to DSRIP and community benefit. We talked about getting ready for the next three year planning cycle which will launch this fall and our next ad-hoc committee meeting is September 24. We also talked about focusing some attention on health disparities and when the Office of Minority Health Disparities report will be issued later this year.

Ms. Pirani noted that the Department has received two competitive grants. One is a multiyear grant awarded by the CDC to enhance our food safety efforts and improve response to outbreaks of foodborne illness. This is \$260,000 for the first year and for about at least five years of funding and New York is one of only six states to receive such funding. Foodborne illness affects tens of millions of people and kills thousands in the United States each year resulting in billions of dollars in healthcare related costs and this grant is to establish a center of excellence in New York State. The Department is going to partner with Cornell University and focus attention on strengthening surveillance systems and outbreak investigations, improving the timeliness, completeness and effectiveness of our surveillance and outbreak response activities, establish training of local and state public health personnel, and insure active participation by state and local health departments. This is a regional award so it's HHS regions 1, 2, and 3. So will actively involve all of them, and it's really a quality improvement effort which really supports our accreditation efforts.

Ms. Pirani spoke about the second award granted to New York which is one of nine states selected for funding under the Paul Coverdale National Acute Stroke program, a new five-year CDC cooperative agreement. \$750,000 in year one. The Department is going to facilitate regional pilots to encourage the development of integrated stroke systems of care across health systems including EMS, hospitals, and post-discharge care organizations. We're going to link data collected through SPARCS and vital statistics with data on processes of acute stroke care reported as part of the stroke designation program to inform the development of statewide measures to measure outcomes and guide and track improvements in stroke systems of care. This is an important initiative that also represents collaboration between the Office of Public Health and the Office of Quality and Patient Safety.

Ms. Pirani concluded his report. Mr. Kraut thanked Ms. Pirani for her report. To read Ms. Pirani's complete report please see pages 24 through 26 of the attached transcript.

PUBLIC HEALTH SERVICES

Mr. Kraut introduced Dr. Boufford to give the Council an update on the work of the Public Health Committee.

Dr. Boufford began her report that stating the collaboration at county level between hospitals among hospitals and local health departments and other stakeholders that can be very valuable going forward and achieving prevention goals around the state that hopefully will be reinforced through the advanced primary care work as well as the DSRIP domain for component.

Dr. Boufford spoke on the topic of the maternal mortality work. The Public Health Committee selected one particular sort of health problem that we wanted to try to as we called it move the needle on in addition to our oversight of the prevention agenda work and during the sort of late 2013 and 2014 we worked closely with the Department. Dr. Boufford commended Rachel Delong, Marilyn Casica, Dr. Gus Birkhead, and Sylvia Pirani who at the first couple of meetings really gave us terrific briefings on the status of maternal mortality for the State of New York. New York has the dubious distinction of being 47 out of 50 states in terms of maternal mortality and the racial disparities are 3:1 for African American women dying in childbirth and 7:1 in the City of New York. So this is significant public health problem even though the numbers are quite small relative to some of the other epidemics that appropriately attract a lot of attention. The Committee decided to try to keep attention on it so that we can take action. We also had a very nice review of all of the very robust activities that are going on in the Department to address maternal mortality and the Committee identified that much of the focus has been on hospital-based management of acute crises and lifesaving activities as well as chart review to develop clinical guidelines to improve management of those crises but there had been relatively less focus on what we might call preconception or interconception care before the hospital based delivery and then between birth, between pregnancies and to some degree after birth so we decided to focus our efforts there, and did some looking at the evidence which shows that one of the most important risk avoidance strategies in maternal mortality is prevention of unplanned pregnancy especially in women of 35 or over 40. And so that lead us into thinking about the issue of reproductive health in relation to the primary care enterprise and similarly the early identification of pregnant, of women who are pregnant who may become high risk.

Dr. Boufford stated the Committee is reviewing the increasing incidence of chronic diseases like diabetes, heart disease, related obesity in younger women which means that pregnancy may or may not be the very simple straight-forward, hopefully simple and straight-forward activity. So it means that early referral and referral availability for specialty care and OBGYN is very important. The Committee is looking at the elements of the State Healthcare Reform in which we might integrate higher level attention to maternal mortality and reproductive health and so we've had great cooperation from colleagues working on the advanced primary care models as well as in the SHIP and SIM and the health home and healthcare insurance groups. Dr. Boufford commended Rachel Delong who has put a lot of time and energy into talking with colleagues and colleagues have been quite responsive.

Dr. Boufford spoke on the topic of health home, and noted thanked Dr. Gesten and his colleagues for their information. Health home members are women with multiple chronic diagnoses and/or all people with multiple chronic diagnoses and mental health problems, 55 percent of these are women, 35 percent of these women are in reproductive age, and we identified 10 percent of them gave birth during the last year in the health homes. This raises questions about the priority of attention to reproductive health and the context of the health home as well as looking at costs that might be mitigated by early intervention and early referral systems that are more robust and the health department has offered to work with care coordinators in the health home for training. There was also an issue raised about gaps in health insurance coverage potentially that might put women at risk for access to care after they are no longer pregnant until they can be reenrolled, there may be some slight delays, generally speaking there are not any significant flaws in the insurance coverage issues that are being advanced through the healthcare reforms.

Dr. Boufford explained the Committee is very excited about collaboration among many players who have been very committed to improving the issue of maternal mortality in the State but have not had the mechanism or the vehicle. The Public Health Committee and the work of this Council and being able to bring this issue forward has created some new potential for partnerships with the State with New York State ACOG, with Greater New York and HANYs as well as the City of New York.

Dr. Boufford also noted that the Committee discussed the distressing lack of any state investment in the public health side of our work in the Prevention Agenda and the 50 percent reduction in the PHP budget are all elements that reflect a very imbalanced investment strategy for the healthcare reform in New York State and the Committee is hoping that that can be addressed over future weeks and months.

Dr. Boufford concluded her report and Mr. Kraut inquired if Members had comments. To view the complete report, please see pages 26 through 33 of the attached transcript.

HEALTH POLICY

Mr. Kraut moved to the next topic, Health Policy and introduced Mr. Robinson to give the report on the activities of the Health Planning Committee.

Mr. Robinson noted for the record that he has a conflict of interest on the request for a Stroke Center Designation application for Jones Memorial Hospital. Mr. Robison exited the meeting room. Mr. Kraut described the application.

Mr. Kraut made a motion to approve the request. Dr. Gutiérrez seconded the request. The motion to approve the stroke center designation for Jones Memorial Hospital passed with Mr. Robinson's recusal.

To view the complete report, please see pages 33 and 34 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

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

Dr. Gutiérrez introduced for emergency adoption 13-08 Amendment of Subpart 7-2 of Title 10 NYCRR (Children's Camps). Dr. Gutiérrez motioned to adopt and Dr. Berliner seconded the motion. The motion failed with 2 abstentions, and one member opposing. There was a second motion for emergency adoption which failed with 3 abstentions and one nay. A third motion was made by Mr. Robinson to table the adoption. Dr. Berliner seconded the motion. The motion to table carried with no abstentions. Please see pages 34 through 50 for the Members discussion.

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

Dr. Gutiérrez next introduced 15-12 Amendment of Section 9.1 of Title 10 NYCRR (Prohibit Additional Synthetic Cannabinoids) for emergency adoption. Dr. Gutiérrez motioned for emergency adoption which was seconded by Dr. Brown. The motion carried. Please see pages 50 and 51 of the attached transcript.

For Adoption

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

Next, Dr. Gutiérrez described 12-23 Amendment of Section 16.25 and Addition of Section 16.59 of Title 10 NYCRR (Computed Tomography (CT) Quality Assurance) and motioned for adoption. Dr. Berliner seconded the motion. The motion carried with an abstention from Dr. Martin. Please see pages 51 and 52 of the attached transcript.

For Information

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

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

Dr. Gutiérrez described For Information Section 14-13 Amendment of Parts 58 and 34 of title 10 NYCRR (Patient Access of Laboratory Test Results) and 12-02 Amendment of Part 757 of Title 10 NYCRR (Chronic Renal Dialysis Services). Please see pages 52 through 62 of the attached transcript to view the Members comments.

Dr. Gutierrez concluded his report. Mr. Kraut thanked him and moved to the next item on the agenda introducing Dr. Kalkut to give the Report of the Project Review Recommendations and Establishment Actions.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. 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

Ambulatory Surgery Center - Construction

Exhibit #5

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151107 C	New York Presbyterian Hospital – Columbia Presbyterian Center (New York County) Dr. Boutin-Foster - Recusal Dr. Brown – Recusal	Contingent Approval

Dr. Kalkut introduced application 151107 and noted for the record that Dr. Boutin-Foster has a conflict and has exited the meeting room. Dr. Kalkut motioned for approval which was seconded by Dr. Berliner. The motion to approve carried with one recusal. Dr. Boutin-Foster returned to the meeting room. Please see pages 62 through 65 of the attached transcript.

2. 151178 C	Nicholas H Noyes Memorial Hospital (Livingston County) Ms. Hines – Recusal (not present at meeting) Mr. Robinson - Recusal	Contingent Approval
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Dr. Kalkut described application 151178 and noted for the record that Mr. Robinson is recusing and left the meeting room. Dr. Kalkut motioned for approval, Mr. Fassler seconded the motion. The motion carried with Mr. Robinson's recusal. Mr. Robinson returned to the meeting room. Please see pages 65 and 66 of the attached transcript.

Diagnostic and Treatment Center - Construction

Exhibit #6

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151121 C	East Side Endoscopy (New York County) Dr. Martin - Interest	Contingent Approval

Dr. Kalkut called application 151121 and noted Dr. Martin's interest. Dr. Kalkut motioned for approval which was seconded by Mr. Fassler. The motion to approve carried. Please see page 66 and 67 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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 2: Applications Recommended for Approval with the Following:

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

Acute Care Services– Establish/Construct

Exhibit #10

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151205 E	Peconic Bay Medical Center (Suffolk County) Mr. Kraut – Recusal	Contingent Approval
3.	151221 E	Southampton Hospital (Suffolk County) Mr. Kraut – Recusal	Contingent Approval

4.	151247 E	Eastern Long Island Hospital (Suffolk County) Mr. Kraut – Recusal	Contingent Approval
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Dr. Kalkut called applications 151205, 151221, and 151247 and noted for the record that Mr. Kraut has a conflict and has left the meeting room. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion to approval carried with Mr. Kraut’s recusals. Please see pages 68 and 69 of the attached transcript.

Acute Care Services– Establish/Construct **Exhibit #10**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2.	151217 E	North Shore LIJ Healthcare, Inc. (Nassau County) Mr. Kraut – Recusal	Contingent Approval

Mr. Kraut remained outside the meeting room. Dr. Kalkut called application 151217 and motioned for approval, Mr. Fassler seconded the motion. The motion passed with Mr. Kraut’s noted recusal. Mr. Kraut returned to the meeting. Please see page 69 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 or HSA

Dialysis Services– Establish/Construct **Exhibit #12**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151169 E	Westchester Center for Renal Care (Westchester County)	Contingent Approval

Dr. Kalkut introduced application 151169 and motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried. Please see page 70 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

Diagnostic and Treatment Center– Establish/Construct **Exhibit #11**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151166 B	The Birthing Center of NY (Kings County) Dr. Kalkut - Interest	Contingent Approval

Dr. Kalkut called application 151166 and motioned for approval. The motion was seconded by Dr. Gutiérrez. The motion to approve passed. Please see pages 70 through 73 of the attached transcript.

Residential Health Care Facilities– Establish/Construct

Exhibit #13

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 142278 E	Nesconset ZJ 1 LLC d/b/a Nesconset Center for Nursing and Rehabilitation (Suffolk County) Ms. Carver-Cheney - Recusal	Contingent Approval

Dr. Kalkut introduced application 142278 and noted for the record that Ms. Carver-Cheney has a conflict and has left the meeting room. Mr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion to approve passed with Ms. Carver-Cheney’s recusal. See pages 73 and 74 of the attached transcript.

2. 142279 E	Huntington Acquisition 1, LLC d/b/a Hilaire Rehab & Nursing (Suffolk County) Ms. Carver-Cheney - Recusal	Contingent Approval
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Dr. Kalkut noted Ms. Carver-Cheney has a conflict on application 142279 and noted that she has left the meeting room. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion carried with Ms. Carver-Cheney’s recusal. Ms. Carver-Cheney remained outside the meeting room. Please see page 74 of the attached transcript.

CATEGORY 4: Applications Recommended for Approval with the Following:

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

HOME HEALTH AGENCY LICENSURES

Exhibit #9

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2313L	AHS Criticare, LLC (Bronx, Kings, Nassau, New York, Queens and Richmond Counties) Ms. Carver-Cheney – Recusal	Contingent Approval

Dr. Kalkut moved to Category 4 and introduced application 2313-L and noted for the record that Ms. Carver-Cheney has a conflict and is not present in the meeting room. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion carried with Ms. Carver-Cheney’s recusal. Please see page 75 of the attached transcript.

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Acute Care Services – Establish/Construct

Exhibit #16

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 142211 B	Sympaticare, LLC d/b/a Summit Park Hospital (Rockland County) Ms. Carver-Cheney – Recusal	

Dr. Kalkut moved to application 142211 and noted that Ms. Carver-Cheney has a conflict and has remained outside the meeting room. Dr. Kalkut motioned for approval, Dr. Berliner seconded the motion. The motion approve carried with Ms. Carver-Cheney’s recusal. Please see pages 75 and 76 of the attached transcript.

Residential Health Care Facility – Establish/Construct

Exhibit #17

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 141223 B	Sympaticare, LLC d/b/a Summit Park Nursing Care Center (Rockland County) Ms. Carver-Cheney – Recusal	Contingent Approval

Dr. Kalkut called application 141223 and noted for the record that Ms. Carver-Cheney has a conflict has remained outside the meeting room. Dr. Kalkut motioned for approval, Dr. Gutiérrez seconded the motion. The motion to approve carried with Ms. Carver-Cheney’s recusal. Ms. Carver-Cheney returned to the meeting room. Please see page 76 of the attached transcript.

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services - Construction

Exhibit #4

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151162 C	University Hospital SUNY Health Science Center (Onondaga County)	Approval

Dr. Kalkut moved Category 1 and called application 151162 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please refer to page 77 of the transcript.

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Diagnostic and Treatment Centers – Establish/Construct

Exhibit #7

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

Residential Health Care Facilities – Establish/Construct

Exhibit #8

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151014 E	PRNC Operating, LLC d/b/a Plattsburgh Rehabilitation and Nursing Center (Clinton County)	Contingent Approval
2. 151085 E	AURNC Operating, LLC d/b/a Auburn Rehabilitation & Nursing Center (Cayuga County)	Contingent Approval

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

Certified Home Health Agencies– Establish/Construct

Exhibit #9

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151118 E	Willcare (Orange County)	Contingent Approval
2.	151119 E	Willcare (Erie County)	Contingent Approval

Dr. Kalkut called applications 132131, 142069, 142222, 151014, 151085, 151087, 151182, 151191, 151118 and 151119 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 78 through 81 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

HOME HEALTH AGENCY LICENSURES

Exhibit #10

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
	1968 L	Finecare Homecare, Inc. (New York, Kings, Queens and Bronx Counties)	Contingent Approval
	1972 L	Beth Israel Homecare Inc., d/b/a American Homecare in NY (New York, Kings, Queens, Bronx, Richmond and Nassau Counties)	Contingent Approval

2217 L	Savi's Homecare Services, Inc. (Bronx, Kings, Queens, Richmond, New York and Westchester Counties)	Contingent Approval
2251 L	Samaritan Services, Inc. (Kings, Queens, Bronx, Richmond, New York and Westchester Counties)	Contingent Approval
2258 L	Epic Home Care, LLC (Westchester, Putnam, Rockland, Sullivan, Dutchess, Ulster and Orange Counties)	Contingent Approval
2265 L	Curatio Health Care Systems, LLC d/b/a Curatio Home Care Services (Bronx, Kings, Queens, Richmond, New York and Westchester Counties)	Contingent Approval
2273 L	Caresense Health, LLC (Kings, Queens, New York, Bronx and Nassau Counties)	Contingent Approval
2298 L	Brarr Inc. d/b/a Home Helpers & Direct Link of Staten Island 58669 (Richmond County)	Contingent Approval
2376 L	Warm Touch Home Care, LLC (Queens, Kings, Bronx, New York, Richmond and Nassau Counties)	Contingent Approval
2382 L	Amazing Grace Home Care Solutions, LLC (Albany, Schenectady and Rensselaer Counties)	Contingent Approval
2386 L	Reliable Home Care Service Corp. (Bronx, Kings, Queens, Richmond and New York Counties)	Contingent Approval

2390 L	Long Island Licensed Home Health Care Agency, LLC (Queens County)	Contingent Approval
2398 L	Mason & Bugayeva Home Care Services, Inc. (Kings, Bronx, Queens and New York Counties)	Contingent Approval
2408 L	Inspired Inhouse Health Care, Inc. (Queens, Bronx, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2420 L	Care for Seniors, LLC d/b/a Home Instead Senior Care (Richmond, Kings and New York Counties)	Contingent Approval
2421 L	Accolade Care, Inc. (New York, Kings, Queens, Bronx and Richmond Counties)	Contingent Approval
2422 L	JJ Wells Company, LLC d/b/a Nurse Next Door Manhattan (New York County)	Contingent Approval
2426 L	Bantam Enterprises, Inc. d/b/a Right at Home (Westchester, Rockland, Orange, Putnam, Sullivan, Ulster, Dutchess, Nassau, Suffolk and Bronx Counties)	Contingent Approval
2428 L	Golden Promises Home Care LLC (Westchester, Rockland, Orange, Putnam, Sullivan, Ulster, Dutchess, Nassau, Suffolk and Greene Counties)	Contingent Approval
2431 L	KB HomeCare, Inc. d/b/a Visiting Angels (Westchester and Putnam Counties)	Contingent Approval

2439 L	Thelus Specialty Care Agency, LLC (Suffolk, Nassau, Westchester, Rockland and Queens Counties)	Contingent Approval
2453 L	Caring Connections, LLC (Rockland County)	Contingent Approval
2470 L	Centercare Home Care Agency, LLC (Queens, New York, Bronx, Kings, Richmond and Nassau Counties)	Contingent Approval
2476 L	Infinite Care, Inc. (Kings, Queens, Richmond, New York, Bronx and Nassau Counties)	Contingent Approval
2486 L	Jefferson's Ferry Home Care, Inc. (Suffolk and Nassau Counties)	Contingent Approval
2648 L	Columbia County Department of Health (Columbia County)	Contingent Approval
2598L	Wavecrest HFA, Inc. d/b/a Wavecrest Home Care (Queens County)	Contingent Approval
2599L	Parkview HFA, Inc. d/b/a Parkview Home Care (Bronx County)	Contingent Approval
2613L	Woodland Village, LLC d/b/a Fawn Ridge Home Care (Albany, Columbia, Fulton, Rensselaer, Saratoga, Schenectady, Schoharie, Warren, Washington and Dutchess Counties)	Contingent Approval
2286L	Attentive Home Care Agency, Inc. d/b/a Always Home Care (Bronx, Kings, Nassau, New York, Richmond and Queens Counties)	Contingent Approval

2315L	Universal Health Care, LLC d/b/a At Your Side Home Care Services (Bronx, Kings, New York, Queens, Richmond and Nassau Counties)	Contingent Approval
2373L	Platinum Home Health Care, Inc. (Nassau, Bronx, Kings, New York, Queens and Richmond Counties)	Contingent Approval
2506L	Effective Home Care, L.L.C. (Bronx, Kings, New York, Queens, Richmond and Westchester Counties)	Contingent Approval
2530L	Angel Care, Inc. (Bronx, Kings, New York, Queens, Richmond and Nassau Counties)	Contingent Approval
2567L	HCS Home Care of Westchester, Inc. d/b/a A&J Home Care (Putnam and Westchester Counties)	Contingent Approval
2616L	Willcare, Inc. d/b/a Willcare (See exhibit for list of Counties served)	Contingent Approval
2617L	Litson Health Care, Inc. d/b/a Willcare (See exhibit for list of Counties served)	Contingent Approval
2288L	Morningside Acquisition III, LLC d/b/a Morningside at Home (Bronx County)	Contingent Approval

Dr. Kalkut moved to Category 3 and called applications 1968, 1972, 2217, 2251, 2258, 2265, 2273, 2298, 2376, 2382, 2386, 2390, 2398, 2408, 2420, 2421, 2422, 2426, 2428, 2431, 2439, 2453, 2470, 2476, 2486, 2648, 2598, 2599, 2613, 2286, 2315, 2373, 2506, 2530, 2567, 2616, 2617, and 2288 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 81 and 82 of the transcript.

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Exhibit #15

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151186 B	Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Erie County)	Deferred

Dr. Kalkut moved to Category 6 and called application 151186 and motioned for a deferral. Dr. Gutiérrez seconded the motion. The motion to defer passed. Please see pages 82 and 83 of the attached transcript.

Certificate of Amendment of the Certificate of Incorporation

Exhibit #18

<u>Applicant</u>	<u>Council Action</u>
Certificate of Amendment of the Certificate of Incorporation of The Capital Region Geriatric Center, Inc.	Approval

Dr. Kalkut introduced the Certificate of Amendment of the Certificate of Incorporation of The Capital Region Geriatric Center, Inc. for consent to file and motioned for approval. Dr. Berliner seconded the motion. The motion passed. Please see page 83 of the attached transcript.

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

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

Mr. Robinson began his report by thanking Mr. Delker for his work on the Committee and asked Mr. Delker to present the recommendations to the Council

Mr. Delker stated that the report addresses the issue of ASCs and charity care in serving the underserved in response to the Council on the Department's noticing that in the initial years of limited life approval many of the ambulatory surgery centers were not reaching the charity care goals particularly. The Committee was convened back in September to examine the reasons. Over the course of four meetings there was much discussion both operators of ASCs and advocates for the underserved regarding the difficulties and successes that are entailed in trying to bring ambulatory surgery services to the underserved. The Committee also heard from the industry, from the New York State Association of Ambulatory Surgery Centers and they are very supportive of reaching out to underserved populations, and including for Medicaid and charity

care and others who expressed the concern that it is standard practice among their members to try to enroll uninsured clients into Medicaid if they are found to be eligible. So when a client presents or is referred, they do make an effort to do that and they did not, and also they will if the client is not eligible at the time of service, they often become eligible following service due to the cost incurred liability incurred by undergoing the procedure. The association did not want to point loss that they are disposed to serve the uninsured and to enroll them in Medicaid and they did not want this, the resulting declining numbers in uninsured to paradoxically indicate that they may not be supportive. Their initiative to enroll the uninsured in Medicaid wherever possible that that might somewhat seem to contradict their efforts to serve the uninsured by showing up as actually paid clients under Medicaid, that point is in the final report.

Mr. Delker also stated that the Committee heard on this latest draft from the New York City Department of Health who has been very supportive of this effort and is working with the American Cancer Society to bring uninsured clients into endoscopy screening, and also heard from several providers that are collaborating in this effort. NYC pointed out that in the paper the Committee suggested that the applicants ASCs document contacts with FQHCs or other entities that might serve as referrals for the uninsured, they wanted the recommendation to be a little more specific about contacts so the report reflects the added information to the effect that with specific examples of meetings, conference calls, letters, and other active measurable indicators that would show that.

Mr. Delker also explained that the Committee recognized in the discussions that with the increasing and Medicaid enrollment and the increased enrollment under the Affordable Care Act, the number of uninsured is declining and some of the Committee members were concerned that our earlier discussions and draft might have left the impression that it was OK to just go after Medicaid and bad debt and consider that the obligation. The report has added language at the end of this current draft to the effect that these things are good developments, but they should not be seen as substitutes altogether for charity care, and that all ASCs should still be expected to show a sustained good faith effort to reach charity care clients.

Mr. Delker stated that building on what Ms. Dreslin said earlier in the morning and describing the report from New York State of Health last week, which showed that some 2 million New Yorkers have enrolled through the exchange through the end of the second enrollment period representing 89 percent of them were uninsured at the time of enrollment. According to U.S. census data there were 2.1 million New Yorkers uninsured in 2013 before the implementation of the Affordable Care Act, so the amount of uninsured is coming close to the total number of uninsured who enrolled is coming close to the total number of uninsured. There is still always going to be uninsured people out there and ASC should be expected to serve them. The operators have stated that it is getting harder and harder to find uninsured and charity care clients which reinforces the Committee's decision not to put an actual percentage of uninsured or charity care in the guidelines in the paper. It just has to be borne in mind that each ASC has to be evaluated according to its own circumstances and service area and the type of services that are being proposed. We have to be ever mindful of the context in evaluating these applicants of the changing insurance situation, broader coverage, growth of Medicaid managed care, and the way the whole landscape of healthcare is changing underneath our feet through DSRIP and PPSs and other activities.

Mr. Delker concluded by stating that report provides guidance to the Council, to the Department and to ASC operators and applicants about what is expected and at the same time acknowledges that this is occurring in a changing healthcare environment.

After further discussion Mr. Robinson motioned to adopt the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care Recommendations. Dr. Berliner seconded the motion. The motion passed.

Mr. Robinson concluded his report. To view the complete report and members questions, please see pages 84 through 94 of the attached transcript.

ADJOURNMENT:

Mr. Kraut adjourned the public portion of the Council meeting.

1 JEFF KRAUT: Good morning. I'd like to welcome everybody
2 to the August 6 meeting of the Public Health and Health Planning
3 Council. I'm Jeff Kraut the chair of the Council and I have the
4 privilege to call to order this meeting. I want to welcome
5 members of the Department staff, Ms. Dreslin, and participants
6 and observers. As I said previously, I gave you some kind of
7 groundrules here. We have three individuals I'd like to spend a
8 few minutes talking about before I ask for reports. First, many
9 of you are aware that Dr. Bhat has resigned from the council and
10 he was a dedicated member of the council, and on behalf of the
11 council, both Dr. Boufford and I have written a resolution of
12 appreciation, and I just want to read you, not the entire thing
13 but some part of it into the record to thank Dr. Bhat for his
14 years of service. He served from June 3, 2010 to November 30,
15 2010 on the Public Health Council and then on the merged council
16 from December of 2010 till May 26 of this year. And as a tenure
17 on the council he was dedicated, he served as chair of the
18 committee on health professional and interprofessional
19 relations, a member of the codes regulation and legislation
20 committee and he served on the ad-hoc committee on freestanding
21 am-surg centers and charity care, and he's made significant
22 contributions to improving the health of New York State's
23 residents, improving the delivery system for our citizens, and
24 we want to acknowledge his valuable service on the Council for

1 the past five years. In addition, in June we received the
 2 resignation of Dr. Grant. She resigned from the Council and
 3 she's taken a new position in a new kind of phase of her life as
 4 Sr. Vice President for Chapter Programing to the Say Yes to
 5 Education. This is a national non-profit organization. In that
 6 capacity she's going to be providing programing support to
 7 community-wide chapters in the upstate, New York City, Buffalo,
 8 and Syracuse as well to a smaller chapter that's located in
 9 Harlem in the City and she has also been an equally dedicated
 10 member of the new council and we wish her well in her endeavors.
 11 She served from April to November of 2010 on the Public Health
 12 and Health Planning - on the State Hospital Review and Planning
 13 Council, the predecessor entity, and on May of 2011 to June of
 14 2015 on the Public Health and Health Planning Council and she
 15 served on the Council as Vice-Chair of Health Planning, Vice
 16 Chair of the Health Personnel and Interpersonal Relations
 17 Committee and is a member of Establishment and Project Review,
 18 and together with Dr. Bhat we wish her well in their new
 19 ventures. We thank her for her years of service and the
 20 gratitude and we will be sending her a certificate of
 21 appreciation as well on behalf of the council.

22 And I want to talk about Chris Delker who is here today
 23 with us. Chris as you know or you may have heard if you haven't
 24 seen the flyer, there after 36 years of State service and that

1 was not his only career - he's done other things, but in
2 healthcare Chris is retiring. We're going to have an event to
3 vest him and his years of service on October 6 and there's a
4 flyer out there. You should actually keep this flyer. It's
5 probably going to be a collector's item because Chris is smiling
6 in the picture and that - you know, he's a serious guy, let's
7 admit it, but to have - that's why it's so fuzzy because there's
8 not too many pictures - I guess they grabbed that off of
9 FaceBook, Chris. We had to photoshop it in, but you know, I
10 could spend an hour talking about Chris. I've known him for I
11 think a good part of his professional career, we've overlapped,
12 he is going to be with us on the Committee day, on September 24,
13 some of his last act, but we're not going to be together as a
14 Council to congratulate him. And we too have a certificate of
15 appreciation. But Chris has served, that spanned the
16 administration of five governors, bookended by Cuomos, and seven
17 commissioners of health. There are only a handful of people in
18 the Department today that have those legacies, and more
19 importantly the historical perspective on the development of
20 policy, and Chris is one of those go-to guys. Whenever we have a
21 problem, and he will remind us that we had this problem 20 years
22 ago, we're still trying to solve it, he has displayed expertise
23 in so many facets of healthcare delivery system and those of us
24 will remember he managed and administered the Heal New York

1 program. He was intimately involved in the implementation of the
2 Berger Commission mandates, he's given us counsel since 1995, he
3 probably was the godfather of a lot of the policies and
4 updating, revising, certificate of need regulations, the bed
5 need methodologies which we're still doing. You can't leave
6 until we get the long term care one done. The cost thresholds.
7 He was there at the beginning of ambulatory surgery centers,
8 provider networks, the whole span of trying to create a more
9 contemporary framework for design and construction and operation
10 of facilities. The industry owes you an enormous debt of
11 gratitude for a kind of forward thinking but also keeping us
12 grounded in what we're able and capable of doing. He most
13 likely, most recently served on the ad-hoc committee on
14 freestanding surgery centers and charity care. He was helping
15 us look at those factors affecting the level of Medicaid and
16 charity care. Something I know he was passionate and still is.
17 And so, Chris, on behalf of the council on all of us we just
18 want to congratulate you, wish you well, and the character that
19 you've displayed, the content of your character, we are just
20 enormously gratified to have somebody such as yourself with
21 years of public service serving the people of New York State and
22 our healthcare industry, so congratulations.

23 [applause]

24 Chris, you.....

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CHRIS DELKER: I might exercise my seniority and take more,
but,

JEFF KRAUT: Nobody will say no to you. At least before.

CHRIS DELKER: Well, briefly, thank you for that tribute
and thank you for the opportunity to work with you over these
years. It's been a privilege. And I'd like to thank you
personally as a citizen and a tax payer for the contributions
you make coming here as you do away from your regular endeavors.
Some of you loss of income, without compensation. But certainly
the public health system that safeguards us and the health
facilities that serve us when we need them are better off for
your efforts and I thank you for that.

[applause]

JEFF KRAUT: Well Chris, good luck, long life and enjoy
whatever that next chapter takes you.

OK, so today what we're going to do is we just finished the
health policy and the special meeting of the project review.
We're going to go through the reports from the Department of
Health, hear from Ms. Dreslin, Mr. Sheppard, Ms. Pirani, Dr.

1 Boufford will report on the public health services and
2 committee. Dr. Gutierrez will update us on regulation. We'll
3 return to Dr. Kalkut on project review and establishment. Mr.
4 Robinson will then brief us on the ad-hoc committee on
5 freestanding ambulatory surgery and charity care, and I'll go
6 through the agenda. Members of the council and most of our
7 guests who regularly familiar and attend these meetings, we've
8 organized the - well, I'll tell you what, I'll go through this
9 when we go through the project review on the rules. So, let me
10 turn it over to Ms. Dreslin now who will give the report for the
11 Department.

12

13 MS. DRESLIN: Thank you. And good morning. It's my
14 pleasure to be here today. The health department has had a very
15 busy summer and I do have a number of updates for you. So I'd
16 like to start with the latest news about legionella in New York
17 City. As you may know, there's been an outbreak in the Bronx
18 that has resulted in 97 cases including 8 deaths as of last
19 night. Since the trend was identified, Wadsworth laboratories
20 has been testing samples both environmental and human to support
21 the city's investigation. This is sophisticated testing that
22 our Wadsworth Center excels at. We do continue to see some more
23 cases although the persistently hot and humid weather that
24 promotes the bacterial growth is abating and in addition the

1 identified contaminated cooling towers have been disinfected.
 2 So we hope the trend is changing. But we do want healthcare
 3 providers to consider legionella and conduct patient testing
 4 whenever they might suspect the disease. Legionella is a
 5 bacterial disease that can cause mild respiratory illness but it
 6 can also cause pneumonia and lead to death. So some symptoms
 7 include muscle aches, headache, tiredness, dry cough followed by
 8 a high fever, chills, and occasionally diarrhea. Legionella is
 9 more likely to affect the elderly and people who have
 10 compromised immune systems but important to note the disease
 11 does not spread from person to person. So we will continue
 12 working with New York City. We will be monitoring the situation
 13 closely and updating as necessary.

14 On another front the Department announced news on medical
 15 marijuana. The Department has selected five organizations out of
 16 the 43 that applied to be issued registrations to manufacture
 17 and dispense medical marijuana. The selection of the five
 18 registered organizations is a major step forward in New York's
 19 accelerated time table to implement the medical marijuana
 20 program by January 2016. New York is working to launch the
 21 program and begin providing care to patients faster than any
 22 other state has previously done. The five organizations are
 23 Bloomfield Industries, Columbia Care New York, Empire State
 24 Health Solutions, Attain, and Pharmacann. And there's

1 information available on our website. Each organization will
2 manufacture in one location and operate four dispensing
3 facilities across the State. In selecting the organizations we
4 did we made sure the proposed dispensaries were geographically
5 dispersed in a way that will meet the needs of all certified
6 patients. But we will continue to monitor patient demand, in
7 order to make sure that all patients who meet the requirements
8 of the compassionate care act will indeed benefit from the
9 program.

10 Only certain forms of medical marijuana are permitted and
11 all products will be tested for quality and consistency. Our
12 goal has always been to ensure that all New Yorkers have access
13 to the best and safest treatments possible. This medical
14 marijuana program meets that goal. And by making this therapy
15 available in the safest way possible we will hopefully alleviate
16 suffering from many New Yorkers with debilitating diseases.

17 On another note, last month Governor Cuomo initiated a push
18 for stronger regulations to combat the sale of synthetic
19 cannabinoids in New York. As you may know these dangerous man-
20 made compounds have resulted in a dramatic increase in reports
21 of emergency department visits and poison control center calls.
22 During April 1 to June 30 New York State saw more than 1900
23 emergency department visits and more than 680 poison control
24 center calls due to adverse health effects associated with

1 synthetic cannabinoid use. This is more than a 10-fold increase
2 over the same time period in 2014. But what's more alarming is
3 that of those people going to emergency departments more of them
4 are going to critical care units. Nationally there have been 15
5 synthetic cannabinoid related deaths reported to poison control
6 centers in the first five months of this year, but so far no
7 deaths have occurred in New York State and we're trying to keep
8 it that way. That's why we're expanding the existing list of
9 banned substances which you'll be voting on today, hopefully, to
10 include two more chemical compounds that drug producers have
11 begun to make since 2012. That's when Governor Cuomo banned the
12 sale of possession of dozens of synthetic cannabinoids and bath
13 salts. We believe these new regulations will help keep New
14 Yorkers safe.

15 The Department is also working to avoid fatal opioid
16 overdoses. There are now more than 220 registered overdose
17 programs in the State. They are training individuals to respond
18 appropriately to opioid overdose. So, besides calling 911,
19 people can be trained to administer a naloxone. Naloxone is a
20 medication that can reverse the deadly effects of heroin and
21 other opioids. It works by temporarily blocking the effects of
22 the opioid, whether illicit or prescription allowing the
23 individual to regain consciousness and resume normal breathing.
24 It poses no danger to anyone who otherwise might come into

1 contact with it. More than 65,000 citizen responders have been
2 trained so far, and nearly 1300 naloxone administrations have
3 been reported to the Department. Another 500 additional
4 administrations have been reported by law enforcement personnel
5 who are also receiving training. The Department has joined
6 forces with the New York State Division of Homeland Security and
7 Emergency Services, and the New York State Office of Alcoholism
8 and Substance Abuse Services to provide free naloxone training
9 to fire departments as well across the State. Firefighters are
10 often the first to arrive on the scene of a suspected opioid
11 overdose and that's why it's critical that non-EMS fire
12 departments and all emergency responders receive this training.
13 After completing the training naloxone will be made available
14 free of charge to participating fire departments. The training,
15 a component of Governor Cuomo's Combat Heroine and Prescription
16 Drug Abuse Campaign is funded and administered by the Department
17 of Health. The Department is also collaborating with other state
18 agencies to train inmates who are about to be released, their
19 family and friends as well as school nurses and school
20 employees. Most people who are trained will have the option to
21 receive a naloxone kit free of charge and taken together, these
22 efforts will enhance the safety of New Yorkers who have
23 succumbed to this terrible addiction.

1 Last month we joined the nation in celebrating the 50th
2 anniversary of Medicaid and Medicare. It was 1965 when
3 President Lyndon Johnson signed into law these two pieces of
4 legislation that have truly altered the face of healthcare in
5 our country. The anniversary came just after Governor Cuomo's
6 announcement that New York's Medicaid per person spending had
7 fallen to a 13 year low over this past year. This significant
8 decrease has saved billions of dollars for New York's taxpayers
9 and the drop in spending happened even as we added new
10 beneficiaries to the Medicaid program. Credit goes to the
11 reforms implemented in 2011 by the Medicaid Redesign Team, and
12 the savings from the revamped program are now being reinvested
13 through DSRIP into 25 performing provider systems. These
14 networks which involve hospitals, private physicians, community
15 service groups and more are all working to decrease avoidable
16 hospital admissions and improve our State's safety net system
17 and the healthcare system at large.

18 Summertime often means increased exposure to ticks and
19 mosquitos and Lyme is not our only tick-borne challenge in the
20 warm weather. Every summer we get about 1000 cases of other
21 tick-borne diseases. All of this on top of nearly 7000 cases of
22 Lyme each year, and at the same time we're dealing with
23 mosquito-borne diseases. This summer three counties, Onondaga,
24 Oswego, and Madison have all identified West Nile Virus and EEE,

1 which is Eastern Equine Encephalitis. Onondaga County has six
 2 pools test positive for EEE, Madison has had four pools and
 3 Oswego has had three. The State has - all three have received
 4 imminent threat to public health status for these counties and
 5 this enables the State reimbursement formula to increase so that
 6 the county has more resources for combating these diseases. We
 7 are also seeing West Nile Virus around the State. In fact, we
 8 have had 35 positive pools this summer with 20 of those in
 9 Suffolk County on Long Island. But the Department continues to
 10 be vigilant about these disease and work together with local
 11 health departments in combating.

12 This summer also marked the debut of capital for a day.
 13 Governor Cuomo launched this initiative in Rochester on July 9.
 14 Capital for a day was created to bring State government directly
 15 to the people it serves. The day-long event partners state
 16 officials with residents, local leaders and stakeholders to
 17 examine first hand the needs of the community. What grew out of
 18 this were several new initiatives to better connect New York
 19 Schools to local growers and producers across the State working
 20 with the Office of General Services, of Agriculture and Markets,
 21 the Department of Health is promoting the use of fresh healthy
 22 foods in school meals across the State while at the same time
 23 giving a boost to the State's agricultural industry. The
 24 Department of Health also announced \$6 point million [sic] in

1 grants to 26 organizations statewide. These creating healthy
 2 schools and communities grants will allow local organizations to
 3 combat obesity and other chronic diseases in high-need school
 4 districts and surrounding communities. The grant recipients
 5 will work with school districts and school retailers to improve
 6 access to nutritious food and increase opportunities for daily
 7 physical activity.

8 And for a final bit of good news, I'd like to discuss the
 9 decline in the State's smoking rates. New York's smoking levels
 10 are now at their lowest rate in recorded history. Our data shows
 11 that for the last four years the smoking rate among high school
 12 students has dropped 42 percent and now remains at 7.3 percent.
 13 Meanwhile the adult smoking rate has dropped to 14.5 percent and
 14 remains below the national average which is 17.8 percent. We
 15 attribute these drastic reductions to the State's wide-ranging
 16 tobacco control efforts which includes the prevention agenda and
 17 our comprehensive cancer control program. These programs focus
 18 on the use of evidence-based strategies to encourage people to
 19 stop smoking as well as aggressive public awareness campaigns.
 20 The State also promotes policies that make tobacco less
 21 accessible to youth. This includes the State's adolescent
 22 tobacco use prevention act, ATUPA, which combats illegal sales
 23 to minors through sting operations across the State. In
 24 addition to our efforts - in addition our efforts include making

1 resources to break the addiction more widely available to people
2 who are trying to quit. We also had some good news about the
3 health exchange market place, the New York State of Health. The
4 report was released recently. As of February 28 this year more
5 than 2.1 million people have enrolled in health insurance
6 coverage through the New York State of Health. This represents
7 more than a two-fold increase from the first open enrollment
8 period where we enrolled more than 960,000 people. 89 percent of
9 the people who had enrolled said that they had previously been
10 uninsured. It's remarkable. By providing more New Yorkers with
11 affordable health insurance coverage we're giving them greater
12 access to healthcare that bodes well for the health of all New
13 Yorkers.

14 So as you can see it has been a busy summer for the
15 Department. In judging from what I see now, today especially it
16 will remain this way into the foreseeable future. So thank you
17 very much, and that concludes my comments.

18

19 JEFF KRAUT: Thank you Ms. Dreslin. Any questions from
20 the Council? Yes, Dr. Brown.

21

22 LAWRENCE BROWN: I want to continue to commend the
23 Department for it's excellent leadership, and your report
24 certainly demonstrates that on a number of levels. I want to -

1 one of the things you probably know that Dr. Martin and I also
2 serve on the Advisory Panel for behavioral health services
3 advisory council, and that issue of synthetic cannabinoids
4 continues to be a concern for treatment professionals. So, we
5 salute and we clearly want to continue to collaborate with the
6 Department and we believe that it presents that interest and
7 conundrum because on the one hand as treatment professionals we
8 generally stay away from law and order issues. But quite
9 frankly it's kind of difficult to do that given how we see this
10 perpetuated in the State of New York. So, I want you to know
11 that we are there in support of you and as recent as the last
12 meeting this has been a topic of the agenda for each council
13 meeting for that group as well.

14 Also wanted to commend the Department because through the
15 AIDS Institute, it's campaign on drug user health certainly is
16 one that I would like to commend. I'm not sure I would really
17 give them a lot of kudos for having selected me to be a
18 participant in the webcast, but that's another issue. But I'd
19 like to salute them for doing so because I think the stigma with
20 respect to drug use, and actually with those who treat those who
21 have substance use disorders continues to be prevalent in New
22 York State and one way to do that is to have a Department like
23 the New York State Department of Health to take the leadership
24 role that it has. I have one question; it felt like I was going

1 to go on forever, Mr. Chair. I understand and appreciate that.
2 With the ISTOP program, and I've been certainly a supporter of
3 it, I was wondering, those patients who have the benefit of
4 medical marijuana, will they be registered in the ISTOP program?

5
6 MS. DRESLIN: They will. And thank you for your words.
7 Thank you.

8
9 JEFF KRAUT: The other issue with the synthetic
10 cannabinoids depends particularly, the ones, whoever is cooking
11 them, they accompany extraordinary aggression at times, and it
12 creates a risk to both law enforcement and our health personnel.
13 So it's, they come in super strong. Dr. Martin.

14
15 GLENN MARTIN: So I will echo but not repeat the comments
16 of my colleague. But I just want to say again, and it's
17 anecdotal, on the ground, there still remains fairly significant
18 problems, as you know, with I think the enforcement of the
19 rules. At least in bodegas in the New York City area and
20 probably others. I mean, I just know in the New York City area
21 from anecdotal, but I suspect that in truck stops throughout the
22 State, it's still there. And I know, in the enforcement, it's
23 not directly under DOH, but again, just the idea of getting the

1 word out to the local authorities and making it a priority would
2 be greatly appreciated.

3

4 MS. DRESLIN: Absolutely. And we are working across
5 agency including law enforcement at a variety of levels state,
6 local, and even in some sense federal. So we do recognize that
7 challenge and are trying to incorporate that into a really
8 comprehensive approach.

9

10 JEFF KRAUT: Ms. Rautenberg.

11

12 ELLEN RAUTENBERG: Hi. Are our health code laws
13 sufficient to legionnaires and cleaning water towers? Obviously,
14 a hospital was part of the issue.

15

16 JEFF KRAUT: Also I think one of the things in the next
17 round when Dr. Birkhead is here we might go through that in
18 October. I'm not sure, you know, just so we have people from
19 Wadsworth here. Oh, wait a minute. He's retired, right. Well,
20 he's not going to be here. Day two.

21

22 [we're going to review that at that point]

23

24 I think let them go through the process here.

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ELLEN RAUTENBERG: Secondly, is there some oversight, external oversight on the medical marijuana? Citizens, physicians, ethicists? The Department often puts together sort of oversight committees. Is there one on medical marijuana?

MS. DRESLIN: There is not one. There is not an external medical oversight committee on medical marijuana. There is a cross agency initiative to continue to monitor the program, to make sure that it's the safest that it is very highly regulated. The commissioner of health and the superintendent of the State police are actively involved, and we continue to monitor for both ensuring access for certified patients and eligible patients but also to ensure that the program integrity remains strong and will be continuing to evaluate diseases that could be included on an ongoing basis as is reflected in the statute and the regulations and insuring that it meets the needs in a safe and regulated manner. Sure.

JEFF KRAUT: Thank you. I'm going to now ask Mr. Sheppard to give an update on the activities of the Office of Primary Care and Health Systems Management.

1 DAN SHEPPARD: Thank you Mr. Kraut. I'm going to I guess
 2 build on, it's been a busy summer theme that executive deputy
 3 commissioner Dreslin began. Sally mentioned several initiatives
 4 that reside within OPCHSM , opioid, esthetic cannabinoids and
 5 the opioid prevention as well as medical marijuana, Mr.
 6 Segara who is sitting over there to present on the synthetic
 7 cannabinoid regulations later is our director of the Bureau of
 8 Narcotics Enforcement and is a leader on those issues and has
 9 had a very busy summer. So, just building on the busy summer
 10 theme for the Office of Primary Care and Health Systems
 11 Management, as we look forward to working with PHHPC over the
 12 next months and years on updating and modernizing our
 13 regulations to better align with, gross understatement is an
 14 evolving healthcare delivery system, we're working today to find
 15 some paths within our current framework to accommodate requests
 16 from the industry who, clearly the pace of change is rapid and
 17 we get almost on a daily basis increasingly innovative complex,
 18 certificate of need and other proposals that require our most
 19 excellent staff's attention.

20 So, just some examples of this that we're working on now
 21 are looking at how to facilitate the opening of small clinics
 22 within homeless shelters and other non-traditional community-
 23 based settings to increase access to primary care and healthcare
 24 services, very often for some of our most fragile citizens.

1 This effort involves working with our policy people, our
 2 planning and licensure folks, most particularly our architecture
 3 bureau in trying to navigate within the regulations both state
 4 and federal that we have to operate within trying to find paths
 5 that with patient safety first and foremost we can move primary
 6 care as rapidly as possible into communities, again, we see
 7 homeless shelters, small clinics are a big area there.

8 Colocation and shared space, separate apart from integrated
 9 behavioral health services, colocation and shared space is
 10 really I think a dominant issue and a policy, at a regulatory
 11 level for us. And again, how as systems, as systems, our
 12 healthcare systems network and integrate the natural synergies
 13 between types of licensed providers and how do we, again, in a
 14 way that is compliant with regulation statute and patient safety
 15 as well as financial integrity on public payment side, how do we
 16 bring these entities together and allow these natural
 17 collaborations and relationships to grow for the benefit of
 18 patients, again, within a regulatory framework that we have to
 19 operate in now and then from that what are the ideas, what are
 20 the proposals that again will engage with PHHPC, with
 21 legislature, with CMS on an ongoing basis to try to modernize
 22 our healthcare system. And then also I suppose we had a flavor
 23 of earlier today in the special meeting looking at need
 24 differently in the context of projects that are parts of

1 integrated delivery systems. These are all, I think it's rich
 2 and interesting work. It is busy. Very, very busy and I just,
 3 on top of more routine work that continues to happen here, so
 4 definitely credit to many of the staff you see sitting around
 5 here and the many more who are back in the Department.

6 Another area of summer activity are requests for
 7 applications for a number of projects both an unprecedented
 8 amount of capital dollars that we've been blessed to have the
 9 responsibility of administering to the industry that we're
 10 working through. We're in the process of currently reviewing,
 11 over 640 applications for \$1.2 billion of capital restructuring
 12 financing program funding. We have teams evaluating these
 13 awards and we're expecting decisions by the October/November
 14 timeframe...October timeframe on this. I think if you think about
 15 HEAL being \$1.5 billion administered over a multiyear period,
 16 we're talking about \$1.2 billion administered in a single
 17 offering here. I think, for the impact, I think we're obligated
 18 as necessary to do that given the impact it will have on
 19 propelling DSRIP forward. But again, certainly for a busy
 20 summer.

21 We're also in the process of we just received over a number
 22 of applications, well over 100 applications for 3400 assisted
 23 living program slots and OPHCSM staff are in the process of
 24 evaluating those applications with decisions expected also in

1 the fall timeframe. Doctors Across New York, the applications
2 for both practice support and the loan payment programs are
3 coming in for the next cycle and we're evaluating those, and
4 finally we are on the RFA front, we're finalizing RFAs for an
5 additional \$1.3 billion of new capital funding for healthcare
6 transformation projects that were provided in the most recent
7 budget, and I think, move forward on that. An additional
8 activity that we're doing is working with over 30 hospitals
9 statewide. These are financially struggling hospitals on
10 sustainability plans. This is connected to transitional,
11 transformational, transitional funding that was in the budget
12 and again, it's both small, rural, urban, small, large, there
13 are a number of facilities out there that need to try to chart a
14 path forward and working with them to do that. And finally but
15 not certainly not exclusively, I want to talk about trauma
16 center verification. I, again, the time I spent here I haven't
17 heard much discussion in PHHP about the OPCHSM's role with
18 respect to emergency medical services, but the work that's done
19 by the staff in this area, by Lee Burns who heads up the area
20 and her staff is critical, and they're real professionals. A
21 big recent accomplishment that I want to acknowledge there is
22 that the following facilities have been successfully verified as
23 trauma centers. North Shore University was verified as a level
24 one adult trauma center; South Side Hospital, a level two adult

1 trauma center; Westchester Medical Center, a level one adult and
 2 pediatric trauma center; Upstate University Hospital, a level
 3 one adult and pediatric center; Erie County Medical Center,
 4 level one adult; and Strong Memorial Hospital, level one adult.
 5 There are going to be five additional hospital centers set to
 6 have their verification visits in 2015. And then there are two
 7 more centers scheduled for visits in March 2016. And I just,
 8 additionally there are four new trauma centers who were
 9 provisionally designated. That's New York Methodist Hospital,
 10 Orange Regional Medical Center, St. Luke's Cornwall and Canton-
 11 Pottsdam Hospital. And about 15 community hospitals have
 12 expressed interest in level four designation and there are a
 13 handful more that have expressed interest in level three
 14 designation.

15 So that's a sampling of ongoing activities and OPCHSM. And
 16 I suppose I would be remiss, although we'll have our
 17 opportunities as a Department to acknowledge Chris's
 18 contributions, but I can't imagine having tried to navigate my
 19 way through my first year on this job without Chris and I just
 20 want to publicly thank him for all the help and guidance he's
 21 provided me. So thank you.

22

1 JEFF KRAUT: Thanks Mr. Sheppard. Any questions for Mr.
2 Sheppard? Well, it's a busy summer, like every summer. Thank
3 you.

4 Now - oh, before I do this I should've done something
5 earlier. I just need a motion to adopt the June 11, 2015
6 minutes. Second. All those in favor?

7
8 [Aye]

9 Opposed? Motion carries.

10 I'll now ask Ms. Pirani to give us an update on the
11 activities of the Office of Public Health.

12

13 SYLVIA PIRANI: Good morning. I'm pleased to give the
14 report this morning. I just wanted to give you a quick update on
15 the Prevention Agenda which we talked about at the most recent
16 Public Health Committee meeting where we reported on the fact
17 that we've met 16 of the 96 outcome objectives in the Prevention
18 Agenda and substantial progress has been made on an additional
19 22 indicators. We discussed our ongoing efforts to help
20 coordinate local prevention agenda efforts with activities and
21 hospitals have underway related to DSRIP and community benefit.
22 We talked about getting ready for the next three year planning
23 cycle which will launch this fall and our next ad-hoc committee
24 meeting is September 24. We also talked about focusing some

1 attention on health disparities and when the Office of Minority
 2 Health Disparities report will be issued later this year.

3 And then on other public health fronts just very briefly I
 4 wanted to let people know that the department has received two
 5 competitive grants we thought you'd like to hear about. One is
 6 a multiyear grant awarded by the CDC to enhance our food safety
 7 efforts and improve response to outbreaks of foodborne illness.
 8 This is \$260,000 for the first year and for about at least five
 9 years of funding and we're one of only six states to receive
 10 such funding. Foodborne illness affects tens of millions of
 11 people and kills thousands in the United States each year
 12 resulting in billions of dollars in healthcare related costs and
 13 this grant is to establish a center of excellence in New York
 14 State. We're going to partner with Cornell University and focus
 15 attention on strengthening surveillance systems and outbreak
 16 investigations, improving the timeliness, completeness and
 17 effectiveness of our surveillance and outbreak response
 18 activities, establish training of local and state public health
 19 personnel, and insure active participation by state and local
 20 health departments. This is a regional award so it's HHS
 21 regions 1, 2, and 3. So will actively involve all of them, and
 22 it's really a quality improvement effort which really supports
 23 our accreditation efforts. So we're very pleased about that.
 24 And then the second award is one that Anna touched on. It's,

1 New York is one of nine states selected for funding under the
2 Paul Coverdale National Acute Stroke program, a new five-year
3 CDC cooperative agreement. \$750,000 in year one. We're going to
4 facilitate regional pilots to encourage the development of
5 integrated stroke systems of care across health systems
6 including EMS, hospitals, and post-discharge care organizations.
7 We're going to link data collected through SPARCS and vital
8 statistics with data on processes of acute stroke care reported
9 as part of the stroke designation program to inform the
10 development of statewide measures to measure outcomes and guide
11 and track improvements in stroke systems of care. This is an
12 important initiative that also represents collaboration between
13 the Office of Public Health and the Office of Quality and
14 Patient Safety. So we're very excited about this opportunity.
15 And that concludes my report.

16

17 JEFF KRAUT: Thank you. Any questions for Ms. Pirani?
18 Thank you. Yes? I'm going to ask Dr. Boufford to give the
19 report on the Public Health Committee.

20

21 JO BOUFFORD: OK, thank you. Ms. Pirani just told you
22 about the update on the Prevention Agenda which is moving well
23 and I think really is providing platform for collaboration at
24 county level between hospitals among hospitals and local health

1 departments and other stakeholders that can be very valuable
2 going forward and achieving prevention goals around the state
3 that hopefully will be reinforced through the advanced primary
4 care work as well as the DSRIP domain for component.

5 I just want to add a little bit on the maternal mortality
6 work. We began - we haven't talked about it to the council for
7 a while, so just very quickly, the Public Health Committee had
8 wanted to select one particular sort of health problem that we
9 wanted to try to as we called it move the needle on in addition
10 to our oversight of the prevention agenda work and during the
11 sort of late 2013 and '14 we worked closely with, and I want to
12 commend certainly Rachel Delong and Marilyn Casica as well as
13 Gus Birkhead and Sylvia who first couple of meetings really gave
14 us terrific briefings on the status of maternal mortality I the
15 State of New York. New York has the dubious distinction of
16 being 47 out of 50 states in terms of maternal mortality and the
17 racial disparities are 3:1 for African American women dying in
18 childbirth and 7:1 in the City of New York. So this is
19 significant public health problem even though the numbers are
20 quite small relative to some of the other epidemics that
21 appropriately attract a lot of attention. So we've decided to
22 try to keep attention on it so that we can take action. We also
23 had a very nice review of all of the very robust activities that
24 are going on in the Department to address maternal mortality and

1 the committee identified that much of the focus has been on
2 hospital-based management of acute crises and life saving
3 activities as well as chart review to develop clinical
4 guidelines to improve management of those crises but there had
5 been relatively less focus on what we might call preconception
6 or interconception care before the hospital based delivery and
7 then between birth, between pregnancies and to some degree after
8 birth so we decided to focus our efforts there, and did some
9 looking at the evidence which shows that one of the most
10 important risk avoidance strategies in maternal mortality is
11 prevention of unplanned pregnancy especially in women of 35 or
12 over 40. And so that lead us into thinking about the issue of
13 reproductive health in relation to the primary care enterprise
14 and similarly the early identification of pregnant, of women who
15 are pregnant who may become high risk. The other issue that was
16 identified in our review was the increasing incidence of chronic
17 diseases like diabetes, heart disease, related obesity in
18 younger women which means that pregnancy may or may not be the
19 very simple straight-forward, hopefully simple and straight-
20 forward activity that may be in people's minds. So it means
21 that early referral and referral availability for specialty care
22 and OBGYN is very important. So that's where we put our energy
23 and that led us naturally to looking at the elements of the
24 State Healthcare Reform in which we might integrate higher level

1 attention to maternal mortality and reproductive health and so
2 we've had great cooperation from colleagues working on the
3 advanced primary care models as well as in the SHIP and SIM and
4 the health home and healthcare insurance groups, and I want to
5 especially commend Rachel Delong who's put a lot of time and
6 energy into talking with colleagues and colleagues have been
7 quite responsive. I think we're not at the end of those
8 conversations yet but we are gonna be, the couple quick reports,
9 one is that we did review the advanced primary care standards
10 and there are several elements we think relate to some of the
11 opportunities for early identification and discussion with women
12 of reproductive age if they, a very simple question, "do you
13 wish to get pregnant in the next year?" it's not terribly
14 complicated, but then the need to follow up on that. And this
15 would fit into the standards for patient centered care
16 population health and care management, and one of the challenges
17 that was identified is that to be accepted as a standards in the
18 advanced primary care obviously everyone wants to use evidence-
19 based standards and one of the classical dilemmas in the U.S.
20 preventive services taskforce work is that evidence-base on
21 women's health interventions is very poor. The investigations
22 have not been as extensive as they should be and there's not a
23 lot of class A or B evidence around any women's health or
24 reproductive health issues, and so this has stymied us at the

1 moment, but we won't be blocked. We're going to keep working on
 2 it with colleagues like Dan and his colleagues there.

3 On the health home, very interesting look at their data
 4 and again thanking Foster Gestin and his colleagues for this, 55
 5 percent of health home members, these are women with multiple
 6 chronic diagnoses and/or all people with multiple chronic
 7 diagnoses and mental health problems, 55 percent of these are
 8 women, 35 percent of these women are in reproductive age, and we
 9 identified 10 percent of them gave birth during the last year in
 10 the health homes. So this raises questions about the priority
 11 of attention to reproductive health and the context of the
 12 health home as well as looking at costs that might be mitigated
 13 by early intervention and early referral systems that are more
 14 robust and the health department has offered to work with care
 15 coordinators in the health home for training. There was also an
 16 issue raised about gaps in health insurance coverage potentially
 17 that might put women at risk for access to care after they've,
 18 when they're no longer pregnant until they can be reenrolled,
 19 and I think this was investigated pretty fully and people felt
 20 that while there may be some slight delays, generally speaking
 21 there aren't any significant flaws in the insurance coverage
 22 issues that are being advanced through the healthcare reforms.
 23 And then lastly we are very excited about collaboration among
 24 many players who have been very committed to improving the issue

1 of maternal - addressing the issue of maternal mortality in the
 2 state but have not had the mechanism or the vehicle, and I think
 3 the Public Health Committee and the work of this council and
 4 being able to bring this issue forward has created some new
 5 potential for partnerships with the State with New York State
 6 ACOG, with Greater New York and HANYs as well as the City of New
 7 York. All of those folks working on maternal care, maternal
 8 mortality, and others have filled out a matrix which identifies
 9 who's doing what and identifying opportunities for alignment as
 10 well as gaps which may need attention and we have had an initial
 11 call and there will be two meetings, one in September, one in
 12 October to come together and develop a collaborative agenda.
 13 So, we're very excited about that because I think it will serve
 14 the purposes of many folks who really want to see this issue
 15 tackled.

16 So we'll have a lot more to report. I also would feel
 17 obliged to say that we did discuss in the Committee, Council
 18 that the distressing lack of any state investment in the public
 19 health side of our work in the Prevention Agenda and the 50
 20 percent reduction in the PHP budget are all elements that
 21 reflect a very imbalanced investment strategy for the healthcare
 22 reform in New York State and we're hoping that that can be
 23 addressed over future weeks and months. Thank you.

24

1 JEFF KRAUT: Thank you. Are there questions for Dr.
2 Boufford? I was surprised by the percentage of reproductive
3 women in health homes. I would've expected -

4

5 JO BOUFFORD: So were they.. when they looked at the data.

6

7 JEFF KRAUT: I don't know why because I never probably
8 seen data, but just intuitively I would've expected it to be
9 low, but -

10

11 JO BOUFFORD: Well, I think the issue is this moving up of
12 early, an earlier age of chronically ill individuals obviously
13 substance abuse and mental health is part of the problem as
14 well. But it was quite surprising.

15

16 JEFF KRAUT: And did they have data on women going in and
17 out of Medicaid eligibility and the dis - does it break up
18 continuity of -

19

20 JO BOUFFORD: There was a lot of investigation, Sylvia may
21 have detail like the feeling was that there really weren't any
22 significant gaps.

23

1 SYLVIA PIRANI: But the people working on the health
2 exchange have really focused on this problem to maintain
3 continuity.

4
5 JEFF KRAUT: Maintain continuity. That's great. I could
6 spend a lot of time - anyway, any other questions? Thank you
7 very much Dr. Boufford. Lot of things to think about. That's
8 some progress on some of these issues. Yeah, we heard the
9 resources question -

10

11 JO BOUFFORD: I want to commend the department, the Public
12 Health staff who just are amazing given the resources they have
13 to do what they're doing. So, they're very very committed. It's
14 a pleasure to work with them.

15

16 JEFF KRAUT: Thank you. And thank you. Mr. Robinson,
17 could you give a report on the Health Planning Committee.

18

19 PETER ROBINSON: Yes, we had one agenda item and I'm
20 going to recuse myself from that and turn it back over to you.

21

22 JEFF KRAUT: I just did that to have fun with you.

23 We have one item on the agenda and that is - I lost the
24 page. Hold on... so the one item that we have on the, Mr.

1 Robinson has left the room, make a motion to approve Jone's
2 Memorial Hospital in it's request for stroke center designation.
3 The committee met this morning and recommended approval as did
4 the Department and I so move the motion. Do I have a second?
5 Second Dr. Gutierrez. Any discussion or any comments from the
6 Department? Any discussion from the Council? Hearing none I'll
7 call for a vote. All those in favor aye?

8

9 [Aye]

10 Opposed? Abstention? The motion carries. And I will take
11 the prerogative to conclude Mr. Robinson's - is he going to give
12 a report on health planning? No. that's it, right. So that was
13 the only thing. I'll take the prerogative to close your meeting
14 and thank you for your report.

15 I now like to call on Dr. Gutierrez to give a report on the
16 Codes, Regulations, and Legislation Committee.

17

18 ANGEL GUTIERREZ: Good morning. Still. My name is Angel
19 Gutierrez. I chair the committee on Codes Regulations and
20 Legislation and at the July 23 meeting we reviewed five
21 proposals for emergency adoption, once again, we
22 children's camps. The first matter is a proposed emergency
23 amendment of subpart 7-2 of the State sanitary code regarding
24 children's camps. These amendments are necessary to implement

1 the law that established the New York State Justice Center for
2 the Protection of People with Special Needs. At the committee
3 meeting Tim Shay from the Department of Health noted that there
4 have been no changes to the emergency amendments previously
5 approved by the Council which have been in effect since June 30,
6 2013. He indicated that the emergency amendment currently in
7 effect will expire September 8 so it is necessary to request
8 approval of another emergency adoption. Mr. Shea explained that
9 the Department has not yet put forth permanent regulations
10 because the Justice Center is continuing to work with a number
11 of state agencies on it's agenda and has asked the Department to
12 wait until this work concludes. The committee voted to
13 recommend adoption to the full council and I so move.

14 [Second]

15 So, Yeah.

16

17 JEFF KRAUT: Any questions for Dr. Gutierrez or the
18 Department? Hearing none I'll call for a vote. All those in
19 favor aye?

20

21 [Aye]

22 Opposed? Abst—hold on. What do we - Just hold on for a
23 minute. I think we have a quorum issue. Dr. Yang left? OK.

24

1 LAWRENCE BROWN: Mr. Chair, if I could during this brief
2 pause -

3

4 JEFF KRAUT: Sure.

5

6 LAWRENCE BROWN: I'd like to acknowledge Dr. Gutierrez
7 in terms of his being the chair of the Codes Committee and
8 always seeming to be there to second every motion. So can we do
9 something to, how do get some diversity in there? Oh, I know Mr
10 Berliner -

11

12 JEFF KRAUT: It's Berliner, and we can let them compete.
13 They just have faster auditory processing speeds. When we ask
14 for a motion.

15 Ok, so we have a quorum? And I now again call the vote.
16 All those in favor aye?

17

18 [Aye]

19 Abstentions? We have one abstention, two abstention. Does
20 the motion? ...OK so we need 13 affirmative votes to pass this,
21 to continue emergency adoption. If we do not vote this, the
22 consequence is this - I'll turn to the attorneys. The
23 consequence of not adopting this? You guys want to - OK. There

1 is a consequence of not adopting this, (and you obviously don't
2 care) ☺

3 Mr. (Zanloiter) and after conferring with Mr. Furnish I
4 think that the disposition of this is that it has to be tabled.

5

6 JEFF KRAUT: If I can't-

7

8 [If you cannot get the requisite number.]

9

10 JEFF KRAUT: So before I ask for a vote, tabled means
11 continued until the next meeting. Am I correct?

12

13 [yes]

14

15 [If I may, Rick, does it also mean that we cannot proceed
16 - I'm over here, it also means that we cannot proceed to file
17 the emergency regulation already in place and it will lapse. So
18 the protections currently I place will not continue. Correct?]

19

20 MICK STONE: Yes, that's correct.

21

22 [So, I guess the Department would urge moving forward.]

23

1 JEFF KRAUT: When would it lapse? Before we meet next.
2 So, -- Let me get a straw vote. Let me just - and I don't want
3 to call a vote. The individuals who are not going to support
4 this, do you want to express - what's the concern here? and you
5 understand what the ramifications are if you do that?

6
7 GLENN MARTIN: OK. No, my concerns
8 This has been an emergency regulation that's gone for year
9 after year now. There is no emergency. This reflects a
10 malfunctioning process within the bureaucracy . I don't think it
11 is proper and I don't plan on encouraging it. I voted against
12 it before. I'm consistent in my opposition to using an
13 emergency go around for something that is not an emergency.
14 It's certainly an important state issue and I have no problem
15 with it, I just think that it's not something that should come
16 up again and again as an emergency. I also note that it's going
17 to go into effect after camps close, it seems to me on September
18 8, which would make the emergency aspect of it even less
19 compelling, though I do understand it's not just camps and may
20 have some other implications. But I am balancing in my own mind
21 what I think is a fundamental abuse of a process, not in any
22 intentional horrible way, but a fundamental abuse of a process
23 against this issue, so I'm voting against it.

24

1 JEFF KRAUT: Dr. Gutierrez.

2

3 ANGEL GUTIERREZ: Mr. Shay and Dr. Ryan are here and you
4 have gone through this before. Perhaps you may want to repeat
5 some of the remarks you made before regarding why is it
6 important that we pass the emergency regulation?

7

8 TIM SHAY: Sure. As mentioned, these regulations implement
9 legislation that was created at the Justice Center. Imposes
10 additional requirements for camps that have developmentally
11 disabled children for reporting and investigating incidents, for
12 training nurse staff, for doing additional background checks
13 before hiring those staff, and without these regulations those
14 additional requirements will not be imposed. I will add that
15 since the last codes council meeting, there's been request by
16 the Justice Center for us to submit a permanent regulation.
17 We're in a process of doing that at this time. As you recall
18 the reason for our delay was that they were working on trying to
19 standardize incident reporting and investigation requirements
20 across a six state agencies that it oversees. I guess that task
21 proved to be too challenging and they decided that each agency
22 will need to move forward on it's own and we're working to do
23 that at this time.

24

1 JEFF KRAUT: OK. So, I understand your point and we've
2 certainly echoed it over the years. And the consequence of
3 failing to negotiate a satisfactory resolution of this issue
4 means there will be no regulation. So, the Justice Center would
5 understand there will be no regulation for background checks at
6 all. Once this lapse. OK. That has other consequences.

7
8 TIM SHAY: The state sanitary code currently has some
9 background check requirements. The Justice Center imposes
10 additional background checks. So, essentially we're not going
11 to impose any additional background checks other than what's the
12 minimum if we do not pass this. yes.

13
14 GLENN MARTIN: So obviously I note and appreciate the new
15 information, but what timeline are we talking about? Does this
16 mean a permanent regulation will be before us at our next
17 meeting and then we can do this for a temporary period of time?

18
19 JEFF KRAUT: Mr. Shay, you may not know the answer to
20 that, because it's above -

21
22 TIM SHAY: The timeline is going to be a little challenging
23 for me to lay out. We are working within the department now to
24 get some concensus on how to move forward. So, I would expect

1 that before, if we were to have another emergency amendment
2 before that emergency amendment was expired, the Department
3 would be able to impose something for permanent..

4

5 GLENN MARTIN: And can I also have clarification of this
6 emergency amendment is how long? This particular one we're
7 voting on now? This goes on for how long?

8

9 JEFF KRAUT: To the next cycle.

10

11 TIM SHAY: It's 90 days.

12

13 JEFF KRAUT: I mean, there is a valid issue that Dr.
14 Martin has raised and he's taking a principle stand and respect
15 what you're doing. I just, everything has a consequence and
16 sometimes it's unintended. You know, this may not be the time
17 and place to try this. It is a problem, you know, particularly
18 like in reimbursement but we did it for I believe six years? We
19 did emergency adoption every, it was like - Dr. Boutin-Foster.

20

21 CARLA BOUTIN-FOSTER: I mean, my challenge, I'm really
22 torn by this. it's not so much that it's an emergency adoption,
23 but I just don't get the 20 percent and that's something that
24 I've raised a couple of times and which is why I was abstaining.

1 I definitely support, I definitely think there needs to be
2 additional protection for children with special needs, so if
3 you're telling me that, if there are 10 children out of 100 then
4 these additional background checks are not necessary so you need
5 at least 20. So the implication could be that a camp could say,
6 well, we're going to limit the number of children with special
7 needs that we have. So, my challenge in sort of frustration
8 with this is that the 20 percent makes no sense to me. And I
9 guess if you're looking at it from a financial perspective, yes,
10 that's more money, but again, we're talking about children who
11 are not - I mean, I guess the protection is to protect children
12 who may not be able to advocate for themselves and speak and say
13 something happened. So, I support in theory what it is that
14 you're trying to do, but I just, I'm just not - I'm torn. I
15 don't oppose it, but it just makes no sense that we're saying,
16 you have a cut off. 20 children, yes. 10 or 5, no. It just
17 doesn't make any sense to me.

18

19 JEFF KRAUT: And my recollection is that was because the
20 burden, like a small town or village summer camp that has a
21 small number of kids you know, there was a rationale for it. I
22 remember reading in one of the reports why we did that. you may
23 not satisfy Dr. Boutin-Foster but there was a rationale, wasn't
24 there?

1

2 TIM SHAY: Well, the way the regulations came to be, there
3 were special regulations in developed in 1986 and they fell on
4 camps with 20 percent or more developmentally disabled
5 population. We, as this legislation came to be, we implement
6 this in conjunction with the justice center who agreed with our
7 application, this regulation, of the legislation to the 20
8 percent group threshold. There are some financial costs
9 associated with it and when we had previous codes council
10 meeting we had the council had suggested that we hear from some
11 of the camp operators to see what their thought was applying
12 this all of all of the camps and they were very opposed to it.
13 We had letters from state legislators who said that they never
14 intended this to apply to every camp that had a single child
15 with a developmental disability, and therefore we continue to
16 apply these Justice Center requirements to the camps with the 20
17 percent.

18

19 JEFF KRAUT: So, this requires a legislative solu - this
20 is a regulatory or a legis - there can be a legislative
21 solution? Or is this all regulatory?

22

23 TIM SHAY: This is all regulatory at this time.

24

1 JEFF KRAUT: OK. So, let me just think.

2

3 TIM SHAY: And I can just add that I've also approached the
4 camp safety advisory council, we've asked them for advice and
5 consultation on how we can best apply these legislation, and
6 they agreed with our current position. They thought there could
7 be unintended consequences if it was universally applied to
8 camps that may exclude children with disabilities.

9

10 JEFF KRAUT: Separate and apart from this discussion
11 because I hear there's some sympathy for this position, let's
12 ask the Department of Health to give us the consequences
13 unrelated to this that we will not do emergency adoption beyond
14 a certain number of cycles. Does that help or hurt the
15 regulation making process? But just addressing some, -- an
16 emergency is an emergency and don't respond today because we'll
17 talk about it at the next - I'm not asking for a question, but
18 it's a valid issue that requires, because we've been frustrated
19 by this, so let's see if we can understand the implications of
20 having, say you can't do it for more than three cycles or four
21 cycles but recognizing there's always exceptions to the rule. I
22 still - yes, Dr. Martin. I want to try to get a vote today, and
23 I'm willing to lose the vote and then ask for a motion to table
24 or reconsider it.

1

2 GLENN MARTIN: but the point is, I'm concerned that by
3 having gotten into this pattern of just repeating every 90 days
4 that in fact it hasn't allowed for a full expression of Dr.
5 Boutin-Foster's concerns or any real way for us to deal with the
6 fact that there are many of her I the room that aren't thrilled
7 with what the regulation is written and yet we're proposed with
8 I'm killing kids if I don't let this go through today. I know
9 no one's ever said that, but that's sort of the idea -

10

11 JEFF KRAUT: I understand -

12

13 GLENN MARTIN: But that's a situation.

14

15 JEFF KRAUT: The dramatic undertones.

16

17 GLENN MARTIN: And that's obviously not my intent, but my
18 intent is I think it's a process that's broken and if they
19 continue to perpetuate it I don't think helps. If, looks, if
20 push comes to shove and I had an assurance that this is the
21 last, the honest to God last 90 days and there's going to be
22 something real that we can look at that will allow us to debate
23 the issues that are here, I will be happy - that's probably an
24 overstatement, I will vote for, this 90 day extension. But if

1 it's the same thing, we don't know, it may take, there may be
2 this, there may be that, no screw it.

3

4 JEFF KRAUT: OK. Alright. You know, my entire objective
5 I sharing this is to make you happy. So, no, I understand the
6 point. So let me just see. How many - Colleen give me some
7 logistic numbers. How many people do we have eligible to vote?

8 So there's 16 members eligible to vote and we need 13
9 members - OK. So we need 13. Let me, keeping to your guns,
10 don't change your position right now, let me see if I can get 13
11 affirmative votes. OK. All those in favor of the emergency
12 adoption of this regulation, continuance of the emergency
13 adoption say yay and nay-let's do a roll call so I'm clear.

14

15 Dr. Berliner

16 Dr. Boufford

17 Yes

18 Dr. Boutin-Foster

19 Abstain

20 Dr. Brown

21 Abstain

22 Ms. Kathleen Carver-Cheney

23 Yay

24 Mr. Fassler

- 1 Yes
- 2 Ms. Fine
- 3 Yes
- 4 Dr. Gutierrez
- 5 Yes
- 6 Dr. Kalkut
- 7 Yes
- 8 Dr. Martin
- 9 No
- 10 Ms. Rautenberg
- 11 Yes
- 12 Mr. Robinson
- 13 Yes
- 14 Dr. Strange
- 15 Yes
- 16 Dr. Yang
- 17 Yes
- 18 The chair wish to vote?
- 19 Yes.
- 20 Ms. Dreslin
- 21 Yes.
- 22
- 23 12. Because we got one more abstention.
- 24

1 JEFF KRAUT: OK. So the motion fails. I'd like to make
2 another motion to reconsider this and or maybe just make a
3 motion to table - well, we had a vote. We had insufficient, we
4 have no recommendation. Can we make a motion just to table this
5 one cycle please?

6
7 PETER ROBINSON: Make a motion to table this item for
8 the next cycle.

9
10 JEFF KRAUT: So, I have a second, so what we will do
11 because then there's no action taken. That's the kind of
12 legislative limbo. So, we will not vote, we will not attempt to
13 vote on this again to try to get an affirmative or a negative
14 vote to turn it, and we'll continue it to the next meeting,
15 taking into account, don't expect a different outcome it sounds
16 like at the next meeting. If some of these issues are not
17 explained or, and maybe the parties that have been involved in
18 negotiating some of this understand you'll fail the next time we
19 will not table it.

20
21 LAWRENCE BROWN: Mr. Chair, can we also ask the
22 Department because I appreciate the stakeholders and I
23 understand we're participating in a prior discussion, but it
24 appeared, and it may be just my blind side of seeing it, just

1 appear to be one sided. I didn't hear about advocates for those
2 with developmentally disabled at the table. I heard about owners
3 of camps, heard about those who have some financial involvement
4 or investment in it. So can we have the other side, those who
5 actually represent this population, this vulnerable population
6 as well?

7

8 JEFF KRAUT: Didn't they speak when we first presented
9 this? No. they never did. OK.

10 Let's leave that to Dr. Gutierrez when he does the
11 Committee. Dr. Gutierrez, could you move on to the next item for
12 emergency adoption. Wait a minute, we've got to vote on that.
13 I'm going to vote. We had a motion and it was seconded by Dr.
14 Berliner. I'd now like to vote on tabling this matter. all
15 those in favor, aye.

16

17 [aye]

18 Yes.

19

20 CARLA BOUTIN-FOSTER: Will there be further discussion
21 between meetings or we're just -

22

23 JEFF KRAUT: What I would suggest is the next committee
24 day, let this be discussed at the codes committee given what

1 went on and just work with Mr. Shay and the Department to see if
2 we can come up with a unanimous recommendation. OK. so, I just
3 would like a motion is to table the matter until the next
4 council meeting. all those in favor?

5

6 [aye]

7 Opposed? Abstentions? The motion carries. Dr. Gutierrez,
8 please continue.

9

10 ANGEL GUTIERREZ: For emergency adoption is synthetic
11 cannabinoids. The proposed regulations would amend part 9 of
12 title 10 NYCRR to expand the list of prohibited synthetic
13 cannabinoids. This is in response to a rash of hospitalizations
14 related to new forms of synthetic cannabinoids with chemical
15 compositioning not explicitly included in the current
16 regulation. The proposal will also update the regulation for
17 consistency with the federal schedule one of control substances.
18 Josh from the Department explains that naming
19 the newly identified synthetic cannabinoids will better enable
20 law enforcement of the regulation and make it clear that the
21 possession, manufacture, distribution or sale of this chemical
22 compound is illegal. The committee voted to recommend adoption
23 to the full council and I so move.

24

1 JEFF KRAUT: I have a motion. Do I have a second?

2 [Second]

3 Second, Dr. Brown. Any comments or discussion? Hearing
4 none I'll call for a vote. All those in favor aye?

5

6 [Aye]

7 Opposed? Abstention? The motion carries.

8

9 ANGEL GUTIERREZ: For adoption is computer tomography
10 quality assurance. The proposed regulations will amend part 16
11 of number 10 NYCRR ionizing radiation to include requirements
12 for the use of computer tomography on humans within the New York
13 State, excluding New York City. The New York City Department of
14 Health and Mental Hygiene regulates the use of ionizing
15 radiation within the five boroughs. The proposed regulations
16 will provide quality assurance and safety standards that
17 directly address CT, Physical, and Operational parameters. In
18 addition the regulation will require accreditation by a
19 nationally recognized accrediting body that is acceptable to the
20 Department which would be consistent with the accrediting bodies
21 accepted by the Centers for Medicare and Medicaid services. The
22 proposal was published in the State Register on May 6, 2015 and
23 underwent a 45 day comment period. Steve (Cavits) from the
24 Department informed the committee that five public comments were

1 received from medical physicists asking clarification questions
2 and none were opposed to the proposal. In addition, at previous
3 meetings, the codes committee had discussed the utility and
4 impracticality of documenting and sharing those such information
5 with patients on how such a requirement will fit into this
6 proposal or a proposal in the future. Mr. Cavit stated that CT
7 manufacturers currently do not have the ability to record actual
8 patient dose and indicated that this can be revisited once the
9 industry has implemented methodologies to capture that
10 information. The committee voted to recommend adoption to the
11 full council, and I so move.

12

13 JEFF KRAUT: I have a motion, do I have a second? Dr.
14 Berliner. Any conversations or discussions? Comments? Hearing
15 none, I'll call for a vote. All those in favor, aye?

16

17 [Aye]

18 Opposed? Abstention? The motion carries.

19 You abstaining Dr. Martin? Dr. Martin is abstaining. Thank
20 you.

21

22 ANGEL GUTIERREZ: For information, patient access to
23 laboratory test results. The proposed regulations would amend
24 provisions of part 34 and 58 of title 10 would govern laboratory

1 test results reporting practices. As explained by Dr. Michael
2 Ryan by the Department, the proposal will make state regulations
3 consistent with federal regulations and permit laboratories to
4 release patient test results directly to the patient upon
5 patient request without the ordering providers written consent.
6 This proposal was published in the State Register on June 17 and
7 completed the 45 day comment period on August 3. Since this was
8 before the committee for information only, there was no vote.

9 And for information also is a chronic renal dialysis
10 services. This proposal will repeal part 757 of title 10 which
11 governs New York State Renal Dialysis facilities and create a
12 new part 75-10. The new part 75-10 will conform to changes in
13 federal regulations pertaining to providers of end stage renal
14 disease services, clarify in specific terms and strengthen
15 operational requirements. Kathleen Ericson from the Department
16 reviewed the three main components of the proposal, codes and
17 standards, additional requirements not specifically addressed in
18 federal regulations such as the timeframe for assessments and
19 staffing requirements. This proposal was published in the State
20 Register on June 3 and completed the 45 day comment period on
21 July 20. No comments were received. Since this was before the
22 committee for information, there was no vote. That, Mr.
23 Chairman concludes my report.

24

1 JEFF KRAUT: Dr. Gutierrez, I have a question, and I
2 don't know who responds to the laboratory regulations if there's
3 somebody here?

4

5 ANGEL GUTIERREZ: Yes.

6

7 JEFF KRAUT: The thing that I'm questioning about this
8 because, this is something because I spend a lot of time with
9 our folks is only the ordering physician is permitted to discuss
10 the lab results and we're moving to more of a retail approach on
11 laboratory testing where individuals can go in and requests
12 laboratory testing. Why isn't it that we're not allowing our
13 pathologists or our laboratory medicine professionals to
14 participate and discuss those results directly with patients.
15 You know, we're not, we're practicing in a team and we have a
16 lot of team members doing things that play different roles, and
17 I would think when I read through some of this, just, it's
18 anachronistic to me, and I'm just wondering is there somebody
19 that could discuss that? Is there, you know...

20 Just press the - identify.

21

22 MICHAEL RYAN: Michael Ryan from the Department. The
23 regulatory changes that are being proposed are specifically
24 related to access to the test results, and allowing those

1 patients to access those test results. We are trying to do this
 2 to be consistent with the federal rule. The - what you're
 3 bringing up is related to interpretation of results and
 4 discussing those interpretation of those results with a patient.
 5 traditionally it's been the physician, the provider who has done
 6 that with a patient. We have had comments to this regulation
 7 pertaining to the question that you have addressed with respect
 8 to pathologists and pathologists being able to interact with a
 9 patient and discuss those tests results and those comments came
 10 from several individuals. And the Department has discussed
 11 those types of approaches with the College of American
 12 Pathologists, but specifically this regulation is about
 13 accessing the test results by the patients. Not the
 14 interactions between the patient and their provider or others.

15
 16 JEFF KRAUT: But, if we're fixing the regs, why wouldn't
 17 we just add that? I mean, do you, is there a problem putting
 18 aside that that's not about - is this something we, is this
 19 something from a policy you think is a bad policy? You know, I
 20 don't know if you're prepared to go into depth but I'm just
 21 trying to understand but this is an opportunity as this
 22 regulation comes by here we can deal with some of those issues
 23 because it gives us a more ability to create a more contemporary
 24 framework and how we're actually delivering care and fixing the

1 code wherever we can. I think that's part of what we've been
2 trying to do over the years.

3
4 GARY KALKUT: Can I also ask, is that a current issue with
5 the code? Certainly disclosure by members of a team covering
6 physician when lab results come in later are done not by, often
7 not by the primary care physician but by a covering physician or
8 another type of provider.

9
10 JEFF KRAUT: Who's not the ordering physician.

11
12 GARY KALKUT: Who is not the ordering physician, but
13 representing the ordering physician in some way.

14
15 JEFF KRAUT: And couldn't the pathologist represent the
16 ordering physician if they're working as part of a team in one
17 entity? Part of a medical group?

18 Go ahead.

19
20 DR. STRANGE: I think this is a very slippery slope, I
21 have to tell you. Because I think the interpretation of lab
22 data by anybody other than the ordering physician could
23 potentially lead to some major pitfalls in terms of the
24 interpretation of what a pathologist sees a lab test as as

1 opposed to what it fits into the clinical of what
 2 you're ordering for. So, for example, thyroid disease; there's
 3 many different ways to interpret thyroid tests in terms of when
 4 you order a TSH, T3, T4, and how those three may be interpreted
 5 I the face of clinical view or clinical presentation. PSA for
 6 example is another one. And I think it would be very slippery
 7 for a pathologist who looked at a PSA and said you potentially
 8 can have cancer here, when the issue may not have been cancer at
 9 all, and an elevated PSA doesn't always mean cancer. An
 10 elevated TSH doesn't always mean hypothyroidism, and I think
 11 this needs to be looked at in, I'm not suggesting they should
 12 not be part of a team, but it cannot be taken in isolation that
 13 just the pathologist should be able to look at a set of blood
 14 tests because somebody else isn't around or by diagnostic biopsy
 15 because somebody else isn't around and make an interpretation to
 16 a patient. I think that would be very dangerous legally and from
 17 a quality point of view.

18

19 GARY KALKUT: And I would agree with that. I think there
 20 has to be a road to navigate through this where there is
 21 clinical context, it's happening now.

22

23 JEFF KRAUT: I see a different role for, than you guys do
 24 on the benefits and the knowledge of laboratory medicine and

1 it's role in kind of patient empowerment. But OK. I won't take
2 the time now to debate it, but I'll defer, since I'm bookended
3 by two physicians, I will defer - here is a third and a fourth.
4 Go ahead.

5

6 ANGEL GUTIERREZ: Well, I'm a physician, being
7 is a physician, I'm in favor of the patient being given a copy
8 of the report that says your blood sugar is 450. But for me to
9 engage in explaining whether that's out of the, I don't think we
10 should go there.

11

12 JEFF KRAUT: OK.

13

14 MICHAEL RYAN: Can I just clarify that the language that
15 you're referring to is language that's in part 34. And these
16 are business practice regulations and these regulations were put
17 into place to insure that there are no kickbacks, and there's
18 proper business relationships between laboratories and the
19 people that are ordering the tests. That's what's driving these
20 regulations. So make sure that you understand that it's business
21 practice related, it's not the practice of medicine here that
22 we're discussing in the regs.

23

24 JEFF KRAUT: OK.

1

2 GLENN MARTIN: The point I was going to make is that we
3 function as a team, some function more in a team; some function
4 less in a team. My private practice of psychiatry I am
5 basically the team. If I send somebody out for labs I'm sitting
6 there with the records, I certainly talk to the internist, etc.,
7 etc. I don't talk to the pathologist who's running it and they
8 have no idea generally what meds they're on, what the TSH means,
9 what a psychiatrist wants to see is a TSH as compared to a
10 regular generalist looks; we're usually pickier. There are all
11 sorts of reasons why this could be a problem. Could be an
12 issue. I'm not saying I'm opposed to it entirely, I just think
13 as Dr Strange pointed out, it's more subtle and complex. And I
14 agree that we have this mantra of patient empowerment which I by
15 no means wish to diminish, but there's also the idea that the
16 idea that the team functions with somebody sort of in the center
17 of it or at least keeping track, and the idea that the
18 generalist or whatever we're going to call them actually knows
19 what's going on and there's not a whole bunch of specialists
20 running around making interpretations, frightening the crap out
21 of people and going off on their own chases is not great
22 medicine either. So I think that the regs should certainly
23 reflect and give the ability to practice good medicine, but they
24 shouldn't be open to such an extent where it may have unintended

1 consequences, and that's why I say it's more complex than simply
2 doing it. So that's my -

3

4 JEFF KRAUT: Alright. So then, we'll do a final comment,
5 then we'll close.

6

7 GARY KALKUT: I don't think it's an issue of primary care
8 versus specialty care if they've seen the patient. They may
9 have no idea about who a pathologist is, what they're doing,
10 where they, how they enter into it.

11

12 JEFF KRAUT: OK. I'm just used to - the things that I've
13 observed slightly different practices are organized differently
14 than some of the things you're explaining. That's all. And Dr.
15 Boutin-Foster and then I'll give you the final word.

16

17 CARLA BOUTIN-FOSTER: Does this pertain to all exams?
18 So would HIV, HSV, other STDs be included in this?

19

20 [So, as Mike was explaining before, in public health law
21 section 587 there's a prohibition on clinical laboratories
22 giving any kind of kickback to the practitioner who ordered the
23 laboratory test. So, traditionally the practitioner is the one
24 who explains the test results to the patient and interprets

1 them. If the laboratory takes on that responsibility, that can
 2 be considered giving something of value to the practitioner who
 3 ordered the test. In essence, it's a kickback. So that's what
 4 our regulation is about. If the pathologist didn't work for the
 5 clinical laboratory, then the pathologist could be part of the
 6 team of people providing care to the patient. But that's what
 7 the regulation is actually about, and yes, to answer your
 8 question, it applies regardless of the type of clinical
 9 laboratory test.

10

11 JEFF KRAUT: When we go into a value-based bundled
 12 payment and we're bundling, that's not an issue. Again,
 13 there's, and I'm not going to get into it, I'm just going to
 14 suggest that concern evaporates when we're contractually
 15 bundling and that we've contracted for that expertise as part of
 16 the bundle and that group, that person, the clinical lab is part
 17 of that team. I mean, this is what I mean. There's, you have
 18 to understand some of the changes that you're describing where
 19 the care manager, you know, it's beyond they're empowered,
 20 there's a doctor there, we're going to be getting test results,
 21 it's going to become - I'm just telling you - I think this
 22 requires a little more thought, but we'll come back to it. But
 23 alright, last, last, last comment. OK.

24

1 HOWARD BERLINER: So, given the growing movement, I mean,
2 allowing people to kind of write to labs directly and get their
3 own DNA and get the results back from a lab, or order their own
4 lab tests from may not be in, from a New York State lab but from
5 someplace in a lab sending back directly, how do those things
6 fit in to what the current law is or any changes?

7
8 [a number of interesting policy questions are being raised
9 here and of course, we could amend our regulations in many
10 different ways, but the proposed regulation that is for
11 information right now is simply a proposal to make our
12 regulations consistent with recent changes to the federal
13 regulations that allow patients to get access to their lab
14 results. That's all we're doing.]

15
16 JEFF KRAUT: Alright. We won't pile on. OK. Anything
17 else Dr. Gutierrez?

18 [no]

19 Thank you very much for the clarification.

20 I'd now like to call on Dr. Kalkut to do project review.
21 Recommendation and actions. Before I do, I just want to remind
22 everybody about our policy on conflicts. Members of the council
23 and most of our guests regularly attend these meetings should be
24 familiar now with the reorganization of the agenda by topics or

1 categories which captures our roles and responsibilities, and we
2 have taken to batching certificate of need applications. Now,
3 before we came into the room the members have reviewed the
4 batched applications and have thought about whether they want,
5 they're declaring a conflict of interest. We've recorded that
6 on the agenda. If you think you'd like a project moved to a
7 different category when that batch is called by Dr. Kalkut
8 please let him know and give you an opportunity if any of you
9 want to change anything on how we're batching this. If there's
10 anything that you saw there or want to change, just let us know
11 now and certainly before we call the vote. Yes, Dr. Martin.

12

13 GLENN MARTIN: I don't know if it makes a difference, but
14 I'm pretty sure I recused myself from the East Side Endoscopy at
15 the Committee level.

16

17 JEFF KRAUT: You declared an interest.

18

19 GLENN MARTIN: Fine. I didn't know if I was listed.

20

21 JEFF KRAUT: Yeah, it was. OK. Dr. Kalkut I'll turn it
22 over to you.

23

1 GARY KALKUT: Thank you. I'm going to change the order of
2 the agenda in order to assure a quorum for applications that
3 have significant recusals. So I'd like to move to category II,
4 for construction. First, the first application is 151107C, New
5 York Presbyterian Hospital, Columbia Presbyterian Center in New
6 York County. Conflict and recusal by Dr. Brown who has left the
7 room and Dr. Boutin-Foster has left the room. This is to
8 convert 19 neonatal care beds to intermediate care beds to 19
9 neonatal intensive care beds, create 17 new neonatal intensive
10 care beds for a total of 50 and perform renovations to get that
11 done. The Department recommended approval with conditions and
12 contingencies, and Project Review recommended approval, approved
13 that. Approval with conditions and contingencies. Make a
14 motion? Dr. Berliner. Questions? Hearing none, I'd call a vote.
15 All in favor?

16 [Aye]

17 Opposed? Abstain? The motion carries.

18

19 JEFF KRAUT: Hold on. You make a motion, I do that.

20

21 GARY KALKUT: I'm sorry. I'm in -

22

23 JEFF KRAUT: Dr. Berliner. Is there any discussion.

24 Hearing none, I'll call for a vote. All those in favor, aye?

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[Aye]

Opposed? Motion carries.

GARY KALKUT: There's a little bit of an Al Hague moment.

JEFF KRAUT: That's OK.

GARY KALKUT: I apologize for that.

Alright. Back. Jeff, so sorry.

JEFF KRAUT: No, that's ok. That's fine.

You can go in the next.

GARY KALKUT: We're waiting for Dr. Boutin-Foster.

[yeah, I just want to make sure]

Next application, 151178C Nicholas Noyes Memorial Hospital,
Livingston County. Conflict by Mr. Robinson who has left the
room. This is to certify therapeutic radiology service and one
linear accelerator with requisite and construction. The
Department and project review have recommended approval with
contingencies. I make a motion.

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JEFF KRAUT: Second, Dr. Fassler. Any questions? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

GARY KALKUT: Application 151121C, East Side Endoscopy in New York County. There's an interest declared by Dr. Martin. This is to certify a second specialty pain management to become a dual specialty freestanding ambulatory surgery center. The department has recommended approval with conditions and contingency and continuation of the operating certificate expiration of February 4, 2016. The Establishment and Project Review Committee approved that recommendation. I make a motion.

JEFF KRAUT: I have a second, Dr. Fassler. Comments?

HOWARD BERLINER: Charlie, why is this a dual, single specialty rather than a multispecialty?

CHARLIE ABEL: I'll call, remind you perhaps that we had this discussion about a year ago now with respect to certain limited specialties and the comfort the Department would have in advancing the notion of dual-specialties and specifically it

1 would only be where we had situations where we didn't have a
2 class C operating room that would be required for multispecialty
3 to allow for the provision for all types of surgeries. So, we
4 felt comfortable after reviewing options that for applications
5 that requested within a limited number of specialties that they
6 could have two specialties, especially if there was no class C
7 operating room.

8

9 HOWARD BERLINER: So if they wanted to add, if they hired
10 someone on salary, not as an owner, so they didn't have, would
11 they have to come back through us if they wanted to put in an
12 additional specialty?

13

14 CHARLIE ABEL: An additional specialty would then make it a
15 proposal for a multispecialty facility and as a result, that
16 classification of certification would require a class C
17 operating room.

18

19 JEFF KRAUT: Any other questions? All those in favor aye?

20

21 [Aye]

22 Opposed? Abstention? The motion carries.

23

1 GARY KALKUT: I'd like to move to category II for
2 establishment and construction and I'd like to group three of
3 the applications we would vote on them separately. 151205 E.
4 Peconic Bay Medical Center in Suffolk County. Mr. Kraut has
5 declared a conflict and has left the room. This is to
6 disestablish Peconic Bay Corporation d/b/a East End Health
7 Alliance as the active parent and cooperator of Peconic Bay
8 Medical Center with a companion CON application to follow.
9 Today, both the Department and the Project Review Committee
10 recommended approval with conditions and contingencies. There
11 are two other CON applications that relate to this
12 disestablishment. First, 151221E, Southampton Hospital in
13 Suffolk County, again, to disestablish Peconic Health
14 Corporation d/b/a East End Health Alliance as the active parent
15 and cooperator. Approval with conditions was recommended by both
16 the Department and Project Review and last, 151247E, Eastern
17 Long Island Hospital, Suffolk County to disestablish Peconic Bay
18 Health Corporation d/b/a East End Health Alliance as the active
19 parent and cooperator of the hospital. Again, with approval
20 with conditions and contingencies by both the Department and
21 Project Review. Make a motion.

22

23 PETER ROBINSON: OK, we have a motion. Do we have a
24 second?

1 [Second]

2 Any comments from you Mr. Abel? Call the question, all in
3 favor?

4

5 [aye]

6 Any opposed? Motion carries.

7

8 GARY KALKUT: And I'd like to come back to the companion
9 CON and that is 151217E, Northshore LIJ Healthcare in Nassau
10 County. Conflict by Mr. Kraut who has left the room. And that
11 is to establish Northshore LIJ Healthcare as the active parent
12 and cooperator of Peconic Bay Medical Center. I'd like to note
13 that the completion of the CON 151205 prior to the completion of
14 the project was added as a condition. Both the Department and
15 Project Review recommended approval and I make a motion.

16 [Second]

17

18 PETER ROBINSON: Thank you. I have a second from Dr.
19 Gutierrez. Oh, no. Oh, really, Mr. Fassler. How exciting. Any
20 comments Mr. Abel? Hearing none, I'll call the question. All
21 in favor?

22 [aye]

23 Any opposed? Abstentions? The motion carries. We can get
24 Mr. Kraut back into the room. Thank you.

1

2 GARY KALKUT: OK. Continuing on now with category III,
3 application for dialysis services for establishment and
4 construction. This is 151169E, Westchester Center for Renal Care
5 in Westchester County. This is to transfer 100 percent
6 membership from two withdrawing members to eight new members.
7 The Department recommended approval with conditions and
8 contingencies. The Project Review Committee approved that with
9 the same conditions and contingencies with one member
10 abstaining. Motion, to entertain the application.

11

12 JEFF KRAUT: I have a motion, I have a second, Dr.
13 Berliner. Comments? Questions? All those in favor, aye.

14

15 [Aye]

16 Opposed? Abstentions? The motion carries.

17

18 GARY KALKUT: OK. Next is 151166B, the Birthing Center of
19 New York in Kings County. I declared an interest at the Project
20 Review Committee and here, and this is to establish and
21 construct a freestanding diagnostic and treatment center,
22 birthing center located at 6702-6706 Third Avenue in Brooklyn.
23 Both the Department and the project review recommended approval
24 with conditions and contingencies. Motion?

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JEFF KRAUT: So moved. Second, Dr. Gutierrez. Any questions or comments? Ms. Rautenberg and then Dr. Boufford.

ELLEN RAUTENBERG: Can you tell us, Charlie, how far that is from the closest hospital obstetrical department.

CHARLIE ABEL: Well, I can't but we do have Maimonides which obviously is a very large obstetrical department and Lutheran, so I don't have the exact-

JEFF KRAUT: It's probably I'd say less than a mile from Lutheran and less than a mile and a quarter from Maimonides. Dr. Boufford.

JO BOUFFORD: Yeah, I have a related question. I was surprised not to see an explicit statement of a backup agreement with a hospital which I thought was required for these. I didn't see it.

JEFF KRAUT: Oh, yeah, we did ask the question at the meeting and I think they affirmed that it's with Lutheran.

1 JO BOUFFORD: It wasn't in the written material and I
2 wasn't at the committee, so that's why I'm asking the question.
3 It is with Lutheran then. OK. I wondered what the current
4 rules were on that.

5
6 JEFF KRAUT: And Dr. Yang is on the medical staff at
7 Lutheran. She runs the department.

8
9 GARY KALKUT: She doesn't run the department at Lutheran
10 but she does, she has privileges at Lutheran.

11
12 JEFF KRAUT: She's privileged at Lutheran, OK. It's, on
13 one hand you know, it's kind of nice to see this. On the other
14 hand you want to make sure it's safe. That's the issue.

15
16 JO BOUFFORD: They used to be almost prohibited because of
17 the levels of regulation that were around them and I didn't know
18 if we'd gone to the point where they could just, get it set up -

19
20 JEFF KRAUT: I think the mid-wife mediated birthing
21 centers are primarily in hospitals. They're not - there's one
22 that failed years ago.

23

1 ELLEN RAUTENBERG: It's very rare to have a freestanding
2 one.

3

4 JEFF KRAUT: Right. Any other questions? Comments? All
5 those in favor, aye?

6

7 [Aye]

8 Opposed? Abstentions? The motion carries.

9

10

11 GARY KALKUT: Next is 142278E, Nesconset ZJ1 LLC d/b/a
12 Nesconset Center for Nursing and Rehabilitation in Suffolk
13 County. There's a conflict and recusal by Ms. Carver-Cheney
14 who's left the room. This is to establish Nesconset ZJ1 LLC as
15 the new operator of the facility located at 100 Southern
16 Boulevard in Nesconset, currently operated by Nesconset
17 Acquisition LLC. And to decertify 12 residential facility beds.
18 Note that this represents a one change, one percent change in
19 the member LLC. Both the Department and the Project Review
20 Committee voted for approval with conditions and contingencies
21 recommended.

22

1 JEFF KRAUT: I have a motion. May I have a second, Dr.
2 Berliner. Any comments? Questions? Hearing none, all those in
3 favor, aye?

4

5 [Aye]

6 Opposed? Abstentions? The motion carries.

7

8 GARY KALKUT: Next is 142279E, Huntington Acquisitions I,
9 d/b/a Hilaire Rehab and Nursing in Suffolk County. Again
10 conflict by Ms. Carver-Cheney who has left the room. This is to
11 establish Huntington Acquisitions I, LLC as the new operator of
12 the 76 bed facility located at 9 Hilaire Drive, Huntington,
13 Currently operated by Hilaire Farm Skilled Living and
14 Rehabilitation Center LLC, similar notation that there's a one
15 percent change in the member LLC. Both the Department and the
16 Project Review Committee voted approval with conditions and
17 contingencies. Motion.

18

19 JEFF KRAUT: I have a motion. I have a second, Dr.
20 Berliner. Any comments? Questions? All those in favor, aye?

21

22 [Aye]

23 Opposed? Abstentions? The motion carries.

24 Ask Ms. Carver-Cheney to come back in. Oh, one more.

1 GARY KALKUT: This is I category IV. Home health agency
2 licensures.

3 2313L, AHS Criticare LLC, Bronx, Kings, Nassau, New York,
4 Queens, and Richmond County. Ms. Carver-Cheney has a conflict
5 and has left the room. The Department recommended approval with
6 contingency. The Project Review Committee recommended approval
7 also with contingency with one member abstaining. Motion.

8

9 JEFF KRAUT: I have a motion, I have a second, Dr.
10 Berliner. Any comments or questions? All those in favor, aye?

11

12 [Aye]

13 Opposed? Abstentions? The motion carries.

14

15 GARY KALKUT: OK. Now moving to applications for acute
16 care services. Establish and construction. This is 142211B,
17 Sympaticare LLC, d/b/a Summit Park Hospital in Rockland County.
18 This was the matter discussed in the special committee earlier
19 this morning.

20

21 JEFF KRAUT: She has recusals, sorry, go ahead.

22

23 GARY KALKUT: Again, conflict declared by Ms. Carver-
24 Cheney who is not in the room. This is to establish Sympaticare

1 LLC as the new operator of the hospital located on Sanatorium
2 Road in Pamona. To decertify 17 beds, convert 57 beds to
3 medical surgical ones and decertify several services and perform
4 renovations. The Department recommended approval with
5 conditions and contingencies, as did the Establishment and
6 Project Review Committee today. Motion.

7
8 JEFF KRAUT: I have a motion. I have a second, Dr.
9 Berliner. Any additional comments? All those in favor, aye?

10
11 [Aye]

12 Opposed? Abstentions? The motion carries.

13
14 GARY KALKUT: 141223B, Sympaticare LLC d/b/a Summit Park
15 Nursing Care Center in Rockland. Conflict declared by Ms.
16 Carver-Cheney who is not in the room. This is to establish
17 Sympaticare LLC as the new operator of the Summit Park Nursing
18 Care Center located on Sanatorium Road in Pomona. Currently
19 operated by Rockland County and to decertify 41 residential beds
20 and perform renovations. Note that contingency number four has
21 been withdrawn. The Department is recommended approval with
22 conditions and contingencies, as has the Project Review
23 Committee. I'd make a motion.

24

1 JEFF KRAUT: I have a motion. May I have a second.
2 Second, Dr. Gutierrez. Any questions? Comments? All those in
3 favor - Ms. Carver-Cheney, you just have to stay out. All those
4 in favor, aye?

5

6 [Aye]

7 Opposed? Abstentions? The motion carries.

8 Now you can come back in.

9

10 GARY KALKUT: Thank you. We'll now move to the top of the
11 agenda category I, application for acute care services for
12 construction. 151162C. University Hospital SUNY Health Sciences
13 Center in Onondaga County. Request is for indefinite life status
14 for it's outpatient multispecialty ambulatory surgery center.
15 Originally approved through project CON 101123. Both the
16 Department and the Project Review Committee recommended approval
17 for indefinite life. I'd make a motion.

18

19 JEFF KRAUT: I have a motion. I have a second Dr.
20 Gutierrez. Any comments? Any questions? All those in favor,
21 aye?

22

23 [Aye]

24 Opposed? Abstentions? The motion carries.

1

2 GARY KALKUT: Moving forward, 132131B, SMC Manhattan
3 Center, New York County. This is to establish and construct a
4 new diagnostic and treatment center located at 512 West 126th
5 Street in Harlem to provide primary care services primarily to
6 individuals and family living with HIV AIDS. Both the
7 Department and the Project Review Committee recommended approval
8 with conditions and contingencies.

9

10 JEFF KRAUT: You want to move this as a batch?

11

12 GARY KALKUT: Happy to do so. 142069B, Bethany Village
13 Primary Care Network in Chemung County. This is to establish
14 and construct diagnostic and treatment center to be located at
15 2977 Westinghouse Road in Horsehead. Both the Department and the
16 Project Review Committee recommended approval with conditions
17 and contingencies.

18 Next is 142222B, Healthquest Health Center in New York
19 County. This is to establish and construct a new diagnostic and
20 treatment center to be located at 3500 Nostron Avenue in
21 Brooklyn. The Department and the Project Review Committee
22 recommended approval with conditions and contingencies.

23 151014E, PRNC Operating, LLC, d/b/a Plattsburgh
24 Rehabilitation and Nursing Center in Clinton County. This is to

1 establish PRNC Operating LLC as the new operator of the 89 bed
2 facility located at 8 Bushey Blvd. Plattsburgh, currently
3 operating as Evergreen Valley Nursing Home. Both the Department
4 and the Project Review Committee recommended approval with
5 conditions and contingencies.

6 151085E, AURNC Operating LLC, d/b/a Auburn Rehabilitation
7 and Nursing Center in Cayuga County. This is to establish AURNC
8 Operating LLC as the new operator of the Auburn Nursing Home a
9 92 bed facility located at 85 Thornton Avenue in Auburn. Both
10 the Department and the Project Review Committee recommended
11 approval with conditions and contingencies.

12 151087E, BVRNC Operating LLC, d/b/a Blossom View
13 Rehabilitation and Nursing Center in Wayne County. This is to
14 establish BVRNC Operating LLC as the new operator of the
15 existing 129 bed facility located at 6884 Maple Avenue in Sodus
16 and to decertify 5 residential healthcare facility beds. Both
17 the Department and the Project Review Committee recommended
18 approval with conditions and contingencies. There's an added
19 contingency of submission of a photocopy of the certificate of
20 doing business under an assumed name that is acceptable to the
21 Department that has been added to the application. Let's
22 continue with the same.

23 151182E, One Bethesda Drive Operating Company LLC d/b/a
24 Elderwood at Hornell in Steuben County. This is to establish

1 One Bethesda Drive Operating Company as the new operator of the
2 112 bed facility located at One Bethesda Drive North Hornell
3 which is currently operated as the McCauley Manor at Mercy Care.
4 Both the Department and the Project Review Committee recommended
5 approval with conditions and contingencies.

6 151191E, Westledge OP, LLC, d/b/a Pinnacle Center for
7 Rehabilitation on the Hudson in Westchester County. This is to
8 establish Westledge OP LLC as the new operator of the 96 bed
9 facility located at 2000 Main Street in Peekskill which is
10 currently operated as Westledge Rehabilitation and Nursing
11 Center. Four residential healthcare facility beds will be
12 decertified to achieve a 96 bed facility. Both the Department
13 and the Project Review Committee recommended approval with
14 conditions and contingencies.

15 151118E, WellCare Orange County. This is to establish
16 National Health Industries Incorporated and Almost Family
17 incorporated as the controlling persons at the Grandparent and
18 Great-grandparent levels of Litson Certified Care. Both the
19 Department and the Project Review Committee recommended approval
20 with conditions and contingencies.

21 151119E, WellCare in Erie County, to establish Healthcare
22 Industries and Almost Family Inc., as the controlling persons at
23 the Grandparent and Great-grandparent level of Western Regional
24 Healthcare, Western Regional Health Corporation Inc., both the

1 Department and the Project Review Committee recommended approval
2 with conditions and contingencies. And I'd make a motion.

3

4 JEFF KRAUT: have a motion on the batch. I have a second
5 by Dr. Berliner. Is there any question or comment on any of the
6 applications in the batch? Hearing none, I'll call for a vote.
7 All those in favor, aye?

8

9 [Aye]

10 Opposed? Abstentions? The motion carries.

11

12 GARY KALKUT: We'll now go to the approval for the
13 applications for home agency licensures. After I take a drink of
14 water.

15

16 JEFF KRAUT: You just gotta read the number.

17

18 GARY KALKUT: Right.

19 1968L, 1972L, 2217L, 2251L, 2258L, 2265L, 2273L, 2298L,
20 2376L, 2382L, 2386L, 2390L, 2408L, 2420L - did I miss 239 -
21 2398L, 2408L, 2420L, 2421L, 2422L, 2426L, 2428L, 2431L, 2439L,
22 2453L, 2470L, 2476L, 2486L, 2648L, 2598L, 2599L, 2613L, 2286L,
23 2315L, 2373L, 2506L, 2530L, 2567L, 2616L, 2617L, 2288L. The
24 Department has recommended approval with contingencies. The

1 Project Review Committee recommended approval with contingency
2 with one member abstaining.

3

4 JEFF KRAUT: I have a motion, second Dr. Gutierrez. Any
5 comments on any of these applications? You'll note, just do
6 this for the record, Ms. Hines abstained on all of these out of
7 her long-standing concern about the ability to oversight that,
8 so I just recognize that. any other questions? All those in
9 favor, aye?

10

11 [Aye]

12 Opposed? Abstentions? The motion carries.

13

14 GARY KALKUT: Next is category VI. 151186B, Premier
15 Ambulatory Services Development Company LLC d/b/a Premier
16 Ambulatory Surgery Center in Erie County. This is to establish
17 and construct a freestanding multispecialty ambulatory surgery
18 center initially specializing in ophthalmology and
19 gastroenterology procedures to be located at 2816 Pleasant
20 Avenue in Hamburg. The Department recommended conditions and
21 contingencies and expiration of the operating certificate five
22 years from the date of issuance. The Project Review Committee
23 recommend deferral of this application to gather additional
24 information for the deferral for one cycle. Make a motion?

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JEFF KRAUT: I have a second Dr. Gutierrez. So we're just going to defer this one cycle. All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

Is there any other?—

GARY KALKUT: There's one other and that's certificate of amendment. Certificate of amendment of the certificate of incorporation. The Capital Region Geriatric Center incorporated name change. Department recommended approval as did the Project Review Committee in the special session this morning.

JEFF KRAUT: Motion to approve. Second, Dr. Berliner, any comments? All those in favor, aye?

[Aye]

Opposed? Abstentions? The motion carries.

We did Sympaticare. Colleen, is there anything that we missed? I know we jumped all over the agenda so I just want to make sure from your perspective.

[We are good]

1 OK. Thank you so much, Dr. Kalkut. I know that was
2 difficult and appreciate it.

3 We'll now call on report of the ad-hoc committee on
4 freestanding ambulatory surgery centers and charity care. Mr.
5 Robinson.

6
7 PETER ROBINSON: Thank you Mr. Kraut. The final
8 committee meeting which I don't think we had sufficient
9 representation for did cover a little bit of where we were in
10 the report, but I don't think really added a whole lot. However
11 in the interim we did continue to gather some input in what you
12 have in your recommendations are pretty consistent with that
13 input. I do actually want to do what you indicated earlier and
14 I'd like to just add to that my special thanks to Chris Delker
15 and actually give him the privilege of maybe making this report
16 to the Council in recognition of the work that he's done on
17 this. Chris.

18
19 CHRIS DELKER: Thank you. The report basically addresses
20 the issue of ASCs and charity care in serving the underserved in
21 response to the Council on the Department's noticing that in the
22 initial years of limited life approval many of the ambulatory
23 surgery centers were not reaching the charity care goals
24 particularly, so the Committee was convened back in September to

1 examine the reasons. And over the course of four meetings we had
2 a lot of discussion and I think most importantly we heard a lot
3 from the individuals who are out there both operators of ASCs
4 and advocates for the underserved regarding the difficulties and
5 successes that are entailed in trying to bring ambulatory
6 surgery services to the underserved. And I think we learned a
7 lot about how reaching out to underserved populations
8 particularly charity care populations does take quite an effort
9 on the part of an ambulatory surgery center. Something in the
10 way perhaps of a patient navigator at least a dedicated person
11 or large part of a full time equivalent to make that happen. We
12 also heard from the industry, from the New York State
13 Association of Ambulatory Surgery Centers and they are very
14 supportive of reaching out to underserved populations, and
15 including for Medicaid and charity care and others, and they did
16 point out I think in some of the later comments they made just
17 prior to this final draft, they did express the concern that
18 it's standard practice among their members to try to enroll
19 uninsured clients into Medicaid if they are found to be
20 eligible. So when a client presents or is referred, they do
21 make an effort to do that and they did not, and also they will
22 if the client is not eligible at the time of service, they often
23 become eligible following service due to the cost incurred
24 liability incurred by undergoing the procedure. So, the

1 association did not want to point loss that they are disposed to
2 serve the uninsured and to enroll them in Medicaid and they did
3 not want this, the resulting declining numbers in uninsured to
4 paradoxically indicate that they may not be supportive. They're
5 actually, it's because of their initiative to enroll the
6 uninsured in Medicaid wherever possible that that might somewhat
7 seem to contradict their efforts to serve the uninsured by
8 showing up as actually paid clients under Medicaid. That point
9 is in the paper. We also heard on this latest draft from the New
10 York City Department of Health who has been very supportive of
11 this effort and is working with the American Cancer Society to
12 bring uninsured clients into endoscopy screening, and we heard
13 from several, from some of the providers that are collaborating
14 in this effort. But the city did point out that in our paper we
15 suggested that the applicants ASCs document contacts with FQHCs
16 or other entities that might serve as referrals for the
17 uninsured, they wanted us to be a little more specific about
18 contacts so we added information to the effect that with
19 specific examples of meetings, conference calls, letters, and
20 other active measurable indicators that would show that. There
21 were also some concerns expressed by some of the committee
22 members towards the end of our deliberations that are, well, let
23 me back up a little. One of the things that was recognized in
24 the discussions that with the increasing and Medicaid enrollment

1 and the increased enrolment under the affordable care act, the
2 number of uninsured is declining and some of the committee
3 members were concerned that our earlier discussions and draft
4 might have left the impression that it was OK to just go after
5 Medicaid and bad debt and consider that the obligation. So we
6 did add language at the end of this current draft to the effect
7 that these things are good developments, but they should not be
8 seen as substitutes altogether for charity care, and that all
9 ASCs should still be expected to show a sustained good faith
10 effort to reach charity care clients. Now, building on what Ms.
11 Dreslin said earlier this morning and describing the report from
12 New York State of Health last week, which showed that some 2
13 million New Yorkers have enrolled through the exchange through
14 the end of the second enrollment period representing 89 percent
15 of them were uninsured at the time of enrollment. According to
16 U.S. census data there were 2.1 million New Yorkers uninsured in
17 2013 before the implementation of the Affordable Care Act, so
18 the amount of uninsured is coming close to the total number of
19 uninsured who enrolled is coming close to the total number of
20 uninsured. Now, we should not be content with that. There's
21 still always going to be uninsured people out there and ASC
22 should be expected to serve them. But I think that that very
23 favorable development underscores some of the comments we heard
24 from ASC operators saying that it's getting harder and harder to

1 find uninsured and charity care clients. And I think that
 2 reinforces the committee's decision not to put an actual
 3 percentage of uninsured or charity care in the guidelines in the
 4 paper here. It just has to be borne in mind that each ASC has
 5 to be evaluated according to it's own circumstances and service
 6 area and the type of services that are being proposed. And we
 7 have to be ever mindful of the context in evaluating these
 8 applicants of the changing insurance situation, broader
 9 coverage, growth of Medicaid managed care, and the way the whole
 10 landscape of healthcare is changing underneath our feet through
 11 DSRIP and PPSs and other activities. So I think what the paper
 12 does, it does provide guidance to the council, to the Department
 13 and to ASC operators and applicants about what is expected and
 14 at the same time acknowledges that this is occurring in a
 15 changing healthcare environment.

16

17 PETER ROBINSON: Thank you very much Chris. I would
 18 like to invite the people that are on the ad-hoc committee if
 19 there's anything that they would like to comment on. Dr.
 20 Berliner.

21

22 HOWARD BERLINLER: Chris, I'd like to add - and Mr.
 23 Robinson about how much you'll be missed. Surely there'll be no

1 one to remind us about the tax that ambulatory surgery centers
2 pay.

3

4 CHRIS DELKER: Yes, and you'll see that the added
5 information shows that that's been up to \$1.2 billion over the
6 last seven years. But before you go on Howard, I have to remind
7 you there was a time when you promised you would not advocate
8 for repeal of CON until I retired.

9

10 HOWARD BERLINER: Oh, I was going to say that.

11

12 CHRIS DELKER: I thought I could outlast you, but you keep
13 getting reappointed.

14

15 HOWARD BERLINER: September. You know, it's gone. No, but
16 what I wanted to ask you about, could you just go over, I mean,
17 Medicare billing does not count in the tax.

18

19 CHRIS DELKER: That's correct. The HCCRA tax, it's 9.63
20 percent on commercial plans and commercial managed care plans.
21 It's about 7 percent on Medicaid, the State's share of Medicaid
22 and other governmental payers. It is not applied to the federal
23 share of Medicaid or to Medicare.

24

1 HOWARD BERLINER: So we are not talking in terms of
2 ambulatory surgery about well over a \$3 billion industry. It's
3 hard to estimate because we don't know. But I'm assuming most
4 of the ophthalmology oriented ambulatory surgery centers are
5 largely Medicare so they're not really paying very much in the
6 tax.

7

8 CHRIS DELKER: Probably true.

9

10 HOWARD BERLINER: Probably paying half of the Medicaid
11 tax. So, this is you know, I mean, when we do this application
12 by application I mean it seems a lot smaller than when you put
13 it together as an entire industry now. It's a big industry in
14 this State.

15

16 CHRIS DELKER: Yeah, well, I, over $\frac{3}{4}$ of the surgery in this
17 state is done on an ambulatory basis. I think three billion is
18 probably right. I trust your arithmetic on that.

19

20 HOWARD BERLINER: Well, it's I actually think given those
21 caveats actually much more than three billion if that's the tax
22 they're paying and that's not including Medicare and the half of
23 the Medicaid share. But I guess, you know, part of the question
24 then becomes, Siri doesn't understand this. We're dealing in a

1 system now which has an increasing number of people who are
2 insured thanks to the ACA and the work of the marketplace.
3 We're dealing with a situation where we're seeing increasing bad
4 debt as opposed to an actual need. I'm sure there still is very
5 much an actual need for charity care. But I'm wondering to what
6 extent is all this money that's now being poured into the bad
7 debt and charity care fund. I mean, does that need to be
8 redirected in some way to be more appropriately applied to
9 people who can't afford, who don't have insurance or can't
10 afford to pay for care. This is now becoming such a big sum of
11 that money and again, I mean, yes, 80 percent of the ambulatory
12 surgery or 80 percent of the surgeries ambulatory surgery but
13 quite a bit of that ambulatory surgery is hospital-based and
14 therefore not subject to the tax.

15

16 CHRIS DELKER: Right.

17

18 HOWARD BERLINER: So we're talking about relatively small
19 number of facilities that are generating like, a lot of money
20 for the, for bad debt and charity care potentially.

21

22 JEFF KRAUT: I think you asked a question but it was a
23 wonderful statement. But Howard, in all seriousness, you're,
24 you know, because we've been doing this for years, this is a

1 reasonable framework I think to go forward given, you know we
2 were looking for a hard number, a hard stop. So, what I take
3 away from this is that the, that when an applicant applies we're
4 going to not only be looking for what they are comfortable to
5 commit to given the communities they're serving, but there is an
6 affirmative obligation to do so and second, I would say given
7 the framework you gave to work with the FQHCs, the expectation
8 is that would be part and parcel of the application process that
9 we would've seen evidence of that outreach at the outset, and
10 then when they come in for the limited life, the review, you're
11 gonna have to evaluate it against all these factors at that
12 point in time. Is that the takeaway?

13

14 PETER ROBINSON: That's a broad intent obviously there
15 are geographic issues here in terms of where FQHCs are located
16 and where the ambulatory surgery centers are, but there would be
17 a presumption that there would be an effort to reach out and to
18 establish linkages between providers that care for the medically
19 underserved and the indigent as well as Medicaid, insuring
20 Medicaid access.

21

22 GLENN MARTIN: I just want to emphasize what I think New
23 York City's DOH MH was saying also, is there's still a large
24 pool of people who will never be insured because they are not

1 legally in this country to the extent that congress believes
2 they should get insurance. And that certainly when we look at
3 the geographic differences personally my expectation if you're
4 opening up in New York City is the concept of charity care and
5 people are in there that aren't going to be able to get these
6 other services is going to be important where it may be less so
7 in other geographic areas where in fact the State's efforts have
8 paid off really well and a lot of the uninsured are now insured.
9 So I think it's just an important thing that we all have to keep
10 in our heads as we go forward.

11

12 PETER ROBINSON: I think that's right, which is why I
13 think we recognize the fundamental obligation but recognize that
14 the standard that we're going to apply is not a one-size-fits
15 all that we're really going to have to look at each on a case by
16 case basis, and I think that's how we've managed the balance
17 that I think everybody was looking for.

18

19 JEFF KRAUT: OK. any other comments or questions?

20

21 PETER ROBINSON: I'd like to make a motion that this
22 report serve as a recommendation for how the department applies
23 the charitable care standards that are still fundamental to what

3hr 2min

1 we want to do as a sort of working guiding document for them.

2 So I'll make that motion.

3

4 JEFF KRAUT: So we have a motion for the Council to
5 accept the work of the subcommittee and for the two advanced to
6 the Department for future policy and guidance. I have second Dr.
7 Berliner. Any other discussion? All those in favor, aye?

8

9 [Aye]

10 Opposed? Abstentions? The motion carries.

11 Thank you again to Chris and the staff have worked on this
12 and it's a nice piece of work and I think it's to our chairman
13 Mr. Robinson that did this in a very short timeframe and got it
14 back to us. We appreciate it very much. We know how much work
15 that takes. Thank you. Anything else? That's it. OK. I am
16 going to go into Executive Session in a moment, but before I
17 close down I wanted to make a statement about our next meeting
18 is on September 24 is the Committee day and August - October 8
19 is our next full meeting that'll be held in New York City. We're
20 going to go into Executive Session take on a matter, so, the
21 public will conclude the public portion of the Public Health and
22 Health Planning Council meeting.

23

24 [end of audio]

15-14 Addition of Part 4 to Title 10 NYCRR
(Protection Against Legionella)

To Be Distributed Under Separate Cover

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

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

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

Costs:

Costs to Private Regulated Parties:

The regulation imposes no new costs for private regulated parties.

Costs to State Government and Local Government:

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

Local Government Mandates:

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

Paperwork:

The regulation imposes no new reporting or filing requirements.

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Contact Person:

Katherine E. Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

Regulatory Flexibility Analysis for Small Business and Local Governments

Effect of Rule:

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

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

Compliance Requirements:

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

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

up to \$500 and 15 days in prison.

Professional Services:

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

Compliance Costs:

Costs to Private Regulated Parties:

The regulation imposes no new costs for private regulated parties.

Costs to State Government and Local Government:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

consultation, coordination and information and updates on its website.

Small Business and Local Government Participation:

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

Cure Period:

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

Rural Area Flexibility Analysis

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

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

Job Impact Statement

Nature of the Impact:

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

Categories and Numbers Affected:

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

Regions of Adverse Impact:

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

Minimizing Adverse Impact:

Not applicable.

Emergency Justification

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

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

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

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

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

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

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

governments to control these dangerous chemicals.

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

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval by the Commissioner of Health pursuant to Sections 2803, 2805-v and 2805-w of the Public Health Law, paragraph (2) of subdivision (e) of Part 405.19 is amended, subdivision (g) of Section 405.19 is repealed and a new Section 405.32 is added to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York to be effective upon publication of a Notice of Adoption in the New York State Register to read as follows:

Paragraph (2) of subdivision (e) of Section 405.19 is amended to read as follows:

(2) Every person arriving at the emergency service for care shall be promptly examined, diagnosed and appropriately treated in accordance with triage and transfer policies and protocols adopted by the emergency service and approved by the hospital. Such protocols must include written agreements with local emergency medical services (EMS) in accordance with subparagraph (b) (1) (i) of this section. All patient care services shall be provided under the direction and control of the emergency services director or attending physician. In no event shall a patient be discharged or transferred to another facility, unless evaluated, initially managed, and treated as necessary by an appropriately privileged physician, physician assistant, or nurse practitioner. No later than eight hours after presenting in the emergency service, every person shall be admitted to the hospital, or assigned to [an]observation [unit]services in accordance with [subdivision (g) of this] section 405.32 of this part, or transferred to another hospital in accordance with paragraph (6) of this subdivision, or discharged to self-care or the care of a physician or other appropriate follow-up service. [Hospitals which elect to use physician assistants or nurse practitioners shall develop and implement written policies and treatment

protocols subject to approval by the governing body that specify patient conditions that may be treated by a registered physician assistant or nurse practitioner without direct visual supervision of the emergency services attending physician.]

Subdivision (g) of section 405.19 is repealed.

A new Section 405.32 is added to read as follows:

405.32 Observation services.

(a) General.

- (1) Observation services are post-stabilization services appropriate for short-term treatments, assessment, and re-assessment of those patients for whom diagnosis and a determination concerning inpatient admission, discharge, or transfer can reasonably be expected within forty-eight hours.
- (2) If observation services are provided, the services shall be provided in a manner which protects the health and safety of the patients in accordance with generally accepted standards of medical practice.

(3) Direct referral is defined as a patient referred to the hospital for observation services by a nursing home, hospital outpatient clinic, diagnostic and treatment center, private practice physician or appropriately licensed practitioner, without receiving emergency room or critical care services on the day observation care begins. The referring practitioner must be a licensed physician or appropriately licensed practitioner and must have conducted a physical assessment of the patient within the previous eight hours from the referral.

(4) Patients may be assigned to observation services only by order of a physician or appropriately licensed practitioner.

(5) Patients may be assigned to observation services only through the emergency department or by direct referral in accordance with hospital policies, procedures and bylaws, in conformance with applicable statutes and regulations.

(b) Organization and Notice.

(1) The medical staff shall develop and implement written policies and procedures, approved by the governing body, that are based on the clinical needs of the patient, that shall specify:

- (i) the organizational structure for providing observation services, including the specification of authority and accountability of the services,
 - (ii) the proper clinical location for the care of a patient requiring observation services,
 - (iii) the appropriate medical and administrative oversight of observation services
 - (iv) clinical criteria for observation assignment and discharge,
 - (v) assignment of a physician, nurse practitioner, or physician assistant who will be responsible for the care of the patient and timely discharge from observation services, and
 - (vi) integration with related services and quality assurance activities of the hospital.
- (2) The hospital, in conjunction with the discharge planning program of the hospital, shall establish and implement written criteria and guidelines specifying the circumstances, the actions to be taken, and the appropriate contact agencies and individuals to accomplish adequate discharge planning for persons in need of post observation treatment or services but not in need of inpatient hospital care.
- (3) Patients in observation shall be cared for by staff appropriately trained and in sufficient numbers to meet the needs of the patients.
- (4) Patients being assigned to the observation services, or the patient representative, shall be provided with an oral and written notice within twenty-four hours of such placement that

the patient is not admitted to the hospital and is under observation status. The hospital shall make a good faith effort to obtain written acknowledgment of receipt of the notice by the patient or the patient representative, and if not obtained, document its good faith efforts to obtain such acknowledgment and the reason why the acknowledgment was not obtained. Such written notice shall include, but not be limited to the following information:

- (i) a statement that observation status may affect the patient's Medicare, Medicaid and/or private insurance coverage for the current hospital services, including medications and other pharmaceutical supplies, as well as coverage for any subsequent discharge to a skilled nursing facility or home and community based care; and
- (ii) that the patient should contact his or her insurance plan to better understand the implications of being placed in observation status.

(c) Locations. Hospitals may provide observation services in the following locations:

- (1) Inpatient beds;
- (2) Distinct Observation Units; or

(3) In a hospital designated as a critical access hospital pursuant to Subpart F of Part 485 of Title 42 of the Code of Federal Regulations or a sole community hospital pursuant to section 412.92 of Title 42 of the Code of Federal Regulations, or any successor provisions, observation services may be provided in the emergency department.

(d) Distinct Observation Units.

(1) Physical Standards

(i) The observation unit shall comply with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011, except that the unit need not be adjacent to the emergency department.

(ii) Observation unit beds shall not be counted within the state certified bed capacity of the hospital and shall be exempt from the public need provisions of Part 709 of this Title.

(iii) The observation unit shall be marked with a clear and conspicuous sign that states: "This is an observation unit for visits of up to 48 hours. Patients in this unit are not admitted for inpatient services."

(2) Any hospital seeking to establish a distinct observation unit shall, not less than 90 days prior:

- (i) if no construction, as defined in subdivision 5 of section 2801 of the Public Health Law, will be needed, no construction waivers are being requested, and no service will be eliminated, notify the Department in writing of the general location of the unit and the number of beds; and submit a certification from a licensed architect or engineer, in the form specified by the Department, that the space complies with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011; or
- (ii) if construction, as defined in subdivision 5 of section 2801 of the Public Health Law, will be needed, or construction waivers are being requested, or a service will be eliminated:
 - (a) submit a request for limited review under 710.1(c)(5) of this Title, provided that for purposes of Part 710, a construction project involving only the creation of an observation unit and the addition of observation unit beds shall not be subject to review under section 710.1(c)(2) or (3) of this Title, unless the total project cost exceeds \$15 million or \$6 million respectively; and
 - (b) comply with the applicable provisions of Parts 711 and 712-2 and section 712-2.4 of this Title for construction projects approved or completed after January 1, 2011.

(3) Any hospital operating an observation unit pursuant to a waiver granted by the Department shall be required to comply with the provisions of this subdivision within 12 months of its effective date.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the proposed revision to Title 10 NYCRR Part 405 is section 2803 of the Public Health Law (PHL), which authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the provisions and purposes of Article 28 of the PHL with respect to minimum standards for hospitals and section 2805-v of the PHL, which authorizes PHHPC and the Commissioner to adopt regulations with respect to observation services in general hospitals. In addition, Section 2805-w of the Public Health Law requires patient notice of observation services.

Legislative Objectives:

While observation services have been widely used, it wasn't until 2011 a Medicaid rate was implemented and 2012 that regulations were adopted creating operational standards for observation units, pursuant to a recommendation adopted by Governor Cuomo's Medicaid Redesign Team. In January 2013 Governor Cuomo signed legislation (L. 2013, ch. 5) creating section 2805-v of the Public Health Law in relation to hospital observation services which differ from the type of observation services provided for in the current regulations. In addition, Chapter 397 of the Laws of 2013 added a new Section 2805-w to the Public Health Law specific to patient notice of observation services.

The proposed changes are designed to make the regulations consistent with sections 2805-v and 2805-w, as well as make modifications based on the experiences of hospitals and the desire to bring the regulations more in line with Medicare rules, while still assuring patient safety and quality of care.

Current Requirements:

Current regulations require that observation services be rendered in a discrete unit, under the direction and control of the emergency services. Additionally, observation services are currently limited to twenty-four hours, at which time the hospital must either discharge or admit the patient. Observation services have been identified as a means of improving patient care and relieving overcrowding in emergency departments by increasing efficiency and patient through-put. However, the current regulations differ significantly from sections 2805-v and 2805-w and from Medicare rules.

Needs and Benefits:

The proposed regulations repeal 405.19(g) and create a new section 405.32. In response to the recent legislation, the new regulations will allow observation services to be rendered in a distinct unit or in inpatient beds, with no limit on the number of observation beds. The facility will be able to determine the appropriate oversight, and the maximum observation stay will increase to

forty-eight hours. Many of the provisions in the current section 405.19(g) are retained in the new 405.32(d).

Additionally, proposed changes would allow hospitals to accept direct referrals to observation by community providers, following appropriately adopted policies and procedures. The new regulations will also require both verbal and written notice be given to patients explaining that observation services are considered outpatient services with all concurrent applicable insurance rules.

These regulatory changes incorporate the statutory changes and take into account the desire for appropriate consistency with Medicare rules and operational experiences over the past year, while maintaining proper safeguards and attention to patient safety and quality of care.

COSTS

Costs to Private Regulated Parties:

This regulation creates no additional burdens or costs to regulated parties. It will eliminate the requirement for discrete units which may have required construction costs to be in compliance with construction standards.

Costs to Local Government:

There are no costs to local government.

Costs to the Department of Health:

The proposed amendment would impose no new costs on the Department.

Costs to Other State Agencies:

There are no costs to other State agencies or offices of State government.

Local Government Mandates:

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

Paperwork:

This regulation requires no additional paperwork other than written notice to patients about their assignment to observation services and signage at the entrance to the observation area.

Duplication:

There are no relevant State regulations which duplicate, overlap or conflict with the proposed amendment. Federal Medicare payment rules set forth standards for reimbursement of observation services. These proposed regulations provide clear and consistent operating standards for observation services. The regulations do not conflict with Medicare payment rules.

Alternatives:

The Department believes that Chapter 5 of the Laws of 2013 requires the Department to promulgate these regulations. The Department considered not requiring verbal and written notice to patients regarding their assignment to observation services. Based on the literature and recent newspaper articles, the Department determined that such information was important for patients to know.

Federal Standards:

The proposed amendment does not exceed any minimum operating standards for health care facilities imposed by the Federal government.

Compliance Schedule:

The proposed amendments will be effective 90 days after publication of a Notice of Adoption in the New York State Register. Facilities operating observation units pursuant to a waiver approved by the Department will have 12 months to comply with these regulations.

Contact Person: Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Room 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

**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**

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 impact on facilities in rural areas, and it does not impose reporting, record keeping or other compliance requirements on facilities in rural areas. The regulation includes an exemption for critical access hospitals and sole community hospitals, allowing them to utilize emergency room beds.

**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 amendment, that it will not have an adverse impact on jobs and employment opportunities.

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

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

PART 757 CHRONIC RENAL DIALYSIS SERVICES

(Statutory authority: Public Health Law §2803)

Sec.

§757.1 Codes and standards.

§757.2 Additional requirements for chronic renal dialysis centers.

§757.3 Chronic renal dialysis center staffing.

§757.1 Codes and standards.

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

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

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

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

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

§757.2 Additional requirements for chronic renal dialysis centers.

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 757.3 Chronic renal dialysis service staffing.

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

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

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

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

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

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

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

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

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

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

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

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

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

Costs:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Contact Person:

Katherine E. Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Room 2438, ESP Tower Building
Albany, NY 12237
(518) 473-7488
(518) 473-2019 – FAX
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS

Effect of Rule:

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

Compliance Requirements:

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

renal dialysis center to collaborate with its ESRD network, suppliers, utility service providers and the Department for survey and for emergency preparedness, as well as with other chronic renal dialysis centers to ensure that life saving dialysis services are available in the event of an emergency or disaster. Such standards must be immediately complied with in order not to jeopardize health and safety. Therefore, a cure period was not determined necessary and included in the rule.

Professional Services:

No additional professional standards are required as a result of the proposed regulation. This measure incorporates by reference amended federal regulations and standards reflecting current technology and practice in the field of ESRD care, and clarifies such standards for New York State chronic renal dialysis centers.

Compliance Costs:

This measure incorporates by reference amended federal regulations, and standards reflecting current technology and practice in the field of ESRD care, and clarifies requirements for New York State chronic renal dialysis centers.

Economic and Technological Feasibility:

This proposal is economically and technologically feasible.

Minimizing Adverse Impact:

There is no adverse impact.

Small Business and Local Government Participation:

Outreach to the affected parties is being conducted. Organizations who represent the affected parties and the public can also obtain the agenda of the Codes, Regulations and Legislation Committee of the Public Health and Health Planning Council (PHHPC) and the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

“Dear Chief Executive Officer (CEO)” letters were sent to affected parties outlining the components of 42 CFR Part 494 summarizing the general requirements that apply and linking them to the full text of the federal regulation online. The letter also included a Departmental contact for any questions. Chronic renal dialysis centers should already be in compliance with the federal regulations.

RURAL AREA FLEXIBILITY ANALYSIS

No Rural Area Flexibility Analysis is required pursuant to section 202-bb (4) (a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed regulation that it will not impose any adverse impact on rural areas, and does not impose any new reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

JOB IMPACT STATEMENT

No Job Impact Statement is required pursuant to section 201-a (2) (a) of the State Administrative Procedure Act (SAPA). It is apparent, from the nature of the proposed regulation that it will have no impact on jobs and employment opportunities.

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

Section 58-1.8 is amended as follows:

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

Section 58-1.9 is amended as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

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

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

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

Needs and Benefits:

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

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

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

Costs

Costs to Private Regulated Parties:

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

Costs for Implementation and Administration of the Rule:

Costs to State Government:

No new costs would be incurred by state government.

Costs to the Department:

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

Costs to Local Government:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternative Approaches:

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

Federal Standards:

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

Compliance Schedule:

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

Contact person:

Katherine Ceroalo
New York State Department of Health
Bureau of House Counsel, Regulatory Affairs Unit
Corning Tower Building, Rm. 2438
Empire State Plaza
Albany, New York 12237
(518) 473-7488
(518) 473-2019 (FAX)
REGSQNA@health.ny.gov

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

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

Compliance Requirements:

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

Professional Services:

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

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small Business and Local Government Participation:

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

RURAL AREA FLEXIBILITY ANALYSIS

Types and estimated numbers of rural areas:

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

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

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

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

Compliance Requirements:

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

Professional Services:

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

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

Compliance Costs:

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

Minimizing Adverse Impact:

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

Opportunity for Rural Area Participation:

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

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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



**Project # 151204-C
Vassar Brothers Medical Center**

Program: Hospital
Purpose: Construction

County: Dutchess
Acknowledged: May 7, 2015

Executive Summary

Description

Vassar Brothers Medical Center (VBMC), a 365-bed, voluntary not-for-profit, Article 28 hospital located at 45 Reade Place, Poughkeepsie (Dutchess County), requests approval to replace and modernize significant portions of the existing VBMC campus and to decertify fifteen total licensed beds, bringing the total licensed beds to 350.

The major components of the applicant's proposal are as follows: construction of a new 696,440 sq. ft. patient bed tower; replacement and expansion of the emergency department; replacement of most of the operating rooms and interventional suites; expansion and modernization of the central plant; addition of conference space, educational space and amenities; addition of six intensive care beds; decertification of nine pediatric beds; and decertification of twelve medical/surgical beds.

Health Quest Systems, Inc. is the sole corporate member and active parent of VBMC, Putnam Hospital Center and Northern Dutchess Hospital. VBMC is a member of the Health Quest Systems, Inc. obligated group. BFA Attachment C provides the organizational chart of Health Quest Systems, Inc.

OPCHSM Recommendation Contingent Approval

Need Summary

The current bed capacity is 365 and will be reduced to 350 beds. The facility will reduce twelve medical/surgical beds and nine pediatric beds while increasing critical care beds by six.

Program Summary

The facility is deemed to be operating in substantial compliance with all applicable State and Federal codes, rules and regulations.

Financial Summary

Project costs of \$466,164,933 will be met as follows: Equity of \$100,000,000 and tax-exempt bonds for \$366,164,933 with a maturity of 30 years bearing interest at 4.1% for tax-exempt debt.

Budget:	Revenues	\$487,814,700
	Expenses	<u>\$343,148,644</u>
	Net	\$144,666,056
	Income/(Loss)	

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON upon submission. [PMU]
2. Submission of a bond resolution for the project, acceptable to the Department of Health. [BFA]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER]
4. Submission of State Environmental Quality Review Act (SEQRA) Findings as required under Section 617.4 of the New York Codes, Rules, and Regulations (NYCRR). [SEQ]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. Construction must start on or before July 1, 2016 and construction must be completed by December 31, 2019, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

October 8, 2015

Need Analysis

Project Description

Vassar Brothers Medical Center, a 365 bed tertiary care hospital located at 45 Reade Place, Poughkeepsie (Dutchess County), New York 12601, is seeking approval to construct a 696,440 sq. ft. bed tower. The end result will be a 4.1 percent reduction in beds, or a reduction of 15. In addition, the Emergency Department will be expanded.

Background

	Current Beds	Proposed Change	Proposed Beds
Medical/Surgical	276	-12	264
Critical Care	24	6	30
Pediatrics	18	-9	9
Obstetrics	32	0	32
Neonatal Continuing Care	4	0	4
Neonatal Intensive Care	5	0	5
Neonatal Intermediate Care	6	0	6
Total Beds	365	-15	350

Service Category	2010	2011	2012	2013	2014
Med/Surg	70.5%	73.5%	69.4%	67.4%	69.3%
Pediatric	31.0%	31.8%	37.9%	34.1%	31.8%
Obstetric	74.9%	74.5%	72.9%	74.1%	70.1%
High-Risk Neonates	71.9%	90.6%	75.3%	70.5%	75.5%
Total	69.3%	72.5%	68.6%	66.7%	68.1%

Adult Surgical Discharges			
Year	Inpatient	Amb. Surg.	Total
2011	5,415	8,436	13,851
2012	4,948	7,316	12,264
2013	4,681	8,329	13,010
2014	4,590	8,628	13,218

Conclusion

The addition of private patient rooms and a streamlined system of care will make it easier to directly see patients, increase patient accessibility, improve efficiency, improve the quality of care and help improve patient stays. This is a much needed renovation at an aging facility.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Vassar Brothers Medical Center (VBMC), a 365-bed tertiary care hospital located at 45 Reade Place in Poughkeepsie (Dutchess County) requests approval to replace and modernize significant portions of the existing campus and decrease total bed count to 350. VBMC seeks to build a contemporary facility with all private rooms and current industry standard in-room space for clinical care, as well as appropriate space and amenities for family to participate in the care plan. The facility would also house modern systems and mechanicals to run an efficient operation.

The construction project would involve building a new, nearly 700,000 square foot patient bed tower, replacing and expanding the emergency department (ED), and replacing most of the operating rooms (ORs) and interventional suites. Additionally, VBMC's central plant would be updated, and conference, educational space and other amenities added to enhance physician, visitor, and employee experiences in the new bed tower.

Upon completion of this project, staffing is anticipated to increase by 21.0 FTEs (Environmental Services) and remain at that level through the third year of operation.

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost

Total project cost is estimated at \$466,164,933 broken down as follows:

New Construction	\$313,462,253
Renovation and Demolition	\$4,312,465
Site Development	\$27,439,850
Temporary Utilities	\$6,156,201
Asbestos Abatement or Removal	\$436,000
Design Contingency	\$25,776,809
Construction Contingency	\$17,805,962
Fixed Equipment	\$13,458,884
Architect/Engineering Fees	\$21,311,000
Other Fees (Consultant)	\$702,632
Movable Equipment	\$20,316,783
Telecommunications	\$8,000,000
Interim Interest Expense	\$4,434,222
CON Fee	\$2,000
Additional Processing Fee	<u>\$2,549,872</u>
Total Project Cost	\$466,164,933

Project costs are based on a construction start date of July 1, 2016, with a 36-month construction period.

The applicant's financing plan appears as follows:

Equity from Health Quest Systems, Inc. (Active Parent)	\$100,000,000
Tax-Exempt fixed rate bonds (4.1% interest, 30-year term)	<u>\$366,164,933</u>
Total	\$466,164,933

Cain Brothers and Company LLC has provided a letter of interest for underwriting the bond financing. The bonds will be issued either by the Dormitory Authority of the State of New York or a local issuer.

Operating Budget

The applicant has submitted operating budgets, in 2015 dollars, for the Current Year and for Year One of operations, and include Health Quest Allocated operating expenses, as shown below:

	Current Year		Year One	
Revenues:				
<u>Inpatient</u>	<u>Per Disch.</u>		<u>Per Disch.</u>	
Commercial FFS	\$29,586	\$139,160,478	\$29,835	\$156,625,560
Medicare FFS	\$8,753	\$89,216,003	\$8,811	\$100,222,985
Medicaid FFS	\$3,359	\$9,649,371	\$3,399	\$10,897,089
Private Pay	\$16,460	\$3,765,357	\$16,660	\$4,252,239
Other Operating Revenue*		<u>\$8,437,000</u>		<u>\$8,631,000</u>
Total Inpatient Revenue		\$250,228,209		\$280,628,873
<u>Outpatient</u>	<u>Per Visit</u>		<u>Per Visit</u>	
Commercial FFS	\$1,553	\$123,990,204	\$1,551	\$125,140,239
Medicare FFS	\$473	\$38,387,696	\$472	\$38,743,750
Medicaid FFS	\$890	\$37,156,005	\$889	\$37,500,635
Private Pay	<u>\$363</u>	<u>\$5,747,890</u>	<u>\$362</u>	<u>\$5,801,203</u>
Total Outpatient Revenue		\$205,281,795		\$207,185,827
Total Overall Revenue		\$455,510,004		\$487,814,700
Expenses:				
Operating:				
Vassar Brothers Specific		\$272,321,000		\$284,728,311
Health Quest Allocated#		<u>\$111,000,000</u>		<u>\$113,500,000</u>
Total Operating Expenses		383,321,000		\$398,228,311
Capital		\$30,927,000		\$58,420,333
Total Expenses		\$414,248,000		\$456,648,644
Net Income/(Loss)		<u>\$41,262,004</u>		<u>\$31,166,056</u>
Discharges (Inpatient)		17,998		20,086
Visits(Outpatient)		218,693		220,938

*Other Operating Revenue consists of:

- Cafeteria sales: Current year \$1,572,000 and Year One incremental \$194,000
- Meaningful use: Current year \$2,976,000 and Year One incremental \$0 (federal funding for implementation of facility-wide electronic medical records systems.)
- Other operating revenue: Current year \$ 3,889,000 and Year One incremental \$0 and is composed of the following items:

Rental Income	\$905,000
Ulster Radiation Oncology Mgmt. Fee	\$685,000

Rebates/Refunds/Discounts	\$575,000
Physician Stipends	\$480,000
Quality Incentive Payments	\$419,000
Study/Research Revenue	\$318,000
Other (Parking, Catering, Vending)	\$318,000
Continuing Medical Education Fees	\$163,000
Fitness Center	\$112,000
Medical Staff Application Fees	\$35,000
Patient Education Programs	<u>(\$121,000)</u>
Total	\$3,889,000

#Distribution of Health Quest (HQ) Allocation and Other Expenses:

	<u>Current Year</u>	<u>Year One</u>
HQ Clinical Allocated Services	\$19,363,000	\$19,799,104
HQ Administrative Services	\$53,814,000	\$55,026,027
HQ Lab	\$14,436,000	\$14,761,135
Service Contracts/Maint	\$7,431,000	\$7,598,365
Insurance	\$3,520,000	\$3,599,279
Other Purchased Services	\$3,005,000	\$3,072,680
Cash Assessment Taxes	\$2,787,000	\$2,849,770
Lease/Rentals	\$2,434,000	\$2,488,820
Other	<u>\$4,210,000</u>	<u>\$4,304,820</u>
Total	\$111,000,000	\$113,500,000

Utilization by payor source for the first year of operation is anticipated as follows:

<u>Inpatient</u>	<u>Discharges</u>	<u>%</u>
Commercial FFS	5,250	26.14%
Medicare FFS	11,375	56.63%
Medicaid FFS	3,206	15.96%
Private Pay	255	1.27%
Total	20,086	100.00%

<u>Outpatient</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	80,665	36.51%
Medicare FFS	82,077	37.15%
Medicaid FFS	42,190	19.10%
Private Pay	16,006	7.24%
Total	220,938	100.00%

The following is noted with respect to the submitted budget:

- Revenues are based upon VBMC's current experience in operating the hospital. Outpatient revenues are derived from three service lines: Emergency Department, Ambulatory Surgery, and Referred Ambulatory services. The hospital has no outpatient clinic services.
- Expense assumptions are based upon VBMC's historical experience in operating the hospital.
- Utilization assumptions are based on the facility's current operations with increases factored in due to a substantial increase in the over 65+ population in the region and significant improvements to the facility that has allowed the facility to increase their overall patient population by limiting the amount of outmigration for specific services.

Capability and Feasibility

Project costs of \$466,164,933 will be met as follows: Equity of \$100,000,000 from the parent entity Health Quest Systems, Inc. and \$366,164,933 financed via Tax-Exempt fixed rate bonds at an interest rate of 4.1% for a 30-year term. As shown on BFA Attachment B, the parent entity has enough liquid assets to cover the project's equity requirement.

Working capital requirements are estimated at \$81,302,450, which is equivalent to two months of year one expenses. The applicant will provide the entire amount of the working capital from operations. As shown on BFA Attachment A, the applicant has enough liquid assets to cover the working capital requirement.

BFA Attachment A is VBMC's 2012-2014 certified financial statements, which shows the facility generated an average net income of \$35,626,000 and had both average positive net asset and average positive working capital positions for the period shown.

BFA Attachment B is Health Quest Systems, Inc. and Subsidiaries' 2012-2014 certified financial statements, which shows that the entity generated an average net income of \$34,006,000 and had both average positive net asset and average positive working capital positions for the period shown.

The submitted budget indicates a net income of \$144,666,056 for Year One. Revenues are based on the current reimbursement methodologies for hospitals. The submitted budget is reasonable.

Subject to the noted contingency, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

- BFA Attachment A 2012-2014 Certified Financial Statements for Vassar Brothers Medical Center
- BFA Attachment B 2012-2014 Certified Financial Statements for Health Quest Systems, Inc. and Subsidiaries.
- BFA Attachment C Health Quest Systems, Inc. Org Chart



Project # 151270-C
Hospice Buffalo Inc

Program: Hospice
Purpose: Construction

County: Erie
Acknowledged: July 10, 2015

Executive Summary

Description

Hospice Buffalo, Inc., a not-for-profit corporation that operates an Article 40 Hospice Program serving Erie County at two sites, requests approval to decertify ten residence beds, close one site, and consolidate their remaining beds at their main campus with an inpatient designation.

The hospice currently operates from the following two locations:

- The Center for Hospice and Palliative Care-Mitchell Campus (main site) located at 225 Como Park Blvd, Cheektowaga, NY, which currently has a ten-bed residence unit that includes eight residence specific beds and two beds dually certified for inpatient and residence care. Also on the campus, but not affected by this proposal, is a newly renovated 22-bed inpatient unit.
St. John Baptist Hospice Buffalo House (off-campus site) located at 111 Maple Street, Buffalo, NY, which has eight inpatient beds and no residence beds.

The off-campus site will close and the residence site on the Mitchell campus will become a 10-bed inpatient unit. Upon approval of this project the final bed complement will be 32 inpatient beds and no residence beds.

Due to recent collaborations with area nursing homes, Hospice of Buffalo, Inc. finds it unnecessary to continue maintaining residence beds. Rather, providing hospice care as an overlay to nursing home care

has proven to be a more cost effective way to spend limited resources.

OPCHSM Recommendation Approval

Need Summary

Hospice Buffalo, Inc. intends to decertify its ten-bed hospice residence unit and cease operating any hospice residence beds at any location and close their leased offsite location which housed some of their hospice inpatient beds. Upon approval of this application, there will still be a remaining need for six additional hospice beds in the County.

Program Summary

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

Financial Summary

There are no project costs associated with this project.

Incremental Budget:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$2,084,121), Expenses (\$3,092,372), Net Income/(Loss) (\$1,008,251)

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

1. The project must be completed within 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

October 8, 2015

Need Analysis

Background

Hospice Buffalo, Inc. is currently certified to operate 32 hospice inpatient beds and 10 hospice residence beds and offer the following services:

Audiology	Nursing
Bereavement	Nutritional
Clinical Laboratory Service	Pastoral Care
Home Health Aide	Personal Care
Homemaker	Pharmaceutical Service
Hospice Residence	Physician Services
Housekeeper	Psychology
Inpatient Certified	Therapy-Occupational
Inpatient Services	Therapy-Physical
Medical Social Services	Therapy-Respiratory
Medical Supplies Equipment and Appliances	Therapy-Speech Language Pathology

Hospice Buffalo, Inc. is authorized to provide services in Erie County.

Analysis

The Hospice Bed Need Methodology for Erie County shows a need for 38 hospice beds. The allocation of resources in this county is shown below in the following table:

<i>Hospice Bed Need</i>						
<i>County</i>	<i>Inpatient Bed Need</i>	<i>Current Inpatient Unit/Facilities</i>	<i># of Operating Hospice Beds</i>	<i># of Beds Approved, Not Yet Operational</i>	<i># of Beds Pending Approval</i>	<i>Remaining Inpatient Bed Need</i>
Erie	38	Hospice Buffalo, Inc. – Cheektowaga	22 (+ 2 dual cert)	0	0	6
		Hospice Buffalo, Inc. – Buffalo	8	0	0	
Total	38		32	0	0	6

Hospice Buffalo Inc. will decertify the ten residence beds currently located in Cheektowaga. Additionally they will convert the two dually certified beds to inpatient-only beds and relocate the eight inpatient beds from Buffalo to Cheektowaga, creating an additional ten-bed inpatient unit in Cheektowaga. The current Residence Unit was originally constructed and licensed as an inpatient unit and served as a temporary inpatient unit during the renovation of the existing 22-bed hospice inpatient unit. The proposed ten-bed hospice inpatient unit will operate in the same manner as the facility's existing 22-bed hospice inpatient unit and the Hospice Buffalo's Director of Inpatient Services will provide oversight of both units.

Conclusion

Hospice Buffalo, Inc. intends to decertify all of its residence beds and has determined that providing hospice care as an overlay to nursing home care is a much more cost effective way to spend limited resources. Upon approval of this application, there will be a continued need for additional hospice beds in the County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Hospice Buffalo, Inc., a voluntary corporation, currently operates an Article 40 hospice which serves the residents of Erie County. It is also currently certified to operate a 22-bed hospice inpatient unit and a 10-bed hospice residence unit (with 2 of these 10 residence beds dually certified for both inpatient care and residence care) in a freestanding facility located in Cheektowaga, which also houses their hospice's main parent office practice location, and another 8-bed hospice inpatient unit in leased space in a freestanding facility located in Buffalo.

The current proposal seeks approval to close the current 8-bed hospice inpatient unit located in leased space in a freestanding facility located in Buffalo, and to convert the 10-bed hospice residence unit (with 2 of these 10 residence beds dually certified for both inpatient care and residence care) located in Cheektowaga, into a 10-bed hospice inpatient unit. Since this hospice residence already required hospice inpatient level construction standards when initially approved due to its 2 dually certified beds, the proposed conversion of the 10 hospice residence beds into 10 hospice inpatient level beds requires no construction reconfigurations or changes in staffing. The Hospice Buffalo Director of Inpatient Services will continue to oversee both the existing 22-bed hospice inpatient unit, and the newly converted 10-bed hospice inpatient unit, all located within the same building.

The proposal will result in Hospice Buffalo operating 32 total hospice inpatient beds in two units (one 22-bed unit and one 10-bed unit), both located in the same building at their main offices in Cheektowaga. The proposal will also result in Hospice Buffalo no longer operating any hospice residence beds at any location, and closing their leased offsite location which housed hospice inpatient beds.

Hospice Buffalo, Inc. is currently in compliance with all applicable codes, rules, and regulations.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted their incremental first and third year operating budgets for the ten-bed unit, in 2015 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicare	\$1,722,091	\$1,774,141
Medicaid	\$119,918	\$123,543
Private Pay/Other	<u>\$242,112</u>	<u>\$249,430</u>
Total Revenues	\$2,084,121	\$2,147,114
Expenses:		
Operating	\$2,903,124	\$3,035,210
Capital	<u>\$189,248</u>	<u>\$192,754</u>
Total Expenses	\$3,092,372	\$3,227,964
Net Income/(Loss)	(\$1,008,251)	(\$1,080,850)
Utilization (patient days)	3,321	3,321
Cost per patient day	\$931.16	\$971.99

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

Medicaid	5.48%
Medicare	80.30%
Private Pay	4.70%
Other	9.52%
Total	100.00%

The following is noted with respect the submitted budget:

- Revenue was calculated based on the entity's 2014 reimbursement by payer mix with an annual increase of 1.5% per year.
- Expense assumptions are based upon Hospice Buffalo, Inc.'s historical experience operating inpatient beds, with an annual 2% cost of living increase for years two and three.
- Utilization assumptions are based on the applicant's actual inpatient bed occupancy trends, prorated to the ten-bed unit.
- The applicant indicated that, like the eight-bed inpatient unit currently operating at the Buffalo House site, the new ten-bed unit on the main campus is expected to operate at a loss to be covered by funding from the Hospice Foundation of WNY. An affidavit from the Hospice Foundation of WNY, has been provided attesting that they are willing to contribute necessary funds to cover losses.

Based on the above, the budget is reasonable.

Capability and Feasibility

There are no project costs associated with this project.

The submitted budget indicates a net loss of \$1,008,251 and \$1,080,850 during the first and third years of operation, respectively. The losses will be covered through philanthropic funding from the Hospice Foundation of WNY. As of December 31, 2014, the Foundation had a net equity position of over \$28 million, showing sufficient resources to cover the projected losses for the new inpatient unit.

BFA Attachment A is the 2013-2014 certified financial statements of The Center for Hospice & Palliative Care, Inc. and Related Entities, which show that the organization had an average positive working capital position and an average positive net asset position and generated an average net loss of \$471,219 for the period shown. The financial statements for 2014 also show the financial status for Hospice of Buffalo, Inc. specifically, which shows that the facility generated both a positive work capital and net asset position and generated a net loss of \$2,136,740 for 2014. The applicant indicated that the 2014 losses were due to the facility's nine-month renovation of the clinical building on the Mitchell Campus. This renovation project forced the facility to operate out of the vacant ten-bed residence unit which reduced their overall operating capacity by twelve beds and greatly reduced their revenue.

The applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A 2013 and 2014 certified financial statements of the Center for Hospice and Palliative Care, Inc. and Related Entities and the 2014 certified financial statements for Hospice Buffalo, Inc. and Hospice Foundation of WNY



Project # 151213-C
Strong Memorial Hospital

Program: Hospital
Purpose: Construction

County: Monroe
Acknowledged: May 14, 2015

Executive Summary

Description

Strong Memorial Hospital (SMH), an 830-bed, voluntary not-for-profit, Article 28 hospital located at 601 Elmwood Avenue, Rochester (Monroe County), requests approval to certify eight new pediatric intensive care unit (PICU) beds, and to construct six pediatric operating rooms, a GI procedure room, and a pediatric catheterization laboratory with support space to be housed on the fourth floor of SMH's new Golisano Children's Hospital (GCH). The construction will accommodate a total of twenty-eight pediatric beds on the sixth floor of the GCH: twenty PICU beds comprised of the eight incremental plus twelve current PICU beds to be relocated from the legacy SMH, and eight general pediatric beds that will also be relocated to the sixth floor GCH space. The hospital's total licensed bed capacity will increase to 838 beds.

In 2012, CON approval authorized the construction of the GCH, a new tower connected to SMH that opened in July 2015. The tower includes two shelled floors designed to accommodate the existing Pediatric Operating Program and Pediatric Intensive Care Unit, currently located in the legacy SMH, as well as eight additional pediatric beds. The current proposal seeks to complete this planned fit-out of the shelled space. Subsequent CON's are anticipated to process backfilling space vacated in the legacy SMH facility as a result of this proposal.

OPCHSM Recommendation
Contingent Approval

Need Summary

Strong Memorial is expecting a 63 percent increase in pediatric ICU discharges from the current year to the third year after completion. Strong Memorial handles very complex pediatric cardiovascular surgery, neurology, and electrophysiology cases. These procedures, along with more routine procedures, can fill the beds, resulting in overflows that force Strong Memorial to transfer patients to other facilities. These complex cases typically take longer than average procedures. The addition of the eight new pediatric ICU beds included in this build-out at GCH will help treat the growing number of patients in the only dedicated pediatric facility in the Finger Lakes Region.

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 \$45,283,688 will be funded by SMH as follows: \$26,483,688 from accumulated funds, and the remaining \$18,800,000 to be financed via a bank loan. The applicant has indicated that if the bank loan is not available, they will fund the entire project with accumulated funds.

Table with 3 columns: Budget, Year One, Year Three. Rows include Revenues, Expenses, and Net Income.

Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency recommends Approval of this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON upon submission [PMU]
2. Submission of a final financing package for the project, inclusive of an executed loan commitment if applicable, acceptable to the Department of Health. [BFA]
3. The applicant is required to submit design development drawings, complying with requirements of 10 NYCRR Part 710.4, for review and approval by DASNY and the submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. [AER] [DAS]

Approval conditional upon:

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The applicant is required to submit final construction documents, complying with requirements of 10NYCRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [DAS]
3. Construction must start on or before December 1, 2015, and must be completed by February 1, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

October 8, 2015

Need Analysis

	Current Beds	Bed Change	Beds Upon Completion
Burns Care	7		7
Coronary Care	8		8
Intensive Care	67		67
Maternity	45		45
Medical / Surgical	458		458
Neonatal Continuing Care	14		14
Neonatal Intensive Care	26		26
Neonatal Intermediate Care	20		20
Pediatric	60		60
Pediatric ICU	12	8	20
Physical Medicine and Rehabilitation	20		20
Psychiatric	93		93
Total	830	8	838

	Current Year	1st Year	3rd Year
Pediatric ICU	952	1,252	1,552

Bed Category	Current Beds	Discharges				Occupancy			
		2011	2012	2013	2014	2011	2012	2013	2014
Med/Surg	560	27,066	27,642	26,703	25,986	85.8%	87.6%	90.3%	92.9%
Pediatric	72	3,776	3,800	3,700	3,946	64.0%	64.2%	66.6%	64.2%
Obstetric	45	3,584	3,374	3,396	3,458	70.0%	68.6%	65.4%	71.4%
General Psychiatric	93	2,477	2,511	2,305	2,199	75.9%	79.6%	78.9%	80.3%
Chem. Dependence	0	368	409	364	348	0.0%	0.0%	0.0%	0.0%
High-Risk Neonates	60	882	898	1,019	1,027	98.1%	100.7%	99.9%	106.7%
Total	830	38,153	38,634	37,487	36,964	83.3%	85.2%	86.8%	89.3%

SMH has the only pediatric ICU in the Finger Lakes Region. The PICU's average occupancy for the last three years has been consistently close to capacity, with the current year's census up to 112%, necessitating intensive care to be provided in regular pediatric beds co-located in the PICU. Census has been driven by recruitments in complex pediatric specialties not available elsewhere in the region. Given the high occupancy, SMH is inadequately prepared to accommodate any surge in pediatric cases due to flu epidemics, community or trauma related emergencies.

Utilization assumptions are based on the facility's historical per day occupancy pattern for pediatric intensive care services. SMH is the regional provider of pediatric services for the sixteen counties that make up the primary and secondary service areas of the hospital. With the addition of the eight net new PICU beds, occupancy is expected to be at 88% in Year 1, based on the current average length of stay (LOS) of SMH PICU patients.

Conclusion

Modernization and consolidation of services will better serve patients and families of the Finger Lakes Region, reducing travel and inconvenience.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Strong Memorial Hospital, an existing Article 28 830-bed hospital located at 601 Elmwood Avenue in Rochester (Monroe County) requests approval to construct six operating rooms, a procedure suite, and a pediatric catheterization laboratory with support space to be housed on the fourth floor of the new Golisano Children's Hospital (GCH). Additionally, the construction will accommodate a total of twenty-eight pediatric beds to be located on the sixth floor GCH. The pediatric bed complement will include eight incremental pediatric ICU beds, as well as the relocation of twelve pediatric ICU beds and eight general pediatric beds.

Centralizing all pediatric procedural cases in one facility improves the efficiency of pediatric anesthesiologists, pediatric nurses and other support staff and minimizes the duplication of support space specifically designed for pediatric cases.

Staffing will increase by 38.30 FTEs, in the first year of operation and to 39.30 by the third year of operation to include registered nurses, nurse practitioners, aides, technicians and administrative and management staff

Compliance with Applicable Codes, Rules and Regulations

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project costs for the renovation and acquisition of moveable equipment is estimated at \$45,283,688, broken down as follows:

New Construction	\$ 22,532,447
Design Contingency	2,253,245
Construction Contingency	1,126,622
Fixed Equipment	5,412,621
Planning Consultant Fees	745,811
Architect/Engineering Fees	1,313,590
Construction Manager Fees	562,967
Movable Equipment	9,311,522

Telecommunications	741,176
Financing Costs	282,000
Interim Interest Expense	752,000
Application Fee	2,000
Processing Fee	<u>247,687</u>
Total Project Cost	\$ 45,283,688

Total project costs are based on a start date of December 1, 2015, with a fourteen-month construction period.

The applicant's financing plan for the project is as follows:

SMH's Accumulated Funds	\$26,483,688
Bank Loan (25-year term, 4% interest rate)	<u>\$18,800,000</u>
Total	\$ 45,283,688

A letter of interest has been provided by Barclay Bank for the capital financing at the above stated terms. SMH has provided a letter stating that they will fund the entire project with accumulated funds in the event that the bank financing cannot be obtained.

Operating Budget

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first and third years, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenue:		
Medicaid Fee-For-Service	\$6,215,600	\$6,260,680
Medicaid Managed Care	\$16,870,916	\$16,993,276
Commercial Fee-For-Service	\$17,314,889	\$17,440,469
Commercial Managed Care	\$2,219,858	\$2,235,958
Private Pay	\$443,972	\$447,192
Other Income	<u>\$1,331,915</u>	<u>\$1,341,575</u>
Total Revenues:	\$44,397,150	\$44,719,150
Expenses:		
Operating	\$25,697,000	\$25,955,000
Capital	<u>\$13,998,000</u>	<u>\$13,959,000</u>
Total Expenses:	\$39,695,000	\$39,914,000
Net Income:	<u>\$4,702,150</u>	<u>\$4,805,150</u>
Utilization (Patient Days)	6,427	7,011
Cost Per Patient Day	\$6,176.29	\$5,693.05

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

	<u>Year One</u>		<u>Year Three</u>	
Payor:	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid Fee-For-Service	902	14%	902	13%
Medicaid Managed Care	2,447	38%	2,973	42%
Commercial Fee-For-Service	2,511	39%	2,511	36%
Commercial Managed Care	322	5%	322	5%
Private Pay	64	1%	78	1%
All other	<u>181</u>	<u>3%</u>	<u>225</u>	<u>3%</u>
Total	6,427	100%	7,011	100%

The following is noted with respect to the submitted budget:

- Expense assumptions are based upon SMH's current experience operating the PICU beds.
- Utilization assumptions are based on the facility's historical per day occupancy pattern for pediatric intensive care services. SMH is the regional provider of pediatric services for the sixteen counties that make up the primary and secondary service areas of the hospital. The applicant noted that their current occupancy rate for the twelve-bed PICU is 112%, requiring intensive care to be provided in co-located general pediatric beds. With the addition of the eight PICU beds, occupancy is expected to be at 88% in year one based on the current average length of stay (LOS) of their PICU patients.
- Revenue assumptions are based on the GCH's actual 2014 payor mix experience for PICU care and the related net patient revenue, projected by a 1.5% increase in Year One (held constant for Year Three).

Capability and Feasibility

Total project cost of \$45,283,688 will be satisfied via equity of \$26,483,688 and a loan for \$18,800,000 from Barclay Bank at the above stated terms. SMH has provided a letter stating that in the event that they are unable to obtain the desired financing, they will fund the project entirely with equity. Working capital requirements are estimated at \$6,652,333 based upon two months of Year Three expenses. The applicant will provide working capital from operations. BFA Attachment A is SMH's 2013-2014 certified financial statements, which indicates the availability of sufficient resources to fund the project's equity and working capital requirements.

The submitted budget indicates an excess of revenues over expenses of \$4,702,150 in Year One and \$4,805,150 in Year Three. Revenues are projected based on current PICU experience and payor mix with a projected increase of 1.5% in Year One (held constant for Year Three). SMH indicated that it is part of Accountable Health Partners (AHP), a physician/hospital network organization participating in a shared savings arrangement with commercial payors, and has contracted to be part of Medicare's Bundled Payment Incentive Program beginning July 1, 2015. In the PICU, care is highly specialized and they anticipate that patient volume will continue to grow based on the referral patterns from an expanding region in Upstate New York. They expect some impact of value based payment (VBP) methodologies on this population as it relates to reduced readmission rates and reduced hospital infections which can impact LOS, and note that while it is difficult to model the potential impact of VBP, their projections used for this application reflect a unit that is currently operating at 112% of capacity. The addition of eight PICU beds will result in an occupancy of almost 90%, which is considered optimal by SMH, and assumes minimal growth in volumes over the next three years.

As shown on BFA Attachment A, SMH has maintained an average working capital position of \$440,561,906, average net asset position of \$600,738,683, and generated an average income from operation of \$119,799,875 for the 2013 - 2014 time period. BFA Attachment B is SMH's internal financial summary as of April 30, 2015, which shows income from operations after clinical transfers of \$78,851,409 and an increase in unrestricted net assets totaling \$44,488,267.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Statement for 2013 and 2014, Strong Memorial Hospital
BFA Attachment B	Internal Financial Summary for April 30, 2015, Strong Memorial Hospital



**Project # 151216-E
Columbia Memorial Hospital**

**Program: Hospital
Purpose: Establishment**

**County: Columbia
Acknowledged: May 14, 2015**

Executive Summary

Description

Columbia Memorial Hospital (CMH), a 192-bed, voluntary not-for-profit, Article 28 hospital located at 71 Prospect Avenue, Hudson (Columbia County), requests approval to establish Albany Medical Center (AMC) as the active parent and co-operator of CMH. AMC will be the sole corporate member of CMH, and its active parent.

On April 17, 2015, CMH and AMC entered into an Affiliation Agreement with the goal of creating a strong and effective long-term relationship between the two entities. The benefits and efficiencies that will result from the Affiliation include:

- Clinical and administrative integration, producing efficiencies and synergy through coordination and collaboration on strategic planning, budgeting, other administrative and management activities; and
- Integration of the health care delivery system in the region, resulting in access to a geographic distribution of health care services and cost savings.

There will be no change in authorized services or the number or type of beds as a result of approval of this CON. Also, there are no projected changes in utilization, revenues or expenses of CMH as a result of this project. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate following completion of the project.

As active parent and co-operator, AMC will have the following rights, powers and authorities with respect to CMH:

- Appointment of the members of the Board of Directors of CMH;
- Adoption or approval of any amendments to the Certification of Incorporation, Bylaws, and Medical Staff Bylaws of CMH;
- Appointment or dismissal of officers, managers and medical staff of CMH;
- Approval of the operating and capital budgets and strategic and operating plans of CMH;
- Approval of certificate of need applications filed by or on behalf of CMH;
- Approval of any indebtedness of CMH, where the total principal amount is in excess of \$1,000,000 in the aggregate for all such debt or which is secured by a mortgage or security interest in CMH's assets or property;
- Approval of any sale or transfer of CMH's assets to a non-affiliated entity or third-party entity, if such assets have a value in excess of \$250,000, other than as a component part of an approved budget;
- Approval of management or clinical service contracts, and contracts to provide covered healthcare services to beneficiaries of health insurance, managed care or payor contracts; and
- Approval of settlements of administrative proceedings or other litigation or proceedings to which CMH is a party

BFA Attachment A provides the organizational chart of CMH post-closing.

OPCHSM Recommendation
Contingent Approval

Need Summary

This project is the addition of a co-operator and is not expected to have an impact on services provided by the facility or the utilization of those services. The applicant believes that clinical and administrative integration between Columbia Memorial Hospital and Albany Medical Center will provide synergies, cost savings, and strategic planning opportunities that will make health care more efficient and stable in the affected counties.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of documentation of approval by the NYS Office of Mental Health. [PMU]
2. Submission of a photocopy of Albany Medical Center's executed Articles of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of Columbia Memorial Hospital's executed Restated Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of Columbia Memorial Hospital's bylaws, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 8, 2015

Need Analysis

Project Overview

Columbia Memorial Hospital, an existing voluntary non-profit 192-bed hospital located at 71 Prospect Ave, Hudson NY 12534 in Columbia County, with numerous extension clinics, is seeking approval to enter into an affiliation with Albany Medical Center, a hospital operator located at New Scotland Avenue, Albany NY 12208. Albany Medical Center will become the active parent and co-operator of Columbia Memorial Hospital.

No changes in services or beds are proposed.

Background

Columbia Medical Center's bed chart and historical utilization is provided below for reference. This project is not expected to have an effect on beds or services at the Center.

Category	Current Beds	2010	2011	2012	2013	2014
Med/Surg & ICU	156	36.6%	38.7%	39.2%	36.0%	36.2%
Pediatric	4	6.5%	3.6%	3.5%	3.4%	3.1%
Maternity	10	42.1%	34.7%	32.4%	31.6%	25.4%
General Psychiatric	22	75.8%	81.8%	79.5%	78.8%	73.3%
Total	192	42.4%	44.3%	44.4%	41.5%	40.6%

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

Columbia Memorial Hospital (CMH), an existing not-for-profit health system which operates a 192-bed hospital at 71 Prospect Avenue in Hudson (Columbia County), as well as numerous extension clinics, requests approval to become an affiliated entity with Albany Medical Center (AMC), an existing hospital located on New Scotland Avenue in Albany (Albany County).

The agreement is structured so that Albany Medical Center will become the active parent and co-operator of Columbia Memorial Hospital. Both organizations shall have Board representation on one another's boards.

Efficiencies produced through the coordination and centralization of activities will result in the preservation of health care for residents in the service area. The applicant does not anticipate any change in authorized services or number or type of beds.

Character and Competence

The proposed members of the board for Columbia Memorial Hospital are:

Raimundo C. Archibold, Jr.
James J. Barba
Robert T. Cushing, *Chairman*
Joyce M. DeFazio
R. Wayne Diesel

Sharon Duker
Peter H. Elitzer
Marc N. Fecteau, *Vice-Chair*
Margaret Gillis
David Golub

Douglas Hamlin, *Vice-Chair*
Peter H. Heerwagen
Robert J. Higgins
James O. Jackson, PhD
Robert Jones
Ruth Mahoney
Morris Massry
Lillian Moy, Esq.
John J. Nigro
John B. O'Connor

Steven M. Parnes, MD
Daniel T. Pickett III
W. Michael Reickert
John B. Robinson, Jr.
Janice Smith
Jeffrey Sperry
Jeffrey Stone, *Vice-Chair/Secretary*
Todd M. Tidgewell
Omar Usmani
Candace King Weir

All proposed board members were subject to a character and competence review. Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Mr. Barba disclosed a relationship with University Heights Association which, in 2006, filed in federal bankruptcy court to prevent the execution of a large judgment against it. The matter was later settled with all debts being fully paid.

Ms. Gillis disclosed three legal actions not naming her individually, but against the firm with which she is affiliated. One, a malpractice action, has been settled. Two actions remain pending (one malpractice claim, one foreclosure action where the firm holds a judgment lien on property).

Mr. Golub disclosed that, as a large supermarket retailer, his employer has been involved in routine civil litigation, none of which has had an adverse impact on his employer.

Mr. Nigro disclosed an affiliation with a real estate company which owned a shopping center. Due to severe economic market conditions and the recession of 2008, the company defaulted on their mortgage. A receiver was appointed to operate the property until the future of the property is resolved

Mr. Pickett disclosed that a legal action had been initiated by a former employee over the terms and conditions of a stock option granted to the former employee in 2005. The matter was settled in 2013.

Ms. Weir disclosed three (3) legal matters. On October 10, 2011, she was named (as a director of a corporation) as a defendant and the matter was subsequently settled. On May 14, 2013, a former employee filed a civil lawsuit alleging constructive discharge in violation of the Dodd-Frank Act for providing information to the Securities and Exchange Commission (SEC). The civil suit was dismissed and the matter was settled through a subsequent arbitration claim filed with FINRA. In June 2014, Ms. Weir and an investment management corporation for which she is the Chief Investment Officer settled an administrative proceeding with the SEC. As part of the settlement, Ms. Weir agreed in the future to cease and desist from violating Section 203(6) of the Investment Advisers Act (relating to the requisite disclosures and consents regarding certain related-party transactions).

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.

On March 8, 2009, a Stipulation and Order and a \$6,000 fine were issued against Albany Medical Center Hospital – South Clinical Campus for wrong-sided surgery. A pediatric patient was admitted for a left side inguinal hernia, however, a right side inguinal hernia repair was performed. Further review of records

identified multiple instances where the facility was out of compliance with internal policy and state guidelines for performing surgery involving laterality.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

There are no project costs or budgets associated with this application.

BFA Attachment B is the 2013 and 2014 consolidated certified financial statements of Columbia Memorial Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2013 through 2014. The hospital reported an operating loss for both 2013 and 2014. The applicant provided the following explanations for the losses:

- The 2013 loss from operations of \$2,217,532 was due to significantly reduced inpatient discharges for the year, coupled with additional expenses associated with the acquisition of multiple local outpatient physician practices.
- The 2014 loss from operations of \$549,590 represents an improvement from the prior year; however, operations continued to be negatively impacted by lower inpatient volumes in 2014 and operational inefficiencies in the outpatient departments which were identified and addressed.
- In 2015, both inpatient and outpatient service areas have experienced favorable improvements to their operational workflows, which has led to increased efficiencies and continues the trend toward a positive operating margin.

BFA Attachment C is the financial summaries of the 2013 and 2014 consolidated certified financial statements of AMCH and CMH, and the 2015 internal financial statements for CMH. As shown, AMCH had an average positive working capital position and an average positive net asset position from 2013 through 2014, and incurred an average positive operating net income for 2013 and 2014. CMH's internal financial summary as of June 30, 2015 shows a positive working capital position, positive net assets and operating revenue at \$80.4M, a \$5M increase over the same period in 2014.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Statements – Columbia Memorial Hospital Consolidating financials
BFA Attachment C	Financial Summaries – AMCH and CMH

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Albany Medical Center as the active parent/co-operator of Columbia Memorial Hospital, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

151216 E

Columbia Memorial Hospital

APPROVAL CONTINGENT UPON:

1. Submission of documentation of approval by the NYS Office of Mental Health. [PMU]
2. Submission of a photocopy of Albany Medical Center's executed Articles of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of Columbia Memorial Hospital's executed Restated Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of Columbia Memorial Hospital's bylaws, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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*.

Financial Summary

There are no project costs associated with this application.

Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$13,674,585	\$3,674,585
Expenses	<u>11,631,017</u>	<u>11,655,139</u>
Net Income	\$2,043,568	\$2,019,446

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 affidavit, acceptable to the Department, attesting that there have been no changes to the legal documentation as originally approved by 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

October 8, 2015

Need Analysis

Project Description

Crystal Run Ambulatory Surgery Center of Middletown, LLC, an Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, is requesting permission to convert to indefinite life following a five year limited life with an operating certificate dated April 19, 2010 to April 18, 2015 (CON 082080). This ambulatory surgery center provides gastroenterology, gynecology, orthopedic, otolaryngology, plastic surgery, urology, pain management, dermatology and general surgery services. It is located at 95 Crystal Run Road, Middletown, 10941, in Orange County. Crystal Run has five operating rooms and two procedure rooms.

Analysis

The primary service area is Orange County.

The table below provides procedures projections and utilization for Years 1 and 3 based on CON 082080.

CON 082080 Crystal Run	Projected Year 1 (2010)	Projected Year 3 (2012)	Actual Year 1 (2010)	Actual Year 3 (2012)
Total	12,000	12,000	8,090	13,048

The table below provides Year 3 utilization, projections and actual, by payor, for CON 082080, actual for 2014 and projections for Years 1 and 3 following approval.

	CON 082080 Projected Year 3 (2012)	CON 082080 Actual Year 3 (2012)	CON 151201 Actual 2014	CON 151201 Projected Years 1 and 3
Medicaid FFS/MC	4.0%	12.3%	15.2%	15.4%
Medicare FFS/MC	29.0%	16.3%	18.4%	18.7%
Commercial FFS/MC	60.0%	70.9%	33.0%	33.2%
Charity Care	2.0%	.5%	2.9%*	2.0%
Private Pay	5.0%	---	6.2%	6.4%
All Other	-----	-----	24.3%	24.4%
Total	100%	100%	100%	100%

*Includes a portion of bad-debt cases

The center has made a concerted effort to provide Charity Care and reduced fee care to the residents of Orange County. The center re-evaluated the amount of bad debt and determined that 120 cases in 2013 and 266 cases in 2014 could be labeled charity care. This increased the amount of charity care provided to 1.5% in 2013 and 2.9% in 2014.

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people needing traditional Charity Care. Through February 2015, the number of uninsured in Orange County has dropped from 47,000 before passage of the Affordable Care Act to 15,500 after passage (represents a 67% drop). Approximately 65% of these newly insured people have been enrolled in Medicaid plans.

Early in 2014, it was identified that the center was not providing Charity Care at a level that met projections. The center developed an action plan to improve efforts to provide Charity Care which included the following steps:

- Designated one staff member to focus on Charity Care efforts.
- Initiated a free colonoscopy screening program with Middletown Community Health Center (a FQHC).

- Expanded the free colonoscopy program to include patients of The Greater Hudson Valley Family Health Center (another FQHC).
- Performed community outreach to patients with large outstanding balances to provide information and the criteria for inclusion in the Charity Care Program offered at the center.

Crystal Run is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion

Although Crystal Run's level of charity care has been modest, this has occurred in the midst of a major decline in the number of uninsured in Orange County. The facility's relatively low level of charity care to date is also somewhat ameliorated by its absorption of bad debt that could be considered charity care, and by the ASC's implementation of a strengthened action plan to reach uninsured individuals. Moreover, Crystal Run's volume of services to Medicaid clients has reached over 3.5 times the facility's original projection. These circumstances indicate a reasonable and sustained effort to extend services to the underserved in the Orange County area. Therefore, certification for indefinite life should be granted.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

Crystal Run Ambulatory Surgery Center of Middletown, LLC, an existing Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, located at 95 Crystal Run Road in Middletown (Orange County), is requesting permission to convert to indefinite life following a five year conditional, limited life approval (initially approved in CON #082080).

The Center's two members are Orange Regional Medical Center, a 383-bed hospital located in Middletown with a 40% membership interest and Crystal Run Healthcare LLP, a multi-specialty group practice comprised of 123 physician partners, with a 60% membership interest.

The Center is not proposing to add any services, expand or renovate the facility. Stephen Cagliostro, M.D. will continue to serve as the Center's Medical Director.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted operating budgets, in 2015 dollars, for the current year of operations and for year one and year three subsequent to approval of this application, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:			
Medicare Fee For Service	\$1,786,513	\$1,837,137	\$1,837,137
Medicaid Fee For Service	80,085	83,332	83,332
Medicaid Managed Care	1,788,940	1,855,844	1,855,844
Commercial Fee For Service	5,065,592	5,213,417	5,213,417
Private Pay	967,647	1,070,439	1,070,439
Other/Government	<u>3,807,657</u>	<u>3,614,416</u>	<u>3,614,416</u>
Total Revenues	\$13,496,434	\$13,674,585	\$13,674,585
Expenses:			
Operating	\$9,306,225	\$9,803,676	\$9,803,676
Capital	<u>1,821,592</u>	<u>1,827,341</u>	<u>1,851,463</u>
Total Expenses	\$11,127,817	\$11,631,017	\$11,655,139
Net Income	\$2,368,617	\$2,043,568	\$2,019,446
Utilization (Cases)	10,716	11,145	11,145
Cost Per Case	\$1,038.43	\$1,043.61	\$1,045.77

Utilization broken down by payor source for the respective years is as follows:

Payor Source	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Cases</u>	<u>%</u>	<u>Cases</u>	<u>%</u>	<u>Cases</u>	<u>%</u>
Commercial Fee For Service	3,623	33.8%	3,705	33.2%	3,705	33.2%
Medicare Fee For Service	2,026	18.9%	2,080	18.7%	2,080	18.7%
Medicaid Fee For Service	74	0.7%	77	0.7%	77	0.7%
Medicaid Managed Care	1,577	14.7%	1,635	14.7%	1,635	14.7%
Private Pay	684	6.4%	708	6.4%	708	6.4%
Charity	60	0.6%	223	2.0%	223	2.0%
Other/Government	<u>2,672</u>	<u>24.9%</u>	<u>2,717</u>	<u>24.4%</u>	<u>2,717</u>	<u>24.4%</u>
	10,716	100.0%	11,145	100.0%	11,145	100.0%

Per the Center's establishment CON, Medicaid and charity care utilization were projected to be 4% and 2%, respectively, of total procedures in the first and third years of operation. As documented in the AHCF cost reports filed with the Department, and supported by their SPARCS data submissions, the facility has experienced difficulty meeting the 2% charity care level to date. However, Medicaid utilization was 11.4% (2011), 12.4% (2012), and 12.9% (2013) of their total caseload, far exceeding their initial projections. The applicant indicated that this trend continues through to the present with Medicaid now comprising 15.4% of total cases.

The applicant provided documentation attesting to the declining number of uninsured persons in Orange County due to the impact of the Affordable Care Act and ongoing enrollments in insurance products, such as those available to individuals through the New York State of Health exchange marketplace. The applicant further indicated that, despite increased insurance coverage, many cases still result in bad debt (defined as an amount higher than \$300 for which no payment is received) due to high deductibles and co-pays. By working with their collection agency they identified 120 cases in 2013 and 266 cases in 2014 they believe could fairly have been classified as charity care.

To improve charity care service delivery, the applicant created a Charity Care Team in 2014 devoted to enhancing services to the underserved. Highlights of their efforts include the following:

- A full-time Center employee (1.0 FTE) is dedicated specifically to charity care outreach.
- For patients with outstanding balances, outreach letters are sent to advise them of the Center's Charity Care Program if it is determined they meet the Center's charity care criteria. Follow-up contact is made for those that continue to have large balances.
- A process was created for contacting patients prior to the procedure date to explain and offer their Charity Care Program if it is determined they will have a large out-of-pocket amount and/or no insurance coverage.
- In 2012 the FASC initiated a free colonoscopy screening program with Middletown Community Health Center, a FQHC. The Center expanded this program to include another FQHC, Greater Hudson Valley Family Health Center located in Newburgh.

With these efforts and program changes, the applicant feels they can achieve a minimum charity care of 2% utilization by the end of year one.

Capability and Feasibility

There are no project costs associated with this application.

The submitted budgets indicate a net income of \$2,043,568 and \$2,019,446 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment B is the 2013 and 2014 certified financial statements of Crystal Run ASC of Middletown, LLC. As shown, the facility had an average positive working capital position and an average positive net asset position for these years. Also, the entity achieved an average net income from operations of \$2,710,314 from 2013 through 2014.

BFA Attachment C provides the internal financial statements of Crystal Run ASC of Middletown, LLC as of June 30, 2015. As shown, the entity had a positive working capital position and a positive net asset position for the period. Also, the entity achieved a net income from operations of \$538,872 through June 30, 2015.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart and Member Listing - Crystal Run ASC of Middletown, LLC
BFA Attachment B	2013 and 2014 certified financial statements of Crystal Run ASC
BFA Attachment C	Crystal Run ASC's internal financial statements as of June 30, 2015

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request for indefinite life for CON #082080, 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:

151201 E

FACILITY/APPLICANT:

Crystal Run Ambulatory Surgery Center of
Middletown

APPROVAL CONTINGENT UPON:

1. Submission of an affidavit, acceptable to the Department, attesting that there have been no changes to the legal documentation as originally approved by 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 # 151246-B

Mid-Bronx Endoscopy Center

Program: Diagnostic and Treatment Center County: Bronx
Purpose: Establishment and Construction Acknowledged: June 1, 2015

Executive Summary

Description

Mid-Bronx Endoscopy Center, LLC (the Center), a recently formed New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology. The Center will be located in approximately 7,700 square feet of leased space on the ground floor of an existing building at 57 West Burnside Avenue, Bronx (Bronx County), New York. The FASC will include four gastroenterology procedure rooms and preoperative, recovery and support areas.

The proposed ownership of the Center includes six classes of members as follows:

1. Class A Members (23 Units): four participating independent physicians who are board-certified gastroenterologist practicing in the Bronx area, each of whom will own 5.75 units in the Center;
2. Class B Members (7.6 Units): three non-physician individuals, each of whom will own 2.53 units in the Center;
3. Class C Member (45 Units): Bronx-Lebanon Special Care Center, Inc., a New York not-for-profit corporation that operates a 240-bed nursing home in the Bronx;
4. Class D Member (10 Units): Harrison Circle Development Corp. (HCDC), a New York business corporation whose sole shareholder, Morris Heights Senior Housing Development Fund Company, Inc., is affiliated with the landlord;

5. Class E Members (2.4 Units): Advance Endoscopy Center, LLC, which is owned by fifteen individuals (three of which have ownership interest in the Administrative Service Agreement provider) and MMC Holdings West, Inc. whose sole passive member is Montefiore Medical Center; and
6. Class F Members (12 Units): four participating physician members who are board-certified gastroenterologist affiliated with and employed by Bronx-Lebanon Hospital Center.

Class A and F members are required to be licensed and registered physicians remaining in practice in the Bronx area and able to perform surgical services at the Center. Based on their percentage interest, all of the members generally have the same economic and voting rights. The business and affairs of the Center will be managed by a Board of Managers elected by each membership class, including three representatives elected by Class A members and one representative each from Class B, Class C, Class D and Class F members.

BFA Attachment A provides a list of the proposed members of the Center by class and units of ownership.

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

Need Summary

The number of projected procedures is 5,936 in Year 1, with 50 percent Medicaid and two percent charity care.

Program Summary

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

Financial Summary

Project costs of \$3,918,239 will be met by \$391,824 in members' equity and a \$3,526,415 bank loan at 5.5% interest over a six-year term. A letter of interest has been provided by Wells Fargo.

Budget:

	<u>Year Three</u>
Revenues	\$4,084,744
Expenses	<u>\$2,816,366</u>
Net Income	\$1,268,378

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 date of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NSECON. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the construction, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed Development and Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
8. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
9. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
10. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payor source;
 - c. Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided, and
 - f. Number of nosocomial infections recorded during the year in question. [RNR]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 for Outpatient Facilities. [AER]
12. Submission of the executed Articles of Organization of Mid- Bronx Endoscopy Center LLC., acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Construction must start on or before December 1, 2015 and construction must be completed by May 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

October 8, 2015

Need Analysis

Project Description

Mid-Bronx Endoscopy Center, LLC, a newly-formed New York limited liability company, is requesting approval to establish and construct an Article 28 Diagnostic and Treatment Center to provide single specialty gastroenterology ambulatory surgery services. The proposed location is 57 West Burnside Avenue, Bronx, 10453, in Bronx County.

Analysis

The service area includes Bronx County. Bronx County currently has a total of eight freestanding ambulatory surgery centers: five multi-specialty ASCs and three single specialty ASCs. The table below shows the number of patients utilizing Ambulatory Surgery Centers in Bronx County for 2013 & 2014.

Specialty Type	Facility	Total Patients 2013	Total Patients 2014
Single	Eye Surgery Center of New York (opened 3/18/15)	N/A	N/A
Multi	Surgicare Ambulatory Surgery Center of New York	3,147	2,702
Multi	Empire State Ambulatory Surgery Ctr (opened 2/19/15)	N/A	N/A
Multi	Avicenna ASC, Inc. (opened 4/7/15)	N/A	N/A
Multi	East Tremont Medical Center	3,385	3,267
Single	New York GI Center, LLC	7,305	9,608
Multi	Ambulatory Surgery Center of Greater New York	10,083	9,740
Single	Advanced Endoscopy Center	10,248	11,013
Total		34,168	36,330

(Source-SPARCS)

For Bronx County, the total number of patient visits for ASC's was 34,168 in 2013 and 36,330 in 2014. This represents a 6.3% increase in the number of patients served by Ambulatory Surgery Centers in Bronx County from 2013 to 2014.

The population of Bronx County in 2010 was 1,385,108 with 484,998 individuals (34.9%) who are 45 and over, which is the primary population group utilizing Gastroenterology services. Per PAD projection data from the Cornell Program on Applied Demographics, this population group is estimated to grow to 529,060 by 2025, an increase of 6.7% in the population group of individuals 45 and over.

The number of projected procedures is 5,936 in Year 1 and 6,055 in Year 3 with 50 percent Medicaid and two percent charity care. These projections are based on the current case load of the participating physicians.

Projections	Year 1 Procedures	Year 1 Percentage	Year 3 Procedures	Year 3 Percentage
Commercial Ins	1,187	20%	1,211	20%
Medicare	1,662	28%	1,696	28%
Medicaid	2,968	50%	3,027	50%
Charity Care	119	2.0%	121	2.0%
Total	5,936	100.0%	6,055	100.0%

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

Conclusion

The proposed project will improve access to ambulatory surgery services specializing in gastroenterology to the communities of Bronx County, including the Medicaid-eligible populations whom the applicant proposes to serve in significant numbers.

Recommendation

From a need perspective, contingent approval is recommended for a limited life of five years.

Program Analysis

Project Proposal

Mid-Bronx Endoscopy Center, LLC, is requesting approval to establish and construct a single-specialty ambulatory surgery center specializing in gastroenterological procedures at 57 West Burnside Avenue, Bronx (Bronx County), New York 10453.

This project consolidates the participating physicians' separate private practices into a single, regulated Article 28 Center and will allow the operator to provide screening and other outreach programs to the community that were not feasible through the member physicians' private practices.

Proposed Operator	Mid-Bronx Endoscopy Center, LLC
Site Address	57 West Burnside Avenue Bronx, NY (Bronx County)
Surgical Specialties	Single Specialty: Endoscopy
Operating Rooms	0
Procedure Rooms	4
Hours of Operation	Monday through Friday from 7:00 a.m. to 5:00 p.m. (Weekend and/or evening procedures will be available, if needed, to accommodate patient scheduling issues.)
Staffing (1st / 3rd Year)	11.5 FTEs / 16.5 FTEs
Medical Director(s)	Prosper Remy, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Bronx-Lebanon Hospital Center 1.3 miles/ 8 minutes
On-call service	24/7 service to refer the patient to the Center's on-call physician

Character and Competence

The membership of the proposed project is divided into six (6) different classes and consists of 14 total members (i.e., physicians, non-physicians, not-for-profit corporations and an LLC). They proposed members are:

Name	Percentage
Class A Members (Physician Members)	23.00%
Prosper Remy, MD, <i>Manager</i>	5.75%
Carl Guillaume, MD	5.75%
Mohamad Erfani, MD	5.75%
Marie-Nirva Blaise, MD	5.75%
Class B Members (Non-Physician Members)	7.59%
Frank Principati	2.53%
W. Barry Tanner	2.53%
Karen Sablyak	2.53%

Class C Member	
Bronx-Lebanon Special Care Center, Inc.	45.00%
Barbara Lowe, RN, <i>board member</i>	
Miguel Fuentes, <i>board member</i>	
John Colon, <i>board member</i>	
Victor DeMarco, <i>board member</i>	
Class D Member	
Harrison Circle Development Corp. (HCDC)	10.00%
Morris Heights Senior Housing Development Fund Company, Inc.	
Verona Greenland, <i>board member</i>	
Judith Fairweather, <i>board member</i>	
Class E Member	
Advanced Endoscopy Center, LLC	2.40%
Michael Ader, MD (0.11%)	
Amnon Gotian, MD (0.11%)	
Isadore Gutwein, MD (0.11%)	
Jeremy Gutwein, MD (0.11%)	
Ian Harnik, MD (0.11%)	
Neil Herbsman, MD (0.11%)	
Henry Katz, MD (0.11%)	
Albert Kramer, MD (0.11%)	
Daniel Reich, MD (0.11%)	
Robert Sable, MD (0.11%)	
David Stein, MD (0.11%)	
Ira Tepler, MD (0.11%)	
MMC GI Holdings West, Inc. (0.72%)	
Patrick Haughey, <i>board member</i>	
Christopher Panczner, <i>board member</i>	
Karen Sablyak (0.12%)	
W. Barry Tanner (0.12%)	
Frank Principati (0.12%)	
Class F Members	12.00%
Ariyo Ihimoyan, MD	3.00%
Anil Dev, MD	3.00%
Bhavna Balar, MD	3.00%
Myrta Daniel, MD	3.00%

All of the aforementioned proposed members were subject to Character and Competence Review. Each of the proposed Class A physician members are board-certified gastroenterologists. The proposed Class B members are also members of Physicians Endoscopy, LLC, who will provide development and administrative services to the Center. The proposed Class C member, Bronx-Lebanon Special Care Center, Inc., is a New York not-for-profit corporation. The proposed Class D member, Harrison Circle Development Corp., is a New York business corporation. HCDC's sole shareholder is Morris Heights Senior Housing Development Fund Company, Inc., a not-for-profit corporation whose sole, passive member is Morris Heights Health Center, Inc., a not-for-profit corporation and Federally Qualified Health Center (FQHC). The proposed Class E member, Advanced Endoscopy Center, LLC (AEC), is a New York limited liability company that operates an existing Article 28 FASC in Bronx County. The proposed Class F participating physician members are each board-certified gastroenterologists affiliated with Bronx-Lebanon Hospital Center.

Physicians Endoscopy, LLC (PELL), based in Jamison, Pennsylvania, owns, develops, manages and operates single-specialty endoscopic ambulatory surgery centers in partnership with practicing physicians

and hospitals. PELL will provide development and administrative consultation regarding the day-to-day operation of the Center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Dr. Reich disclosed a settled malpractice case. Dr. Herbsman disclosed three (3) settled malpractice cases. Dr. Isadore Gutwein and Dr. Sable each disclosed one (1) open/pending malpractice case.

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.

In October 2005, the Office of Mental Health (OMH) fined Morris Heights Health Center, Inc. \$40,000 for the establishment and operation of a mental health clinic and 7 satellites at various locations in Bronx County for a 14 year period without OMH's prior approval. Morris Heights Health Center requested an administrative hearing and ultimately entered into settlement negotiations resulting in a Stipulation of Settlement and \$20,000 fine.

In a Stipulation and Order dated November 19, 2007, Bronx-Lebanon Special Care Center, Inc. was fined \$2,000 for its breach of the minimum standard requirements related to Quality of Care: Accidents.

In a Stipulation and Order dated August 16, 2010, Bronx Lebanon Hospital Center was fined \$16,000 based on an investigation into the care rendered to a juvenile who was admitted for a left side hernia repair. A right repair was agreed to at "time out" but no hernia was found during surgery exposing the error.

In August 2011, the Department completed a survey at Bronx-Lebanon Highbridge-Woodcrest Center and issues a statement of deficiencies that the facility was not in substantial compliance with regulations which resulted in a denial of payment for new Medicare and Medicaid admissions during the period from August 26, 2011 through October 30, 2011.

Integration with Community Resources

The Center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers. The applicant will develop a formal outreach program directed at the local community, to include local physicians and other existing healthcare providers, particularly those who provide care to the underserved residents of the Center's primary service area. Patients will not be excluded based on ability to pay. Charity care will be provided and the Center will utilize a sliding fee scale for those who are uninsured or unable to pay. The Center plans on utilizing an electronic medical record (EMR) and would consider participating in a Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

The total project costs for renovation & demolition, moveable equipment, and construction are estimated at \$3,918,239, broken down as follows:

Renovation & Demolition	\$1,921,774
Design Contingency	192,177
Construction Contingency	192,177
Architect/Engineering Fees	131,040
Other Fees	52,000
Moveable Equipment	1,304,521
Financing Costs	36,478
Interim Interest Expense	64,651
Application Fee	2,000
Additional Processing Fee	<u>21,421</u>
Total Project Costs	<u>\$3,918,239</u>

Project costs will be financed as follows:

Members' Equity	\$391,824
Bank Loan (six-year term, 5.5% interest)	<u>3,526,415</u>
Total	<u>\$3,918,239</u>

A letter of interest has been provided by Wells Fargo.

Lease Rental Agreement

The applicant has submitted a letter of interest lease term sheet for the site to be occupied, the terms of which are summarized below:

Date Signed:	March 12, 2015
Premises:	Approx. 7,800 sq. ft. (architect to confirm measurement prior to lease execution) located at 57 West Burnside Avenue, Bronx, NY 10453
Landlord:	Morris Height Health Center, Inc.
Lessee:	Mid-Bronx Endoscopy Center, LLC
Term:	12 years, two (2) five-year renewal options
Rent:	\$312,000 per year (\$40.00 per square foot) with a 2% increase per year
Provisions:	Utilities and taxes

The applicant submitted an affidavit stating the lease agreement is an arm's length transaction, except as follows: Mid-Bronx Endoscopy Center, LLC and Morris Heights Health Center, Inc. have common ownership. It is noted that Morris Heights Health Center, Inc. is affiliated with HCDC, the proposed Class D member, in that Morris Heights Health Center, Inc. is the sole passive member of HCDC's sole shareholder, Morris Heights Senior Housing Development Fund Company, Inc.

The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the square foot rental rate.

Development and Administrative Service Agreement

The applicant has submitted a draft development and administrative services agreement, the terms of which are summarized below:

Date:	February 13, 2015
Facility:	Mid-Bronx Endoscopy Center, LLC
Contractor:	Physicians Endoscopy, L.L.C.
Development Services Provided:	Coordination and assistance with: legal formation, site selection, facility set up, oversee construction, recommend facility policies, recruit initial support staff plus train subject to company's approval, prepare applications and/or other documents for licenses & contracts, assist in financing and obtaining business insurance. Establish management & fiscal systems subject to company's approval.
Administrative Services Provided:	Oversight of annual budget development & reporting, administration, financial systems & procedures, accounts receivables & billing, purchasing & inventories, manage care services and operational assistances including complying with governmental regulations. Assist in review of non-professional employees and assist in follow-up services reasonably request by the company.
Billing and Collection Services:	Oversight of revenue cycle activities and collection process. Deposits into company lock box, withdrawal only for company third party payables. Schedule patients, registration of patients, daily review, billing/claim submission, payment posting, and accounts receivable follow-up and correspondence.
Development Fee:	\$126,000 in four installments of \$31,500 each (ending with first patient)
Administrative Fee:	\$120,000 (\$12,000 per month, beginning with first patient) fee will increase by 2% per year after the first year
Billing & Collection Fee:	First year at \$17 per procedure and \$34 per procedure after the first year
Administrative Term:	Seven years with automatic renewals, for an additional three years, effective on each anniversary date of the Expiration Date unless cancelled.

While Physicians Endoscopy, L.L.C. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

Proposed applicant Class B members Frank Principati, Barry Tanner and Karen Sablyak have common membership with the administrative service agreement provider.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three, as summarized below:

<u>Revenues:</u>	<u>Year One</u>	<u>Year Three</u>
Commercial Fee For Service	\$803,071	\$819,134
Commercial Managed Care	267,691	273,044
Medicare Fee For Service	1,026,147	1,046,670
Medicare Managed Care	123,138	125,600
Medicaid Managed Care	<u>1,784,604</u>	<u>1,820,296</u>
Total Revenues	\$4,004,651	\$4,084,744
 <u>Expenses:</u>		
Operating	\$1,699,166	\$1,910,571
Capital	<u>956,853</u>	<u>905,795</u>
Total Expenses	\$2,656,019	\$2,816,366
Net Income	\$1,348,632	\$1,268,378

Total Visits	5,936	6,055
Total Cost Per Procedure	\$447.44	\$465.13

Utilization by payor source is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Commercial Fee For Service	890	15%	908	15%
Commercial Managed Care	297	5%	303	5%
Medicare Fee For Service	1,484	25%	1,514	25%
Medicare Managed Care	178	3%	182	3%
Medicaid Managed Care	2,968	50%	3,027	50%
Charity Care	<u>119</u>	<u>2%</u>	<u>121</u>	<u>2%</u>
Total	5,936	100%	6,055	100%

The following is noted with respect to the submitted budget:

- Expenses were projected base on the number and mix of staff as determined by the experience of the participating physicians in providing and administering gastroenterology services. The applicant projects an increase in operating expenses by year three due to anticipated increased purchased services and additional staffing needs related to increased utilization.
- Revenues by payor are based on the experience of participating providers in their private medical practices and the expected collection rate of the FASC. Reimbursement rates are based on current and projected Federal and State government rates, with commercial payers reflecting regional adjustments.
- Utilization is projected based upon the current caseload of the eight participating physicians. All of the physicians have medical practices within the Center's service area and have provided letters of interest documenting the number of surgical procedures they currently perform and a commitment to perform the procedures at the FASC. All of the projected procedures are currently being done at Bronx-Lebanon Hospital Center or in the physicians' private, office-based practices.
- The applicant will implement a formal Charitable Care Program including, but not limited to, patient and community outreach and a partnership with Morris Heights Health Center, Inc., a Federally Qualified Health Center D&TC located in the Bronx.

The budget appears reasonable.

Capability and Feasibility

The total project cost of \$3,918,239 will be satisfied from \$391,824 in members' equity with the remaining \$3,526,415 provided through a bank loan at the above stated terms. Wells Fargo has provided a letter of interest.

Working capital requirements are estimated at \$469,394 based on two months of third year expenses. The applicant will provide \$286,338 from members' equity. The remaining will be satisfied through a five-year loan at 5.5% interest from Wells Fargo bank. BFA Attachment B is a summary of the net worth of the individual members, which shows sufficient liquid resources to meet both the project's equity and working capital requirements. BFA Attachments C through F are the member entities' 2014 certified financial statements, which show positive working capital and net assets sufficient to meet their share of the equity requirements.

BFA Attachment G is the pro-forma balance sheet for Mid-Bronx Endoscopy Center, LLC, which shows operations will start with \$678,162 in members' equity.

The submitted budget projects a net income of \$1,348,632 and \$1,268,378 during the first and third years of operations, respectively. Reimbursement rates based on current and projected Federal and State government rates. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Jacobi Medical Center --- **No Response**
1400 Pelham Bay Parkway
South Bronx, New York 10461

Facility: Montefiore Medical Center
Henry and Lucy Moses Division --- **No Response**
111 East 210th Street
Bronx, NY 10467

Facility: Bronx-Lebanon Hospital Center
Concourse Division
1650 Grand Concourse
Bronx, NY 10457

Bronx-Lebanon responded that it had no objections to this project and saw no adverse impact for the hospital or the community it serves.

Supplemental Information from Applicant

Need and Source of Cases: The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private office-based practices of the applicant physicians. The applicant also cites data showing a continued growth in Bronx County in the number of persons 45 years and older, which is the primary service group for colorectal cancer screening. The applicant also refers to the relatively low number of gastroenterologists and of other freestanding ASCs specializing in gastroenterology in Bronx County, a jurisdiction of over 1.3 million people. The applicant also plans to develop a formal outreach program directed to members of the local community, including local physicians.

Staff Recruitment and Retention: The applicant states that, to the greatest extent possible, the proposed ASC will utilize existing staff currently employed by the member physicians in their office-based practices. Recruitment of any additional staff members will come through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits and continuing education opportunities are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. Employees will also be rewarded for hard work and efficiency in a manner that recognizes their individual contributions to the effective operation of the ASC.

Office-Based Cases: The applicant states that all of the projected surgical procedures for the proposed ASC are currently performed in the private, office-based practices of the applicant physicians, or are not currently being provided (i.e., the patients are unserved).

DOH Comment

The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year, limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

Attachments

BPN Attachment A	Map
BFA Attachment A	Proposed Members of Mid-Bronx Endoscopy Center, LLC
BFA Attachment B	Net Worth Summary, Proposed Members of Mid-Bronx Endoscopy Center, LLC
BFA Attachment C	Bronx-Lebanon Special Care, Inc. – The Bronx-Lebanon Highbridge Woodycrest Center 2013-2014 consolidated certified financial statement
BFA Attachment D	Morris Heights Health Center, Inc. and Subsidiaries June 2014 consolidated certified financial statement
BFA Attachment E	Advanced Endoscopy Center, LLC 2013-2014 certified financial statement
BFA Attachment F	Montefiore Medical Center Consolidated 2013-2014 certified financial statement
BFA Attachment G	Pro Forma Balance Sheet, Mid-Bronx Endoscopy 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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a new single specialty ambulatory surgery center specializing in gastroenterology procedures to be located at 57 West Burnside Avenue, 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:

151246 B

FACILITY/APPLICANT:

Mid-Bronx Endoscopy Center

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NSECON. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the construction, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed Development and Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
8. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
9. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
10. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payor source;
 - c. Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided, and
 - f. Number of nosocomial infections recorded during the year in question. [RNR]

11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 for Outpatient Facilities. [AER]
12. Submission of the executed Articles of Organization of Mid- Bronx Endoscopy Center LLC., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. Construction must start on or before December 1, 2015 and construction must be completed by May 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 151288-B
**Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser
Center of the Capital Region**

Program: Diagnostic and Treatment Center **County:** Albany
Purpose: Establishment and Construction **Acknowledged:** June 19, 2015

Executive Summary

Description

Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region, a New York limited liability company, is requesting to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a single-specialty, freestanding ambulatory surgery center specializing in ophthalmology. The D&TC will consist of approximately 6,773 square feet located in leased space in a single story building at 207 Troy-Schenectady Road, Latham (Albany County). The center will include seven pre-op/post-op bays, two operating rooms, a nurse's station and support areas.

The proposed members of Colonie ASC, LLC are Edward Wladis, M.D., (33.333%), Andrew Robinson, MD, (33.333%) and Robert Eden, MD (33.334%), all board certified ophthalmologists. All three physicians will maintain their private practices.

OPCHSM Recommendation

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

Need Summary

Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region

proposes to establish a single specialty ambulatory surgery center specializing in Ophthalmology services.

The number of projected procedures is 2,073 in Year 1, with Medicaid at 4.0% and charity care at 2.0%.

Program Summary

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

Financial Summary

Project costs are \$666,800 and will be met with \$86,800 from proposed members' equity and a \$580,000 bank loan at 5% interest over a five-year term.

Budget:	Revenues:	\$2,216,463
	Expenses:	<u>1,602,864</u>
	Gain:	\$613,599

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payer source;
 - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided; and
 - f. Number of nosocomial infections recorded during the year in question. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed bank loan commitment for equipment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03, including satisfactory responses to the following comments:
 - a. Please confirm that an infection isolation room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.
 - b. Please confirm that a Protective Environment room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.
 - c. Please confirm the provision of a refrigerator as part of the Medication Distribution Station, and locate on SHC drawings.
 - d. The Staff Toilets are labeled to indicate the provision of staff showers. Please indicate specific location and features of staff showers on SHC drawings.
 - e. Please confirm the provision of Patient Changing facilities in accord with 2010 FGI.
 - f. Please show specific location of soiled linen receptacles in the Soiled Workroom. [AER]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to contacting the Regional Office to complete the project. [AER]

Council Action Date

October 8, 2015

Need Analysis

Project Description

Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty Ophthalmology surgery services at 207 Troy-Schenectady Road, Latham, 12210, in Albany County.

Analysis

The service area consists of the Capital District, which includes the counties of Albany, Rensselaer, Saratoga and Schenectady. The Capital District has a total of two freestanding multi-specialty ASCs and five freestanding single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in the Capital District for 2013 & 2014 (Source: SPARCS-2015).

ASC Type	Name	County	Total Patients 2013	Total Patients 2014
Single	Albany Regional Eye Surgery Center	Albany	11,456	10,817
Single	Capital Region Ambulatory Surgery Center	Albany	8,983	9,282
Single	Executive Woods Ambulatory Surgery Center LLC	Albany	1,576	4,579
Multi	New England Laser & Cosmetic Surgery Center	Albany	943	900
Single	Saratoga-Schenectady Endoscopy Center, LLC	Saratoga	10,538	10,519
Multi	St. Peter's Surgery And Endoscopy Center	Albany	15,397	15,666
Single	The New York Eye Surgical Center (opened 7/31/13)	Saratoga	131	1,840
Total			49,024	53,603

For the Capital District, the total number of patient visits was 49,024 in 2013 and 53,603 in 2014. This represents a 9.3% year to year increase in the number of patients served by ambulatory surgery centers in the Capital District. For ophthalmology services, the total number of visits was 11,587 in 2013 and 12,657 in 2014. This represents a 9.2% year to year increase in the number of patients served by Ophthalmology ambulatory services in the Capital District.

The population of the four counties included in the Capital District in 2010 was 837,967. Per the Cornell Program on Applied Demographics (PAD) projection data, the population is estimated to grow by approximately 3% to 862,052 by 2020.

The number of projected procedures is 2,073 in Year 1 and 2,197 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Specialty Eye Surgery and Laser Center for Years 1 and 3.

Projections	Year 1	Year 1	Year 3	Year 3
Commercial Ins	1,182	57.0%	1,230	56.0%
Medicare	767	37.0%	813	37.0%
Medicaid	83	4.0%	110	5.0%
Charity Care	41	2.0%	44	2.0%
Total	2,073	100.0%	2,197	100.0%

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

Conclusion

Approval of this project will expand the availability of ophthalmological surgery services in a regulated Article 28 setting to residents of the capital region.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

Establish and construct a freestanding single-specialty ambulatory surgery center for ophthalmology to be located at 207 Troy-Schenectady Road, Latham.

Proposed Operator	Colonie ASC, LLC
Doing Business As	Specialty Eye Surgery and Laser Center of the Capital Region
Site Address	207 Troy-Schenectady Road Latham, NY 12110 (Albany County)
Surgical Specialties	Single Specialty Ophthalmology
Operating Rooms	2 (one Class B and one Class C)
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:00 am to 3:00 pm (Extended as necessary to accommodate patient needs)
Staffing (1st Year / 3rd Year)	5.8 FTEs / 5.8 FTEs
Medical Director(s)	Edward Wladis, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Albany Medical Center Hospital 9 miles / 17 minutes
On-call service	Patients will be provided with surgeon's service and will be directed to him/her or to another physician of the surgeon's specialty on call.

Character and Competence

The members of Colonie ASC, LLC are:

Member Name	Membership Interest
Edward Wladis, MD	1/3
Andrew Robinson, MD	1/3
Robert Eden, MD	1/3

The members of the LLC are all practicing physicians with extensive experience in ophthalmology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in 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

The Center will require their patients, whenever possible, to have a medical clearance appointment with a primary care physician prior to surgery and will encourage the establishment of a primary care physician relationship if one does not exist. The facility plans to reach out to primary care physicians and physician groups in its service area to facilitate the coordination of care for common patients. The Center will be utilizing electronic medical records. In addition, the Center would consider joining a Regional Health Information Organization or Health Information Exchange as well as becoming a part of any Accountable Care Organization or Medical Homes if one were to develop in its service area.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements. The Center intends to review the list acceptable procedures annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Lease Agreement

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

Date:	May 1, 2015
Premises:	6,773 square feet located at 207 Troy-Schenectady Rd., Latham, New York, 12110
Landlord:	Colonie Real Estate Holdings, LLC
Tenant:	Colonie ASC, LLC
Rental:	\$272,840 per year for the first ten years with a 2% increase thereafter.
Term:	15 years with two additional five-year renewals.
Provisions:	Lessee shall be responsible for real estate taxes, maintenance, insurance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between landlord and tenant. Colonie ASC, LLC has submitted letters from two New York real estate brokers attesting to the reasonableness of the rent.

Total Project Cost and Financing

Total project cost for movable equipment is \$666,800, broken down as follows:

Other Fees (Consultants)	\$ 20,000
Movable Equipment	641,164
CON Application Fee	2,000
CON Processing Fee	<u>3,636</u>
Total Project Cost	\$666,800

Project costs will be financed by \$86,800 through proposed members' equity and the remaining \$580,000 will be provided as a loan from First Niagara Bank over a five-year term at 5.0% interest.

Operating Budget

	Year One	Visits	Year Three	Visits
Revenues:				
Medicare	\$ 714,077	767	\$ 756,903	813
Medicaid	70,052	83	92,840	110
Commercial	1,304,928	1,182	1,357,920	1,230
Private Pay*	8,200	0	8,800	0
Charity Care	<u>0</u>	41	<u>0</u>	44
Total Patient Revenues	\$2,097,257		\$2,216,463	

Expenses:		
Operating	\$1,110,523	\$1,178,570
Rent	<u>401,073</u>	<u>424,294</u>
Total Expenses	\$1,511,596	\$1,602,864
Net Income	\$585,661	\$613,599
Visits	2,073	2,197
Cost/Visit	<u>\$729.18</u>	<u>\$729.57</u>

*Private Pay Revenue represents a sliding fee scale based on the patient's eligibility under the financial assistance program and is the difference not covered under other carriers. Visits are represented within other revenue producing line items.

The slight increase in cost per visit in Year Three is due to a 1% increase in Medicaid utilization and a 1% decrease in commercial utilization.

Medicare reimbursement was based on the 2014 Medicare fee schedule which currently reimburses 58% of the Hospital Outpatient Department rate. Based on experience, the applicant estimated commercial reimbursement at around 118% of Medicare for ophthalmology cases, Medicaid Managed Care at around 90% of Medicare, and \$200 per case for charity (sliding/discounted fee schedule) cases.

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

	Year One	Year Three
Medicare Fee-For-Service	37.0%	37.0%
Medicaid Fee-For-Service	4.0%	5.0%
Commercial Fee-For-Service	57.0%	56.0%
Charity Care	2.0%	2.0%

Expense and utilization assumptions are based on historical experience of the physicians' private practices.

Capability and Feasibility

Project costs are \$666,800 and will be met with \$86,800 from proposed members' equity and a \$580,000 bank loan over five years at 5%. A bank letter of interest has been provided by First Niagara Bank.

Working capital requirements are estimated at \$267,144 based on two months of third year expenses and will be satisfied by a loan of \$130,000 from First Niagara Bank at 5% over a five-year term with the remaining \$137,144 from the proposed members' equity. BFA Attachment A is the net worth of the proposed members, which indicates the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with net assets of \$223,944.

The submitted budget indicates the facility will generate net income of \$585,611 and \$613,599 in the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies for FASC ophthalmology services.

Based on the preceding, and subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Albany Memorial Hospital --- **No Response**
 600 Northern Boulevard
 Albany, NY 12204

Facility: Albany Medical Center Hospital --- **No Response**
 43 New Scotland Avenue
 Albany, NY 12208

Facility: St. Peter's Health Partners --- **No Response**
 St. Peter's Hospital
 315 South Manning Blvd.
 Albany, NY 12208

Facility: St. Peter's Health Partners --- **No Response**
 St. Mary's Hospital
 1300 Massachusetts Avenue
 Troy, NY 12180

Facility: St. Peter's Health Partners
 Samaritan Hospital
 2215 Burdett Avenue
 Troy, NY 12180

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Inpatient	Ambulatory		
24% ¹	Inpatient 1,305	Ambulatory 3,928	Yes	Yes

The hospital opposes the application, stating that one of the three applicant surgeons performs approximately 700 procedures per year at the facility, which represents 12 percent of Samaritan's operating room volume and constitutes an annual contribution margin of \$625,000. The hospital states that the potential loss of the 700 cases would have a significant negative impact on Samaritan's financial performance. The hospital does not describe any specific community-oriented services that would be adversely affected by that development.

In 2014, St. Peter's Health Partners had current assets of \$447.9 million on current liabilities of \$176.7 million, for a ratio of 2.50. In 2014, St. Peter's Health Partners had revenues of \$1.185 billion on expenses of \$1.167 billion, for an operating gain of \$18 million. For its fiscal year ending 2015, Samaritan Hospital (combined with St. Mary's) shows and operating loss of \$2.1 million. Samaritan Hospital provided charity care in the amount of \$1,347,902 and \$4,102,485 for its fiscal years 2015 and 2014, respectively.

¹ Includes OR utilization at St. Mary's Hospital, which was merged with Samaritan in 2011.

Samaritan Hospital incurred expenditures for bad debt in the amount of \$9,770,924 and \$11,632,049 for fiscal years 2015 and 2014.

Facility: Ellis Hospital
1101 Nott Street
Schenectady, NY 12308

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Inpatient Data not provided	Ambulatory Data not provided		
46% inpatient 55% ambulatory ²			No	No

Although Ellis Hospital acknowledges that none of the applicant physicians currently operate at its facility, the hospital speculates that the ASC will pull volume from Ellis, resulting in a loss of revenue. The hospital also states that it currently has capacity for more surgical volume.

In 2012, Ellis Hospital had current assets of \$93.9 million on current liabilities of \$62.1 million, for a ratio of 1.5. In 2013, Ellis Hospital had current assets of \$97.7 million on current liabilities of \$60.4 million, for a ratio of 1.6. In 2012, Ellis Hospital had revenues of \$368.1 million on expenses of \$366.0 million, for an operating gain of \$2.1 million. In 2013, Ellis Hospital had revenues of \$380.6 million on expenses of \$378.3 million, for an operating gain of \$2.3 million. In 2013, Ellis incurred \$12.0 million in bad debt expense and \$11.3 million in charity care. In 2014, the hospital incurred \$8.5 million in bad debt expense and \$8.5 million in charity care.

Supplemental Information from Applicant

Need and source of Cases: The applicant states that the proposed ASC will provide ambulatory surgery services to patients of ophthalmologists on its medical staff who elect to use the facility to perform their outpatient surgeries; and that surgeries performed at the ASC would otherwise be performed at area hospitals. The applicant also expects that patients will prefer to have their surgeries performed at a new, convenient, patient-friendly, state-of-the-art ambulatory surgery center whose specialty is eye surgery, rather than in a hospital.

Staff Recruitment and Retention: The applicant states that employees will be recruited from accredited schools and training programs, as well as through advertisements in local newspapers and professional publications. The ASC plans to offer competitive salary and benefits and will maintain good resource and communication systems. In addition, the ASC will provide a positive work environment and flexible working hours.

Office-Based Cases: The applicant states that approximately 170 of the 2,073 procedures projected for the facility are currently performed in an office setting.

DOH Comment

Of the comments received from two area hospitals, Ellis Hospital stated that none of the physicians proposed to operate at the ASC currently practice at that facility. The Department therefore considers Ellis's comments regarding a possible adverse impact of the ASC on Ellis's revenues and operations to be entirely speculative. Although Samaritan Hospital documented a possible loss of revenues to the ASC, Samaritan is part of a larger system, St. Peter's Health Partners, whose revenues exceed \$1 billion and which has other robust financial indicators. Based on these considerations, the Department finds no basis for reversal or modification of the recommendation for limited life approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

² Main hospital and off-site facility combined

Attachments

BPNR Attachment A
BFA Attachment A
BFA Attachment B

Map
Net Worth of Proposed Members
Pro Forma Balance Sheet, Colonie ASC, 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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a freestanding single-specialty ambulatory surgery center for ophthalmology to be located at 207 Troy-Schenectady Road, Latham, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

151288 B

FACILITY/APPLICANT:

Colonie ASC, LLC
d/b/a Specialty Eye Surgery and Laser Center of
the Capital Region

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payer source;
 - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided; and
 - f. Number of nosocomial infections recorded during the year in question. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed bank loan commitment for equipment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03, including satisfactory responses to the following comments:
 - a. Please confirm that an infection isolation room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.

- b. Please confirm that a Protective Environment room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.
- c. Please confirm the provision of a refrigerator as part of the Medication Distribution Station, and locate on SHC drawings.
- d. The Staff Toilets are labeled to indicate the provision of staff showers. Please indicate specific location and features of staff showers on SHC drawings.
- e. Please confirm the provision of Patient Changing facilities in accord with 2010 FGI.
- f. Please show specific location of soiled linen receptacles in the Soiled Workroom.
[AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to contacting the Regional Office to complete the project. [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 # 152036-E
AGCNY East, LLC d/b/a Endoscopy Center of
Central New York

Program: Diagnostic and Treatment Center **County:** Onondaga
Purpose: Establishment **Acknowledged:** July 20, 2015

Executive Summary

Description

AGCNY East, LLC d/b/a Endoscopy Center of Central New York (AGCNY), a New York proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 4000 Medical Center Drive, Fayetteville (Onondaga County), New York, is requesting indefinite life. The D&TC is certified as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology procedures. The facility was approved by the Public Health Council with a five-year limited life under CON #092006 and began operation effective December 14, 2010. The FASC's initial five-year limited life will expire on December 14, 2015.

Upon approval of this project, Endoscopy Center of New York projects 4,946 visits in Year 1 and 5,047 visits in Year 3 with 4.0 % Medicaid visits and 1% percent charity care. There will be no changes in services.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

**OPCHSM Recommendation
Contingent Approval**

Budget:		Year One
	Revenues	\$2,820,000
	Expenses	<u>\$1,612,000</u>
	Net Income	\$1,208,000

Need Summary

Data submission by the applicant, as a contingency of CON 092006, is completed.

Based on CON 092006, Endoscopy Center of Central New York projected 4,052 procedures in Year 1 (2011) and 4,216 procedures in Year 3 (2013). Medicaid procedures were projected at four (4) percent and charity care was projected at two (2) percent. Based on the Annual Reports submitted by the applicant, the total number of procedures was 3,396 in Year 1 (2011) and 4,859 in Year 3 (2013). Actual charity care in Year 3 (2013) was 1.0 percent.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of an executed and completed facility lease agreement between Cedar Bay Properties, LLC and AGCNY East, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of the membership interest transfers and any additional transfer documents, which are acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
5. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. [CSL]
6. Submission of a photocopy of the consulting and administrative services agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 8, 2015

Need Analysis

Project Description

AGCNY East, LLC d/b/a/ Endoscopy Center of Central New York, an existing Article 28 Diagnostic and Treatment Center certified as a single specialty ambulatory surgery center providing gastroenterology services, is requesting permission to convert to indefinite life following a five year limited life with an Operating Certificate dated December 14, 2010 to December 14, 2015. The facility is located at 4000 Medical Center Drive, Fayetteville, 13066, in Onondaga County.

Analysis

The ASC's primary service area is Onondaga County. The table below provides information on projections and utilization for Years 1 and 3 based on CON 092006.

CON 092006	Projected Procedures Year 1 (2011)	Projected Procedures Year 3 (2013)	Actual Procedures Year 1 (2011)	Actual Procedures Year 3 (2013)
Total	4,052	4,216	3,396	4,859

The table below shows, by payor, projected and actual utilization for Year 3 for CON 092006, as well as actual 2014 and Year 3 projected after approval.

	CON 092006 Projected Year 3 (2013)	CON 092006 Actual Year 3 (2013)	CON 152036 Actual 2014	CON 152036 Projected Year 3
Medicaid FFS/MC	2.0%	3.5%	3.8%	4.5%
Medicare FFS/MC	22.1%	25.2%	26.9%	30.7%
Commercial FFS/MC	73.9%	70.0%	68.1%	63.9%
Charity Care	2.0%	0.9%	0.9%	0.9%
Total	100%	100%	100%	100%

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people in need of traditional Charity Care. Through February 2015, the number of uninsured individuals in Onondaga County has dropped from 41,600 before passage of the Affordable Care Act to approximately 5,000 (an 88% drop). Roughly 71% of these newly insured people have been enrolled in Medicaid plans. The likelihood of obtaining a significant volume of charity care cases has been severely diminished in light of this development.

In its effort to provide charity care, the center has taken the following actions:

- Established contracts with three Medicaid managed care plans.
- One of the center's physician's volunteers one day a month at Assumption Church's Portello Health Center (staffed by volunteers and provides free medical care to the uninsured).
- The center receives Medicaid referrals from Syracuse Community Health Center (an FQHC) and has scheduled meetings to increase GI referrals and to participate in a Medicaid managed care plan associated with this FQHC.

Endoscopy Center of Central New York is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion

Because the number of uninsured individuals has dropped by 88 percent in AGCNY's service area, the facility's attainment of a level of charity care that is still nearly one-half of its original target, together with a level of services to Medicaid clients that has reached nearly twice the ASC's original target for that

population, indicate that AGCNY has made a reasonable and sustained effort to extend services to the underserved in the Onondaga County area. Therefore, certification for indefinite life should be granted.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

AGCNY East, LLC, d/b/a/ Endoscopy Center of Central New York, an existing Article 28 Diagnostic and Treatment Center certified as a single specialty (gastroenterology) ambulatory surgery center, located in Suite 308 of the Northeast Medical Building Condominium at 4000 Medical Center Drive in Fayetteville (Onondaga County), is requesting permission to convert to indefinite life following a five year conditional, limited life approval (approved under CON #092006).

The Center is not proposing to add any services, expand or renovate the facility. Staffing is expected to remain at current levels (14.1 FTEs) and Scott Edison, M.D. will serve as the Center's Medical Director.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the current year of operations and for year one subsequent to receiving permanent life, as shown below:

	<u>Current Year</u>	<u>Year One</u>
Revenues:		
Commercial Fee For Service	\$2,204,573	\$2,190,000
Medicare Fee For Service	\$460,800	\$521,000
Medicaid Managed Care	\$101,500	\$109,000
Private Pay	<u>\$7,300</u>	<u>\$0</u>
Total Revenues	\$2,774,173	\$2,820,000
Expenses:		
Operating	\$1,320,895	\$1,375,000
Capital	<u>231,027</u>	<u>237,000</u>
Total Expenses	\$1,551,922	\$1,612,000
Net Income or (Loss):	\$1,222,181	\$1,208,000
Utilization (cases):	4,832	4,946
Cost per case:	\$321.18	\$325.92

Projected utilization, revenues and expenses are based on current operating experience.

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

Payor Source	<u>Current Year</u>		<u>Year One</u>	
	<u>Cases</u>	<u>%</u>	<u>Cases</u>	<u>%</u>
Commercial Fee For Service	3,291	68.11%	3,234	65.39%
Medicare Fee For Service	1,302	26.95%	1,470	29.72%
Medicaid Managed Care	182	3.77%	196	3.96%
Private Pay	12	0.25%	0	0.00%
Charity Care	<u>45</u>	<u>0.93%</u>	<u>46</u>	<u>0.93%</u>
Total	4,832	100%	4,946	100%

Per AGCNY's establishment CON, Medicaid and charity care utilization were projected to be 2% and 2%, respectively, of total procedures in the first and third year of operation. As documented in AGCNY's SPARCS data submissions, the facility has experienced difficulty meeting their charity care projections to date. However, Medicaid utilization was 1.3% (2011), 2.6% (2012), 3.5% (2013) and 3.8% (2014) of their total caseload, exceeding their initial projections in all but 2011.

AGCNY indicated that they have adopted a formal Charity and Financial Assistance Program, inclusive of a sliding fee scale to patients without insurance coverage, and provisions are made for those who cannot afford services. Their current efforts to treat underserved populations include participating with three Medicaid managed care plans and volunteering one day per month at the Poverello Health Center in Syracuse to provide free colon cancer screenings and GI diagnostic services. This Franciscan Northside Ministries clinic offers free medical care to the uninsured and is staffed by volunteers.

Going forward, their strategy includes improved outreach efforts by the physician group practice, Associated Gastroenterologists of Central New York, PC (Associated Gastro) and increasing AGCNY's presence at the Poverello Health Center to obtain referrals. Associated Gastro has scheduled meetings with St Joseph's Hospital Health Center to discuss providing services at the hospital's Westside Clinic, and with Syracuse Community Health Center (SCHC), a Federally Qualified Health Center, to discuss referrals and participating in SCHC's affiliated Total Care Medicaid Managed Care Plan.

With these efforts, the applicant believes they can improve their service delivery to underserved populations and sustain these efforts into the future.

Capability and Feasibility

There are no project costs associated with this application.

AGCNY's submitted budget indicates a net income of \$1,208,000 in year one. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is Endoscopy Center of Central New York's 2012-2014 financial summary, which shows the FASC had an average positive working capital, an average positive equity position, and generated an average positive net income for each period.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A 2012-2014 Financial Summary of Endoscopy Center of Central New York

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request for permanent life for project #092006, 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:

152036 E

FACILITY/APPLICANT:

AGCNY East, LLC
d/b/a Endoscopy Center of Central New York

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an executed and completed facility lease agreement between Cedar Bay Properties, LLC and AGCNY East, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of the membership interest transfers and any additional transfer documents, which are acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
5. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. [CSL]
6. Submission of a photocopy of the consulting and administrative services agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151250-B
LISH, Inc.**

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment and Construction **Acknowledged:** June 1, 2015

Executive Summary

Description

This CON amends and supersedes CON #142031, which was approved by the PHHPC in October 2014. Subsequent to approval, United Cerebral Palsy of Nassau County, Inc. withdrew from the project. Per this amended application, LISH, Inc. (LISH), a newly formed New York State not-for-profit corporation, requests approval to establish an Article 28 diagnostic and treatment center (D&TC) and five extension clinics in Suffolk County. The main clinic site and five extension clinics will be located at:

- Main Site: 159 Carleton Avenue, Central Islip;
- LISH at the Family Wellness Center: 120 Plant Street, Hauppauge;
- LISH at Smithtown: Landing Meadow Road, Smithtown;
- LISH at Manorville: 221 North Sunrise Highway Service Road, Manorville;
- LISH at Port Jefferson Station: 51-33 Terryville Road, Port Jefferson Station; and
- LISH at Riverhead: 883 E. Main Street, Riverhead.

All of the clinic sites are currently operated as Article 28 facilities by one of the following three human service agencies: Developmental Disabilities Institute, Inc. (DDI), Family Residences and Essential Enterprises, Inc. (FREE), and United Cerebral Palsy of Greater Suffolk, Inc. (UCP Suffolk). The entities provide primary and specialty medical and dental services at their respective clinics, and are joining together to form LISH to ensure the long-term financial sustainability of the health care services they provide to the at-risk populations they serve. The intent is to increase access to

care, achieve efficiencies by placing currently fragmented operations under one comprehensive network, and effectuate positive net financial impact on the three human services organizations. LISH will serve all underserved populations throughout Long Island, with a primary focus on patients with developmental disabilities.

Upon approval of this CON, LISH intends to change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare (HRHCare), a Federally Qualified Health Center (FQHC) that has a network of twenty-two health centers serving ten counties in the Hudson Valley and Long Island regions. HRHCare has provided a letter of interest in support of LISH becoming a FQHC sub-grantee.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

LISH proposes to serve all underserved populations throughout Long Island, but its primary focus will be on serving patients with developmental disabilities (DD).

The number of projected visits for all sites combined is 62,074 in Year 1, of which 38 percent are expected to be primary care visits.

Program Summary

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

Financial Summary

Project costs of \$840,649 will be met via cash through a subvention agreement between LISH and: DDI for \$275,839.33, FREE for \$237,961.33, and UCP Suffolk for \$326,848.34.

Budget:	Revenues	\$13,623,002
	Expenses	<u>\$12,749,849</u>
	Net Income	\$873,153

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the six (6) sites. [HSP]
3. Submission of an executed acquisition agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed subvention agreement/certificate, acceptable to the Department of Health, between LISH, Inc. and Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc. and United Cerebral Palsy of Greater Suffolk, Inc. [BFA]
5. Submission of the executed building lease agreements for the Central Islip, Port Jefferson Station, Smithtown, Manorville, Riverhead, and Hauppauge LISH sites, acceptable to the Department of Health. [BFA]
6. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc. and LISH, Inc. [BFA]
7. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and United Cerebral Palsy Association of Greater Suffolk, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Family Residence and Essential Enterprises, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Independent Group Home Living, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Mayhaven Center of Hope, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed and completed facility sublease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's executed Restated Certificate of Incorporation of LISH, Inc., acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's executed and completed by-laws, which are acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding (as a sub-grantee), acceptable to the Department of Health. [BFA]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]

5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, for record purposes prior to the applicant's start of construction. [AES]
8. Construction must start on or before November 1, 2015 and construction must be completed by November 30, 2015, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date

October 8, 2015

Need Analysis

Project Description

LISH, Inc. is requesting approval to establish a diagnostic and treatment center (D&TC) and five (5) extension clinics to serve Suffolk County. All sites are currently operated as Article 28 facilities by three different operators - three D&TC's and three extension clinics. The proposed location of the main site D&TC is 159 Carleton Avenue, Central Islip, 11722, in Suffolk County.

Analysis

LISH will take over the operations of the sites, which are currently operated by three human services organizations, to provide primary and specialty medical care and dental services primarily to patients with developmental disabilities.

The table below identifies the service area for each site.

Proposed Sites	City	Zip Code	Service Area
D&TC Main Site: LISH at Central Islip-159 Carleton Avenue	Central Islip	11722	11722, 11716, 11717, 11752
Extension Clinic: LISH at the Family Wellness Center- 120 Plant Street	Hauppauge	11788	11788, 11725, 11749, 11779
Extension Clinic: LISH at Smithtown-Landing Meadow Road	Smithtown	11787	11787, 11754, 11767, 11780
Extension Clinic: LISH at Manorville-221 North Sunrise Hwy Service Road	Manorville	11941	11941, 11949, 11940, 11977, 11978
Extension Clinic: LISH at Port Jefferson Station-51-33 Terryville Road	Port Jefferson Stn.	11776	11776, 11720, 11733, 11766, 11777, 11784
Extension Clinic: LISH at Riverhead-883 E Main Street	Riverhead	11901	11901, 11792, 11933, 11948

Proposed services at the main site and the five extension clinics are Medical Services-Primary Care, Medical Services-Other Medical Specialties, and Dental Care O/P.

The number of projected visits for all sites combined is 62,074 in Year 1 and 65,217 in Year 3, 38 percent of which are primary care visits, as given below.

Type	Proposed Sites	Year 1		Year 3	
		Total Visits	% Primary Care	Total Visits	% Primary Care
Main Site	Central Islip	12,060	32.7%	12,671	32.7%
Ext. Clinic	Hauppauge-Fam Wellness Ctr	19,904	37.2%	20,912	37.2%
Ext. Clinic	Manorville	1,500	56.2%	1,577	56.2%
Ext. Clinic	Port Jefferson Station	3,430	49.4%	3,604	49.4%
Ext. Clinic	Riverhead	14,597	35.5%	15,335	35.5%
Ext. Clinic	Smithtown	10,583	42.2%	11,118	42.2%
	Total Project	62,074	37.9%	65,217	37.9%

Prevention Quality Indicators-PQIs

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the 2013 PQI rates for major condition categories such as acute conditions and respiratory, as well as the overall total. The rates are presented for the zip codes of the six sites combined in Suffolk County and for the entire State. All numbers represent hospital admissions per 100,000 adults. PQI rates are significantly higher for the Suffolk County sites than for the State as a whole.

PQI Rates-2013	Suffolk County Sites¹	NYS
All Acute	588	473
All Respiratory	378	312
Overall Total ²	1,669	1,408

Source: NYSDOH-Health Data NY- PQI

¹ Suffolk County Sites Zip Codes: Main Site (11722) plus Five Extension Clinic Sites (11788, 11787, 11941, 11776, and 11901) Combined.

² Overall Total includes major condition categories such as acute conditions, circulatory, diabetes, and respiratory.

Conclusion

The proposed project will reorganize these respective Article 28 clinics into a comprehensive network of community health centers, thereby increasing access to primary and specialty medical and dental care services for all underserved populations throughout Long Island. Its primary focus will be serving patients with developmental disabilities (DD).

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

LISH, Inc., a newly-formed not-for-profit corporation, is submitting a project amendment seeking approval for the establishment of a diagnostic and treatment center (D&TC) and five extension clinic sites to be located throughout Suffolk County by taking over Article 28 sites operated by the three human services organizations (Developmental Disabilities Institute (DDI), Family Residences and Essential Enterprises, Inc. (FREE) and United Cerebral Palsy of Greater Suffolk, Inc. (UCP Suffolk)). LISH will provide primary and specialty medical and dental services primarily to the developmentally disabled.

LISH previously received contingent approval (under CON 142031) to establish a D&TC and six extension clinics throughout Nassau and Suffolk Counties. As part of that project, LISH was to have taken over four D&TCs and three extension clinics operated by four human service organizations, however, since the contingent approval, one of the agencies, United Cerebral Palsy of Nassau County (UCPN) has decided not to proceed with the three others in forming LISH.

By reorganizing their respective Article 28 clinic services into a comprehensive network of community health centers, the three entities believe they will increase access to primary and specialty medical and dental care, reduce the inefficiencies in fragmented services, achieve efficiencies of scale to ensure the long-term financial sustainability of the health services provided by LISH, and effectuate a positive net financial impact on the human services organizations, thereby preserving essential non-Article 28 developmental disability services (e.g., educational, residential, day habilitation and vocational services).

Construction is proposed for only two sites. The applicant does not anticipate any changes in hours or staffing from the current operators (other than the addition of centralized administrative staff to support the administrative, billing and IT functions of LISH). LISH will add hours and adjust staffing as volume and demand for services increases.

Upon approval, LISH, Inc. will change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare, a Federally Qualified Health Center (FQHC).

The six sites to be operated by LISH (main D&TC site and five extension clinics) are:

Proposed Name of Site	Address	Current Operator	PFI	County
LISH at Central Islip (Main Site)	159 Carleton Ave. Central Islip NY 11722	United Cerebral Palsy Assoc. of Greater Suffolk, Inc.	914	Suffolk
LISH at Port Jefferson Station (Extension Clinic)	51-33 Terryville Rd. Port Jefferson Station, NY 11776	United Cerebral Palsy Assoc. of Greater Suffolk, Inc.	5718	Suffolk
LISH at the Family Wellness Center (Extension Clinic)	120 Plant St. Hauppauge, NY 11788	Family Residences and Essential Enterprises, Inc.	6240	Suffolk
LISH at Smithtown (Extension Clinic)	Landing Meadow Rd, Smithtown, NY 11787	Developmental Disabilities Institute, Inc.	4940	Suffolk
LISH at Manorville (Extension Clinic)	221 North Sunrise Highway Service Rd, Manorville, NY 11941	Developmental Disabilities Institute, Inc.	4864	Suffolk
LISH at Riverhead (Extension Clinic)	883 East Main St. Riverhead, NY 11901	Developmental Disabilities Institute, Inc.	4862	Suffolk

Character and Competence

The proposed board membership is:

Name	Affiliation
Robert Budd	Family Residences and Essential Enterprises, Inc.
John Lessard	Developmental Disabilities Institute, Inc.
Stephen Friedman	United Cerebral Palsy of Greater Suffolk, Inc.

Staff from the Division of Certification & Surveillance previously reviewed (under CON 142031), and verified under this project, the disclosure information of the LISH members, as well as the proposed Medical Director, Dr. James Powell, regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Acquisition Agreement

The change in ownership of the operations will be effectuated in accordance with the terms of the draft Acquisition Agreement, as summarized below:

Transferors:	DDI, FREE and UCP Suffolk
Transferee:	LISH, Inc.
Assets Transferred:	Article 28 D&TC operating certificates for DDI, FREE and UCP Suffolk
Assets Excluded:	None
Liabilities Assumed:	None
Purchase Price:	\$0

DDI, FREE and UCP Suffolk will surrender their respective Article 28 operating certificates when LISH receives all required approvals to become the operator of the D&TC clinics currently under their licensure.

Total Project Cost and Financing

Total project cost for the renovation and demolition and acquisition of movable equipment for the entire project is estimated at \$840,649 broken down as follows:

Renovation & Demolition	\$21,789
Design Contingency	2,179
Construction Contingency	2,179
Movable Equipment	807,915
CON Fees	2,000
Additional Processing Fees	<u>4,587</u>
Total Project Cost	\$840,649

Subproject costs broken down by site are shown on BFA Attachment C.

Financing of the \$840,649 total project cost will be met via cash through a subvention agreement.

Subvention Agreement

The applicant has provided a draft subvention agreement for the project cost of \$840,649 and the working capital of \$5,000,000 summarized as follows:

Date:	To be determined
Subvention Grantors:	DDI, FREE and UCP Suffolk
Subvention Grantee:	LISH, Inc.
Total Subvention Amounts:	\$840,649 total project cost and \$5,000,000 total working capital
Amount due from DDI	\$275,839.33 project cost and \$1,666,666.67 working capital
Amount due from FREE	\$237,961.33 project cost and \$1,666,666.67 working capital
Amount due from UCP Suffolk	\$326,848.34 project cost and \$1,666,666.66 working capital
Interest Charged:	0%

This agreement has no interest associated with it, and will be paid back to the Grantors only when the financial condition of LISH permits the required payment to be made without impairment of LISH's operations or injury to its creditors.

Lease Rental Agreements

The applicant has submitted draft leases for all of the sites. The terms of each lease are summarized below:

LISH at Central Islip:

Premises:	14,225 sq. ft. located at 159 Carleton Avenue, Central Islip, NY
Lessor:	UCP Suffolk
Lessee:	LISH, Inc.
Rental:	\$697,648 for year 1 with a 2.5% annual increase (\$49.04 per sq. ft.)
Term:	10 Years with (1) 10 year renewal term
Provisions:	Triple net, Non-arm's length

LISH at the Family Wellness Center:

Premises:	5,236 sq. ft. located at 120 Plant Street, Hauppauge, NY
Lessor:	FREE
Lessee:	LISH, Inc.
Rental:	\$138,764 for year 1 with a 2.5% annual increase (\$26.50 per sq. ft.)
Term:	10 Years with (1) 10 year renewal term
Provisions:	Triple Net, Non-arm's length

LISH at Smithtown:

Premises:	4,289 sq. ft. located at Landing Meadow Road, Smithtown, NY.
Lessor:	DDI
Lessee:	LISH, Inc.
Rental:	\$184,399 for year 1 with a 2.5% increase per year thereafter (\$42.99 per sq. ft.)
Term:	10 Years with (1) 10 year renewal term
Provisions:	Triple Net, Non-arm's length

LISH at Manorville:

Premises:	800 sq. ft. located at 221 North Sunrise Highway Service Road, Manorville, NY
Lessor:	Independent Group Home Living, Inc.
Lessee:	LISH, Inc.
Rental:	\$10,973 year one with a 2.5% annual increase (\$13.72 per sq. ft.)
Term:	5 year term, with (2) 5 year renewal terms
Provisions:	Triple Net, arm's length

LISH at Port Jefferson Station:

Premises:	1,200 sq. ft. located at 51-33 Terryville Road, Port Jefferson Station, NY
Lessor:	Mayhaven Center of Hope, Inc.
Lessee:	LISH, Inc.
Rental:	\$13,024 for year 1, original term of lease ends 12/31/15. Starting 1/1/16 the new annual rent is \$15,900 (\$13.25 per sq.ft.) with a 3.75% annual increase.
Term:	Original Assignment of Lease expires 12/31/15, the applicant provided a draft renewal option for an additional 5 years.
Provisions:	Triple Net, arm's length

LISH at Riverhead:

Premises:	8,672 sq. ft. located at 883 E. Main Street, Riverhead, NY
Lessor:	East Riverhead Equities
Lessee/Sublessor:	DDI
Sublessee:	LISH, Inc.
Rental:	\$494,220 for year 1 with a 2.5% annual increase (\$56.99 per sq. ft.)
Term:	Expires with Prime lease on 6/30/23
Provisions:	Triple Net, Non-arm's length

The applicant has provided confirmation that the leases with UCP Suffolk, FREE, and DDI will be pass through rates based on costs.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first and third years of operation of all the sites, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues*	\$12,379,421	\$13,623,002
Expenses		
Operating	\$10,533,197	\$11,016,554
Capital	<u>\$1,678,354</u>	<u>\$1,733,295</u>
Total Expenses	\$12,211,551	\$12,749,849
 Excess of Revenues over Expenses	 \$167,870	 \$873,153
 Visits	 62,074	 65,217
Cost Per Visit	\$196.73	\$195.50

*Revenues include: \$75,000 in HRSA Federal 330 Grant Funds (both years); \$176,501 in meaningful use incentives (both years); \$491,653 in 340B net revenue (year three); \$432,500 (year one) and \$454,396 (year three) in Non-Mental Health Therapy MCR/MCD Revenue; and \$404,312 in Other Revenue (both years).

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

	<u>Years One and Three</u>
Medicaid MC	25.80%
Medicare FFS	2.74%
Medicare MC	61.99%
Commercial FFS	2.84%
Private Pay/Other*	6.32%
Charity Care	.32%

*Other consists of visits classified as Non-Mental Health. Related revenues are included as other operating revenue under the Non-MH Therapy MCR/MCD classification.

Charity care utilization is projected to be less than 2% through Year 3 as the clinics currently focus on the developmentally disabled population, nearly all of whom are covered by Medicaid or Medicare. Once the facility becomes a FQHC sub-grantee, they will expand to provide services to a broader array of patients including the general public. As a FQHC sub-grantee, the facility will see all types of patients regardless of their ability to pay and anticipates an increase in charity care visits.

Revenue, expense and utilization assumptions are based on the historical experience of the six currently operating Article 28 clinics sites, along with the experience of the three human service entities that operate the clinics.

BFA Attachment D provides the respective operating budgets for each of the D&TC locations.

Capability and Feasibility

The total project cost and the working capital will be provided by a subvention agreement from DDI, FREE, and UCP Suffolk for \$5,840,649 at the above stated terms. BFA Attachment B is the current certified financial statements for the three entities, which show sufficient resources to meet the project cost and working capital requirements.

Working capital requirements are estimated at \$2,124,975 based on two months of Year 3 expenses, which appear reasonable. The applicant has provided a draft subvention agreement for the working capital in the amount of \$5,000,000 at the above stated terms. The additional working capital provided through the subvention agreement is to minimize any cash flow concerns that may be encountered resulting from a delay in obtaining FQHC Medicaid rates due to the rate-setting process.

The submitted budget indicates a net income of \$167,870 and \$873,153 in Years 1 and 3 respectively, and assumes receipt of stated grant funds. Revenues are based on current reimbursement methodologies for FQHC diagnostic and treatment services. HRHCare has provided a letter of interest for LISH to become a sub-grantee and will submit a change in scope request on or about October 31, 2015, to add the LISH sites to its Federal scope of project. HRSA typically approves such changes in scope requests within approximately 120 days of submission of the request, at which point the LISH sites would be eligible for FQHC Medicaid rates. The D&TC is anticipated to go live on or about April 1, 2016, the same time that the FQHC sub-grantee recipient/change in scope of project approval is expected to be obtained. Hence, approvals will converge and the D&TC will never be operational without the FQHC rates. The budget appears reasonable.

BFA Attachment A is the pro forma balance sheet of LISH, Inc. as of the first day of operations, which indicates that the operations will begin with a breakeven members' equity.

BFA Attachment B is the 2012-2014 certified financial summaries of DDI, FREE and UCP Suffolk, which indicates that DDI and UCP Suffolk experienced an average positive working capital, maintained an average positive member's equity, and generated an average positive net income for the period. FREE experienced an average negative working capital position, maintained an average positive member's equity position and generated an average positive net income for the period. FREE's negative working capital in 2013 is a result of \$3.4 million in deferred revenue and recoveries, primarily due to the following:

- In July 2011, OPWDD issued a draft rate adjustment in FREE's Intermediate Care Facilities (ICF) program that was a reduction of about \$1.2 million per year. They were not able to get final approval on that rate until 2014, and have now begun to recover the overpayments. FREE deferred the revenue on its financial statements.
- In 2013 FREE received retroactive payments via its Medicaid rate to pay for day rehab services for ICF patients. Since New York State had previously paid FREE directly for this service, the rate adjustment was deferred pending recovery by the State. A recoupment of approximately \$1.2 million occurred in January and February 2014.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Pro-forma Balance Sheet of LISH, Inc.
BFA Attachment B	2012-2014 Certified financials for Developmental Disabilities Institute, Inc. and Affiliate, Family Residences & Essential Enterprises, Inc. and United Cerebral Palsy Association of Greater Suffolk, Inc.
BFA Attachment C	Site specific project costs
BFA Attachment D	Site specific budgets

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish a diagnostic & treatment center to be located at 159 Carleton Avenue, Central Islip and five (5) extension clinics, all currently Article 28 facilities operated by 3 different operators (Amends and supercedes 142031) 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:

151250 B

LISH, 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 be uploaded into NYSECON. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the six (6) sites. [HSP]
3. Submission of an executed acquisition agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed subvention agreement/certificate, acceptable to the Department of Health, between LISH, Inc. and Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc. and United Cerebral Palsy of Greater Suffolk, Inc. [BFA]
5. Submission of the executed building lease agreements for the Central Islip, Port Jefferson Station, Smithtown, Manorville, Riverhead, and Hauppauge LISH sites, acceptable to the Department of Health. [BFA]
6. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc. and LISH, Inc. [BFA]
7. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and United Cerebral Palsy Association of Greater Suffolk, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Family Residence and Essential Enterprises, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Independent Group Home Living, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Mayhaven Center of Hope, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed and completed facility sublease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's executed Restated Certificate of Incorporation of LISH, Inc., acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's executed and completed by-laws, which are acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding (as a sub-grantee), acceptable to the Department of Health. [BFA]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]
7. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, for record purposes prior to the applicant's start of construction. [AES]
8. Construction must start on or before November 1, 2015 and construction must be completed by November 30, 2015, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

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 # 152015-B
Community Health Initiatives, Inc.**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** July 13, 2015

Executive Summary

Description

Community Health Initiatives, Inc., a not-for-profit corporation, requests approval for the establishment and construction of an Article 28 diagnostic and treatment center (D&TC) to be located at 2882 West 15th Street, Brooklyn (Kings County). The applicant is currently a Federally Qualified Health Center and Health Resources Services Administration (HRSA) funded New Access Point (NAP) facility seeking to convert from a physician shared practice operation to a not-for-profit Article 28 D&TC. The Center will provide comprehensive primary care services in federally designated Medically Underserved Areas of the Coney Island section of Kings County. The proposed D&TC's service area is also a federally designated Health Professional Shortage Area (HPSA) and the Article 28 D&TC will increase the HPSA's physician capacity from 3.1 FTEs to 4.8 FTEs.

OPCHSM Recommendation
Contingent Approval

Need Summary

Community Health Initiative, Inc. proposes to establish an Article 28 Diagnostic and Treatment

Center in Kings County. Proposed services to be provided are: Medical Services - Primary Care and Medical Services - Other Medical Specialties. The number of projected visits is 5,600 for Year 1.

Program Summary

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

Financial Summary

Total project cost of \$278,725 will be met as follows: contributed equipment of \$101,232 and a promissory note of \$177,493 at an interest rate of 10% for a ten-year term.

Budget:

Revenues	\$3,694,940
Expenses	<u>\$3,651,711</u>
Excess of Revenues over Expenses	\$43,229

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of the executed Certificate of Incorporation of Community Health Initiatives, Inc. acceptable to the Department. [CSL]
4. Submission of the Lease Agreement between 2882 West 15th Street LLC, ("Landlord"), and Community Health Initiatives Inc., the "tenant", acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in Bureau of Architecture and Engineering Review (BAER) Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by January 15, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval to any changes to the start and completion dates. [AER]

Council Action Date

October 8, 2015

Need Analysis

Background and Analysis

The service area includes Coney Island, located in southwestern Kings County.

Areas of Kings County that are designated Health Care Professional Shortage Areas and Medically Underserved Areas/Populations are as follows (Source – HRSA):

Health Care Professional Shortage Areas for Primary Care Services:

- Medicaid Eligible – Coney Island/Gravesend

Medically Underserved Area:

- Kings Service Area

The number of projected visits is 5,600 for Year 1 and 10,500 for Year 3.

Prevention Quality Indicators - PQIs

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the PQI rates for the major condition categories such as acute, circulatory, diabetes, and respiratory for zip code 11224 and for New York State. All of the rates for major categories of these conditions are significantly higher for the service area than those rates for New York State.

PQI Rates: Hospital Admissions per 100,000 Adults	Service Area	New York State
All ¹	2,267	1,408
All Acute	781	473
All Circulatory	812	401
All Diabetes	466	223
All Respiratory	608	312

Source: DOH Health Data, 2015

¹ Due to Rounding, individual conditions may not sum to total

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

Conclusion

Approval of this project will provide continued access to primary care services and specialty medical services to Coney Island and the surrounding communities of Kings County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Community Health Initiatives, Inc. (CHI), a Federally Qualified Health Center (FQHC) and New Access Point entity, seeks to establish and construct a Diagnostic and Treatment Center at 2882 West 15th Street in Brooklyn (Kings County).

Community Health Initiatives, Inc. is converting from a private two-physician shared practice (Drs. Yuri Birbrayer and James Peri) to a non-profit D&TC that will provide comprehensive primary care services in medically underserved areas of Coney Island. Specifically, CHI aims to develop a patient-centered model of integrated care within a culturally and linguistically competent service environment by a primary care focus on acute, chronic, and rehabilitative treatment to address the physical and mental health needs of Coney Island residents.

Proposed Operator	Community Health Initiatives, Inc.
Site Address	2882 West 15th Street, Lower Level Brooklyn, NY 11224 (Kings County)
Services	Medical Services – Primary Care Medical Services – Other Medical Specialties
Hours of Operation	Monday through Friday from 9 am to 7 pm and Saturday from 10 am to 2 pm
Staffing (1st Year / 3rd Year)	34.0 FTEs / 43.0 FTEs
Medical Director(s)	Edouard J. Hazel, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by Maimonides Medical Center 6.1 miles / 20 minutes away

Character and Competence

The proposed Board of Directors for Community Health Initiatives is a consumer-majority Governing Board comprised of the following individuals:

<u>Name</u>	<u>Position</u>
Alex Movshovich	Executive Director (Ex-Officio)
Shirley Aikens	Chairperson
Julia Daniely	Treasurer
Joanne Kennedy	Secretary
Diana Felix	Board Member
Vickey Vanet	Board Member
Latasha Sutton	Board Member
Michael Kaplan	Board Member
James Malloy	Board Member
Timeka Garrison	Board Member

Mr. Movshovich holds a degree in business management with a concentration in finance. He is a health care administrator/consultant with over seven years of management experience. Currently he manages eight physicians in the proposed service area. He was involved in the development and subsequent operation of Advance Operations, designing a service model that utilized community resources to promote early medical intervention efforts. Mr. Movshovich is guiding the transformation of Advance Operations from a physician management service model to a Federally Qualified Health Center.

Ms. Aikens is retired and currently serves on the board of the Carey Gardens Resident Association as President. She is also a Community Board 13 member and the Secretary for the Police Council. She feels her relationship with the community will help the center engage the most underserved in Coney Island.

Ms. Daniely serves as the Vice-President on the board of the Carey Gardens Resident Association. She believes her position will facilitate access to and communication with New York City Housing Authority (NYCHA) residents to engage them in primary care.

Ms. Kennedy is retired and anticipates being a patient of the facility. In that role, she feels she can provide valuable feedback from a patient's point of view.

Ms. Felix is a Carrier Assistant for the U.S. Postal Service. She is a long-time resident of Coney Island and also plans to be a patient of the center.

Ms. Vanet has owned and operated a laser hair removal spa since 2009. Prior to that, she was self-employed providing paralegal services. She is a long time resident of Coney Island and feels she can be instrumental when it comes to cultural competency relating to the Russian population in the service area.

Ms. Sutton is a Credentialed Alcoholism and Substance Abuse Counselor Trainee (CASAC-T) pursuing a degree in Chemical Dependency Counseling. She has case management experience and has provided counseling and referral services to individuals in need, specifically to those with substance use disorders. As a Board Member, she feels she will be an asset in advising the center regarding their substance abuse component.

Mr. Kaplan has over 20 years of technical and managerial experience in information technology (IT) and feels his qualifications will allow him to effectively support all IT functions and be instrumental in efforts for full electronic health record (EHR) integration.

Mr. Malloy is a paraprofessional employed by the New York City Department of Education. Although he does not possess healthcare experience, Mr. Sutton is a long-time Coney Island resident and a NYCHA resident.

Ms. Garrison is a Field Representative for the U.S. Census Bureau. She has been an active community member and is committed to making a positive difference in the community by ensuring that the center addresses the population's needs.

Disclosure information was similarly submitted and reviewed for the Medical Director. Edouard J. Hazel, M.D., a board-certified Internist with sub-certification in Infectious Disease. In his over 30 years of experience, Dr. Hazel has gained experience in the provision of medical care as well as hospital administration and public health issues. Currently, he is employed by Henry J. Carter Specialty Hospital overseeing the work of 10 physicians and PAs and four Infection Control nurses.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted a draft lease agreement for the site that they will occupy, which is summarized below:

Premises:	5,111 square feet located at 2882 West 15 th Street, Unit C5, Brooklyn, New York.
Lessor:	2582 West 15th Street, LLC
Lessee:	Community Health Initiatives, Inc.
Term:	Ten years
Rental:	Year One - \$86,952 (\$17.01 per square foot) with a 3% increase per year thereafter.
Provisions:	The lessee shall be responsible for maintenance and insurance.

The applicant has submitted an affidavit indicating that the lease will be a non-arm's length lease arrangement. They have submitted letters from two New York Licensed Real Estate Brokers attesting to the reasonableness of the per square foot rental amount.

Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment is estimated at \$278,725, broken down as follows:

Renovation and Demolition	\$125,000
Design Contingency	12,500
Construction Contingency	12,500
Architect/Engineering Fees	25,000
Moveable Equipment	101,232
CON Fee	1,250
Additional Processing Fee	<u>1,243</u>
Total Project Cost	\$278,725

Project costs are based on a construction start date of November 1, 2015, and a two-month construction period.

The applicant's financing plan appears as follows:

Contributed Equipment	\$101,232
Promissory Note (10% interest rate for a ten-year term)	<u>177,493</u>
Total	\$278,725

The executed Promissory Note provides for a principal amount of \$180,000 to be credited to an account on the books of the applicant from which the applicant may draw down for use on the above project costs.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first and third year of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care/FFS	\$964,591	\$2,040,110
Medicare Fee-For-Service	201,556	426,291
Private Pay	172,763	365,393
Union	100,778	213,146
HRSA NAP Grant	<u>650,000</u>	<u>650,000</u>
Total Revenue	\$2,089,688	\$3,694,940

Expenses:		
Operating	\$1,973,528	\$3,524,592
Capital	<u>103,200</u>	<u>127,119</u>
Total Expenses	\$2,076,728	\$3,651,711
Excess of Revenues over Expenses	\$12,960	\$43,229
Utilization (visits)	10,730	23,550
Cost Per Visit	\$193.54	\$155.06

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	56.95%	56.95%
Medicaid Fee-For-Service	10.05%	10.05%
Medicare Fee-For-Service	14.00%	14.00%
Private	12.00%	12.00%
Union	7.00%	7.00%

The following is noted with respect to the submitted budget:

- Revenues are based on current reimbursement methodologies by payor. Medicaid revenue was assessed based on APG reimbursement which the provider indicated is consistent with their cost for services. Revenue includes HRSA NAP program grant funding. The applicant indicated that they have received the grant funding for three years and can reapply for ongoing HRSA funding for subsequent years (open competition basis).
- Utilization assumptions are based on current historical experience of the physician shared practice.
- Expense assumptions are also based on the current historical experience of the physician shared practice.

The budget appears reasonable.

Capability and Feasibility

Project costs of \$278,725 will be met as follows: Contributed Equipment valued at \$101,232 and the balance of \$177,493 via a Promissory Note at an interest rate of 10% for a ten-year term. The applicant has submitted an executed Promissory Note for \$180,000 in regard to the financing, and the related amortization schedule. Interest accrues daily at a rate of 10% per annum on any outstanding principal balance used by the applicant. The Promissory Note indicates that principal and interest will be deferred for the first five years, however the Note may be prepaid, in whole or in part, at any time.

Working capital requirements are estimated at \$608,619, which is equivalent to two months of third year expenses. The applicant will meet the working capital requirement via the HRSA NAP grant award approved at \$650,000 per year for the three-year project period starting June 1, 2015 through May 31, 2018. The applicant has submitted the HRSA Notice of Award dated May 8, 2015, confirming receipt of HRSA NAP funding for this project for Year One, and the recommended future support of \$650,000 per year for Year Two and Year Three. BFA Attachment A is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$709,851.

The submitted budget indicates an excess of revenues over expenses of \$12,960 and \$43,229 during the first and third years, respectively. Revenues are based on current reimbursement rates for diagnostic and treatment centers. The submitted budget appears reasonable.

Subject to the noted contingency, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A 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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 2882 West 15th Street, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

152015 B

FACILITY/APPLICANT:

Community Health Initiatives, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of the executed Certificate of Incorporation of Community Health Initiatives, Inc. acceptable to the Department. [CSL]
4. Submission of the Lease Agreement between 2882 West 15th Street LLC, (“Landlord”), and Community Health Initiatives Inc., the “tenant”, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in Bureau of Architecture and Engineering Review (BAER) Drawing Submission Guidelines DSG-05, prior to the applicant’s request for, and Department’s granting approval for the start of construction [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by January 15, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval to any changes to the start and completion dates. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 151269-B
**Schenectady Partners, LLC d/b/a Rotterdam-Schenectady
Dialysis Center**

Program: Diagnostic and Treatment Center **County:** Schenectady
Purpose: Establishment and Construction **Acknowledged:** June 9, 2015

Executive Summary

Description

Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center (the Center), an existing New York limited liability company, requests approval to establish and construct a 13-station Article 28 chronic renal dialysis center to be located at 1592-1594 State Street, Schenectady (Schenectady County), in 7,100 square feet of leased space. The Center will provide the following services: chronic renal dialysis, home hemodialysis training and support, and home peritoneal dialysis training and support.

The proposed members of the Center are: American Renal Associates, LLC (ARA) with 51% ownership interest, and Dr. Hani L. Shahata, a Board Certified Nephrologist, with 49% ownership interest. ARA is a subsidiary of American Renal Holdings, Inc. (ARH), a national provider of renal dialysis centers. ARH, a subsidiary of American Renal Associates Holding, Inc. (ARAH), owns and operates 154 dialysis clinics in 22 states and the District of Columbia. Attachment E provides an organizational chart of ARA.

ARA currently co-operates the following New York State (NYS) chronic renal dialysis centers:

- Mohawk Valley Dialysis Center, Inc. (opened 9/19/2012);
- Plattsburgh Associates, LLC d/b/a H.K. Freedman Renal Center (acquired 12/6/2013);
- Elizabethtown Center, LLC (acquired 4/1/2014);

- Plattsburgh Associates, LLC d/b/a Hastings Hemodialysis Center (acquired 8/1/2014); and
- Massena Center, LLC (acquired 1/1/2015).

Concurrently under review is CON 152025 in which Dr. Hani L. Shahata is seeking to purchase 19% stock ownership in Mohawk Valley Dialysis Center, Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary

This project will result in 13 net new chronic dialysis stations in Schenectady County. These stations will be adequate to meet the remaining unmet need in the County. The proposed facility's nutritional services and home dialysis training, as well as the proposed extended hours, will ensure that all residents have access to critical end stage renal disease treatment.

Program Summary

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

Financial Summary

Total project costs of \$1,616,687 will be met with \$150,000 from the members' equity (\$76,500 from ARA and \$73,500 from Dr. Hani L. Shahata), and an intercompany loan from ARA of \$1,466,687 at an interest rate of 5% for a five-year term.

Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$861,600	\$2,272,745
Expenses	<u>1,070,612</u>	<u>1,666,541</u>
Net Income	\$(209,012)	\$606,204

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 intercompany loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
7. Submission of the executed Articles of Organization of Schenectady Partners, LLC acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
7. Construction must start on or before January 1, 2016 and construction must be completed by April 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates.

Council Action Date

October 8, 2015

Need Analysis

Demographic Information

The population of Schenectady County in 2013 was 155,440. The population was 23.9% non-white and 15.4% over the age of 65. Those two demographics are the most at-risk for developing end stage renal disease.

	Schenectady County	New York State
Ages 65 and over:	15.4%	14.4%
Non-white:	23.9%	42.8%

Source: U.S. Census 2013

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations may treat fewer patients per year than do free-standing stations. Statewide, the majority of stations are free-standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.
- There are currently 36 free-standing chronic dialysis stations operating in Schenectady County and none in pipeline.
- Based upon DOH methodology, the 36 existing free standing stations in Schenectady County could treat a total of 162 patients annually.

Need Projections

	2014	2015	2019	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated ¹	Projected Residents Treated ²
	203	228	236	257
Free-standing Stations Needed	46	51	53	58
Existing Stations	36	36	36	36
Pipeline Stations	0	0	0	0
Total stations with Pipeline	36	36	36	36
With Approval of this CON	49	49	49	49
Unmet Need with Approval	(3)	2	17	22

¹Patient data is from 2014 and is projected out 5 years, assuming a 3% annual rate of increase.

²Resident data is from 2015 and is projected out 4 years, assuming a 3% annual rate of increase.

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. Patient and resident data are from IPRO.

The data presented above shows that with approval of this project Schenectady County will have excess capacity with regard to total patients treated. However, the chart below demonstrates that three counties contiguous to Schenectady County have a net unmet need for 11 dialysis stations, which will contribute to utilization of the added Schenectady County stations.

County	2014 Residents	Free Standing Stations Needed	Existing Stations	Unmet Need
Albany	421	94	81	13
Fulton	50	12	0	12
Montgomery	75	17	31	(14)
Saratoga	208	47	55	(8)
Schoharie	34	8	0	8
Total	788	178	167	11

Conclusion

This project will result in 13 net new chronic dialysis stations in Schenectady County. These stations will be adequate to meet the remaining unmet need in the County. The proposed facility's nutritional services and home dialysis training, as well as the proposed extended hours, will help ensure that all county residents have access to critical end stage renal disease treatment.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center seeks approval to establish and construct a thirteen station Article 28 chronic renal dialysis center at 1592-1594 State Street in Schenectady (Schenectady County).

Proposed Operator	Schenectady Partners, LLC
Doing Business As	Rotterdam-Schenectady Dialysis Center
Site Address	1592-1594 State Street Schenectady, NY (Schenectady County)
Approved Services	Chronic Renal Dialysis (13 Stations) and Home Hemodialysis Training & Support Home Peritoneal Dialysis Training & Support
Shifts/Hours/Schedule	Initially, the Center will be open Monday, Wednesday & Friday and, after the census has grown will be open Monday through Saturday 6:00 am to 5:00 pm
Staffing (1st Year / 3rd Year)	8.0 FTEs increasing by 1.5 FTEs by the third year of operation
Medical Director(s)	Hani L. Shahata, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Ellis Hospital 3.91 miles / 8 minutes

Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Percent</u>
American Renal Associates, LLC (ARA) American Renal Holdings, Inc. (100%)	51.0%
Hani L. Shahata, MD	49.0%

American Renal Associates is a subsidiary of American Renal Holdings, Inc. (ARH), a national provider of kidney dialysis services which owns and operates over 150 dialysis clinics treating nearly 9,000 patients in 23 states and the District of Columbia.

ARA currently co-operates the following New York State chronic renal dialysis centers:

- Mohawk Valley Dialysis Center, Inc. (opened 9/19/2012)
- Plattsburgh Associates, LLC d/b/a H.K. Freedman Renal Center (acquired 12/6/2013)
- Elizabethtown Center, LLC (acquired 4/1/2014)
- Plattsburgh Associates, LLC d/b/a Hastings Hemodialysis Center (acquired 8/1/2014) and
- Massena Center, LLC (acquired 1/1/2015)

Star Ratings of the New York facilities, and all other ARA-associated facilities are provided in HSP Attachment A - Dialysis Compare/STAR Ratings for ARA-affiliated facilities.

The Company's operating model is based on shared ownership of its facilities with nephrologists practicing in the area served by the clinic. Each clinic is maintained as a separate joint venture in which the ARH owns a controlling interest.

Dr. Shahata is a local physician, board-certified in Internal Medicine and Nephrology. He completed a Nephrology Fellowship at the Mount Sinai School of Medicine and is an attending physician at Champlain Valley Physicians Hospital. He has extensive experience in the care and treatment of dialysis patients in high risk communities. (Concurrently under review is CON 152025 in which Dr. Hani Shahata seeks approval to purchase 19% stock ownership in Mohawk Valley Dialysis Center, Inc.)

The Managers for Schenectady Partners, LLC will be:

<u>Name</u>	<u>Title/Position</u>
Joseph A. Carlucci	President/CEO of American Renal Assoc.
John McDonough	Executive VP/COO of American Renal Assoc.
Hani L. Shahata, MD	Physician/ Proposed Medical Director

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A

facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

As stated above, the Star Ratings of all ARA-associated facilities are provided in ***HSP Attachment A - Dialysis Compare/STAR Ratings for ARA-affiliated facilities.***

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Administrative Services Agreement

The applicant has submitted an executed administrative services agreement, the terms of which are summarized below:

Dated:	May 21, 2015
Facility:	Schenectady Partners, LLC
Contractor:	American Renal Management, LLC
Services Provided:	Ensure proper maintenance/repair of Dialysis Center Facility; Maintain all licenses, permits, certifications and approvals required; provide drafts of all necessary manuals, policies and procedures; Establish and supervise all administrative and accounting functions; Develop training programs for all personnel; recommend/analyze purchases and leases of equipment; Develop/maintain quality control and compliance programs; Prepare all cost reports and other reports for Medicare/Medicaid programs; Develop yearly budget; Prepare monthly and yearly financial statements; Select and administer financial and clinical information systems; Advise and assist in negotiating and maintaining contracts; Procure insurance policies; Develop human resource policy manual and oversight; Provide marketing services; Prepare all tax filings.
Term:	5 years – renewable for one additional 5-year term
Fee:	Annual Fee \$90,000 (\$7,500/month)

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the proposed site they will occupy, as summarized below:

Date:	June 12, 2015
Premises:	1592-1594 State Street, Schenectady, NY 12304-1513
Landlord:	Golden Gate Associates, LLC
Lessee:	Schenectady Partners, LLC
Term:	10 years with renewal option for two additional five-year periods.
Rental:	Years 1-5: \$80,230 annually (\$11.30/sq. ft.) Years 6-10: \$88,253 (\$12.43/sq. ft.)

The applicant has submitted an affidavit indicating that the lease is an arm's length agreement. The applicant has submitted a letter from a NYS licensed realtor who assessed multiple comparable sites and attested to the rent reasonableness of the lease.

Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of fixed and movable equipment, is estimated at \$1,616,687, further broken down as follows:

New Construction	\$968,085
Design Contingency	8,627
Construction Contingency	47,925
Fixed Equipment	176,000
Planning Consultant Fees	11,250
Architect/Engineering Fees	67,095
Movable Equipment	326,873
Application Fee	2,000
Processing Fee	<u>8,832</u>
Total Project Cost	\$1,616,687

Project costs are based on a construction start date of January 1, 2016, and a three-month construction period. The applicant's financing plan appears as follows:

Equity	\$150,000
Intercompany loan from ARA (5% interest, five-year term)	<u>\$1,466,687</u>
Total	\$1,616,687

Equity of \$150,000 will be provided from the proposed members as follows: \$76,500 from ARA and \$73,500 from Dr. Hani L Shahata. A letter of interest has been provided by ARA attesting to the intercompany loan terms noted above for the new construction and the acquisition of fixed and movable equipment.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three of operations, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicare Fee- For- Service	\$473,880	\$1,022,735
Commercial Fee- For- Service	<u>387,720</u>	<u>1,250,010</u>
Total Revenues:	\$861,600	\$2,272,745
Expenses:		
Operating	\$727,444	\$1,347,044
Capital	<u>343,168</u>	<u>319,497</u>
Total Expenses:	\$1,070,612	\$1,666,541

Net Income:	<u>\$(209,012)</u>	<u>\$606,204</u>
Utilization (Treatments):	2,154	5,682
Cost Per Treatment:	\$497.03	\$293.30

The applicant indicated that the first year loss is anticipated due to startup as the Center will initially be open only three days a week until patient census grows. Once fully operational, the Center will be open six days a week and the applicant anticipates providing 5,682 treatments by year three. Breakeven utilization is 73% or 4,166 treatments in year three.

Utilization broken down by payor source for years one and three are as follows:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicare Fee-For-Service	1934	89.8%	5,102	89.8%
Commercial Fee-For-Service	<u>220</u>	<u>10.2%</u>	<u>580</u>	<u>10.2%</u>
Total	2,154	100.0%	5,682	100.0%

Treatments broken down by category for years one and three are as follows:

<u>Treatment Category:</u>	<u>Year One</u>	<u>Year Three</u>
Chronic Renal Dialysis	1,812	5,033
Home Hemodialysis training and support	138	162
Home Peritoneal training and support	<u>204</u>	<u>487</u>
Total	2,154	5,682

Expense and utilization projections are based on a combination of ARA's historical experiences in operating end stage renal dialysis clinics, both nationally and in New York State, and Dr. Shahata's experience as a practicing physician for Capital Care Medical Group, a Nephrology practice located in Albany, NY, where Dr. Shahata maintains his private practice.

Capability and Feasibility

Project costs of \$1,616,687 will be met as follows: Equity of \$150,000 from the members (\$76,500 from American Renal Associates, LLC and \$73,500 from Dr. Shahata) and an intercompany loan for \$1,466,687 at an interest rate of 5% with a five-year term.

Working capital requirements are estimated at \$277,756 which is equivalent to two months of year three expenses. The members will provide \$193,100 via equity equivalent to their ownership percentages. ARA's equity portion is \$98,481 and will come from its existing operations. Dr. Shahata's equity portion is \$94,619 and will come from his personal net worth. The remaining working capital will be provided through an intercompany loan from ARA at an interest rate of 5% with a five-year term. A letter of interest has been provided by ARA for the proposed working capital financing.

BFA Attachment A is the net worth statement of the Dr. Han L. Shahata, which shows sufficient liquid resources to cover his portion of both equity requirements for this CON.

BFA Attachment B is the certified financial statements of ARH for the years ended December 31, 2014 and 2013. As shown, ARH maintained positive working capital, net income and net assets for the period and has sufficient liquid assets to cover the equity requirements and both intercompany loans associated with this CON.

BFA Attachment C is the pro forma balance sheet of Schenectady Partners, LLC as of the first day of operations, which indicates that operations will begin with a positive members' equity of \$343,100.

The submitted budget projects a net profit (loss) of (\$209,012) and \$216,882 during the first and third years, respectively. Revenues reflect prevailing reimbursement methodologies. The first year loss is due to startup as the Center's patient census grows. ARA will provide additional funding, if necessary, to fund any losses. The budget appears reasonable.

BFA Attachment D is a financial summary of ARA's NYS affiliated dialysis centers as of December 31, 2014, which shows that the entities acquired prior to 2014 generated positive working capital and net asset positions, and had positive net income. The two entities acquired during 2014 show negative work capital attributable to startup costs. The applicant notes that ARA provided the facilities with needed working capital funds. Data is not available for Massena Center, LLC as the facility was newly acquired in 2015.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

HSP Attachment A	Dialysis Compare/STAR Ratings for ARA-affiliated facilities
BFA Attachment A	Net Worth Statement of Dr. Hani L. Shahata
BFA Attachment B	Certified Financial Statements of American Renal Holdings Inc. and Subsidiaries for 2013-2014
BFA Attachment C	Pro-Forma Balance Sheet of Schenectady Partners, LLC
BFA Attachment D	2014 Financial Summary of ARA Affiliated NYS Dialysis
BFA Attachment E	Organizational Chart
BPN Attachment A	Map

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a 13-station chronic renal dialysis center to be located at 1592-1594 State Street, Schenectady, 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:

151269 B

FACILITY/APPLICANT:

Schenectady Partner, LLC
d/b/a Rotterdam-Schenectady Dialysis Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed intercompany loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
7. Submission of the executed Articles of Organization of Schenectady Partners, LLC acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
7. Construction must start on or before January 1, 2016 and construction must be completed by April 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates.

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 # 151298-E
Pelham Parkway Dialysis Center**

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment **Acknowledged:** July 8, 2015

Executive Summary

Description

IHS of New York, Inc., an existing New York corporation whose sole member is Nelson R. Shaller, operates an Article 28 freestanding dialysis center with one extension clinic: Pelham Parkway Dialysis (25 stations) located at 1400 Pelham Parkway South, Bronx, NY (main clinic site); and Queens Dialysis at South Flushing (25 stations) located at 71-12 Park Avenue, Flushing, NY (extension clinic site). IHS of New York, Inc. requests approval for the transfer of 100% ownership (200 issued and outstanding shares) to the corporate parent company, IHS Dialysis, Inc., a Florida corporation whose sole member is Nelson R. Shaller, via a Contribution Agreement. There will be no change in services provided and all policies and procedures, staffing, and referral relationships will continue uninterrupted.

Mr. Shaller was the owner of 100% of the issued and outstanding shares of IHS of New York Inc. until, in an effort to obtain certain tax savings and assist in tax compliance, he transferred all of his shares via a Contribution Agreement to the corporate parent company, IHS Dialysis, Inc., a Florida corporation of which Mr. Shaller is also the sole member.

In order to comply with Section 2801-a(4)(c) of the New York State Public Health Law, the applicant now seeks the Public Health and Health Planning Council's approval for the Contribution Agreement between Mr. Shaller and IHS Dialysis, Inc.

IHS Dialysis, Inc. has a 100% ownership interests in the following entities: IHS of Massachusetts, LLC; IHS of Georgia, LLC; IHS of Tennessee, LLC; IHS of New Jersey, LLC; IHS of South Florida, LLC; and IHS of New Hampshire, LLC. Presently, only IHS of Massachusetts, LLC is an operating entity, operating two end stage renal dialysis facilities in Massachusetts.

Related requests have been submitted for the transfer of ownership of the main site to USRC Pelham, LLC d/b/a U.S. Renal Care Pelham Parkway Dialysis (CON #151070), and the transfer of ownership of the extension clinic to USRC South Flushing, LLC d/b/a U.S. Renal Care South Flushing Dialysis (CON #151072). These two applications are currently under Department review for subsequent presentation to the Public Health and Health Planning Council.

**OPCHSM Recommendation
Contingent Approval**

Need Summary
The proposed transfer of ownership will not result in any changes in services being provided.

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

Financial Summary

There are no project costs associated with this application.

Nelson R. Shaller is the owner of all issued and outstanding shares of stock of IHS of New York, Inc. and of IHS Dialysis, Inc. Per this CON application, Mr. Shaller proposes to contribute 100% of his shares in IHS of New York, Inc. to IHS Dialysis, Inc., without any payment for this contribution.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the bylaws of IHS Dialysis Inc., acceptable to the Department. [CSL]

Approval conditional upon:

1. Submission of documentation of the applicant's contribution of shares of stock in IHS of New York, Inc. to IHS Dialysis, Inc, acceptable to the Department. [CSL]
2. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 8, 2015

Need Analysis

Background

The primary service area for the facility is Bronx County, which had a population estimate of 1,438,159 in 2014. The percentage of the population aged 65 and over was 11.1%. The nonwhite population percentage was 54.2%, which is well above the statewide average of 29.1%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Bronx County and New York State are listed below.

Ages 65 and Over:	11.1%	State Average:	14.4%
Nonwhite:	54.2%	State Average:	29.1%

Source: U.S. Census 2015

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station $[(2.5 \times 6) \times 52 \text{ weeks}] = 780$ treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station $[(2 \times 6) \times 52 \text{ weeks}] = 624$ treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 480 free standing chronic dialysis stations operating in Bronx County and 104 in pipeline.
- Based upon DOH methodology, the 480 existing free standing stations in Bronx County could treat a total of 2,160 patients annually. Including the 104 additional pipeline stations, the county could treat a total of 2,628 patients annually.

Projected Need

	2014		2019	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	2,984	3,141	3,460	3,642
Free Standing Stations Needed	664	698	769	810
Existing Stations	480	480	480	480
Total Stations (Including Pipeline)	584	584	584	584
Total stations w/Approval of this CON	584	584	584	584
Unmet Need With Approval	80	114	185	226

**Based upon an estimate of a three percent annual increase.*

The data in the first row, "Free Standing Stations Needed," is from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting total stations w/approval of this CON & pipeline from free standing stations needed. "Total Patients Treated" is from IPRO data from 2014.

Conclusion

The 480 stations in Bronx County serve a population of 1,438,159 residents. There remains an unmet need of 114 stations for the 3,141 residents that need treatment. The retention of this facility will help maintain access to dialysis services in the area.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

IHS of New York, Inc., an existing New York corporation whose sole member was Nelson Shaller, operates an Article 28 end stage renal dialysis centers with one extension clinic: Pelham Parkway Dialysis Center (main site, 25 stations), located at 1400 Pelham Parkway in the Bronx (Bronx County) and Queens Dialysis at South Flushing (extension site, 25 stations), located at 71-12 Park Avenue in Flushing (Queens County).

Mr. Shaller was the owner of 100% of the issued and outstanding shares of IHS of New York Inc. until, in an effort to obtain certain tax savings and assist in tax compliance, he transferred all of his shares via a Contribution Agreement to the corporate parent company, IHS Dialysis, Inc., a Florida corporation of which Mr. Shaller is also the sole member.

In order to comply with Section 2801-a(4)(c) of the New York State Public Health Law, the applicant now seeks the Public Health and Health Planning Council's approval for the Contribution Agreement between Mr. Shaller and IHS Dialysis, Inc.

IHS Dialysis, Inc. is also the 100% owner of the interests in the following entities: IHS of Massachusetts, LLC, IHS of Georgia, LLC, IHS of Tennessee, LLC, IHS of New Jersey, LLC, IHS of South Florida, LLC, and IHS of New Hampshire, LLC. (Currently, only IHS of Massachusetts, LLC is an operating entity).

Character and Competence

As stated above, the sole member of IHS Dialysis, Inc. is Nelson R. Shaller.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, 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.

On September 16, 2015, the Department issued a Stipulation and Order and a \$2,000 fine to IHS of New York, Inc. as operator of Pelham Parkway Dialysis Center for violations of Article 28 of the Public Health

Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR). As detailed in a Statement of Deficiencies issued in July 2015, the Department discovered that, on or about May 27, 2015, Nelson Shaller, the owner of 100% of shares of stock in IHS of New York, Inc., had transferred all of the shares he owned to another corporation (in which he is also 100% owner) without prior approval from the Public Health and Health Planning Council. The Department directed that an appropriate Certificate of Need Application be filed and that documentation be submitted (within Department specified time frames) to complete the application process. In addition to the monetary penalty, the Department has directed IHS/Mr. Shaller to submit quarterly reports for a one year period which detail the steps taken to implement the corrective action plan and to access their effectiveness.

Star Ratings - Dialysis Facility Compare (DFC)

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

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

The applicant disclosed that IHS Dialysis, Inc. operates the following dialysis centers:

Facility Name	Address	Star Rating
Pelham Parkway Dialysis Center	1400 Pelham Parkway South Bldg. 5 Dialysis Center Bronx, NY 10461	★★★★★●
IHS Queens Dialysis d/b/a Queens Dialysis at South Flushing	71-12 Park Avenue Flushing, NY 11365	★★★★★●
Advanced Directions Renal Care Center	1250 Hancock St., Ste. 204-N-B Quincy, MA 02169	No Star Data Available
Quincy Center Dialysis	1250 Hancock St., Ste. 110N Quincy, MA 02169	★★★●●●
Advanced Kidney Therapies	3200 Cobb Galleria Pkwy Atlanta, GA 30339	★●●●●

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Contribution Agreement

The applicant has submitted an executed contribution agreement, which is summarized as follows:

Date:	December 31, 2013
From (Contributor):	Nelson R. Shaller, IHS of New York, Inc.
To (Corporate Parent Company):	IHS Dialysis, Inc.
Contribution:	All of the issued and outstanding shares of stock of IHS of New York, Inc.
Purchase Price:	None

There is no consideration paid to Nelson R Shaller for this contribution.

Operating Budget

There are no operational expenses associated with the proposed transaction.

Capability and Feasibility

There are no issues of capability or feasibility, as there are no project costs or budgets associated with this application.

As previously mentioned, this is a stock transfer in which IHS Dialysis, Inc. will continue providing services at present operational levels with no change in operational revenues or expenses due to the transaction. BFA Attachment B is the internal financial statements of IHS Dialysis, Inc. as of December 31, 2014. As shown, the entity had a positive working capital position, positive net asset position and positive operating surpluses.

It appears the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

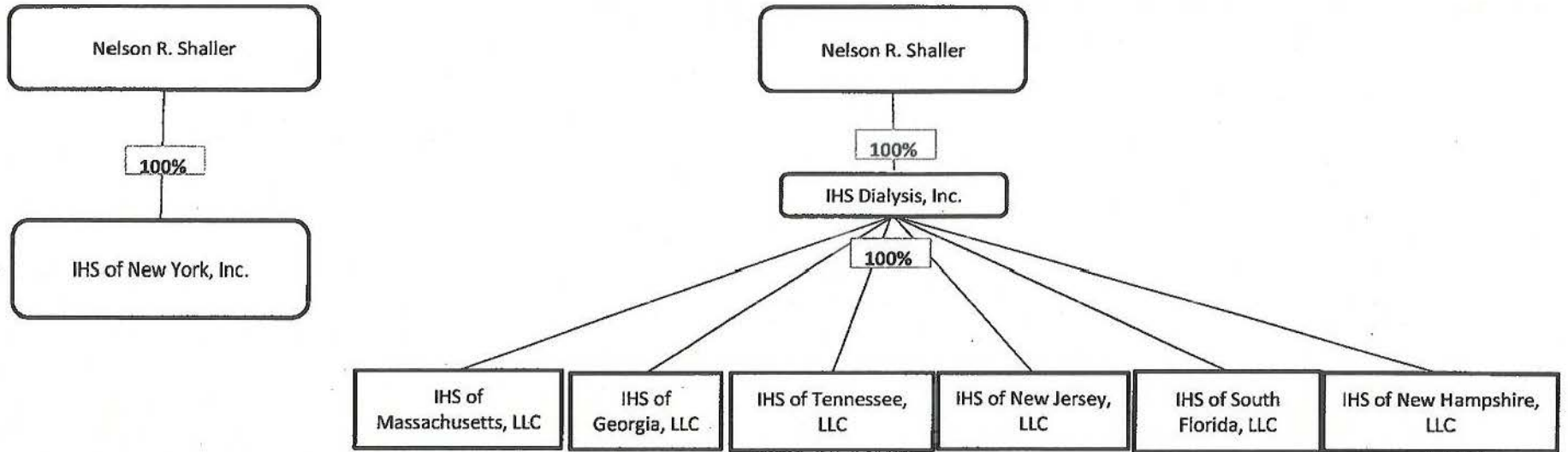
From a financial perspective, contingent approval is recommended.

Attachments

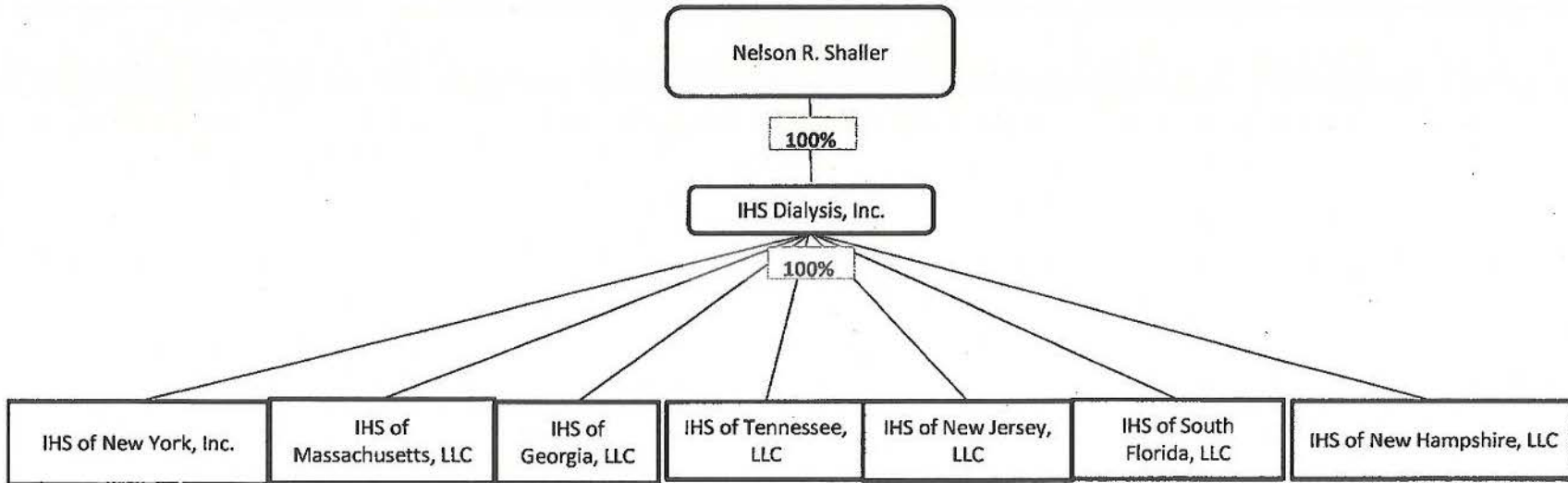
BFA Attachment A Ownership before and after the proposed transaction.

BFA Attachment B 2014 - IHS Dialysis Inc. Consolidated Internal Financial Statements.

BEFORE Restructuring



AFTER Restructuring



IHS Dialysis, Inc - Consolidated
Balance Sheet
December 31, 2014

	<u>December 2014</u>
Cash	\$ 590,190
Net Accounts Receivable	3,339,814
Other Current Assets	4,011,830
Property, plant & equipment	7,305,337
Less: Accumulated depreciation	<u>(4,649,230)</u>
Net PP&E	2,656,107
TOTAL ASSETS	<u>\$ 10,597,941</u>
Accounts Payable	1,365,426
Accrued Payroll Liabilities	504,857
Other Accrued Liabilities	<u>5,131,139</u>
TOTAL LIABILITIES	7,001,422
Owners' Equity	3,596,519
Total Liabilities & Equity	<u>\$ 10,597,941</u>

IHS Dialysis, Inc - Consolidated
Income Statement
For the Twelve Months Ended December 31, 2014

	<u>YTD</u> <u>12/31/14</u>
Revenue:	
Chronic	17,506,079
Home	2,598,841
Total treatment revenue	<u>20,104,920</u>
Pharmaceutical & other ancillary	<u>3,331,939</u>
Total gross revenue	<u>23,436,859</u>
Revenue adjustments:	
Write offs & bad debts	(1,042,596)
Contractual allowances	<u>(245,545)</u>
Total revenue adjustments	<u>(1,288,141)</u>
Net revenue	22,148,718
Expenses:	
Salaries, wages & benefits:	
Variable salaries & wages	4,032,820
Fixed salaries & wages	3,528,176
Biomed salaries & wages	288,587
Contract	<u>179,741</u>
Total salaries & wages	<u>8,029,324</u>
Benefits & taxes	<u>1,601,225</u>
Total salaries, wages & benefits	9,630,550
Pharmaceutical expenses	3,578,874
Other medical supplies	2,535,838

IHS Dialysis, Inc - Consolidated
Income Statement
For the Twelve Months Ended December 31, 2014

	YTD <u>12/31/14</u>
Other clinic operating expenses:	
Building rent	1,190,127
Depreciation	589,075
Machine maint & repair	8,952
Facility maint & repair	123,512
Utilities	391,342
Office supplies/minor equip	74,218
Travel & entertainment	116,273
Medical director fees	758,302
Professional fees	1,310,234
Taxes & licenses	48,408
Insurance	173,623
Other	<u>1,474,933</u>
Total other clinic operating expenses	<u>6,259,000</u>
Total operating expenses	22,004,262
Operating income (loss)	<u>144,457</u>
Income taxes	<u>20,500</u>
Net Income (Loss)	<u><u>\$123,957</u></u>

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 100% ownership interest to a new corporate parent, 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:

151298 E

Pelham Parkway Dialysis Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the bylaws of IHS Dialysis Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. Submission of documentation of the applicant's contribution of shares of stock in IHS of New York, Inc. to IHS Dialysis, Inc, acceptable to the Department. [CSL]
2. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151308-B
Brooklyn Gardens Dialysis Center**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** June 23, 2015

Executive Summary

Description

Brooklyn Gardens Dialysis Center, LLC (Brooklyn Gardens), a newly formed New York limited liability company, requests approval for the establishment and construction of a 15-station Article 28 end stage renal dialysis (ESRD) facility to be located at Brooklyn Gardens Nursing and Rehabilitation Center, a 240-bed, not-for-profit, Article 28 residential health care facility (RHCF) located at 835 Herkimer Street, Brooklyn (Kings County). The proposed dialysis center will be located in 8,005 sq. ft. of designated space on the first (1st) floor of the RHCF. Patients who are not residents of the RHCF will have access through a dedicated entrance located near the main entry of the nursing home.

The proposed members of Brooklyn Gardens Dialysis Center, LLC are Michael Melnicke with 75% membership interest and Leopold Freidman with 25%. On August 31, 2015, the members of Brooklyn Gardens entered into a licensing agreement with the operator of the RHCF, Providence Care, Inc. (Providence Care), for site control of the clinic. Under the terms of the licensing agreement, Providence Care will construct and equip the facility, inclusive of all required equipment necessary to operate an Article 28 ESRD facility, and license the space and equipment to Brooklyn Gardens. The applicant has submitted an affidavit attesting to a relationship with Providence Care

in that the members of Brooklyn Gardens are Board Members of the nursing home facility.

OPCHSM Recommendation
Contingent Approval

Need Summary

Kings County has a large and diverse population that is 64% non-white, and has a significant unmet need for dialysis stations. Currently there is a need for 164 dialysis stations in the county; this project would reduce the unmet need to 149.

Program Summary

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

Financial Summary

The total project cost associated with this project is \$77,413 and will be funded via \$77,413 cash equity from the proposed members of Brooklyn Gardens Dialysis Center, LLC.

Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,579,878	\$4,817,068
Expenses	\$1,789,190	\$3,508,667
Net Income	(\$209,312)	\$1,308,401

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 an executed consulting agreement, acceptable to the Department of Health. [BFA]
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 Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
6. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
7. Submission of a photocopy of the applicant's executed Consulting Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by April 30, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

October 8, 2015

Need Analysis

Background

The population of Kings County in 2013 was 2,602,373. The population was 64.0% non-white and 12.0% over the age of 65. Those two demographics are the most at-risk for developing end stage renal disease.

	Kings County	New York State
Ages 65 and over:	12.0%	14.4%
Non-white:	64.0%	42.8%

Source: U.S. Census 2013

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations may treat fewer patients per year than do free-standing stations. Statewide, the majority of stations are free-standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free-standing stations.
- There are currently 718 free-standing chronic dialysis stations operating in Kings County and 195 in pipeline for a total of 913.
- Based upon DOH methodology, the 718 existing free standing stations in Kings County could treat a total of 3,231 patients annually. Including the additional 195 pipeline stations, the county could treat a total of 4,108 patients annually.

Need Projections

	2014	2015	2019	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated ¹	Projected Residents Treated ²
	4,318	4,846	5,006	5,455
Free-standing Stations Needed	960	1,077	1,113	1,213
Existing Stations	718	718	718	718
Pipeline Stations	195	195	195	195
Total stations with Pipeline	913	913	913	913
With Approval of this CON	928	928	928	928
Unmet Need with Approval	32	149	153	253

¹Patient data is from 2014 and is projected out 5 years, assuming a 3% annual rate of increase.

²Resident data is from 2015 and is projected out 4 years, assuming a 3% annual rate of increase.

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information

System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. Patient and resident data are from IPRO.

The data presented above illustrates a clear need for dialysis stations in Kings County. More residents of the county receive treatment than patients; this indicates residents are leaving the county for treatment, which puts a burden on dialysis facilities in nearby counties and subjects patients to increased travel times.

Conclusion

This project will increase the number of approved dialysis stations in Kings County to 928. Upon approval, there will remain an unmet need for 149 dialysis stations in the County. This project should increase the number of residents of Kings County who receive dialysis treatment within the county; this will lower utilization in neighboring counties, improving access to care for residents of the New York City planning region.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Brooklyn Gardens Dialysis Center, LLC seeks approval to establish and construct a new 15-station End Stage Renal Disease facility. The proposed facility will be located in a designated space at Brooklyn Gardens Nursing and Rehabilitation Center, an existing 240-bed residential health care facility (RHCF) located at 835 Herkimer Street, Brooklyn, (Kings County), 11223.

Proposed Operator	Brooklyn Gardens Dialysis Center, LLC
Doing Business As	Brooklyn Gardens Dialysis Center
Site Address	835 Herkimer Street Brooklyn (Kings County)
Approved Services	Chronic Renal Dialysis (15 Stations)
Shifts/Hours/Schedule	Will operate at least 12 hours per day, 6 days per week, with additional hours as indicated by demand.
Staffing (1st Year / 3rd Year)	11.5 FTEs / 23.6 FTEs
Medical Director(s)	William Shilkoff, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Brooklyn Hospital 3.2 miles / 14 minutes

Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Percent</u>
Michael Melnicke, <i>manager</i>	75.0%
Leo Friedman	25.0%

The proposed members have extensive experience operating health related facilities and associated programs, including long-term care services and nursing home based dialysis programs. Mr. Melnicke, a licensed Nursing Home Administrator for the past 34 years, has owned nursing homes for the past 25 years. He is the Department-appointed receiver of three nursing homes (Park Nursing Home, Rockaway Care Center and Caton Park Nursing Home). Mr. Friedman is the Chief Executive Officer of a Nurse Staffing Agency and a part-owner/operator of a licensed home care services agency (LHCSA). Since January 2013, he has been the Receiver/Operator of Peninsula Nursing and Rehabilitation Center.

The applicant has identified William Shilkoff, MD to serve as the Medical Director of the proposed center. Dr. Shilkoff is board-certified in Internal Medicine and Nephrology with over 18 years of experience in the care and treatment of dialysis patients. Since 1997, Dr, Shilkoff has been employed by the Brooklyn Hospital Center. As an Attending Nephrologist, he has responsibility for inpatient and outpatient nephrology consults and follow-up as well as management of chronic and acute dialysis patients. Additionally, Dr. Shilkoff was involved in the development of a hemodialysis center from scratch (the Brooklyn Dialysis Center) which is now fully operational.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

On April 18, 2009, a Stipulation and Order and \$2,000 fine was issued to Regency Extended Care Center for issues related to Quality of Care.

On June 8, 2009, a Stipulation and Order and \$6,000 fine was issued to Park Nursing Home for issues related to Quality of Care, Medical Services- Physicians Services, and Pharmacy Services.

On December 16, 2011, and again on January 6, 2012, a Stipulation and Order and fines of \$8,000 and \$10,000, respectively, was issued to Hempstead Park Nursing Home for issues related to Mistreatment/Neglect Policy and Procedures; Investigation/Reporting Allegations; Medically Related Social Services; and Administration.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Cost and Financing

The total project costs are broken down as follows:

Consultant Fees	\$75,000
Application Fees	\$2,000
Additional Processing Fees	<u>\$413</u>
Total Project Cost	\$77,413

The applicant will finance the project via cash equity of \$77,413.

License Agreement

The applicant has submitted an executed license agreement for the space and moveable equipment of the facility, which is summarized below:

Date:	August 31, 2015
Premises:	8,005 sq. ft. on the 1st floor of Brooklyn Gardens Nursing and Rehabilitation Center located at 835 Herkimer Street, Brooklyn, New York
Movable Equipment:	Dialysis machines and other equipment needed for the operation of a 15-station Article 28 ESRD facility
Licensor:	Providence Care, Inc.
Licensee:	Brooklyn Gardens Dialysis Center, LLC
Term:	10 Years
Licensing Fee: (Rental)	Year 1: \$425,160 (\$35,430/month, \$53.11/sq. ft.) Year 2: \$430,920 (\$35,910/month, \$53.83/sq. ft.) Year 3: \$436,853 (\$36,404/month, \$54.57/sq. ft.) Years 4-10: 3% annual increase on prior year's fee.

The applicant indicated that the license arrangement will be non-arm's length as the applicant members are on the Board of the nursing home facility. The applicant submitted letters from two NYS licensed realtors attesting to the rent reasonableness of the clinic space. As the landlord will provide the leasehold improvements and movable equipment necessary for the operations of the business, the proposed per sq. ft. rental rate is reasonable.

Consulting Agreement

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

Date:	To Be Determined
Facility:	Brooklyn Gardens Dialysis Center, LLC
Consultant:	Geripro Dialysis Consultants, LLC
Services Provided:	Administrative/Quality Management Services
Term:	two five-year terms with one automatic two-year renewal
Fee:	Annual Fee of \$120,000 (payable at \$10,000 per month)

The applicant has indicated that there is only a business contractual relationship between Geripro Dialysis Consultants, LLC and Brooklyn Gardens Dialysis Center, LLC.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$137,920	\$413,759
Medicare Managed Care	\$1,310,400	\$4,010,217
Commercial Managed Care	\$163,800	\$491,400
Bad Debt	<u>(\$32,242)</u>	<u>(\$98,308)</u>
Total Revenues	\$1,579,878	\$4,817,068
Expenses:		
Operating	\$1,347,453	\$3,067,613
Capital	<u>\$441,737</u>	<u>\$441,054</u>
Total Expenses	\$1,789,190	\$3,508,667
Net Income/(Loss)	(\$209,312)	\$1,308,401
Utilization (Treatments)	5,616	16,848
Cost Per Treatment	\$318.59	\$208.25

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid Managed Care	468	8.33%	1,404	8.33%
Medicare Managed Care	4,680	83.34%	14,040	83.34%
Commercial Managed Care	468	8.33%	1,404	8.33%
Total	5,616	100.0%	16,848	100.0%

The following is noted with respect to the submitted budget:

- Revenues are based upon review of other area ESRD providers and their average reimbursement rate for the various payor sources.
- Expense assumptions are based upon industry standards for operating a dialysis center.
- Utilization assumptions are based on the historical experience of other dialysis facilities in the area. Kings County currently has a significant unmet need for dialysis stations. The center anticipates that it will operate twelve hours per day and six days per week, with additional hours as indicated by demand.

The budget is reasonable.

Capability and Feasibility

The total project cost of \$77,413 will be provided by the proposed members' of Brooklyn Gardens Dialysis Center, LLC.

Working capital requirements are estimated at \$584,778, which is equivalent to two months of year three expenses. The applicant will finance \$292,389 at an interest rate of 6.5% for a three-year term. A letter of interest has been provided by Hudson Valley Bank for the working capital financing. The remaining \$292,389 will be provided as equity from the proposed members' of Brooklyn Gardens Dialysis Center, LLC.

BFA Attachment A is the personal net worth statement of the proposed members of Brooklyn Gardens Dialysis Center, LLC, which indicates that the proposed members have sufficient liquid resources to cover the both of the equity requirements.

BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates they will begin with positive members' equity of \$292,389.

The submitted budget indicates a net loss of \$209,312 in year one and a net income of \$1,308,401 in year three. Revenues are based on the current reimbursement methodologies for dialysis services. The submitted budget is reasonable. The first year loss will be covered by the proposed operators via equity.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

Recommendation

From a financial perspective, contingent is recommended.

Attachments

- BFA Attachment A Net Worth Statement for members of Brooklyn Gardens Dialysis Center, LLC
- BFA Attachment B Pro-Forma Balance Sheet of Brooklyn Gardens Dialysis 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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a 15-station chronic renal dialysis center to be located in Brooklyn Gardens Nursing and Rehabilitation Center at 835 Herkimer Street, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

151308 B

Brooklyn Gardens Dialysis Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed consulting agreement, acceptable to the Department of Health. [BFA]
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 Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
6. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
7. Submission of a photocopy of the applicant's executed Consulting Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by April 30, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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 # 152025-E
Mohawk Valley Dialysis Center**

Program: Diagnostic and Treatment Center **County:** Montgomery
Purpose: Establishment **Acknowledged:** July 15, 2015

Executive Summary

Description

Mohawk Valley Dialysis Center, Inc., an existing proprietary business corporation that operates a 15-station Article 28 chronic renal dialysis center located at 115 Towne Square Drive, Amsterdam (Montgomery County), requests approval for a net transfer of 19% stock ownership from current member, American Renal Associates, to Dr. Hani Shahata, a Board Certified Nephrologist. Membership of the operation before and after the requested change are as follows:

Current:

American Renal Associates, LLC	51%
Amsterdam Nephrology Holdings, LLC	49%

Proposed:

American Renal Associates, LLC	51%
Amsterdam Nephrology Holdings, LLC	30%
Dr. Hani Shahata	19%

There will be no changes to services as a result of this transaction.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no Need recommendation for this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

The total purchase price of \$741,000 will be met with equity from Dr. Hani Shahata.

Incremental	Revenues:	\$1,288,953
Budget:	Expenses:	<u>442,342</u>
	Net Income:	\$846,611

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the applicant's Shareholder's Agreement, dated February 22, 2011, amending Article V, Section 5.9, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's by-laws., amending Article II, Section 8, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Medical Director Agreement, amending Section 11(a), acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed Shareholder Counterpart Signature page, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation that the applicant's Stock Purchase Agreement, dated July 2, 2015, was properly executed, acceptable to the Department. [CSL]

Council Action Date

October 8, 2015

Program Analysis

Project Proposal

Mohawk Valley Dialysis Center, Inc., an existing 15-station chronic renal dialysis center located at 115 Amsterdam Town Square, Route 30 in Amsterdam (Montgomery County), requests approval for the net transfer of 19% of stock ownership from American Renal Associates to Dr. Hani Shahata.

This transfer of membership interest requires three transactions: In the first transaction, 24.5% membership interest will transfer from Amsterdam Nephrology Holdings (ANH) to American Renal Associates (ARA). In Transactions #2 a 5.5% membership interest will transfer back from ARA to ANH. Simultaneously, in Transaction #3, ARA will transfer 19% membership interest to Dr. Hani Shahata.

There are no programmatic changes as a result of this request.

Character and Competence

Following the transactions noted above, the resulting ownership composition will be as follows:

Member Name	Interest
American Renal Associates, LLC [American Renal Holdings, Inc. -100%]	51.0%
Amsterdam Nephrology Holdings, LLC [Soo Gil Lee, M.D. – 100%]	30.0%
*Hani Shahata, M.D.	19.0%

**Subject to Character and Competence Review this project.*

American Renal Holdings, Inc. (ARH) is a national provider of dialysis services that owns and operates over 170 dialysis clinics in more than 20 states. The company's operating model is based on shared ownership of its facilities with nephrologists in the area served by the clinic. Each clinic is maintained with a separate joint venture in which the ARH owns a controlling interest. Amsterdam Nephrology Holdings is wholly owned by Soo Gil Lee, M.D.

The proposed new member, Dr. Shahata, who was subject to review, is a local practicing physician who is board certified in Internal Medicine with sub-certification in Nephrology.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Stock Purchase Agreement

An executed stock purchase agreement has been submitted by the applicant summarized below:

Date:	July 2, 2015
Seller:	American Renal Associates, LLC
Buyer:	Dr. Hani Shahata
Purchase Price:	\$741,000 (\$39,000/share) for 19 shares.
Payment:	Cash upon closing.

Assignment and Assumption of Lease

An executed assignment and assumption of lease has been submitted by the applicant, as summarized below:

Date:	May 22, 2015
Assignor:	Mohawk Valley Property Holdings, LLC
Assignee:	Mohawk Valley Dialysis Center, Inc.
Assignment:	All rights, title, interest in and to the lease and Assignor's rights are transferred to assignee.

Operating Budgets

The applicant has submitted an incremental operating budget in 2015 dollars for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$591,211	\$1,288,953
Expenses:		
Operating	\$215,201	\$512,098
Capital*	(26,667)	(69,757)
Total Expenses:	\$188,534	\$442,342
Net Income:	\$402,677	\$846,611
Utilization(treatments)	792	2,341
Cost per treatment	\$238.05	\$188.95

*The decrease in capital expenditures is due to the pay down of the Mohawk Valley Dialysis Center's term loan.

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

	<u>Years One & Three</u>
Commercial Fee-for-Service	6.4%
Commercial Managed Care	1.6%
Medicare Fee-for-Service	89.3%
Medicaid Fee-for-Service	2.7%

Expenses and utilization are based on the historical experience of Mohawk Valley Dialysis Center.

Capability and Feasibility

There are no project costs associated with this application.

The stock purchase price of \$741,000 will be met with equity from Dr. Hani Shahata. BFA Attachment A shows sufficient equity for Dr. Shahata.

The submitted incremental budget indicates net incomes of \$402,677 and \$846,611 for the first and thirds years, respectively. Revenue is based on Mohawk Valley Dialysis's experience in the operation of the dialysis center and on current reimbursement rates. The budget appears reasonable. BFA Attachment E is the pro forma balance sheet of Mohawk Valley Dialysis Center, LLC. As shown, the facility will initiate operation with \$787,768 net equity.

BFA Attachment B, a financial summary of American Renal Holdings, Inc. and its subsidiaries, indicates that the corporation has maintained positive working capital, stockholders' equity and net income of \$29,224,000 and \$32,249,000 for 2014 and as of March 31, 2015, respectively. BFA Attachment C, a financial summary of Mohawk Valley Dialysis Center, indicates the corporation has maintained positive working capital and stockholder's equity and maintained a net income of \$216,113 as of March 31, 2015.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Financial Summary for Dr. Shahata
BFA Attachment B	Financial Summary- American Renal Holdings Inc. and Subsidiaries, 2014, and March 2015
BFA Attachment C	Financial Summary-Mohawk Valley Dialysis Center, 2014 and March 31, 2015
BFA Attachment D	Organizational Chart- Pre and Post stock transfer
BFA Attachment E	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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 19% stock ownership of an existing 15-station chronic renal dialysis center to one (1) new shareholder, and multiple transfer of ownership between two (2) 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:

152025 E

Mohawk Valley Dialysis Center

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the applicant's Shareholder's Agreement, dated February 22, 2011, amending Article V, Section 5.9, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's by-laws., amending Article II, Section 8, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Medical Director Agreement, amending Section 11(a), acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed Shareholder Counterpart Signature page, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation that the applicant's Stock Purchase Agreement, dated July 2, 2015, was properly executed, acceptable to the Department. [CSL]

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 # 151180-E
**ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and
 Nursing Center**

Program: Residential Health Care Facility
Purpose: Establishment

County: Rensselaer
Acknowledged: April 20, 2015

Executive Summary

Description

ECRNC, LLC, d/b/a Evergreen Commons Rehabilitation and Nursing Center (ECRNC), a New York limited liability company, requests approval to be established as the operator of NYMED Rensselaer, LLC, d/b/a Evergreen Commons (Evergreen Commons). Evergreen Commons is a 240-bed, proprietary, Article 28 residential health care facility (RHCF) located at 1070 Luther Road, East Greenbush (Rensselaer County). The RHCF is also certified for outpatient therapy services. The facility is currently operated by NYMED Rensselaer, LLC. There will be no change in services provided.

On February 1, 2015, Titterton Properties, LLC (real estate seller), NYMED Rensselaer, LLC (operations seller), 1070 Luther Road, LLC (real estate buyer) and ECRNC, LLC (operations buyer) entered into a Master Asset Purchase Agreement for the sale of the property and operations associated with Evergreen Commons. The purchase price for the operations and real estate is \$30,640,000 apportioned as follows: \$14,140,000 for operations and \$16,500,000 for real estate. ECRNC and 1070 Luther Road, LLC are separate, but related entities through common ownership as shown below. The applicant will lease the premises from 1070 Luther Road, LLC.

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

<u>Current Owner</u>	
NYMED Rensselaer, LLC	
<u>Members:</u>	<u>%</u>
Lewis H. Titterton	50.0%
Anthony Scalera	32.0%
Kathryn Romaguera	5.0%
Lois Bouren	13.0%
<u>Proposed Owner</u>	
ECRNC, LLC, d/b/a Evergreen Commons Rehabilitation and Nursing Center	
<u>Members:</u>	<u>%</u>
Efraim Steif	39.9%
Uri Koenig	60.0%
David Camerota	0.1%

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

<u>Current Owner</u>	
Titterton Properties, LLC	
<u>Member:</u>	<u>%</u>
Lewis H. Titterton	100%
<u>Proposed Owner</u>	
1070 Luther Road, LLC	
<u>Members:</u>	<u>%</u>
Efraim Steif	40.00%
Uri Koenig	60.00%

OPCHSM Recommendation
Contingent Approval

Need Summary

This application will not result in a change to beds or services. Evergreen Commons' occupancy was 96.6% in 2011, 95.5% in 2012 and 95.9% in 2013. For 2014 and thus far in 2015 occupancy averages to approximately 95.2% and 98.4%, respectively.

Program Summary

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

No changes in the program or physical environment are proposed in this application. The applicant will enter into an administrative services and consulting agreement.

Financial Summary

There are no project costs associated with this proposal. ECRNC will acquire the operating interest in the RHCF for \$14,140,000, and 1070 Luther Road, LLC will acquire the real property for \$16,500,000, for an overall total purchase price of \$30,640,000. The purchase price will be paid as follows: \$2,298,000 equity contribution from the members of 1070 Luther Road, LLC; a \$24,512,000 mortgage for 30 years at 5% interest rate; and a loan from NYMED Rensselaer, LLC for \$3,830,000 for 10 years at 8% interest rate.

The proposed Year One operating budget for the total facility operations (Inpatient and Outpatient) is as follows:

Budget:	
	<u>Year One</u>
Revenues	\$23,629,950
Expenses	<u>\$23,423,620</u>
Gain/(Loss)	\$206,330

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. (RNR)
4. Submission and review of an acceptable consulting and services agreement. [LTC]
5. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. (BFA)
6. Submission of an executed loan commitment from NYMED Rensselaer, LLC, acceptable to the Department of Health. (BFA)
7. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
8. Submission of the executed Operating Agreement of ECRNC, LLC., acceptable to the Department. [CSL]
9. Submission of the Lease Agreement between 1070 Luther Road LLC, the lessor, and ECRNC LLC, the lessee, acceptable to the Department. [CSL]
10. Submission of statement clarifying if the applicant intends to be managed by managers or members accompanied by the appropriate revisions to ECRNC, LLC's Operating Agreement or Articles of Organization as they conflict. [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
October 8, 2015

Need Analysis

Analysis

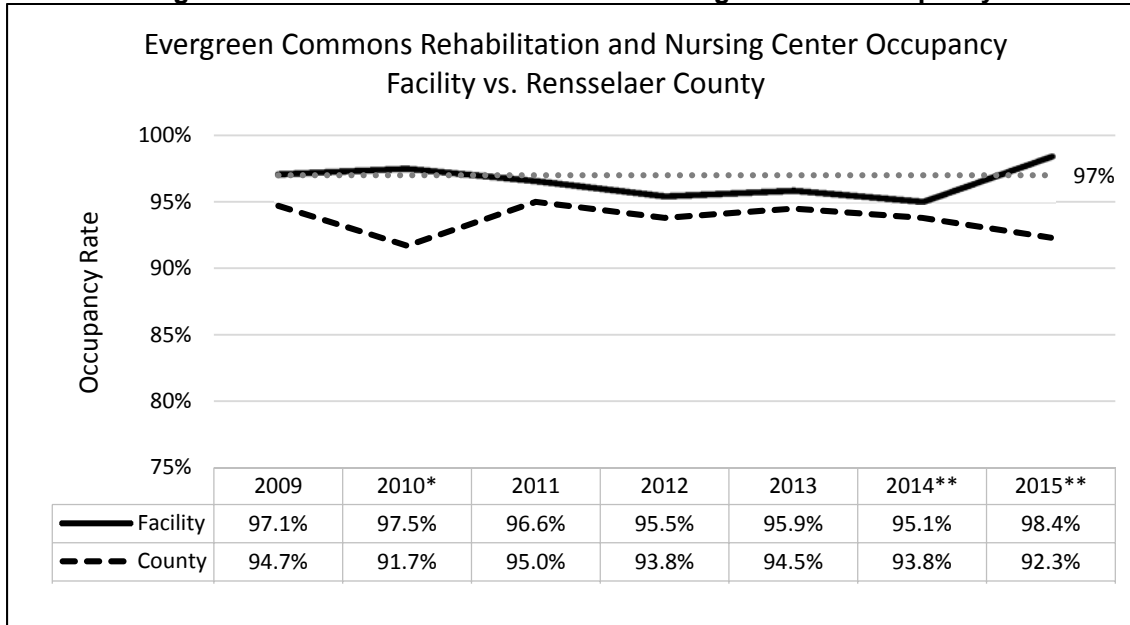
There is currently a surplus of 219 beds in Rensselaer County as indicated in Table 1 below:

Table 1: RHCN Need – Rensselaer County

2016 Projected Need	1,025
Current Beds	1,244
Beds Under Construction	0
Total Resources	1,244
Unmet Need	-219

The overall occupancy for Rensselaer County is 94.5%, as indicated in Chart 1 below:

Chart 1: Evergreen Commons Rehabilitation and Nursing Center's Occupancy Rates



*2010 County rate is an artifact of incomplete reporting

**unaudited; based on weekly census

Evergreen Commons' occupancy was 96.6% in 2011, 95.5% in 2012 and 95.9% in 2013. The facility's historic occupancy has been near or has surpassed the Department's planning optimum. For 2014 and thus far in 2015, occupancy averaged to approximately 95.2% and 98.4%, respectively.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Evergreen Commons' Medicaid admissions for 2012 and 2013 are 23.2% and 21.0%, respectively. This facility exceeded Rensselaer County's 75% Medicaid admission threshold rates in 2012 and 2013 of 12.2% and 12.8%, respectively.

Conclusion

Approval of this application will help preserve a needed source of RHCf care for the Rensselaer County community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Evergreen Commons	Evergreen Commons Rehabilitation and Nursing Center
Address	1070 Luther Road East Greenbush, NY 12061	Same
RHCF Capacity	240	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	NYMED Rensselaer LLC	ECRNC, LLC d/b/a Evergreen Commons Members: *Uri Koenig 60.00% *Efraim Steif 39.90% David Camerota <u>0.10%</u> 100.00% *Managing Members

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Bridgewater Center for Rehabilitation & Nursing	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing	12/2004 to present
Central Park Rehabilitation and Nursing Center	11/2008 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006
Chestnut Park Rehabilitation and Nursing	06/2011 to present
Cortland Park Rehabilitation and Nursing	06/2011 to present
Colonial Park Rehabilitation and Nursing	06/2011 to present
Highland Park Rehabilitation and Nursing &	06/2011 to present
Hudson Park Rehabilitation and Nursing	06/2011 to present
Vestal Park Rehabilitation and Nursing	06/2011 to present
Riverside Center for Rehabilitation and Nursing	03/2012 to present
Capstone Center for Rehabilitation and Nursing	03/2012 to present
Beechtree Center for Rehabilitation and Nursing	09/2013 to present
Folts Center for Rehabilitation and Nursing	10/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present

Diagnostic and Treatment Center:
Bridgewater Center for Dialysis 03/2012 to present

Adult Day Health Care:
Riverside Manor Adult Care (closed) 09/2009 to 07/2010

Adult Home:
The Pavillion at Claxton Manor (on Folts Campus) 10/2013 to present

Individual Background Review

Uri Koenig is a CPA in good standing and owner of JK Koenig & Co., an accounting firm located in Spring Valley, NY. He is a member of Upstate Services Group, LLC. Upstate Services Group is an administrative services organization providing administrative services to affiliated long term care facilities. Mr. Koenig discloses the following health facility interests:

Bridgewater Center for Rehabilitation & Nursing	08/2006 to present
Pine Valley Center for Rehabilitation and Nursing	01/2008 to present
Central Park Rehabilitation and Nursing Center	03/2012 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Chestnut Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Cortland Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Colonial Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Highland Park Rehabilitation and Nursing (Rec/Op)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Vestal Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Riverside Center for Rehabilitation and Nursing (Rec/Op)	03/2012 to present
Capstone Center for Rehabilitation and Nursing (Rec/Op)	03/2012 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
Beechtree Center for Rehabilitation and Nursing (Rec/Op)	09/2013 to present
Bridgewater Center for Dialysis	03/2012 to present

Receiverships:
Folts Center for Rehabilitation and Nursing 10/2013 to 02/13/2015
The Pavillion at Claxton Manor 10/2013 to 02/13/2015

Efraim Steif is a licensed Nursing Home Administrator in New York State. Mr. Steif is the President of FRS Healthcare Consultants, Inc., and formerly served as Administrator of Record at Forest View Center for Rehab and Nursing in Forest Hills from 2000 to 2005. He is a member of Upstate Services Group, LLC. Upstate Services Group is an administrative services organization providing administrative services to affiliated long term care facilities. Mr. Steif discloses the following health care facility interests:

Bridgewater Center for Rehabilitation & Nursing (Rec/Op)	02/2005 to present
Pine Valley Center for Rehabilitation and Nursing (Rec/Op)	12/2004 to present
Central Park Rehabilitation and Nursing Center (Rec/Op)	11/2008 to present
Van Duyn Center for Rehabilitation and Nursing (Rec/Op)	12/2013 to present
Chestnut Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Cortland Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Colonial Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Highland Park Rehabilitation and Nursing (Rec/Op)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Vestal Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Riverside Center for Rehabilitation and Nursing (Rec/Op)	03/2012 to present
Capstone Center for Rehabilitation and Nursing (Rec/Op)	03/2012 to present
Beechtree Center for Rehabilitation and Nursing (Rec/Op)	09/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
Bridgewater Center for Dialysis	03/2012 to present
Riverside Manor Adult Care (closed)	09/2009 to 07/2010

Receiverships:

Westchester Center for Rehabilitation and Nursing	01/2003 to 12/2006
Folts Center for Rehabilitation and Nursing	10/2013 to 02/13/2015
The Pavillion at Claxton Manor	10/2013 to 02/13/2015

David Camerota is a licensed NY nursing home administrator in good standing. He is currently employed as chief operating officer with Upstate Services Group, LLC, which provides administrative and operational support to its affiliated skilled nursing facilities throughout New York. Mr. Camerota has served nearly continuously as administrator for the past eleven years at several upstate New York skilled nursing facilities. Mr. Camerota discloses the following health care facility interests:

Pine Valley Center for Rehabilitation and Nursing	06/2011 to present
Central Park Rehabilitation and Nursing Center	02/2012 to present
Van Duyn Center for Rehabilitation and Nursing	12/2013 to present
Bridgewater Center for Rehabilitation and Nursing	03/2011 to present
Chestnut Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Cortland Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Colonial Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Highland Park Rehabilitation and Nursing (Rec/Op)	06/2011 to present
Hudson Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Vestal Park Rehabilitation and Nursing Center (Rec/Op)	06/2011 to present
Riverside Center for Rehabilitation and Nursing (Rec/Op)	03/2012 to present
Capstone Center for Rehabilitation and Nursing (Rec/Op)	03/2012 to present
Beechtree Center for Rehabilitation and Nursing (Rec/Op)	09/2013 to present
Northeast Center for Rehabilitation and Brain Injury	11/2013 to present
Bridgewater Center for Dialysis	03/2012 to present

Receiverships:

Folts Center for Rehabilitation and Nursing	10/2013 to 02/13/2015
The Pavillion at Claxton Manor	10/2013 to 02/13/2015

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Bridgewater Center for Rehabilitation & Nursing, LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-13-016 issued May 29, 2013 for surveillance findings on July 6, 2011. Deficiencies were found under 10 NYCRR 415.26(f)(1) Written Plans for Emergency/Disasters and 415.26(f)(3) Emergency Procedure/Drills.
- The facility incurred a Civil Monetary Penalty of \$7,387.50 for the period of July 26, 2005 to August 11, 2005; and a Civil Monetary Penalty of \$3,575.00 for the period of July 6, 2011 to July 6, 2011.

A review of Central Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-10-064 issued December 6, 2010 for surveillance findings on May 26, 2009. Deficiencies were found under 10 NYCRR 415.19(a) Quality of Care: Infection Control.

A review of Highland Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on October 25, 2013. Deficiencies were found under 10 NYCRR 415.3e(2)(ii)(b) Notification of Significant Changes in Condition.

A review of Hudson Park Rehabilitation and Nursing Center for the period identified above reveals the following.

- The facility was fined \$28,000 pursuant to a Stipulation and Order NH-15-020 for surveillance findings for surveys on March 20, 2012, February 1, 2013 and May 7, 2013. Deficiencies were cited on: March 30, 2012 for 10 NYCRR 415.15(b)(2)(iii) Physician Services: Physician Visits; March 1, 2013 for 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential, 10 NYCRR 415.12(m)(2) Quality of Care: Medication Errors, 10 NYCRR 415.26 Administration and 10 NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance; May 7, 2013 for 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents.
- The facility incurred a Civil Monetary Penalty of \$4,387.50 for the period of December 17, 2012 to February 1, 2013; and a Civil Monetary Penalty of \$48,600 for the period of September 19, 2013 to October 28, 2013.

A review of operations for Bridgewater Center for Rehabilitation & Nursing, LLC, and Central Park Rehabilitation and Nursing Center, Highland Park Rehabilitation and Nursing Center and Hudson Park Rehabilitation and Nursing Center for the period identified above, results in a conclusion of consistent high level of care since there were no repeat enforced survey deficiencies.

A review of operations for the Beechtree Center for Rehabilitation and Nursing, Capstone Center for Rehabilitation and Nursing, Chestnut Park Rehabilitation and Nursing Center, Colonial Park Rehabilitation and Nursing Center, Cortland Park Rehabilitation and Nursing Center, Folts Center for Rehabilitation and Nursing, Northeast Center for Rehabilitation and Brain Injury, Pine Valley Center for Rehabilitation and Nursing, Riverside Center for Rehabilitation and Nursing, Vestal Park Rehabilitation and Nursing Center, Westchester Center for Rehabilitation and Nursing, Riverside Manor Adult Care, Van Duyn Center for Rehabilitation and Nursing, The Pavillion at Claxton Manor, and Bridgewater Center for Dialysis for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

This application proposes to establish ECRNC, LLC d/b/a Evergreen Commons as the new operator of Evergreen Commons. No changes in the program or physical environment are proposed in this application. The new operator of the facility intends to enter into an administrative services agreement with Upstate Services Group. The agreement will cover administrative services such as billing and other office support services. Upstate Services Group provides similar services to numerous affiliated long term care facilities across the state.

Conclusion

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

No changes in the program or physical environment are proposed in this application. A contingency for the submission of an acceptable consulting services agreement will be required.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

ECRNC and 1070 Luther Road, LLC have submitted an executed Master Asset Purchase Agreement for the change in ownership of the operations and real estate related to Evergreen Commons. The agreement will become effectuated upon Public Health and Health Planning Council approval of this application. The terms of the agreement are summarized below:

Date:	February 1, 2015
Seller (operations):	NYMED Rensselaer, LLC d/b/a Evergreen Commons
Seller (real estate):	Titterton Properties, LLC
Purchaser (operations):	ECRNC, LLC
Purchaser (real estate):	1070 Luther Road, LLC
Purchased Assets (operations):	All of Sellers' rights, title and interest in the following assets: All assets owned by NYMED used in nursing home operations, including furniture, fixtures, equipment, material and supplies, contracts, leases and agreements, permits, licenses and other governmental approvals, inventory, drugs, food and other disposables or consumables, guarantees and warranties, telephone and fax numbers, e-mail addresses and internet domain names, sellers' goodwill and business associated with the nursing home, personnel and employee records for current staff transferring to ECRNC, resident lists, files and medical records, all trade secrets, names, processes, procedures, advertising matter, sales material and correspondence, market research and surveys and marketing information, Medicaid and Medicare billing numbers and provider agreements, custody of all nursing home resident accounts including funds held in trust and any and all deposits for prepaid room and service charges.
Excluded Assets (operations):	Any litigation by sellers and proceeds relating to business prior to the effective date, accounts receivable generated for services provided prior to the effective date, sellers' and nursing home's cash on hand at effective date (other than trust funds and residents' deposits), bank account, NYMED's interest in moneys due from Titterton for moneys paid to Titterton for HUD reserves and escrows, HUD reserves and escrows of seller, sellers' and nursing home's 401(k) plan, seller's minute books and records, tax records and tax returns, accounting records and general ledger or other books of account. All retroactive rate increases and/or lump sum payments resulting from services rendered before the effective date, all proceeds of any appeals (for rate revisions and PRI adjustments addressed to Medicare or Medicaid programs) relating to periods prior to the effective date.
Liabilities Assumed (operations):	N/A
Purchased Assets (real estate):	All seller's right, title and interest in and to the real property, buildings and improvements located at and commonly known as 1070 Luther Road, East Greenbush, NY
Liabilities Assumed (real estate):	None
Purchase Price (operations):	\$14,140,000
Purchase Price (real estate):	\$16,500,000
Payment of Purchase Price (operations and real estate):	\$1,000,000 Escrow deposit at execution of this agreement at closing, \$25,810,000 due at closing, the remaining \$3,830,000 will be paid in 120 equal monthly installments of \$31,916.67 following the closing.

The purchase price inclusive of both the operations and real estate is proposed to be satisfied as follows:

Members' Equity (Cash)	\$2,298,000
Mortgage Loan for 30 years at 5.0% interest	\$24,512,000
Loan from NYMED Rensselaer, LLC for 10 years at 8.0% interest	<u>\$3,830,000</u>
Total	\$30,640,000

A letter of interest from Century Health Capital, Inc. for the mortgage loan at the above stated terms has been provided. A letter of interest from NYMED Rensselaer, LLC for financing at the above stated rates has been provided.

BFA Attachment A is the net worth summary for the proposed members' of ECRNC and 1070 Luther Road, LLC, which reveals sufficient resources to meet the equity requirements associated with the project.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid liabilities or assessments.

Lease Agreement

The applicant has submitted a draft lease agreement, the terms of which are summarized as follows:

Premises:	A 240-bed RHC located at 1070 Luther Road, East Greenbush, NY
Lessor:	1070 Luther Road, LLC
Lessee:	ECRNC, LLC
Term:	40 years
Rental:	\$3,239,123 annually or (\$269,296.92 per month)
Provisions:	Lessee pays for all taxes, utilities, insurance and maintenance fees (Triple Net)

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

Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for year one subsequent to acquisition, summarized as follows:

	<u>Per Diem</u>	<u>Year One</u>
<u>Revenues:</u>		
Medicaid FFS(Inpatient)	\$234.82	\$14,926,777
Medicare FFS(Inpatient)	\$378.99	\$2,981,537
Private Pay/Other (Inpatient)	\$344.22	\$4,957,123
Medicare FFS(Outpatient)	\$71.14	\$242,648
Other (Outpatient)*		<u>\$521,865</u>
Total		\$23,629,950
<u>Expenses:</u>		
Operating	\$208.73	\$17,916,465
Capital	<u>\$64.16</u>	<u>5,507,155</u>
Total	\$272.89	\$23,423,620
Net income/(loss)		<u>\$206,330</u>
Utilization (patient days)		85,834

Occupancy 97.98%

Utilization:(PT visits) 3,411

*Other revenue consists of: cafeteria \$7,681; phone/television \$22,384; medical records \$1,723; other misc. \$56,789; physician revenue \$404,775; and purchase discounts \$28,513

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

- Revenue assumptions are based on the facility's current payment rates. The applicant indicated that they embrace the concept of managed long term care and Value Based Payments and plan to enter into contracts with MLTCPs and other managed care insurers in the future. As the transition to Value Based reimbursement is projected to occur no sooner than 2020, they have based this project's budget on the current operator's 2015 Medicaid Regional Pricing rate and facility's average 2014 per diem payment rates for the other payors.
- Expense assumptions are based on the historical experience of the current operator. The applicant expects to improve the facility's bottom line going forward by reducing administrative expenses including eliminating management fees of \$1,336,706 in year one and \$1,329,583 in year three. The operating budget reflects a leaner, more efficient approach, due to this reduction.
- Utilization assumptions are based on historical experience plus a 3% annual increase.
- Utilization by payor source for Year One is expected as follows:

	<u>Patient Days</u>	<u>Occupancy %</u>
Medicaid FFS	63,566	74.06%
Medicare FFS	7,867	9.17%
Private Pay/Other	14,401	16.78%

- Breakeven utilization is projected at 97.12% or 85,077 patient days. The facility provides outpatient physical therapy service which help to make the overall operations of the facility profitable.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price of \$30,640,000 will be funded as follows: \$2,298,000 equity contribution from the members of 1070 Luther Road, LLC; a \$24,512,000 mortgage at the above stated terms and a loan from NYMED Rensselaer, LLC for \$3,830,000 at the above stated terms. A letter of interest for the mortgage financing has been provided and a letter of interest for the seller loan financing has also been provided.

Working capital requirements for total operations are estimated at \$3,903,937, based on two months of year one expenses, which appears reasonable. Working capital will be satisfied from the applicant members' equity. BFA Attachment A is the net worth statement for the proposed operators of both ECRNC and 1070 Luther Road, LLC, which shows adequate resources to cover the working capital requirements and the equity requirements associated with this project.

BFA Attachment B is the pro-forma balance sheet of ECRNC, LLC and 1070 Luther Road, LLC, which indicates positive members' equity of \$3,903,937 for ECRNC, LLC and \$2,298,000 for 1070 Luther Road, LLC.

The submitted budget projects a net income of \$260,330 for year one. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C is the 2012-2014 certified financial statements for NYMED Rensselaer, LLC, d/b/a Evergreen Commons, which shows that the facility generated an average net loss of \$749,473, had an average positive net asset position, and average positive working capital position for the period. The

2012 and 2013 losses and the 2013 and 2014 negative working capital positions were due to management fees of \$2,533,185 (2012), \$4,046,122 (2013) and \$1,852,742 (2014), respectively. Without the fees, the facility would have been profitable and would not have had a negative working capital position in 2013 and 2014. Going forward the management fee will be eliminated.

BFA Attachment E, Financial Summary of the proposed members' affiliated nursing homes, shows that the facilities have maintained a positive net asset position and had net income from operations for the periods shown. Financial statements for the following facilities are not available as the facilities were newly acquired in 2014:

- CRNC, LLC d/b/a Cortland Park Rehabilitation and Nursing Center;
- RRNC, LLC d/b/a Colonial Park Rehabilitation and Nursing Center;
- ORNC, LLC d/b/a Chestnut Park Rehabilitation and Nursing Center;
- JBRNC, LLC d/b/a Hudson Park Rehabilitation and Nursing Center;
- RSRNC, LLC d/b/a Riverside Center for Rehabilitation and Nursing;
- CSRNC, LLC d/b/a Capstone Center for Rehabilitation and Nursing;
- NCRNC, LLC d/b/a Northeast Center for Rehabilitation and Brain Injury;
- HRNC, LLC d/b/a Highland Park Rehabilitation and Nursing Center;
- BTRNC, LLC, d/b/a Beechtree Center for Rehabilitation and Nursing.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation










From a financial perspective, contingent approval is recommended.

Attachments





















BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Net Worth of ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center and 1070 Luther Road, LLC Proposed Members
BFA Attachment B	Pro-forma Balance Sheet of ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center and 1070 Luther Road, LLC
BFA Attachment C	2012–2014 Certified Financial Summary for NYMED Rensselaer, LLC , d/b/a Evergreen Commons
BFA Attachment D	Ownership interest proposed members' affiliated Nursing Homes
BFA Attachment E	Financial Summary proposed members' affiliated Nursing Homes

Evergreen Commons

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking 
 Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015 8.9% This Facility 13.7% State average 18.3% National average	 3 out of 5 stars
 Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 2.3% This Facility 1.0% State average 0.9% National average	 1 out of 5 stars
 Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 97.0% This Facility 84.6% State average 82.8% National average	 5 out of 5 stars
 Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 94.3% This Facility 83.3% State average 81.9% National average	 4 out of 5 stars
 Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 1.1% This Facility 2.3% State average 2.4% National average	 4 out of 5 stars
 Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 17.8% This Facility 14.4% State average 15.6% National average	 2 out of 5 stars
 Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 4.5% This Facility 4.9% State average 7.4% National average	 3 out of 5 stars
 Have pressure sores (long stay) Reporting period: July 2014 to March 2015 4.8% This Facility 7.5% State average 5.9% National average	 4 out of 5 stars

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 7.0% This Facility 6.1% State average 7.0% National average</p>	<p> 2 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 56.7% This Facility 45.7% State average 45.0% National average</p>	<p> 2 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 2.5% This Facility 2.6% State average 3.1% National average</p>	<p> 3 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 5.5% This Facility 5.6% State average 5.7% National average</p>	<p> 3 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 1.3% This Facility 11.4% State average 6.0% National average</p>	<p> 4 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 3.2% This Facility 1.5% State average 1.1% National average</p>	<p> 1 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 3.0% This Facility 2.7% State average 3.2% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 99.3% This Facility 94.8% State average 92.6% National average</p>	<p> 4 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 98.8% This Facility 96.7% State average 93.8% National average</p>	<p> 3 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 13.0% This Facility 17.6% State average 19.2% National average</p>	<p> 4 out of 5 stars</p>

Evergreen Commons

Inspection Report

Report Period: August 2011 to July 2015

PFI: 7268

Regional Office: [Capital District Regional Office](#)


This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.




Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.





















Measure	This Facility	Statewide Average
Standard Health Deficiencies	57	23
Life Safety Code Deficiencies	6	12
Total Deficiencies	63	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	2	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	3%	3%

Bridgewater Center for Rehabilitation & Nursing, LLC

The following table shows how this nursing home performs in key quality measure areas. For important information on the meaning of quality measures or how rankings are determined, click the associated  symbol.

Percentage of residents who...	Performance Ranking 
 Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015 26.7% This Facility 13.7% State average 18.3% National average	 1 out of 5 stars

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 0.8% This Facility 1.0% State average 0.9% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 81.2% This Facility 84.6% State average 82.8% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 82.1% This Facility 83.3% State average 81.9% National average</p>	<p> 2 out of 5 stars</p>
<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 3.0% This Facility 2.3% State average 2.4% National average</p>	<p> 2 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 14.2% This Facility 14.4% State average 15.6% National average</p>	<p> 3 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 9.3% This Facility 4.9% State average 7.4% National average</p>	<p> 1 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 6.2% This Facility 7.5% State average 5.9% National average</p>	<p> 3 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 10.1% This Facility 6.1% State average 7.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 40.5% This Facility 45.7% State average 45.0% National average</p>	<p> 4 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 5.0% This Facility 2.6% State average 3.1% National average</p>	<p> 1 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 6.9% This Facility 5.6% State average 5.7% National average</p>	<p> 2 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 0.2% This Facility 11.4% State average 6.0% National average</p>	<p> 5 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 2.4% This Facility 1.5% State average 1.1% National average</p>	<p> 1 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 5.9% This Facility 2.7% State average 3.2% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 97.9% This Facility 94.8% State average 92.6% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 97.6% This Facility 96.7% State average 93.8% National average</p>	<p> 2 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 28.0% This Facility 17.6% State average 19.2% National average</p>	<p> 1 out of 5 stars</p>

Bridgewater Center for Rehabilitation & Nursing, LLC

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0050

Regional Office: [Central New York Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary










151180 BNHLC Attachment A – Quality Measures and Inspection Report

This table summarizes the citations in the details section of this report and compares them against the statewide average.























Measure	This Facility	Statewide Average
Standard Health Deficiencies	37	23
Life Safety Code Deficiencies	11	12
Total Deficiencies	48	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	0	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	0%	3%

Pine Valley Center for Rehabilitation and Nursing

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking 
 Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015 12.9% This Facility 13.7% State average 18.3% National average	 3 out of 5 stars
 Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 0.1% This Facility 1.0% State average 0.9% National average	 5 out of 5 stars
 Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 87.6% This Facility 84.6% State average 82.8% National average	 3 out of 5 stars
 Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 62.8% This Facility 83.3% State average 81.9% National average	 1 out of 5 stars

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 1.5% This Facility 2.3% State average 2.4% National average</p>	 3 out of 5 stars
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 13.7% This Facility 14.4% State average 15.6% National average</p>	 3 out of 5 stars
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 3.8% This Facility 4.9% State average 7.4% National average</p>	 3 out of 5 stars
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 5.3% This Facility 7.5% State average 5.9% National average</p>	 4 out of 5 stars
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 3.9% This Facility 6.1% State average 7.0% National average</p>	 4 out of 5 stars
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 60.1% This Facility 45.7% State average 45.0% National average</p>	 2 out of 5 stars
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 4.8% This Facility 2.6% State average 3.1% National average</p>	 1 out of 5 stars
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 8.2% This Facility 5.6% State average 5.7% National average</p>	 2 out of 5 stars
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 4.8% This Facility 11.4% State average 6.0% National average</p>	 3 out of 5 stars
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 0.2% This Facility 1.5% State average 1.1% National average</p>	 3 out of 5 stars
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015</p>	 3 out of 5 stars

151180 BNHLC Attachment A – Quality Measures and Inspection Report

2.4% This Facility 2.7% State average 3.2% National average	3 out of 5 stars
? Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 94.8% This Facility 94.8% State average 92.6% National average	★★ 2 out of 5 stars
? Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 95.3% This Facility 96.7% State average 93.8% National average	★★ 2 out of 5 stars
? Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 20.4% This Facility 17.6% State average 19.2% National average	★★ 2 out of 5 stars

Pine Valley Center for Rehabilitation and Nursing

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0778

Regional Office: [MARO--New Rochelle Area Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.








Measure	This Facility	Statewide Average
Standard Health Deficiencies	22	23
Life Safety Code Deficiencies	21	12
Total Deficiencies	43	35

151180 BNHLC Attachment A – Quality Measures and Inspection Report







Measure	This Facility	Statewide Average
Deficiencies Related to Actual Harm or Immediate Jeopardy	1	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	2%	3%


Central Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p>Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015 7.3% This Facility 13.7% State average 18.3% National average</p>	<p> 4 out of 5 stars</p>
<p>Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 0.0% This Facility 1.0% State average 0.9% National average</p>	<p> 5 out of 5 stars</p>
<p>Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 90.1% This Facility 84.6% State average 82.8% National average</p>	<p> 3 out of 5 stars</p>
<p>Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 87.2% This Facility 83.3% State average 81.9% National average</p>	<p> 3 out of 5 stars</p>
<p>Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 6.2% This Facility 2.3% State average 2.4% National average</p>	<p> 1 out of 5 stars</p>
<p>Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 16.0% This Facility 14.4% State average 15.6% National average</p>	<p> 2 out of 5 stars</p>
<p>Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015</p>	<p> 4 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p>1.2% This Facility 4.9% State average 7.4% National average</p>	
<p>Have pressure sores (long stay) Reporting period: July 2014 to March 2015 2.0% This Facility 7.5% State average 5.9% National average</p>	<p> 5 out of 5 stars</p>
<p>Lose too much weight (long stay) Reporting period: July 2014 to March 2015 7.5% This Facility 6.1% State average 7.0% National average</p>	<p> 2 out of 5 stars</p>
<p>Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 43.4% This Facility 45.7% State average 45.0% National average</p>	<p> 3 out of 5 stars</p>
<p>Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 2.7% This Facility 2.6% State average 3.1% National average</p>	<p> 3 out of 5 stars</p>
<p>Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 1.6% This Facility 5.6% State average 5.7% National average</p>	<p> 5 out of 5 stars</p>
<p>Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 11.6% This Facility 11.4% State average 6.0% National average</p>	<p> 2 out of 5 stars</p>
<p>Were physically restrained (long stay) Reporting period: July 2014 to March 2015 0.5% This Facility 1.5% State average 1.1% National average</p>	<p> 3 out of 5 stars</p>
<p>Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 1.4% This Facility 2.7% State average 3.2% National average</p>	<p> 4 out of 5 stars</p>
<p>Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 99.1% This Facility 94.8% State average 92.6% National average</p>	<p> 4 out of 5 stars</p>
<p>Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015</p>	<p> 3 out of 5 stars</p>

<p>99.3% This Facility 96.7% State average 93.8% National average</p>	
<p>Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 15.1% This Facility 17.6% State average 19.2% National average</p>	<p> 3 out of 5 stars</p>

Central Park Rehabilitation and Nursing Center

Inspection Report Report Period: August 2011 to July 2015

PFI: 0654
 Regional Office: [Central New York Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary






















This table summarizes the citations in the details section of this report and compares them against the statewide average.

Measure	This Facility	Statewide Average
Standard Health Deficiencies	40	23
Life Safety Code Deficiencies	10	12
Total Deficiencies	50	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	2	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	4%	3%









Van Duyn Center for Rehabilitation and Nursing

The following table shows how this nursing home performs in key quality measure areas.

151180 BNHLC Attachment A – Quality Measures and Inspection Report

Percentage of residents who...	Performance Ranking 
<p> Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015 24.4% This Facility 13.7% State average 18.3% National average</p>	<p> 1 out of 5 stars</p>
<p> Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 2.1% This Facility 1.0% State average 0.9% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 87.4% This Facility 84.6% State average 82.8% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 80.8% This Facility 83.3% State average 81.9% National average</p>	<p> 2 out of 5 stars</p>
<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 0.6% This Facility 2.3% State average 2.4% National average</p>	<p> 4 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 15.7% This Facility 14.4% State average 15.6% National average</p>	<p> 2 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 11.1% This Facility 4.9% State average 7.4% National average</p>	<p> 1 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 5.7% This Facility 7.5% State average 5.9% National average</p>	<p> 4 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 10.0% This Facility 6.1% State average 7.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015</p>	<p> 1 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p>66.4% This Facility 45.7% State average 45.0% National average</p>	
<p>Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 3.9% This Facility 2.6% State average 3.1% National average</p>	<p> 1 out of 5 stars</p>
<p>Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 4.3% This Facility 5.6% State average 5.7% National average</p>	<p> 3 out of 5 stars</p>
<p>Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 5.6% This Facility 11.4% State average 6.0% National average</p>	<p> 3 out of 5 stars</p>
<p>Were physically restrained (long stay) Reporting period: July 2014 to March 2015 4.5% This Facility 1.5% State average 1.1% National average</p>	<p> 1 out of 5 stars</p>
<p>Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 2.2% This Facility 2.7% State average 3.2% National average</p>	<p> 3 out of 5 stars</p>
<p>Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 97.6% This Facility 94.8% State average 92.6% National average</p>	<p> 3 out of 5 stars</p>
<p>Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 98.6% This Facility 96.7% State average 93.8% National average</p>	<p> 3 out of 5 stars</p>
<p>Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 15.0% This Facility 17.6% State average 19.2% National average</p>	<p> 3 out of 5 stars</p>

Van Duyn Center for Rehabilitation and Nursing

Inspection Report

Report Period: August 2011 to July 2015

151180 BNHLC Attachment A – Quality Measures and Inspection Report

PFI: 0650

Regional Office: [Central New York Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.














Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

Measure	This Facility	Statewide Average
Standard Health Deficiencies	89	23
Life Safety Code Deficiencies	13	12
Total Deficiencies	102	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	4	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	4%	3%

Chestnut Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking 
 Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015 14.4% This Facility 13.7% State average 18.3% National average	 3 out of 5 stars
 Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 2.3% This Facility 1.0% State average 0.9% National average	 1 out of 5 stars
 Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 86.3% This Facility 84.6% State average 82.8% National average	 3 out of 5 stars
 Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 86.8% This Facility 83.3% State average 81.9% National average	 3 out of 5 stars
 Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 0.9% This Facility 2.3% State average 2.4% National average	 4 out of 5 stars
 Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 15.3% This Facility 14.4% State average 15.6% National average	 3 out of 5 stars
 Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 4.3% This Facility 4.9% State average 7.4% National average	 3 out of 5 stars
 Have pressure sores (long stay) Reporting period: July 2014 to March 2015 8.3% This Facility 7.5% State average 5.9% National average	 2 out of 5 stars

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 11.1% This Facility 6.1% State average 7.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 63.8% This Facility 45.7% State average 45.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 4.3% This Facility 2.6% State average 3.1% National average</p>	<p> 1 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 3.2% This Facility 5.6% State average 5.7% National average</p>	<p> 4 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 0.0% This Facility 11.4% State average 6.0% National average</p>	<p> 5 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 1.6% This Facility 1.5% State average 1.1% National average</p>	<p> 2 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 1.0% This Facility 2.7% State average 3.2% National average</p>	<p> 5 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 89.5% This Facility 94.8% State average 92.6% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 100.0% This Facility 96.7% State average 93.8% National average</p>	<p> 5 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 21.9% This Facility 17.6% State average 19.2% National average</p>	<p> 2 out of 5 stars</p>

Chestnut Park Rehabilitation and Nursing Center

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0743

Regional Office: [Capital District Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.





















Measure	This Facility	Statewide Average
Standard Health Deficiencies	29	23
Life Safety Code Deficiencies	9	12
Total Deficiencies	38	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	0	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	0%	3%

Cortland Park Rehabilitation and Nursing Center















The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p> Self-report moderate to severe pain (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>7.0% This Facility</p> <p>13.7% State average</p> <p>18.3% National average</p>	<p></p> <p></p> <p>4 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 0.9% This Facility 1.0% State average 0.9% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 87.0% This Facility 84.6% State average 82.8% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 80.4% This Facility 83.3% State average 81.9% National average</p>	<p> 2 out of 5 stars</p>
<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 1.3% This Facility 2.3% State average 2.4% National average</p>	<p> 4 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 20.0% This Facility 14.4% State average 15.6% National average</p>	<p> 1 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 2.1% This Facility 4.9% State average 7.4% National average</p>	<p> 4 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 1.8% This Facility 7.5% State average 5.9% National average</p>	<p> 5 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 11.0% This Facility 6.1% State average 7.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 60.8% This Facility 45.7% State average 45.0% National average</p>	<p> 2 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 0.5% This Facility 2.6% State average 3.1% National average</p>	<p> 5 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 6.2% This Facility 5.6% State average 5.7% National average</p>	<p> 2 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 2.9% This Facility 11.4% State average 6.0% National average</p>	<p> 3 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 0.0% This Facility 1.5% State average 1.1% National average</p>	<p> 5 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 3.3% This Facility 2.7% State average 3.2% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 99.3% This Facility 94.8% State average 92.6% National average</p>	<p> 5 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 88.9% This Facility 96.7% State average 93.8% National average</p>	<p> 1 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 14.7% This Facility 17.6% State average 19.2% National average</p>	<p> 3 out of 5 stars</p>

Cortland Park Rehabilitation and Nursing Center

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0160

Regional Office: [Central New York Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

151180 BNHLC Attachment A – Quality Measures and Inspection Report

This table summarizes the citations in the details section of this report and compares them against the statewide average.





















Measure	This Facility	Statewide Average
Standard Health Deficiencies	32	23
Life Safety Code Deficiencies	10	12
Total Deficiencies	42	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	0	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	0%	3%

Colonial Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p>Self-report moderate to severe pain (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>12.5% This Facility</p> <p>13.7% State average</p> <p>18.3% National average</p>	<p>3 out of 5 stars</p>
<p>Have pressure sores that are new or worsened</p> <p>Reporting period: April 2014 to March 2015</p> <p>3.0% This Facility</p> <p>1.0% State average</p> <p>0.9% National average</p>	<p>1 out of 5 stars</p>
<p>Were given, appropriately, the seasonal influenza vaccine (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>98.7% This Facility</p> <p>84.6% State average</p> <p>82.8% National average</p>	<p>5 out of 5 stars</p>
<p>Were given, appropriately, the pneumococcal vaccine</p> <p>Reporting period: April 2014 to March 2015</p> <p>98.9% This Facility</p> <p>83.3% State average</p> <p>81.9% National average</p>	<p>5 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 5.9% This Facility 2.3% State average 2.4% National average</p>	<p> 1 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 14.1% This Facility 14.4% State average 15.6% National average</p>	<p> 3 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 2.6% This Facility 4.9% State average 7.4% National average</p>	<p> 3 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 0.6% This Facility 7.5% State average 5.9% National average</p>	<p> 5 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 6.5% This Facility 6.1% State average 7.0% National average</p>	<p> 2 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 49.4% This Facility 45.7% State average 45.0% National average</p>	<p> 3 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 3.9% This Facility 2.6% State average 3.1% National average</p>	<p> 1 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 3.3% This Facility 5.6% State average 5.7% National average</p>	<p> 4 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 2.9% This Facility 11.4% State average 6.0% National average</p>	<p> 4 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 4.1% This Facility 1.5% State average 1.1% National average</p>	<p> 1 out of 5 stars</p>

<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 0.9% This Facility 2.7% State average 3.2% National average</p>	<p> 5 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 100.0% This Facility 94.8% State average 92.6% National average</p>	<p> 5 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 100.0% This Facility 96.7% State average 93.8% National average</p>	<p> 5 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 16.1% This Facility 17.6% State average 19.2% National average</p>	<p> 3 out of 5 stars</p>

Colonial Park Rehabilitation and Nursing Center

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0592

Regional Office: [Central New York Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

Measure	This Facility	Statewide Average
Standard Health Deficiencies	41	23
Life Safety Code Deficiencies	10	12
Total Deficiencies	51	35

151180 BNHLC Attachment A – Quality Measures and Inspection Report

Measure	This Facility	Statewide Average
Deficiencies Related to Actual Harm or Immediate Jeopardy	1	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	2%	3%





Highland Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p> Self-report moderate to severe pain (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>13.0% This Facility</p> <p>13.7% State average</p> <p>18.3% National average</p>	<p> 3 out of 5 stars</p>
<p> Have pressure sores that are new or worsened</p> <p>Reporting period: April 2014 to March 2015</p> <p>0.4% This Facility</p> <p>1.0% State average</p> <p>0.9% National average</p>	<p> 4 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>89.2% This Facility</p> <p>84.6% State average</p> <p>82.8% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine</p> <p>Reporting period: April 2014 to March 2015</p> <p>95.3% This Facility</p> <p>83.3% State average</p> <p>81.9% National average</p>	<p> 4 out of 5 stars</p>
<p> Newly received an antipsychotic medication</p> <p>Reporting period: April 2014 to March 2015</p> <p>6.2% This Facility</p> <p>2.3% State average</p> <p>2.4% National average</p>	<p> 1 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay)</p> <p>Reporting period: July 2014 to March 2015</p> <p>12.6% This Facility</p> <p>14.4% State average</p> <p>15.6% National average</p>	<p> 3 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 12.3% This Facility 4.9% State average 7.4% National average</p>	<p> 1 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 7.2% This Facility 7.5% State average 5.9% National average</p>	<p> 3 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 5.7% This Facility 6.1% State average 7.0% National average</p>	<p> 3 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 52.9% This Facility 45.7% State average 45.0% National average</p>	<p> 2 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 1.6% This Facility 2.6% State average 3.1% National average</p>	<p> 4 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 2.9% This Facility 5.6% State average 5.7% National average</p>	<p> 4 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 3.4% This Facility 11.4% State average 6.0% National average</p>	<p> 3 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 0.0% This Facility 1.5% State average 1.1% National average</p>	<p> 5 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 1.4% This Facility 2.7% State average 3.2% National average</p>	<p> 4 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 87.3% This Facility 94.8% State average 92.6% National average</p>	<p> 1 out of 5 stars</p>

<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 100.0% This Facility 96.7% State average 93.8% National average</p>	<p> 5 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 27.8% This Facility 17.6% State average 19.2% National average</p>	<p> 1 out of 5 stars</p>

Highland Park Rehabilitation and Nursing Center

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0041

Regional Office: [WRO--Buffalo Area Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.


















Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

Measure	This Facility	Statewide Average
Standard Health Deficiencies	19	23
Life Safety Code Deficiencies	12	12
Total Deficiencies	31	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	1	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	3%	3%

Hudson Park Rehabilitation and Nursing Center

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking 
<p> Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015 13.4% This Facility 13.7% State average 18.3% National average</p>	<p> 3 out of 5 stars</p>
<p> Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 1.4% This Facility 1.0% State average 0.9% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 87.2% This Facility 84.6% State average 82.8% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 86.7% This Facility 83.3% State average 81.9% National average</p>	<p> 3 out of 5 stars</p>
<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 1.6% This Facility 2.3% State average 2.4% National average</p>	<p> 3 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 16.9% This Facility 14.4% State average 15.6% National average</p>	<p> 2 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 5.7% This Facility 4.9% State average 7.4% National average</p>	<p> 2 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 6.7% This Facility 7.5% State average 5.9% National average</p>	<p> 3 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 7.4% This Facility 6.1% State average 7.0% National average</p>	<p> 2 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 39.4% This Facility 45.7% State average 45.0% National average</p>	<p> 4 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 1.5% This Facility 2.6% State average 3.1% National average</p>	<p> 4 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 9.2% This Facility 5.6% State average 5.7% National average</p>	<p> 1 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 0.6% This Facility 11.4% State average 6.0% National average</p>	<p> 5 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 0.6% This Facility 1.5% State average 1.1% National average</p>	<p> 3 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 1.8% This Facility 2.7% State average 3.2% National average</p>	<p> 4 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 94.4% This Facility 94.8% State average 92.6% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 91.5% This Facility 96.7% State average 93.8% National average</p>	<p> 1 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 28.3% This Facility 17.6% State average 19.2% National average</p>	<p> 1 out of 5 stars</p>

Hudson Park Rehabilitation and Nursing Center

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0021

Regional Office: [Capital District Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.











Measure	This Facility	Statewide Average
Standard Health Deficiencies	87	23
Life Safety Code Deficiencies	18	12
Total Deficiencies	105	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	7	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	7%	3%

Vestal Park Rehabilitation and Nursing Center














The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p> Self-report moderate to severe pain (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>33.3% This Facility</p> <p>13.7% State average</p> <p>18.3% National average</p>	<p></p> <p></p> <p>1 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 0.7% This Facility 1.0% State average 0.9% National average</p>	 3 out of 5 stars
<p> Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 73.5% This Facility 84.6% State average 82.8% National average</p>	 1 out of 5 stars
<p> Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 76.2% This Facility 83.3% State average 81.9% National average</p>	 2 out of 5 stars
<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 5.1% This Facility 2.3% State average 2.4% National average</p>	 1 out of 5 stars
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 14.3% This Facility 14.4% State average 15.6% National average</p>	 3 out of 5 stars
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 5.6% This Facility 4.9% State average 7.4% National average</p>	 2 out of 5 stars
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 8.1% This Facility 7.5% State average 5.9% National average</p>	 2 out of 5 stars
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 9.9% This Facility 6.1% State average 7.0% National average</p>	 1 out of 5 stars
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 53.7% This Facility 45.7% State average 45.0% National average</p>	 2 out of 5 stars
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 4.0% This Facility 2.6% State average 3.1% National average</p>	 1 out of 5 stars

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 10.6% This Facility 5.6% State average 5.7% National average</p>	<p> 1 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 13.2% This Facility 11.4% State average 6.0% National average</p>	<p> 2 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 6.3% This Facility 1.5% State average 1.1% National average</p>	<p> 1 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 4.6% This Facility 2.7% State average 3.2% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 90.5% This Facility 94.8% State average 92.6% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 91.6% This Facility 96.7% State average 93.8% National average</p>	<p> 1 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 16.9% This Facility 17.6% State average 19.2% National average</p>	<p> 3 out of 5 stars</p>

Vestal Park Rehabilitation and Nursing Center

Inspection Report

Report Period: August 2011 to July 2015

PFI: 9514

Regional Office: [Central New York Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

151180 BNHLC Attachment A – Quality Measures and Inspection Report

This table summarizes the citations in the details section of this report and compares them against the statewide average.





















Measure	This Facility	Statewide Average
Standard Health Deficiencies	46	23
Life Safety Code Deficiencies	7	12
Total Deficiencies	53	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	0	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	0%	3%

Riverside Center for Rehabilitation and Nursing

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p>Self-report moderate to severe pain (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>11.9% This Facility</p> <p>13.7% State average</p> <p>18.3% National average</p>	<p>3 out of 5 stars</p>
<p>Have pressure sores that are new or worsened</p> <p>Reporting period: April 2014 to March 2015</p> <p>0.0% This Facility</p> <p>1.0% State average</p> <p>0.9% National average</p>	<p>5 out of 5 stars</p>
<p>Were given, appropriately, the seasonal influenza vaccine (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>90.6% This Facility</p> <p>84.6% State average</p> <p>82.8% National average</p>	<p>3 out of 5 stars</p>
<p>Were given, appropriately, the pneumococcal vaccine</p> <p>Reporting period: April 2014 to March 2015</p> <p>100.0% This Facility</p> <p>83.3% State average</p> <p>81.9% National average</p>	<p>5 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 5.0% This Facility 2.3% State average 2.4% National average</p>	<p> 1 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 18.9% This Facility 14.4% State average 15.6% National average</p>	<p> 2 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 3.4% This Facility 4.9% State average 7.4% National average</p>	<p> 3 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 8.3% This Facility 7.5% State average 5.9% National average</p>	<p> 2 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 9.1% This Facility 6.1% State average 7.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 24.2% This Facility 45.7% State average 45.0% National average</p>	<p> 5 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 0.7% This Facility 2.6% State average 3.1% National average</p>	<p> 5 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 9.0% This Facility 5.6% State average 5.7% National average</p>	<p> 1 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 0.5% This Facility 11.4% State average 6.0% National average</p>	<p> 5 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 3.8% This Facility 1.5% State average 1.1% National average</p>	<p> 1 out of 5 stars</p>

<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 0.9% This Facility 2.7% State average 3.2% National average</p>	<p> 5 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 86.9% This Facility 94.8% State average 92.6% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 100.0% This Facility 96.7% State average 93.8% National average</p>	<p> 5 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 13.2% This Facility 17.6% State average 19.2% National average</p>	<p> 4 out of 5 stars</p>

Riverside Center for Rehabilitation and Nursing

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0767

Regional Office: [Capital District Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

Measure	This Facility	Statewide Average
Standard Health Deficiencies	12	23
Life Safety Code Deficiencies	4	12
Total Deficiencies	16	35

151180 BNHLC Attachment A – Quality Measures and Inspection Report





















Measure	This Facility	Statewide Average
Deficiencies Related to Actual Harm or Immediate Jeopardy	0	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	0%	3%





Capstone Center for Rehabilitation and Nursing

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p> Self-report moderate to severe pain (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>18.0% This Facility</p> <p>13.7% State average</p> <p>18.3% National average</p>	<p> 2 out of 5 stars</p>
<p> Have pressure sores that are new or worsened</p> <p>Reporting period: April 2014 to March 2015</p> <p>1.1% This Facility</p> <p>1.0% State average</p> <p>0.9% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>78.9% This Facility</p> <p>84.6% State average</p> <p>82.8% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine</p> <p>Reporting period: April 2014 to March 2015</p> <p>83.2% This Facility</p> <p>83.3% State average</p> <p>81.9% National average</p>	<p> 2 out of 5 stars</p>
<p> Newly received an antipsychotic medication</p> <p>Reporting period: April 2014 to March 2015</p> <p>5.8% This Facility</p> <p>2.3% State average</p> <p>2.4% National average</p>	<p> 1 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay)</p> <p>Reporting period: July 2014 to March 2015</p> <p>25.4% This Facility</p> <p>14.4% State average</p> <p>15.6% National average</p>	<p> 1 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 4.9% This Facility 4.9% State average 7.4% National average</p>	<p> 2 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 7.2% This Facility 7.5% State average 5.9% National average</p>	<p> 3 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 8.9% This Facility 6.1% State average 7.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 37.4% This Facility 45.7% State average 45.0% National average</p>	<p> 4 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 3.4% This Facility 2.6% State average 3.1% National average</p>	<p> 2 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 12.9% This Facility 5.6% State average 5.7% National average</p>	<p> 1 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 3.9% This Facility 11.4% State average 6.0% National average</p>	<p> 3 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 1.2% This Facility 1.5% State average 1.1% National average</p>	<p> 2 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 3.1% This Facility 2.7% State average 3.2% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 87.9% This Facility 94.8% State average 92.6% National average</p>	<p> 1 out of 5 stars</p>

<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 99.4% This Facility 96.7% State average 93.8% National average</p>	<p> 4 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 43.7% This Facility 17.6% State average 19.2% National average</p>	<p> 1 out of 5 stars</p>

Capstone Center for Rehabilitation and Nursing

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0488

Regional Office: [Capital District Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary




















This table summarizes the citations in the details section of this report and compares them against the statewide average.

Measure	This Facility	Statewide Average
Standard Health Deficiencies	25	23
Life Safety Code Deficiencies	8	12
Total Deficiencies	33	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	0	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	0%	3%

Beechtree Center for Rehabilitation and Nursing

151180 BNHLC Attachment A – Quality Measures and Inspection Report

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking 
<p> Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015 18.3% This Facility 13.7% State average 18.3% National average</p>	<p> 2 out of 5 stars</p>
<p> Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 2.2% This Facility 1.0% State average 0.9% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 73.8% This Facility 84.6% State average 82.8% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 66.7% This Facility 83.3% State average 81.9% National average</p>	<p> 1 out of 5 stars</p>
<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 1.8% This Facility 2.3% State average 2.4% National average</p>	<p> 3 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 32.4% This Facility 14.4% State average 15.6% National average</p>	<p> 1 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 8.4% This Facility 4.9% State average 7.4% National average</p>	<p> 2 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 13.2% This Facility 7.5% State average 5.9% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 11.1% This Facility 6.1% State average 7.0% National average</p>	<p> 1 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 65.7% This Facility 45.7% State average 45.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 1.8% This Facility 2.6% State average 3.1% National average</p>	<p> 4 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 3.0% This Facility 5.6% State average 5.7% National average</p>	<p> 4 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 1.8% This Facility 11.4% State average 6.0% National average</p>	<p> 4 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 0.7% This Facility 1.5% State average 1.1% National average</p>	<p> 3 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 2.3% This Facility 2.7% State average 3.2% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 96.7% This Facility 94.8% State average 92.6% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 93.1% This Facility 96.7% State average 93.8% National average</p>	<p> 1 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 16.9% This Facility 17.6% State average 19.2% National average</p>	<p> 3 out of 5 stars</p>

Beechtree Center for Rehabilitation and Nursing

Inspection Report

Report Period: August 2011 to July 2015

151180 BNHLC Attachment A – Quality Measures and Inspection Report

PFI: 0983

Regional Office: [Central New York Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

Measure	This Facility	Statewide Average
Standard Health Deficiencies	49	23
Life Safety Code Deficiencies	6	12
Total Deficiencies	55	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	5	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	9%	3%

Northeast Center for Rehabilitation and Brain Injury













The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p> Self-report moderate to severe pain (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>28.6% This Facility</p> <p>13.7% State average</p> <p>18.3% National average</p>	<p></p> <p> 1 out of 5 stars</p>
<p> Have pressure sores that are new or worsened</p> <p>Reporting period: April 2014 to March 2015</p> <p>1.2% This Facility</p> <p>1.0% State average</p> <p>0.9% National average</p>	<p></p> <p> 2 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 79.1% This Facility 84.6% State average 82.8% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 75.3% This Facility 83.3% State average 81.9% National average</p>	<p> 2 out of 5 stars</p>
<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 6.1% This Facility 2.3% State average 2.4% National average</p>	<p> 1 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 15.8% This Facility 14.4% State average 15.6% National average</p>	<p> 2 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 8.0% This Facility 4.9% State average 7.4% National average</p>	<p> 2 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 14.9% This Facility 7.5% State average 5.9% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 4.8% This Facility 6.1% State average 7.0% National average</p>	<p> 4 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 18.4% This Facility 45.7% State average 45.0% National average</p>	<p> 5 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 5.5% This Facility 2.6% State average 3.1% National average</p>	<p> 1 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 2.9% This Facility 5.6% State average 5.7% National average</p>	<p> 4 out of 5 stars</p>

151180 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 6.8% This Facility 11.4% State average 6.0% National average</p>	<p> 3 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 0.8% This Facility 1.5% State average 1.1% National average</p>	<p> 3 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 2.0% This Facility 2.7% State average 3.2% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 93.1% This Facility 94.8% State average 92.6% National average</p>	<p> 2 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 98.4% This Facility 96.7% State average 93.8% National average</p>	<p> 3 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 43.1% This Facility 17.6% State average 19.2% National average</p>	<p> 1 out of 5 stars</p>

Northeast Center for Rehabilitation and Brain Injury

Inspection Report

Report Period: August 2011 to July 2015

PFI: 7758

Regional Office: [MARO--New Rochelle Area Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

151180 BNHLC Attachment A – Quality Measures and Inspection Report

Measure	This Facility	Statewide Average
Standard Health Deficiencies	20	23
Life Safety Code Deficiencies	6	12
Total Deficiencies	26	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	0	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	0%	3%

Evergreen Commons
Pro Forma Balance Sheet

ECRNC, LLC 1070 Luther Road, LLC

Assets

Cash	\$3,903,937	\$0
Patient Accounts	\$68,922	\$0
Real Estate	\$0	\$16,500,000
Operational Assets	\$14,140,000	\$0
Due from Operating Co.	<u>\$0</u>	<u>\$14,140,000</u>
Total Assets	<u>\$18,112,859</u>	<u>\$30,640,000</u>

Liabilities

Patient Accounts	\$68,922	\$0
Mortgages		\$28,342,000
Due to Realty Co.	\$14,140,000	\$0
Total Liabilities	<u>\$14,208,922</u>	<u>\$28,342,000</u>
Members' Equity	<u>\$3,903,937</u>	<u>\$2,298,000</u>

NYMED Rensselaer, LLC d/b/a Evergreen Commons Residential Healthcare Facility			
	2014	2013	2012
ASSETS - CURRENT	\$5,349,650	\$5,044,952	\$5,430,866
ASSETS - FIXED AND OTHER	\$2,528,139	\$2,583,694	\$2,791,289
TOTAL ASSETS	\$7,877,789	\$7,628,646	\$8,222,155
LIABILITIES - CURRENT	\$5,784,106	\$5,480,862	\$4,238,020
LIABILITIES - LONG-TERM	\$493,486	\$646,561	\$401,198
TOTAL LIABILITIES	\$6,277,592	\$6,127,423	\$4,639,218
WORKING CAPITAL	(\$434,456)	(\$435,910)	\$1,192,846
INCOME	\$23,140,786	\$22,919,657	\$21,967,509
EXPENSE	\$23,041,812	\$25,001,371	\$22,233,188
NET INCOME	\$98,974	(\$2,081,714)	(\$265,679)
NET ASSET POSITION	\$1,600,197	\$1,501,223	\$3,582,937

Related Company Ownership

	Efraim Steif	Uri Koenig	David Camerota
Bridgewater	44.90%	55.00%	0.10%
CPRNC	44.90%	27.50%	0.10%
Pine Valley	49.90%	17.71%	N/A
CRNC	39.90%	60.00%	0.10%
RRNC	39.90%	60.00%	0.10%
ORNC	39.90%	60.00%	0.10%
JBRNC	39.90%	60.00%	0.10%
RSRNC	39.90%	60.00%	0.10%
CSRNC	39.90%	60.00%	0.10%
NCRNC	39.90%	60.00%	0.10%
HRNC	39.90%	60.00%	0.10%
BTRNC	39.90%	60.00%	0.10%
VDRNC	39.90%	60.00%	0.10%

Bridgewater Center for Rehabilitation & Nursing, LLC			
	1/1/2014-		
	12/31/2014		
	Internal	2013	2012
ASSETS - CURRENT	\$8,034,119	\$8,568,912	\$6,448,875
ASSETS - FIXED AND OTHER	\$3,615,141	\$2,946,021	\$1,243,881
TOTAL ASSETS	\$11,649,260	\$11,514,933	\$7,692,756
LIABILITIES - CURRENT	\$7,746,956	\$10,786,079	\$6,872,498
LIABILITIES - LONG-TERM	\$362,731	\$394,367	\$819,057
TOTAL LIABILITIES	\$8,109,687	\$11,180,446	\$7,691,555
WORKING CAPITAL	\$287,163	(\$2,217,167)	(\$423,623)
INCOME	\$29,605,508	\$29,477,711	\$28,137,280
EXPENSE	\$24,311,044	\$28,966,417	\$27,582,261
NET INCOME	\$5,294,464	\$511,294	\$555,019
NET ASSET POSITION	\$3,539,573	\$334,487	\$1,201
CPRNC, LLC d/b/a Central Park Rehabilitation and Nursing Center			
	1/1/2014-		
	12/31/2014		
	Internal	2013	2012
ASSETS - CURRENT	\$3,767,770	\$3,706,237	\$4,082,016
ASSETS - FIXED AND OTHER	\$893,361	\$630,135	\$646,949
TOTAL ASSETS	\$4,661,131	\$4,336,372	\$4,728,965
LIABILITIES - CURRENT	\$3,891,066	\$1,734,043	\$1,943,757
LIABILITIES - LONG-TERM	\$101,544	\$2,800,310	\$2,770,008
TOTAL LIABILITIES	\$3,992,610	\$4,534,353	\$4,713,765
WORKING CAPITAL	-\$123,296	\$1,972,194	\$2,138,259
INCOME	\$14,831,700	\$13,575,585	\$14,204,493
EXPENSE	\$13,004,681	\$13,496,578	\$13,912,344
NET INCOME	\$1,827,019	\$79,007	\$292,149
NET ASSET POSITION	\$668,521	-\$197,981	\$15,200
Pine Valley Center, LLC d/b/a Pine Valley Center for Rehabilitation and Nursing			
	1/1/2014-		
	12/31/2014		
	Internal	2013	2012
ASSETS - CURRENT	\$7,097,527	\$8,002,776	\$7,162,177
ASSETS - FIXED AND OTHER	\$10,319,658	\$9,604,319	\$9,685,382
TOTAL ASSETS	\$17,417,185	\$17,607,095	\$16,847,559
LIABILITIES - CURRENT	\$3,978,944	\$3,814,938	\$4,636,948
LIABILITIES - LONG-TERM	\$9,432,910	\$9,727,141	\$9,700,983
TOTAL LIABILITIES	\$13,411,854	\$13,542,079	\$14,337,931
WORKING CAPITAL	\$3,118,583	\$4,187,838	\$2,525,229
INCOME	\$22,630,958	\$20,624,682	\$18,196,097
EXPENSE	\$20,917,816	\$19,065,882	\$17,970,716
NET INCOME	\$1,713,142	\$1,558,800	\$225,381
NET ASSET POSITION	\$4,005,331	\$4,065,016	\$2,509,628

VDRNC, LLC d/b/a Van Duyn Center for Rehabilitation and Nursing

	2014
ASSETS - CURRENT	\$12,453,731
ASSETS - FIXED AND OTHER	\$2,133,724
TOTAL ASSETS	\$14,587,455
LIABILITIES - CURRENT	\$12,798,958
LIABILITIES - LONG-TERM	\$279,817
TOTAL LIABILITIES	\$13,078,775
WORKING CAPITAL	(\$345,227)
INCOME	\$41,134,151
EXPENSE	\$40,076,040
NET INCOME	\$1,058,111
NET ASSET POSITION	\$1,508,680

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish ECRNC, LLC d/b/a Evergreen Commons Rehabilitation and Nursing Center as the new operator of NYMED Rensselaer, LLC d/b/a Everygreen Commons, a 240-bed facility located in East Greenbush, 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:

151180 E

ECRNC, LLC
d/b/a Evergreen Commons Rehabilitation and
Nursing Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period.
(RNR)
4. Submission and review of an acceptable consulting and services agreement. [LTC]
5. Submission of a commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. (BFA)
6. Submission of an executed loan commitment from NYMED Rensselaer, LLC, acceptable to the Department of Health. (BFA)
7. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
8. Submission of the executed Operating Agreement of ECRNC, LLC., acceptable to the Department. [CSL]

9. Submission of the Lease Agreement between 1070 Luther Road LLC, the lessor, and ECRNC LLC, the lessee, acceptable to the Department. [CSL]
10. Submission of statement clarifying if the applicant intends to be managed by managers or members accompanied by the appropriate revisions to ECRNC, LLC's Operating Agreement or Articles of Organization as they conflict. [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 # 151196-E
Daleview Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Nassau
Acknowledged: May 5, 2015

Executive Summary

Description

MMR Care Corp. d/b/a Daleview Care Center, a 142-bed Article 28 residential health care facility (RHCF) located at 574 Fulton Street, Farmingdale (Nassau County), requests approval for a change in ownership of 9% of the facility. The majority owner, Mr. Robert Ostreicher, proposes to sell 9% of his shares in three equal amounts of 3% to the three other members of Daleview Care Center, all of whom currently have 8% ownership interest. This transfer will bring the acquiring owners to a total of 11% of shares each, requiring approval by the Public Health and Health Planning Council (PHHPC). There will be no change in services provided, nor any change in management. BFA Attachment A presents the organizational chart of the RHCF, which will remain unchanged after the sale of the additional shares to the three acquiring shareholders.

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

MMR Care Corp. d/b/a Daleview Care Center		
	Current	Proposed
Robert Ostreicher	76%	67%
David Ostreicher	8%	11%
Jennifer Ostreicher Mittel	8%	11%
Michael Ostreicher	<u>8%</u>	<u>11%</u>
Total Shares	100%	100%

Each of the acquiring shareholders have ownership interest in the following three RHCFs:

- Daleview Care Center (approval of this CON will increase shares for three existing shareholders);

- Central Island Healthcare, a 202-bed RHCF located in Plainview, NY; and
- Riverhead Care Center, a 181-bed RHCF located in Riverhead, NY.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no Need review of this project.

Program Summary
No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Financial Summary
The purchase price for each transferred interest is \$88,636. Each purchaser will acquire these shares with equity and a Promissory Note of \$68,636 that will accrue interest at the current mid-term Applicable Federal Rate (AFR) in effect on the date of the note. The Maturity Date will be eight years from the executed date of the note at closing.

Budget :	Revenues:	\$17,370,200
	Expenses:	<u>\$16,304,026</u>
	Gain:	\$ 1,066,174

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 promissory note for each member acquiring shares, acceptable to the Department of Health. [BFA]
2. Submission of a resolution of members authorizing the project that is acceptable to the Department. [CSL]
3. Submission of site control that is acceptable to the Department. [CSL]
4. Submission of stockholder affidavits from each stockholder that is acceptable to the Department. [CSL]
5. Submission of a sample stock certificate that is acceptable to the Department. [CSL]
6. Submission of an executed amended Certificate of Incorporation that is acceptable to the Department. [CSL]
7. Submission of Bylaws that are acceptable to the Department. [CSL]
8. Submission of an executed Medicaid Affidavit that is acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 8, 2015

Program Analysis

Program Description

This application is proposing to redistribute 9% of MMR Care Corp from an existing member to the three other existing members. The 9% will be distributed equally between the other members. No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Facility Information

	Existing	Proposed
Facility Name	Daleview Care Center	Same
Address	574 Fulton Street	
Farmingdale, NY. 11735	Same	
RHCF Capacity	142	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	MMR Care Corp	MMR Care Corp
	Robert Ostreicher 76%	Robert Ostreicher 67%
	David Ostreicher 8%	David Ostreicher 11%
	Jennifer Ostreicher Mittel 8%	Jennifer Mittel 11%
	Michael Ostreicher 8%	Michael Ostreicher 11%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Central Island Healthcare	09/2009 to present
Riverhead Care Center	03/2013 to present
Daleview Care Center	07/2013 to present

Individual Background Review

David Ostreicher is a New York State licensed attorney, considered to be in good standing. He lists his employment as the owner of Brooklyn Real Estate Group, LLC, a real estate company located in Uniondale, New York. Prior to starting his own business in June, 2013, Mr. Ostreicher was employed as an attorney at Westerman Ball, LLP. David Ostreicher discloses the following ownership interests in health facilities:

Central Island Healthcare	09/2009 to present
Riverhead Care Center	03/2013 to present
Daleview Care Center	07/2013 to present

Jennifer (Ostreicher) Mittel holds an expired New York State public school teacher certification, but was considered to be in good standing. She is currently unemployed and is the primary caregiver at her home. In 2010, she was briefly employed at Bright Smile Center, a contract agency for special education teachers located in Brooklyn, New York. Jennifer Mittel discloses the following ownership interests in health facilities:

Central Island Healthcare	09/2009 to present
Riverhead Care Center	03/2013 to present
Daleview Care Center	07/2013 to present

Michael Ostreicher is a New York State licensed nursing home administrator and is considered to be in good standing. He lists his employment for the last ten years as the owner of Central Island Healthcare, a skilled nursing facility located in Plainview, New York. Michael Ostreicher discloses the following ownership interests in health facilities:

Central Island Healthcare	09/2009 to present
Riverhead Care Center	03/2013 to present
Daleview Care Center	07/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

The review of Riverhead Care Center reveals the following:

- The facility was fined \$4000 pursuant to a Stipulation and Order dated September 1, 2015 issued for surveillance findings on July 26, 2013. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: Medication Errors and 415.26 Administration: Effective Administration.

A review of operations for Riverhead Care Center for the period identified above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Central Island Healthcare, and Daleview Care Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Share Acquisition Agreement

The purchase price of each Transferred Interest (TI) is \$88,636 to be paid by the purchaser to the seller as follows: \$5,000 down payment on execution of SAA, \$15,000 at closing, and a \$68,636 Promissory Note at closing. The total purchase price for all shares is \$265,908.

The applicant has submitted an executed SAA for the transfer of 9% ownership interest from Robert Ostreicher to the three other members of Daleview Care Center, to be effectuated upon PHHPC approval, summarized as follows:

Date:	January 8, 2014
Purpose:	The sale of 9% ownership of the RHCF (18 shares of the corporation)
Seller:	Robert Ostreicher, 67-42 180th Street, Flushing NY 11365
Purchasers:	David Ostreicher (3%) Michael Ostreicher (3%) Jennifer Ostreicher Mittel (3%),
Purchase Price:	\$88,636 per each TI of 3%
Payment of Purchase Price:	<ul style="list-style-type: none"> • \$5,000 deposit • \$15,000 due at closing • Promissory Note of \$68,636 issued at closing, 8-year maturity date, interest determined at closing at current mid-term AFR rate in effect on that day.

Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year summarized as follows:

	<u>Per Diem</u>	<u>Year One</u>
Revenues:		
Medicare	\$658.38	\$7,763,600
Medicaid	\$268.94	\$8,172,400
Private Pay/Other	\$400.09	<u>\$1,434,200</u>
Total Revenues		\$17,370,200
Expenses:		
Operating	\$348.31	\$15,797,500
Capital	\$ 11.17	<u>\$506,526</u>
Total Expenses		\$16,304,026
Net Income		<u>\$1,066,174</u>
Utilization (patient days)		45,355
Occupancy		87.51%

The following is noted with respect to the submitted budget:

- The Medicaid rate is projected based on the facility's current 2015 Medicaid Fee-for-Service rate.
- The Medicare rate is projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2013 and are increased by 2.5% per annum for inflation to reflect 2015 dollars.
- Private Pay and Other rates are projected based on similar facilities in the same geographical area increased by 2.5% per annum for inflation to reflect 2015 dollars.
- Expense and utilization assumptions are based on the current experience of the facility.
- Utilization by payor source for the first year is anticipated as follows:

Medicare	26.0%
Medicaid	67.0%
Private Pay/Other	7.0%

The projected budget appears reasonable.

Capability and Feasibility

There are no project costs associated with this application.

The total purchase price for all shares is \$265,908. The TI total for each purchasing member is \$88,636. The TI purchase price will be funded with \$20,000 in equity and a Promissory Note of \$68,636 issued at closing, with an 8-year maturity date and interest determined at closing at the current mid-term AFR rate in effect on that day. BFA Attachment B is the summary net worth statement for the members, which shows sufficient resources to cover the equity funding of the purchase price.

BFA Attachment C is the pro forma balance sheet of the RHCF after the change in ownership interest for the existing members, which indicates a positive members' equity of \$1,463,000.

The submitted budget indicated an excess of revenues over expenses of \$1,066,174 during the first year of the change in ownership. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the

benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period.

BFA Attachment D is a 2012 through 2014 financial summary of the combined operations of the members' affiliated RHCs which shows the following:

- Central Island Healthcare had average positive working capital of \$3,249,300, average net assets of \$8,805,365, and generated an average net income of \$1,848,539 during the period.
- Riverhead Care Center, LLC had average positive working capital of \$4,135,780, average net assets of \$5,559,871, and generated an average net income of \$21,101 during the period. The 2014 financials are internal only, as the requested 2014 audited financials have not been received to date.
- Daleview Care Center had average working capital of \$2,619,233, average net assets of \$6,502,616, and generated an average net income during the period 2012 through 2014 of \$85,974. The applicant indicated that the operating net loss of \$790,193 in 2013 was due to a management fee.

Based on the preceding, it appears the applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth Statement of the Members Purchasing Shares
BFA Attachment C	Pro Forma for Daleview Care Center
BFA Attachment D	Financial Summary - Affiliated Residential Health Care Facilities

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 9% ownership interest from one (1) existing shareholder to three (3) existing shareholders bringing each of the three shareholders to a total interest of 11%, 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:

151196 E

Daleview Care Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed promissory note for each member acquiring shares, acceptable to the Department of Health. [BFA]
2. Submission of a resolution of members authorizing the project that is acceptable to the Department. [CSL]
3. Submission of site control that is acceptable to the Department. [CSL]
4. Submission of stockholder affidavits from each stockholder that is acceptable to the Department. [CSL]
5. Submission of a sample stock certificate that is acceptable to the Department. [CSL]
6. Submission of an executed amended Certificate of Incorporation that is acceptable to the Department. [CSL]
7. Submission of Bylaws that are acceptable to the Department. [CSL]
8. Submission of an executed Medicaid Affidavit that is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 152008-E
NYU Hospitals Center**

Program: Hospital
Purpose: Establishment

County: Kings
Acknowledged: July 7, 2015

Executive Summary

Description

NYU Hospitals Center (NYUHC), a 1,069-bed not-for-profit hospital located in Kings County, requests approval to acquire and certify NYU Lutheran Medical Center (NYU Lutheran), a 450-bed not-for-profit hospital also located in Kings County, as a division of NYUHC via a merger agreement. Effective April 1, 2015, NYU Langone Health System, Inc., a New York not-for-profit corporation, became the active parent of NYU Lutheran and the passive parent of NYUHC. After approval of this application, NYU Lutheran will cease to exist as a separate corporate entity, and its operations (including all assets and liabilities) will merge into NYUHC, which will continue to have NYU Langone Health System, Inc. as its sole member and passive parent.

NYUHC anticipates that a full-asset merger will result in substantial savings to NYUHC that would accrue through efficiencies in IT, patient care management, revenue cycle management, and managed care contracting. The merger would bring to the combined operations discounted pharmacy benefits from 340B programs; improved Medicare and Medicaid rates; a potentially improved credit rating due to key performance indicator improvements; and reduced costs of malpractice premiums through the use of NYUHC's wholly owned captive insurance company. Subsequent to the merger, NYUHC will refinance NYU Lutheran's outstanding HUD insured bonds through a draw under an existing line of credit, with permanent financing for that debt to be included in NYUHC's next public bond offering. Repaying the HUD debt will provide substantial operational flexibility for NYU Lutheran by removing HUD's

relatively stringent financial and operational covenants. This merger will preserve the health care services provided by NYU Lutheran, preserve needed jobs for current NYU Lutheran employees, and ensure that the health care needs of the community are met. There will be no change in authorized services or the number or type of beds as a result of this project.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

Merger of these facilities will help to expand services in the region and allow improvement through an influx of cash to be provided by NYU Hospitals Center. Modernization and growth in services is an anticipated and expected result of this project.

Program Summary

Based on the results of this review, a favorable recommendation can be made for the proposal.

Financial Summary

There are no project costs associated with this application.

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first year subsequent to the change in operator.

The budget is summarized below:

Incremental Revenues	\$669,329,248
Incremental Expenses:	
Operating	\$618,705,862
Capital	<u>27,727,850</u>
Total Expenses	\$646,433,712

Excess of Revenues over Expenses	<u>\$22,895,536</u>
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Enterprise Budget:	
Revenues	\$2,897,054,574
Expenses	<u>2,743,559,734</u>
Excess of Revenues over Expenses	<u>\$153,494,840</u>

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 merger agreement that is acceptable to the Department of Health. (BFA).
2. Submission of a photocopy of the fully executed Certificate of Merger of NYU Lutheran Medical Center into NYU Hospitals Center, acceptable to the Department. [CSL]
3. Submission of a photocopy of the fully executed Plan of Merger between NYU Hospitals Center and NYU Lutheran Medical Center, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Certificate of Incorporation of NYU Langone Health System, acceptable to the Department. [CSL]
5. Submission of the fully executed Amendment to Certificate of Incorporation of NYU Hospitals Center, acceptable to the Department. [CSL]
6. Submission of the fully executed bylaws of the NYU Hospitals Center, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 8, 2015

Need Analysis

Background

NYU Hospitals Center is an 844-bed hospital located at 550 First Avenue, New York 10016. The Center is seeking approval to acquire and certify NYU Lutheran Medical Center (NYU Lutheran), a 450-bed not-for-profit hospital also located in Kings County, as a division of NYUHC via a merger agreement.

Analysis

Through this merger, comprehensive care will be more accessible to residents in the service area. Care and services may be expanded and updated through the creation of a larger network, which will better serve patients via the use of state of the art equipment and the latest procedures available as well as an expanded pool of physicians.

This merger will provide support to NYU Lutheran MC's Federally Qualified Health Centers (FQHC's) and allow a transformation so the facility can provide necessary services to Brooklyn residents. NYU Lutheran plans to enhance cardiac catheterization and upgrade the emergency and ambulatory departments.

Conclusion

Merger of these facilities will help to expand services in the region and allow improvement through an influx of cash to be provided by NYU Hospitals Center. Modernization and growth in services is an anticipated and expected result of this project.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

NYU Hospitals Center (NYUHC) requests approval for the proposed merger of NYU Lutheran Medical Center (NYU Lutheran) with and into NYU Hospitals Center, with NYU Hospitals Center being the surviving corporation.

Previously, PHHPC had approved Lutheran's affiliation with NYUHC whereby NYUHC and NYU Lutheran would come under the common control of a single parent. The affiliation was completed on April 1, 2015 and NYU Langone Health System became the active parent of NYU Lutheran and the passive parent of NYUHC. Pursuant to the Affiliation Agreement, NYUHC made commitments to NYU Lutheran consisting of cash grants for capital and clinical improvement projects and loans to implement an electronic medical records system and certain infrastructure projects.

As efforts to integrate clinical programs and corporate services progressed, it became evident that the most optimal way to expedite the growth of NYU Lutheran and to address the increasing financial challenges it faces is to pursue a full-asset merger. NYUHC anticipates that a full-asset merger will result in approximately \$56.9 million in savings to NYUHC annually that would accrue through efficiencies in IT, patient care management, revenue cycle and managed care contracting. The merger would bring to the combined operations discounted pharmacy benefits; improved Medicare and Medicaid rates; potential improved credit rating due to key performance indicator improvement; and reduced costs of malpractice premiums.

NYUHC has 1,069 licensed beds and has received recognition for clinical excellence and quality as evidenced by being awarded the Gold Seal of Approval by The Joint Commission; a #1 ranking for patient safety and quality by the University Health System Consortium in 2013 and 2014; and Magnet Designation for nursing excellence.

NYU Lutheran is the principal provider of health care for the residents of southwest Brooklyn with 450 licensed beds and an emergency department that has been designated a Level I trauma center and a regional stroke center.

In addition to the inpatient facility, NYU Lutheran is the co-operator with Sunset Park Health Council, Inc. of Lutheran Family Health Centers, one of the largest federally qualified health center (FQHC) networks in the country, with 9 primary care sites, 28 school-based health/dental clinics and social support services. Currently, Sunset Park has been the licensed co-operator of all of NYU Lutheran's outpatient extension clinics as well as the clinics located at NYU Lutheran's main facility, all of which are operated as FQHCs sites. Accordingly, NYUHC is hereby requesting that co-operator status of the FQHC outpatient clinics be maintained following the merger, and that co-operator status be noted on the new operating certificate issued to NYUHC.

NYU Lutheran is also the sole passive member of Lutheran Augustana Center, a 240-bed nursing home located on NYU Lutheran's main campus at 150 55th Street in Brooklyn, and indirectly controls a certified home health agency (Lutheran CHHA, Inc.) and a licensed home health agency (Community Care Organization, Inc.). The Bylaws of the two stand-alone entities require that their directors be officers, directors or employees of NYU Lutheran or, in the case of Community Care, NYU Lutheran or a related entity. As NYU Lutheran is a passive parent, Augustana is not included in this proposal. Furthermore, the certified home health agency and the licensed home health agency, both stand-alone corporations without any members, are licensed under Article 36 of the Public Health Law and thus not a part of this application.

Upon approval, NYU Lutheran will cease to exist as a separate corporate entity and its operations (including all assets and liabilities) will merge into NYU Hospitals Center, which will continue to have NYU Langone Health System as its sole member and passive parent. In connection with the proposed transaction, NYU Lutheran is developing an advisory board that will provide input on local issues directly to the NYUHC Board of Trustees and senior management team.

Compliance with Applicable Codes, Rules and Regulations

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

Conclusion

Based on the results of this review, a favorable recommendation can be made for the proposal.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Merger Agreement

The applicant has submitted a draft merger agreement, which is summarized below:

Purpose:	The merger of NYU Lutheran Medical Center into NYU Hospitals Center.
Terms:	All assets and liabilities of NYU Lutheran, as well as all pension plan and other liabilities, will be transferred to and assumed by NYUHC; NYUHC will develop and maintain NYU Lutheran's premises and maintain commitment to its mission; NYUHC's existing, more generous, charity care policy will apply to NYU Lutheran; all existing employment and union agreements will be honored; the management of the two organizations will be integrated, with Senior Executive responsible for operations at the NYU Lutheran site.
Governance:	The members of the Board of Trustees of NYU Hospitals Center immediately prior to the Effective Date shall continue to be the Trustees of the Surviving Corporation upon consummation of the Merger.
Closing:	Closing is contingent upon approval or waiver of approval from: NYS Attorney General, NYS Department of Health, Justice of the Supreme Court of New York County, and HUD

NYUHC has submitted an affidavit, which is acceptable to the Department of Health, in which they agree, notwithstanding any agreement, arrangement or understanding between NYUHC and NYU Lutheran to the contrary, to be liable and responsible for any Medicaid overpayments made to NYU Lutheran and/or surcharges, assessments or fees due to NYU Lutheran pursuant to Article 28 of the Public Health Law with respect to the period of time prior to NYUHC acquiring its interest, without releasing NYU Lutheran of its liability and responsibility. Currently, there are no outstanding Medicaid liabilities or assessments.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first year of operation, as summarized below:

Revenues:	
Operating Revenues	\$2,639,013,665
Other Operating Revenues	<u>258,040,909</u>
Total Revenues	\$2,897,054,574
Expenses:	
Operating	\$2,571,101,308
Capital	<u>172,458,426</u>
Total Expenses	\$2,743,559,734
Excess of Revenues over Expenses	\$153,494,840
Utilization:	
Inpatient (Discharges)	64,652
Outpatient (Visits)	1,634,401

Other operating revenues includes grants and affiliations, return on short term investments, contributions, parking lot and space rental, EHR incentive payments, payments from offshore medical schools to train medical students, and income from Calvary Hospital within a hospital program.

Utilization for the combined NYUHC/NYU Lutheran operations by payor source for inpatient and outpatient services is as follows:

	<u>Inpatient</u>	<u>Outpatient</u>
Medicaid Fee For Service	5.97%	8.40%
Medicaid Managed Care	20.65%	28.55%
Medicare Fee For Service	23.42%	15.85%
Medicare Managed Care	8.61%	6.01%
Commercial Fee For Service	32.85%	25.17%
Commercial Managed Care	4.42%	6.21%
Private Pay	4.08%	9.81%

Expense and utilization assumptions are based on the historical experience of NYU Hospital Center and NYU Lutheran Medical Center.

Capability and Feasibility

There are no issues of capability associated with this application.

The submitted budget indicates an excess of revenues over expenses of \$153,494,840 during the first year for the combined operations. Revenues are based on current reimbursement methodologies.

BFA Attachment A is the certified financial statements of NYU Hospital Center as of August 31, 2013, and August 31, 2014. As shown, the entity had an average positive working capital position and an average positive net asset position for the period shown. Also, the entity achieved an average income of operations of \$131,299,500 during the period shown.

BFA Attachment B is the 2013 and 2014 certified financial statements of Lutheran Healthcare. As shown, the entity had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the entity incurred average losses of \$14,256,500 from 2013 through 2014. The applicant indicated that the losses were attributed to supporting the operating losses that the physician group (Professional Corporation) and Lutheran Augustana Center for Extended Care and Rehabilitation incurred.

BFA Attachment C is the internal financial statements of NYU Hospitals Center as of May 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position for the period ending May 31, 2015. Also, the entity incurred an income from operations of \$167,596,000 through May 31, 2015.

BFA Attachment D is the internal financial statements of NYU Lutheran Medical and Family Health Centers as of May 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position through May 31, 2015. Also, the entity incurred a loss of \$2,500,187 through May 31, 2015. The applicant indicated that the losses were the result of the following: decreases in volume and case mix during January through March as a result of the extreme weather patterns experienced during these months; an increase in observation cases; and Lutheran Medical Center's focus on decreasing readmissions especially from Lutheran Augustana Center for Extended Care and Rehabilitation. The applicant indicated that they implemented the following steps to improve operations: negotiated contracts expiring after April 1, 2015, with significant increases in payment rates; augmented staff and resources to critical areas such as HIM, CDI and Revenue Management; evaluated purchase agreements and leases to drive lower prices and better value through combining purchasing power; and evaluated opportunities to lower insurance premiums by consolidating policies.

Subject to the noted contingency, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

- BFA Attachment A Financial Summary - August 31, 2013 and August 31, 2014 certified financial statements of NYU Hospital Center.
- BFA Attachment B Financial Summary - 2013 and 2014 certified financial statements of Lutheran Healthcare
- BFA Attachment C Financial Summary - May 31, 2015 internal financial statements of NYU Hospitals Center.
- BFA Attachment D Financial Summary - May 31, 2015 internal financial statements of NYU Lutheran Medical and Family Health Centers.

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to certify NYU Lutheran Medical Center as a division of NYU Hospitals Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

152008 E

NYU Hospitals Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed merger agreement that is acceptable to the Department of Health. (BFA).
2. Submission of a photocopy of the fully executed Certificate of Merger of NYU Lutheran Medical Center into NYU Hospitals Center, acceptable to the Department. [CSL]
3. Submission of a photocopy of the fully executed Plan of Merger between NYU Hospitals Center and NYU Lutheran Medical Center, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Certificate of Incorporation of NYU Langone Health System, acceptable to the Department. [CSL]
5. Submission of the fully executed Amendment to Certificate of Incorporation of NYU Hospitals Center, acceptable to the Department. [CSL]
6. Submission of the fully executed bylaws of the NYU Hospitals Center, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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: Members of the Establishment and Project Review Committee
Public Health and Health Planning Council

From: Christopher Delker
Director
Division of Planning and Licensure

Date: September 15, 2015

Subject: CON #151008 Pittsford Pain Center, LLC

This application first came before the full Council at its meeting of June 11, 2015, following earlier review by the Establishment and Project Review Committee, whose members were unable to agree on a recommendation.

The proposed ASC was the subject of considerable discussion at the PHHPC meeting, mainly because of the recommendation of the Finger Lakes Health Systems Agency (HSA) for disapproval (see attached memo). With two members recusing, 14 of the 16 members in attendance were eligible to vote on the application. By a tally of 11 in favor and three opposed, the motion to accept the Department's recommendation for approval of the proposed ASC fell two votes short of the required 13.

Rather than entertain an alternate motion for disapproval of the application, members noted the absence of six members and elected to defer further consideration of the proposal until a PHHPC meeting with fuller attendance. Because it was anticipated that the PHHPC's August meeting would also have the low attendance typical of the summer vacation season, the Department has scheduled the application for consideration in this September/October cycle.



MEMORANDUM

To: Members of the Public Health and Health Planning Council

From: Charles P. Abel *CPA*
Acting Director
Center for Health Care Facility Planning, Licensure and Finance

Date: May 14, 2015

Subject: CON #151008 Pittsford Pain Center, LLC - Revised

The Finger Lakes Health Systems Agency (HSA) has recommended disapproval of the proposed Pittsford Pain Center, LLC, an ambulatory surgery center (ASC) specializing in pain management. The HSA's recommendation for disapproval is based principally on three considerations:

- the availability of pain management services from four hospitals in the Rochester area (at main campus and off-campus sites);
- the higher cost of delivering services that can be effectively delivered in office-based settings;
- a lack of well-established evidence in the medical literature on the clinical efficacy and utility of certain of the procedures to be performed at the proposed ASC.

Although the Department finds the HSA's comments thoughtful and well-considered, the three cited factors do not fall within the elements listed in 10 NYCRR Section 709.5, the need methodology for ambulatory surgery centers. Specifically:

- **Hospital Services:** Section 709.5 does not list the availability of services from hospitals as a factor for consideration in the evaluation of public need for a proposed ASC. Public need for a new ASC rests principally on the applicant's demonstration that the proposed facility will be utilized sufficiently to be financially feasible, as demonstrated by a three-year analysis of costs and revenues from the volume of procedures to be performed. There is no provision for consideration of existing services, whether from hospital-based or independent ASCs, in the evaluation of this factor.

It is also the case that when section 709.5 was amended in 1998 to allow the establishment of more ASCs (which had hitherto been limited to one ASC per

500,000 population) the changes were intended to expand access to ambulatory surgical care and allow greater consumer choice. The HSA's recommendation would leave Article 28 surgical pain management services solely in the hands of hospitals, which would be at odds with regulatory intent.

Although the Department routinely seeks comments from hospitals in the service areas of proposed ASC's, these invitations to comment are not to aid in determining public need. Rather, their purpose is to help ascertain whether the proposed ASC would have an adverse impact on hospital surgical revenues, and in particular on the hospitals' community oriented services that may be subsidized by income from ambulatory surgical cases.

- **Costs:** The Department agrees with the HSA that the delivery of the proposed pain management services in an ASC setting would be more expensive than if these procedures remained in the applicant physicians' office-based practices. However, the Department has for years accepted such higher costs as a tradeoff for the greater safety that comes from Article 28 monitoring and oversight. It would be inconsistent with many past approvals for conversions of office-based practices to Article 28 ASCs if we were to give special weight to the cost factor in this instance. Additionally, there are some procedures appropriate for the ASC setting that would not be appropriate for the office-based setting.
- **Procedures:** Although the HSA refers to a lack of medical consensus regarding the utility and efficacy of certain spinal procedures to be performed by the proposed ASC, the majority of the procedures to be performed at the facility are listed under the Medicaid Products of Ambulatory Surgery and are reimbursed accordingly.

In summary, we respectfully conclude that the HSA's comments provide no basis for reversal or modification of the Department's recommendation for approval of this ASC based on public need, financial feasibility and owner/operator character and competence.



**Project # 151008-B
Pittsford Pain Center LLC**

Program: Diagnostic and Treatment Center **County:** Monroe
Purpose: Establishment and Construction **Acknowledged:** January 14, 2015

Executive Summary

Description

Pittsford Pain Center, LLC, a to-be-formed New York limited liability company, requests approval to develop a single-specialty Article 28 freestanding ambulatory surgery center (FASC) to provide pain management services. The Center will be located in leased space at 727 Linden Avenue, Pittsford (Monroe County), and will consist of four operating rooms.

The proposed members of Pittsford Pain Center, LLC and their ownership percentages are as follows:

Ajai Nemani, M.D.	47.50%
Roser Ng, M.D.	47.50%
Heritage Ambulatory Surgery Center Alliance	5.00%

The members of Heritage Ambulatory Surgery Center Alliance, LLC are as follows:

Robert Tiso, M.D.	37.50%
Eric Tallarico, M.D.	5.00%
Joseph Catania, M.D.	37.50%
Nameer Haider	20.00%

The two physician owners, Ajai Nemani, M.D. and Roger Ng, M.D., currently provide pain management services in their individual offices located in Rochester. The Heritage Ambulatory Surgery Center Alliance (HASCA) provides administrative and consulting services to ambulatory surgery centers.

OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate five (5) years from the date of its issuance.

Need Summary

The vast majority of procedures to be performed at Pittsford Pain Center, LLC are presently being performed in physicians' private offices. (Fewer than 50 per year are performed elsewhere, mostly in freestanding ASCs.)

The number of projected procedures is 6,001 in Year 1, with Medicaid at 3.5% and charity care at 2.0%.

Program Summary

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

Financial Summary

Project costs of \$404,698 will be met as follows: Equity of \$44,698 and a bank loan of \$360,000 at an interest rate of 5% for a five year term.

Budget:

Revenues	\$6,231,234
Expenses	<u>4,827,355</u>
Net Income	\$1,403,879

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Disapproval of this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate five (5) years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payer source;
 - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided; and
 - f. Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed administrative service agreement, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of an executed loan commitment, acceptable to the Department. [BFA]
10. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03 (See Attached). [AER]
12. Submission of a photocopy of the executed Operating Agreement of Pittsford Pain Center, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of the executed Lease Agreement between N & N Real Estate Holding Rochester LLC and the applicant, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and the Department's granting approval for the start of construction (See Attached). [AER]
7. The applicant shall start construction on or before 09/15/2015 and complete construction by 05/15/2016 upon the filing of Final Construction Documents in accordance with 10NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the commissioner. [AER]

Council Action Date

May 21, 2015 EPRC – No Recommendation

June 11, 2015 PHHPC – No Recommendation

October 8, 2015

Need Analysis

Project Description

Pittsford Pain Center, LLC, a to-be-formed New York limited liability company, is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty pain management surgery services at 727 Linden Avenue, Pittsford, 14534, in Monroe County.

Analysis

The primary service area consists of Monroe County. Monroe County has a total of five freestanding multi-specialty ASCs. The table below shows the number of patients utilizing Ambulatory Surgery Centers in Monroe County for 2012 & 2013 (Source: SPARCS).

Specialty Type	Name of Facility	Patients-2012	Patients-2013
Multi	Brighton Surgery Center ,LLC	4,745	6,778
Multi	Lindsay House Surgery Center, LLC	599	674
Multi	Rochester Ambulatory Surgery Center	3,614	4,411
Multi	Unity Linden Oaks Surgery Center	4,923	5,689
Multi	Westfall Surgery Center, LLP	14,224	13,639
Total		28,105	31,191

For Monroe County, the total number of patient visits for ASC's was 28,105 in 2012 and 31,191 in 2013. This represents a 9.9% increase in the number of patients served by Ambulatory Surgery Centers in Monroe County from 2012 to 2013.

The applicant projects 6,001 procedures in Year 1 and 7,260 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Pittsford Pain Center.

Projections	Year 1 Procedures	Year 1 Percentage	Year 3 Procedures	Year 3 Percentage
Commercial Ins	2,064	34.4%	2,498	34.4%
Medicare	2,184	36.4%	2,642	36.4%
Medicaid	212	3.5%	256	3.5%
Private Pay	230	3.8%	278	3.8%
Charity Care	120	2.0%	145	2.0%
Other	1,191	19.8%	1,441	19.8%
Total	6,001	100.0%	7,260	100.0%

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

Conclusion

Approval of this project will bring office-based pain management surgical procedures into an Article 28 Ambulatory Surgery Center serving the communities of Monroe County.

Recommendation

From a need perspective, contingent approval is recommended for a limited period of five years.

Program Analysis

Project Proposal

Pittsford Pain Center, LLC seeks approval to establish and construct a single specialty ambulatory surgery center at 727 Linden Avenue, Pittsford (Monroe County) which will provide pain management services.

Proposed Operator	Pittsford Pain Center, LLC
Site Address	727 Linden Avenue, Pittsford (Monroe County)
Surgical Specialties	Pain Management
Operating Rooms	4 (Class B)
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:30 am to 4:00 pm
Staffing (1st / 3rd Year)	14.6 FTEs / 17.4 FTEs
Medical Director	Ajai K. Nemani, MD
Emergency, In-Patient & Backup Support Services Agreement and Distance	Expected to be provided by Rochester General Hospital 12 miles / 16 minutes
On-call service	24/7 on-call service to connect patients to the facility's on-call physician during hours when the facility is closed.

Character and Competence

The members of Pittsford Pain Center, LLC are:

Name	Membership
Individual Physicians	95%
Ajai Nemani, MD (47.50%)	
Roger R. Ng, MD (47.50%)	
Heritage Ambulatory Surgery Center Alliance, LLC	5%
Robert L. Tiso, MD (37.50%)	
Joseph A. Catania, MD (37.50%)	
Eric Tallarico, MD (5.00%)	
Nameer Haider, MD (20.00%)	

The proposed Center's ownership is comprised of two physicians, Drs. Nemani and Ng—both practicing physicians (Board Certified in Anesthesiology and Pain Medicine) who will perform procedures at the Center, and Heritage Ambulatory Surgery Center Alliance, which is comprised of four physicians who will provide administrative and consulting services to the Center.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Drs. Tallarico and Tiso each disclosed one open malpractice case. Dr. Catania disclosed one settled and three (3) open malpractice cases.

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

The proposed ASC will establish and maintain a list of physicians in and around the facility's location who are accepting new patients. The list will be available to any patient who does not have a primary care physician. Pain management services will be provided to all who are referred to the physicians credentialed by the ASC, without regard to their ability to pay.

The center intends on utilizing an electronic medical record. Another goal of the ASC is to integrate into a Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE). Additionally, the applicant is open to becoming a part of an Accountable Care Organization or Medical Home, based on regulatory and market demands.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Facility:	Pittsford Pain Center, LLC
Contractor:	Heritage Ambulatory Surgery Center Alliance, LLC
Term:	Two years with automatic renewal of successive terms of one year.
Services Provided:	The Contractor shall provide the following services: billing and collection services, detailed revenue analysis on monthly and annual collections, manage the EMR /Billing system software and vendor relationship, provide decision support reporting out of the EMR and Billing system, provide facility level financial statements in format consistent with all HASCA facilities, complete and file the NYS ACHF Cost Report required for all Article 28 facilities in NYS, attend member meetings to monitor compliance with Medicare and NYS DOH requirements, provide information systems consulting services as needed to ensure interface of systems is maintained and provide guidance on Center policies related to HIPAA compliance, HITECH Security and a Corporate Compliance Plan.
Fee:	Year One - \$190,000
	Year Two - \$250,000
	Year Three - \$250,000
	Year Four - \$257,500
	Year Five - \$265,225

While HASCA will be providing the above noted services, the applicant retains ultimate control in all of the final decisions associated with the services and has full control over the management of the Center. The applicant shall retain, in its sole discretion, the following powers:

- Direct independent authority over the appointment and/or dismissal of the Center's management level employees and all licensed or certified health care staff;
- The right to adopt and approve the Center's operating and capital budgets;
- Independent control over, and physical possession of, the Center's books and records;
- The right to independently adopt, approve and enforce the Center's operating policies and procedures;
- Authority over the disposition of assets and authority to incur debt;
- The right to approve settlements of administrative proceedings or litigation to which the Center is a party;
- The Center or a person directly employed by and salaried by Center shall manage and personally direct the Center's day to day operations; and

- The individual responsible for the Center's financial oversight shall be employed or contracted directly by Center and shall be independent of HASCA.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy; which is summarized below:

Premises:	9,594 square feet located at 727 Linden Avenue, Pittsford, New York
Lessor:	N & N Real Estate Holding Rochester, LLC
Lessee:	Pittsford Pain Center, LLC
Term:	10 years
Rental:	Year One - \$316,602 (\$33.00 per sq. ft.) with a 2% annual increase thereafter.
Provisions	The lessor shall be responsible for maintenance, real estate taxes and utilities.

The applicant has submitted an affidavit indicating that the lease agreement will be an arms-length lease agreement. The applicant has submitted letters from two NYS licensed real estate agents attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project cost of \$404,698, which is for moveable equipment and CON fees, is further broken down as follows:

Moveable Equipment	\$400,495
CON Fee	2,000
Additional Processing Fee	<u>2,203</u>
Total Project Cost	\$404,698

The applicant's financing plan appears as follows:

Equity	\$44,698
Bank Loan (5% interest rate, 5 year term)	\$360,000

Equity will be provided by the proposed members proportionate to their ownership interest. A letter of interest has been provided by M&T Bank attesting to the loan terms noted above for the purchase of moveable equipment.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first and third years; summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$5,149,780	\$6,231,234
Expenses:		
Operating	\$3,628,574	\$4,397,380
Capital	<u>431,585</u>	<u>429,975</u>
Total Expenses	\$4,060,159	\$4,827,355
Net Income	\$1,089,621	\$1,403,879
Utilization (Procedures)	6,000	7,260
Cost Per Procedure	\$676.70	\$664.92

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	3.53%	3.53%
Medicare Fee For Service	10.03%	10.03%
Medicare Managed Care	26.37%	26.37%
Commercial Managed Care	34.40%	34.40%
Private Pay	3.83%	3.83%
Workers Compensation	19.78%	19.78%
Charity Care	2.00%	2.00%
Other	.06%	.06%
Total	100.00%	100.00%

The payor mix reflects the historical experience of the physicians in their private practice. Both physicians participate with Medicaid and Medicaid Managed Care plans in their area. Medicare enrollees (including managed care) constitute 36% of patient visits, commercial/managed care accounts for 34%, and workers compensation for 20% of current patient volume. The FASC intends to contract with all Medicaid managed care plans in its service area as well as develop agreements with Community Health Centers and Federally Qualified Health Centers located nearby, which may lead to a higher percentage of Medicaid enrollees being served.

Utilization assumptions are based on current physician procedure volumes. Expense assumptions are based on historical experience of the physicians. The applicant has submitted physician referral letters in support of utilization projections.

Capability and Feasibility

Project costs of \$404,698 will be met as follows: Equity of \$44,698 and a bank loan of \$360,000 at an interest rate of 5% for a five year term. M&T Bank has provided a letter of interest for the loan to finance the project cost.

Working capital requirements are estimated at \$804,560, which is equivalent to two months of third year expenses. The applicant will finance \$360,000 at an interest rate of 5% for a five year term. A letter of interest has been provided by M&T Bank for the working capital financing. The remaining \$444,560 will be provided as equity by the proposed members of Pittsford Pain Center, LLC proportionate to their ownership interest. BFA Attachment A is the personal net worth statements of the proposed members of Pittsford Pain Management, LLC, which indicates the availability of sufficient funds for the equity contribution. BFA Attachment B is the pro forma balance sheet of Pittsford Pain Management, LLC as of the first day of operation, which indicates a positive net asset position of \$485,055.

The submitted budget indicates a net income of \$1,089,621 and \$1,403,879 during the first and third years, respectively. Revenues are based on current reimbursement rates for pain management services. The submitted budget appears reasonable.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas.

Facility: Strong Memorial Hospital
601 Elmwood Avenue
Rochester, New York 14642

Current OR Use (% of capacity)	Surgery Cases ¹		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
53% Main site 62% Off-site	Ambulatory 54%	Inpatient 46%	None	None

Strong Memorial Hospital opposes this application based on existing operating room capacity within the Strong system, the low volume of pain procedures provided in an operating room setting and concerns over the quality and management of pain cases that would be treated at the proposed ASC.

In 2012 Strong Memorial had operating expenses of \$1,083,726,520 on revenue of \$1,179,855,300 for a gain of \$96,128,780. In 2013, operating expenses totaled \$1,163,324,922 and revenue was \$1,286,605,893, for a gain of \$123,280,971. Current assets in 2012 were \$538,431,207 and current liabilities were \$231,840,446 for a working capital ratio of 2.3 to 1.0. In 2013, current assets were \$644,356,490, and current liabilities were \$220,328,133, for a working capital ratio of 2.9 to 1.0. In its fiscal year 2013, Strong Memorial incurred bad debt of \$19.3 million and provided charity care in the amount of \$37.5 million. In fiscal year 2014, the hospital incurred \$22.9 million in bad debt and provided \$37.8 million in charity care.

Facility: Highland Hospital
1000 South Avenue
Rochester, New York 14620

Current OR Use (% of capacity)	Surgery Cases		Ambulatory Surgery Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
Operating Rms. 63.8%	49.0%	51.0%	Yes²	No
Procedure Ctr. 42.1%	78.9%	21.1%		

Highland Hospital opposes the application on the grounds that there is sufficient OR capacity at Highland and elsewhere in the community to obviate the need for an additional ASC, especially in a time of growing consolidation and affiliation among providers. The hospital also states that approval of the proposed ASC

¹ Main site and off-site combined.

² Four cases in 2014

could potentially reduce current OR utilization. Highland does not quantify what effect such a reduction would have on its surgical revenues or on its community-oriented services.

In 2012 Highland Hospital had operating expenses of \$280,395,263 on revenue of \$294,378,157 for a gain of \$13,982,894. In 2013, operating expenses totaled \$297,751,531 and revenue was \$312,863,256, for a gain of \$15,111,725. Current assets in 2012 were \$112,366,882, and current liabilities were \$28,059,340 for a working capital ratio of 4.0 to 1.0. In 2013, current assets were \$127,086,005, and current liabilities were \$30,448,992, for a working capital ratio of 4.2 to 1.0. In 2012, Highland Hospital incurred bad debt of \$3.2 million and provided charity care in the amount of \$4.9 million. In 2013, the hospital incurred \$4.1 million in bad debt and provided \$5.7 million in charity care.

Facility: Rochester General Hospital -- **No Response**
1425 Portland Avenue
Rochester, New York 14621

Supplemental Information from Applicant

Need and Source of Cases: The applicant states that patients of the proposed facility would receive care from staff focused only on the provision of pain management procedures and that the better organized and more efficient nature of a new state-of-the-art ASC would result in reduced wait times, increased patient satisfaction and an overall better patient experience. Oversight by DOH will also help ensure that quality care is provided.

Staff Recruitment and Retention: Staff will be drawn from among the current staff of the office practices of the applicant physicians.

Office-Based Cases: The applicant states that virtually all of the projected cases for the proposed ASC are currently performed in the office practices of the applicant physicians. Of those that are not (fewer than 50 per year), most are performed in freestanding ASCs.

DOH Comment

The comments from the responding hospitals do not describe a specific adverse impact of the proposed ASC on the facilities' surgical revenues or community-oriented programs. Nor does any such adverse impact seem likely, given that virtually all the procedures projected for the ASC are currently performed in office-based settings and that the applicant physicians have performed only a negligible number of cases at one of the responding hospitals. The Department concludes that the comments from area hospitals provide no basis for reconsideration of the recommendation for approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

Finger Lakes HSA Review & Recommendation

MEMO

TO: CON Project File

RE: CON Project 151008 – Pain Management ASC

DATE: March 20, 2015

Service Location:

727 Linden Avenue
Pittsford, NY 14534

Description:

Interventional Pain Management of Rochester, LLC proposes to develop a single-specialty ambulatory surgery center (ASC) to provide pain management services.

Projected Changes to Community Capacity:

Community Capacity

There are four pain management centers currently operating in Monroe County:

1. Center for Pain Management at RGH
2. University of Rochester Pain Treatment Center at Sawgrass
3. University of Rochester Neuromedicine Pain Management Center at Strong
4. Highland Hospital Pain Management Center

FLHSA has access to a multi-payer claims database consisting of claims data from two major commercial insurers in the region. Because many of the proposed procedures are performed outside of the hospital setting, staff utilized this database as the primary source of information for this review. This database contains commercial, Medicare Advantage, and Managed Medicaid claims for Excellus Blue Cross Blue Shield and MVP for patients living in the twelve counties that make up the Finger Lakes region³. In reviewing the proposed services to be provided at the new facility, we reviewed claims data for January 2010- June 2014 for the region and the two physicians proposing to utilize the new facility.

The applicant has provided the top five (5) projected procedures at the new facility by CPT code, those procedures are located in Table 1. These procedures are expected to account for 85% of ASC's total projected procedure volume.

³ Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne Wyoming, and Yates Counties

Table 1. Projected Procedures by Volume, Year 1 and Year 3

CPT	Description	Projected Volume Y1	Projected Volume Y3
64483	Injection(s), anesthetic agent and/or steroid transforaminal epidural, with imaging guidance (fluoro or CT); lumbar or sacral, single level	2,449	2,964
62311	Injection(s) of diagnostic or therapeutic substance(s), not including neurolytic substances, including needle or catheter placement, includes contrast for localization when performed, epidural or subarachnoid; lumbar or sacral (caudal)	928	1,123
64493	Injection(s), diagnostic or therapeutic agent, paravertebral facet joint with image guidance, lumbar or sacral; single level	891	1,078
64635	Destruction by neurolytic agent, paravertebral facet joint nerve(s), with imaging guidance; lumbar or sacral, single facet joint	450	544
62310	Injection(s), of diagnostic or therapeutic substance(s) not including neurolytic substances, including needle or catheter placement, includes contrast for localization when performed, epidural or subarachnoid; lumbar or sacral	944	1,142

Even with this source of information, total community capacity is difficult to determine. The procedures being proposed at the new facility are often performed in the office setting and can be performed by physicians of numerous specialties. Claims data indicate that of the top 5 projected procedures at the new facility 35% are performed in the office. 57% of procedures are performed in an outpatient surgery setting while only 4% are performed in an ambulatory surgery center or as inpatient procedures. It is unlikely that additional outpatient surgical capacity would result in a shift from inpatient to outpatient for these procedures.

The proposing physicians are currently performing nearly all of the proposed procedures in the office setting. ½ of 1% of the applicant's top five procedures proposed at the new facility have been performed in an outpatient surgery or ambulatory surgical center setting.

Community Need

The applicant cites that 195,000 persons in the five county region the ASC proposes to serve will be affected by chronic pain. Staff estimates that there are approximately 117,000 individuals in Monroe County (proposed site's primary service area) over the age of 18 with chronic pain using an estimate of 30.7% of the population.⁴ However, this number does not reflect the number of individuals that will seek treatment or that will meet criteria for the interventions to be provided at the proposed center

The applicant indicates that wait times for patients at offices of both physicians proposing to utilize the new facility are between four and six weeks. It is unknown if there are other practices in the region experiencing similar wait times. The issues apparent with determining community capacity are mirrored regarding community need. Our estimation of need will rely on the evidence apparent in the literature and the applicant's estimated wait times.

⁴ Johannes, C; Le, T; Zhou X. The Prevalence of Chronic Pain in United States Adults: Results of an Internet-Based Survey. The Journal of Pain. 2010;11(11):1230-1239

There are no national guidelines for wait times for patients with chronic pain. The most current literature found⁵ indicates that patient wait times of 6 months or longer are medically unacceptable. This study also found that only one country had any benchmarks for wait times (United Kingdom, 13 weeks). It should be noted that in many countries wait times for cancer patients are dramatically reduced / eliminated. Wait times in the United States are estimated in one study to be three to four weeks with the local example of Strong Memorial Hospital having a policy of trying to keep wait times to less than two weeks⁶.

Although no national guidelines exist, The Centers for Medicare and Medicaid Services has developed local coverage determinations (LCD's) regarding the facet joint (spinal) injections which are proposed to account for 28% of the practice at the new ASC. The LCD which covers our area prescribes very specific timelines and limits for the application of this treatment modality. The LCD does not require that procedures are completed in an outpatient or ambulatory surgery setting, but does require fluoroscopic guidance. Additionally the LCD notes that "... the evidence of clinical efficacy and utility has not been well-established in the medical literature, which is replete with non-comparable and inadequately designed studies. Further, there is a singular dearth of long-term outcomes reports."⁷ There is some national concern about the abuse of these procedures.

National data indicate that the wait times at Dr. Ng and Dr. Nemani's practices are typical of pain management practices across the United States. The wait times listed for United States practices are the shortest of the countries surveyed in the previously noted study. There is no definitive evidence that these wait times result in poorer patient outcomes.

Need Conclusion

It is unclear how the conversion to Article 28 status will improve patient wait times, other than by improving patient flow and efficiency, which could be achieved without the costs associated Article 28 status.

It is not apparent that there is community need for a single specialty Ambulatory Surgical Center for the purposes of pain management.

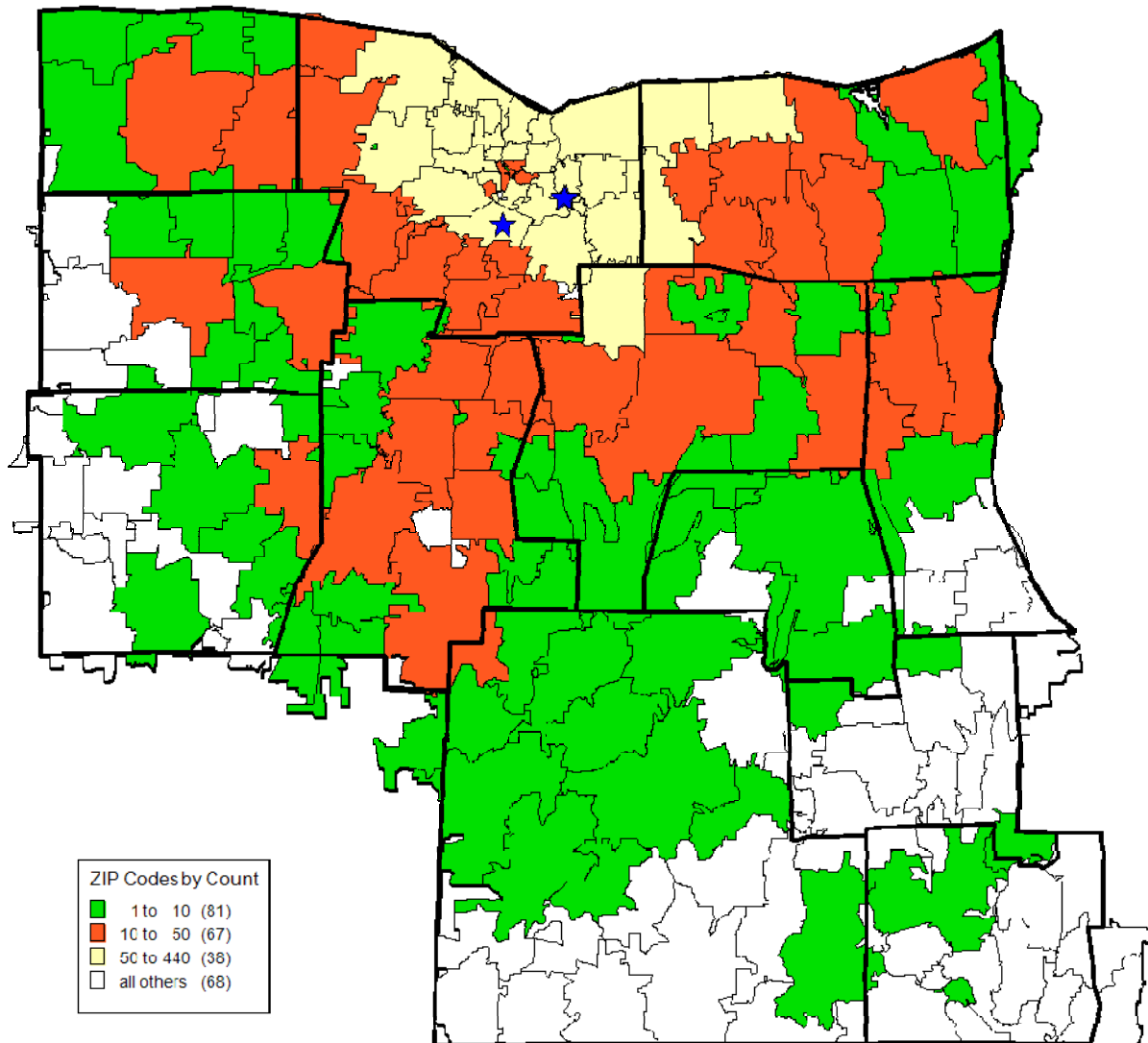
⁵ Lynch, ME; Campbell, F; Clark, A; et al. A systematic review of the effect of waiting for treatment for chronic pain. *Pain*. 2008;136:97-116.

⁶ L Lynch, ME; Campbell, F; Clark, A; et al. Waiting for treatment for chronic pain – a survey of existing benchmarks: Toward establishing evidence-based benchmarks for medically acceptable waiting times. *Pain Research and Management*. 2007;112(4):245-248

⁷ National Government Services LCD L35336. Facet Joint Injections, Medial Branch Blocks, and Facet Joint Radiofrequency Neurotomy 12/16/2014

Projected Changes to Community Access:

The ASC does not appear to significantly alter geographic access for the practices' respective patient population. The proposed center is 1.2 miles from Dr. Nemani's office and 10.0 miles from Dr. Ng's current office location. Below is a map of the physician's current patient population by ZIP code (from claims data).



The applicant projects 3.5% of patient volume to be from Medicaid Managed care and projects no utilization from Medicaid FFS patients. The relatively low volume of Medicaid patients is concerning in that access may be limited by ability to pay at the new ASC.

Project Cost & Revenue:

Pittsford Pain Center, LLC proposes to establish a new 9,594 square foot single-specialty Ambulatory Surgical Center to provide pain management services. The new facility is to contain four operating rooms with eight (8) pre-operative and ten (10) post-operative recovery beds. The floor plan also contains a central supply, consult room, decontamination and separate clean and soiled linen space.

Capital costs are expected to be \$400,495. The entirety of the cost is for moveable equipment, suggesting that other renovation costs are being covered by the building developer and are included in the lease expense. \$175,000 is allotted for two C-Arm imaging devices. \$50,000 will be used to install an EMR system in two rooms. The remainder of the costs are for various surgical and / or office infrastructure.

Incremental operating costs are anticipated to be \$4,827,355 by year three, with an incremental operating revenue of \$6,231,234. Table 2 outlines total project costs. Staffing is anticipated to increase by 17.4 FTE's by year three. New staffing will include 8 RNs 3 LPNs as well as management, technician, clerical and medical assistants. The applicants indicate that it is unlikely that current office staff will be re-allocated or repurposed for the new facility.

Table 2. Project Costs

	Current Year	Year 1 Incremental	Year 3 Incremental
Project Capital Cost	\$400,495	N/A	N/A
Operating Cost	\$0	\$4,060,159	\$4,827,355
Operating Revenue	\$0	\$5,149,780	\$6,231,234

Project financing will be accomplished with a \$360,000 bank loan at an interest rate of 5% with a five (5) year term and the remainder paid for in cash (\$44,698). The space for the facility will be rented with a lease term of ten (10) years.

There are significant incremental operating costs associated with this project. Staff have submitted questions to the applicant asking to identify the amount of incremental operating revenue that is expected due to the shift from office to ASC based procedures. While unable to provide this information, the applicant has made laudable efforts to identify the cost increases associated with the shift and has provided Medicare proposed reimbursements and anticipated revenues for the five (5) procedures noted previously. Utilizing this information we are able to estimate that incremental revenue for these procedures is anticipated to be \$2.26M per year.

Table 3. Medicare Proposed Payments by Setting
**2015 Medicare Proposed Total
 Payment Per Procedure**

CPT Code	Office	ASC
64483	\$222.46	\$485.53
62311	\$225.32	\$461.88
64493	\$175.17	\$464.03
64635	\$424.86	\$1,055.34
62310	\$244.67	\$481.95

Table 4. Estimated Revenue Increase due to Change in Place of Service

CPT Code	Expected Office Reimbursement	Expected ASC Reimbursement	Difference	Proposed Number of Procedures	Estimated Difference in Total Revenue
64483	\$202	\$566	\$364	2,449	\$891,436
62311	\$231	\$728	\$497	928	\$461,216
64493	\$181	\$566	\$385	891	\$343,035
64635	\$399	\$943	\$544	450	\$244,800
62310	\$214	\$561	\$347	944	\$327,568
TOTAL DIFFERENCE IN REVENUE					\$2,268,055

Comments:

The applicant had the opportunity to present the same proposal to the Community Technology Assessment Advisory Board (CTAAB). CTAAB consists of employers, consumers, clinicians, health systems and health insurance representatives and has a 20 year history of making recommendations to the payer community regarding issues of health technology and community capacity. This board considered the needs analysis conducted by Finger Lakes Health Systems Agency (FLHSA), the CON application materials, and the applicant’s presentation to the Board.

Based on the information available, CTAAB concluded there is not a need for the proposed capacity and cited the following reasons:

- There is no demonstrated community need for additional Pain Management Capacity
 - Wait times at the physician offices do not appear to be atypical for that specialty
 - While defining total capacity is difficult, there is no evidence that current capacity is not meeting patient needs
- There are significant incremental costs associated with the project and no evidence of improved outcomes for patients
- Increases in efficiency and quality could be achieved without article 28 status.
- There is no demonstrated improvement in access
 - Geographic access is not significantly altered
 - There is limited access projected for the Managed Medicaid population, with no access indicated for the Medicaid FFS population.

This recommendation was communicated to the Rochester payer community.

Recommendation - Disapproval

Contingencies: N/A

Conditions: N/A

Attachments

BFA Attachment A Personal Net Worth Statement
BFA Attachment B Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single specialty ambulatory surgery center to provide pain management services at 727 Linden Avenue, Pittsford, 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:

151008 B

Pittsford Pain Center LLC

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five (5) years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
 - a. Data showing actual utilization including procedures;
 - b. Data showing breakdown of visits by payer source;
 - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided; and
 - f. Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed administrative service agreement, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of an executed loan commitment, acceptable to the Department. [BFA]
10. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03 (See Attached). [AER]
12. Submission of a photocopy of the executed Operating Agreement of Pittsford Pain Center, LLC, acceptable to the Department. [CSL]

13. Submission of a photocopy of the executed Lease Agreement between N & N Real Estate Holding Rochester LLC and the applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and the Department's granting approval for the start of construction (See Attached). [AER]
7. The applicant shall start construction on or before 09/15/2015 and complete construction by 05/15/2016 upon the filing of Final Construction Documents in accordance with 10NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the commissioner. [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 # 151200-E
South Shore Surgery Center

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment **Acknowledged:** May 1, 2015

Executive Summary

Description

South Shore Surgery Center, LLC (South Shore), a New York proprietary Article 28 diagnostic and treatment center (D&TC) located at 53 Brentwood Road, Suite F, Bay Shore (Suffolk County), requests approval to extend its limited life for two years and to transfer 50.1% of the overall ownership interest in the facility to North Shore-LIJ Multi-Specialty Ventures, LLC through a membership interest purchase agreement. South Shore is certified as a multi-specialty freestanding ambulatory surgery center (FASC) and provides the following services: ear, nose and throat surgery, pain management, orthopedic surgery, ophthalmology, and general surgery. The facility was approved by the Public Health Council with a five-year limited life under CON #042011 and began operation effective December 17, 2010. The FASC's initial five-year limited life will expire on December 17, 2015. The applicant is not proposing to add or change any services, or to expand or renovate the facility.

Upon approval of this application, there will be three classes of members, defined as follows:

- A. Class A Member – individual physician members (thirteen)
- B. Class B Member – individual Ambulatory Surgical Centers of America members (four)
- C. Class C Member – Institutional members (one)

All members, regardless of class, will have the same economic and voting rights based on their percentage ownership interest in South Shore.

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

<u>Class A Members:</u>	<u>Current</u> <u>%</u>	<u>Proposed</u> <u>%</u>
Eric Bergson, M.D.	3.75%	1.8713%
Joseph Bonafede, M.D.	3.75%	1.8713%
Todd Campbell, M.D.	3.75%	1.8713%
Edward Cussatti, M.D.	3.75%	1.8713%
Robert Gargano, M.D.	3.75%	1.8713%
Thomas O'Donnell, M.D.	3.75%	1.8713%
Steven Litman, M.D.	3.75%	1.8713%
Charles Ruotolo, M.D.	3.75%	1.8713%
Luis Fandos, M.D.	8.00%	3.9920%
Sanford Ratzan, M.D.	8.00%	3.9920%
Craig Shalmi, M.D.	8.00%	3.9920%
James Marzec, M.D.	8.00%	3.9920%
Steven Simonsen, M.D.	8.00%	3.9920%
<u>Class B Members:</u>		
Tom Bombardier, M.D.	9.00%	4.4910%
Brent B. Lambert, M.D.	9.00%	4.4910%
Luke L. Lambert	3.00%	1.4970%
George Violin, M.D.	9.00%	4.4910%
<u>Class C Member:</u>		
North Shore-LIJ Multispecialty Ventures, LLC	0.00%	50.1%
Total:	100.00%	100.00%

North Shore-LIJ Multispecialty Ventures, LLC's sole member is North Shore University Hospital, a voluntary not-for-profit, 804-bed tertiary care hospital located at 300 Community Drive, Manhasset, NY. North Shore University Hospital is a member of the North Shore-Long Island Jewish Health System, Inc. (NS-LIJ). NS-LIJ is a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the

community it serves and to achieve economies of scale through consolidation, cooperation and joint planning among its members. The hospital is also a member of the NS-LIJ obligated group, formed to provide its members an enhanced credit position and expanded access to capital markets.

OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate two years from the date of the Public Health and Health Planning Council recommendation letter.

Need Summary

Data submission by the applicant, as a contingency of CON 042011, is completed.

Based on CON 042011, South Shore Surgery Center projected Medicaid to be 5.65 percent and charity care at 5.64 percent for Year 3. According to AHCF cost reports, actual charity care in Year 3 (2013) was 0.40 percent and Medicaid was 5.8 percent.

Upon approval of this CON, South Shore projects 6,614 procedures in Year 1, with 11.8 percent Medicaid and 1.5 percent charity care.

There will be no changes in services.

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

North Shore-LIJ Multispecialty Ventures, LLC will acquire 50.1% interest in the operations of South Shore Surgery Center, LLC via \$5,261,965 cash equity as provided for in the membership interest purchase agreement. The payment will be made by NS-LIJ from their current operations.

There are no project costs associated with this application.

Budget	Revenues	\$5,768,419
	Expenses	<u>\$4,607,606</u>
	Net Income/(Loss)	\$1,160,813

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 two years from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. Said reports should include:
 - a. Data showing actual utilization including procedures
 - b. Data showing breakdown of visits by payor source;
 - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided, and
 - f. Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission of a photocopy of the applicant's Restated and Amended Articles of Organization, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's filing with the Secretary of State of the Restated and Amended Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's Development and Administrative Service Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's First Amendment to the Amended and Restated Development and Administrative Service Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's Amended and Restated Operating Agreement acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's Purchase Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

October 8, 2015

Need Analysis

Project Description

South Shore Surgery Center, LLC, an Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, is requesting a two-year extension of its five year limited life, set to expire December 17, 2015 (CON 042011). The facility is located at 53 Brentwood Road, Bay Shore, 11706, in Suffolk County. The center provides ear, nose and throat (ENT), orthopedic, pain management, ophthalmologic, and general surgery services. The center has three operating rooms and two procedure rooms. South Shore Surgery Center is also seeking to transfer 50.1% membership interest in the center to North Shore-LIJ Multispecialty Ventures, LLC.

Analysis

The primary service area is Suffolk County.

The table below provides information on projected and actual procedures for Year 3 of the original CON 042011.

CON 042011	Projected Year 3 (2013)	Actual Year 3 (2013)
	4,950	4,770

The table below provides information on projected and actual utilization, by payor for Year 3 of the original CON 042011, as well as actual 2014 and projected Year 1 after approval utilization.

	CON 042011 Projections Year 3 (2013)	CON 042011 Actual Year 3 (2013)	CON 151200 Actual 2014	CON 151200 Projections Years 1
Medicare FFS/MC	23.59%	7.0%	8.7%	8.7%
Medicaid FFS/MC	5.65%	5.8%	12.0%	11.8%
Commercial	14.16%	37.9%	32.6%	32.1%
Private Pay/Other	50.96%	48.9%	46.6%	45.9%
Charity Care	5.65%	0.4%	0.1%	1.5%
Total	100%	100%	100%	100%

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people needing traditional charity care. Through February 2015, the number of uninsured individuals in Suffolk County has dropped from 168,000 before passage of the Affordable Care Act to approximately 21,600 after passage (an 87% drop). Approximately 59% of these newly insured people enrolled in Medicaid.

South Shore Surgery Center has engaged in an outreach effort to the Vietnam Veterans and the LI Immigrant Alliance to provide charity care. So far, the center has not received any referrals from these organizations. The center established a Charity Care policy which established guidelines under which the center will provide care for free or at a reduced cost to patients who are unable to pay.

In recognition of the need for the center to improve its charity care, the center has developed a detailed action plan going forward. The center, upon approval of the membership transfer request, will become part of the North Shore-LIJ organization, and will participate in North Shore-LIJ's robust charity program. The center has contacted the Dolan Family Health Center to provide charity care to its patients. The Dolan Family Health Center is part of Huntington Hospital, and it has committed to work diligently to refer underserved and uninsured patients to South Shore for treatment.

With these efforts, the applicant feels it can achieve a charity care level of 1.5% in the next two years. South Shore Surgery Center is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

Conclusion

Even though the number of uninsured individuals in New York State and Suffolk County has dropped sharply since the implementation of the ACA and New York State's health insurance exchange, South Shore's charity care level has been unduly modest. However, it is reasonable to expect that under its proposed more detailed action plan for reaching uninsured individuals, and its connection with the North Shore-LIJ organization, South Shore will be able to achieve its newly proposed level of 1.5 percent charity care within the proposed two-year period of limited life extension.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Proposal

South Shore Surgery Center, LLC requests approval for a two-year extension following a five-year conditional limited life approval (granted on March 14, 2008 in Project Number 042011). Additionally, the Center requests approval to transfer 50.1% membership interest to North Shore-LIJ Multispecialty Ventures, LLC.

The Center is not proposing to add any services, expand or renovate the facility.

Character and Competence

The Center's current membership is comprised of 13 individual physician members (70.00%) and four individuals (30.00%) who are members of Cataract and Laser Center Partners, LLC d/b/a Ambulatory Surgical Centers of America (ASCOA). Upon approval, the Center's membership would be: 13 Class A individual physician members (34.93%); four Class B individual ASCOA members (14.97%); and Class C member North Shore-LIJ Multispecialty Ventures, LLC (50.1%).

The proposed managers of South Shore Surgery Center are:

Name	Affiliation
*Luke Lambert	ASCOA
*Sanford Ratzan, MD	Physician Member
*James Marzec, MD	Physician Member, Medical Director
*Joseph Bonafede, MD	Physician Member
*Charles Ruotolo, MD	Physician Member
John McGovern	North Shore-LIJ Multispecialty Ventures, LLC
Dennis Dowling	North Shore-LIJ Multispecialty Ventures, LLC
Laurence A. Kraemer	North Shore-LIJ Multispecialty Ventures, LLC
Robert Power	North Shore-LIJ Multispecialty Ventures, LLC

**existing members/managers and not subject to review under this CON*

The sole member of North Shore-LIJ Multispecialty Ventures, LLC is North Shore University Hospital (NSUH), an existing voluntary, not-for-profit tertiary care hospital located in Manhasset (Nassau County). NSUH is a member of the North Shore-Long Island Jewish Health System (NSLIJHS). The Board of Trustees for NSLIJHS is comprised of 131 members, all of whom were subject to Character and Competence review.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Mr. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.

Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of \$6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of \$19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of \$74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling \$13,353 were collected.

Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children's Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowitz stated he has no personal involvement and is named by virtue of his professional association with CMF.

Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Dr. Peress disclosed one open malpractice case pending trial in Putnam County.

Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.

Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.

Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.

Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.

Compliance with Applicable Codes, Rules and Regulations

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

In a Stipulation and Order (S&O) dated October 16, 2006, Southside Hospital was fined \$14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.

In an S&O dated December 8, 2006, Forest Hills Hospital was fined \$12,000 after an investigation revealed that surgery was performed on the patient's right side although the patient entered the hospital for hernia repair on the left side.

In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.

In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH's conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.

Recommendation

From a programmatic perspective, approval is recommended.

<h2 style="margin: 0;">Financial Analysis</h2>
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Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement for the change of 50.1% membership interest of South Shore Surgery Center, LLC to be effectuated upon Public Health and Health Planning Council approval of this application request. The terms of the agreement are summarized below:

Date:	December 19, 2014
Purpose:	The sale of 50.1% membership interest in South Shore Surgery Center, LLC.
Sellers:	All current South Shore Surgery, LLC members as follows: <ul style="list-style-type: none"> • Selling 1.88% interest: Drs. Bergson, Bonafede, Campbell, Cussatti, Gargano, O'Donnell, Litman and Ruotolo; • Selling 4.01% interest: Drs. Fandos, Ratzan, Shalmi, Marzec and Simonsen; • Selling 4.51% interest: Drs. Bombardier, Lambert and Violin; and • Selling 1.50% interest: Mr. Luke Lambert.
Purchaser:	North Shore-LIJ Multispecialty Ventures, LLC
Purchase Price:	\$5,261,965 (\$105,029.24 per percent)
Payment of Purchase Price	Due at closing

Operating Budget

The applicant has submitted operating budgets for the current year of operations (2014) and for Year One (2015 dollars) subsequent to receiving a two-year limited life extension, as shown below:

	<u>Current Year</u>	<u>Year One</u>
Revenues:		
Operating	\$5,762,282	\$5,762,282
Non-Operating	<u>\$6,137</u>	<u>\$6,137</u>
Total Revenues	\$5,768,419	\$5,768,419
Expenses:		
Operating	\$3,440,279	\$3,488,804
Capital	<u>\$1,118,802</u>	<u>\$1,118,802</u>
Total Expenses	\$4,559,081	\$4,607,606
Net Income/(Loss)	<u>\$1,209,338</u>	<u>\$1,160,813</u>
Utilization (procedures)	6,526	6,614
Cost per procedure	\$698.60	\$696.64

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

<u>Payor Source:</u>	<u>Current Year</u>		<u>Year One</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicare FFS	440	6.7%	440	6.7%
Medicare MC	131	2.0%	131	2.0%
Medicaid FFS	6	0.1%	6	0.1%
Medicaid MC	774	11.9%	774	11.7%
Commercial MC	2,126	32.6%	2,126	32.1%
Private Pay/Other	3,039	46.6%	3,039	45.9%
Charity Care	<u>10</u>	<u>0.1%</u>	<u>98</u>	<u>1.5%</u>
Total	6,526	100.0%	6,614	100.0%

Per South Shore's establishment CON, Medicaid and Charity Care utilization were projected to be 5.65% and 5.65%, respectively, of total procedures in the first and third year of operation. As documented in the AHCF cost reports filed with the Department, and supported by their SPARCS data submissions, the facility has experienced difficulty meeting a modest charity care level to date. However, Medicaid utilization was 2.3% (2011), 2.9% (2012), and 5.8% (2013) of their total caseload. The applicant indicated that they achieved 12.0% Medicaid in 2014 and this trend continues through to the present with Medicaid now comprising 12.77% of total cases.

The applicant provided documentation attesting to the declining number of uninsured persons in Suffolk County due to the impact of the Affordable Care Act and ongoing enrollments in insurance products, such as those available to individuals through the New York State of Health exchange marketplace.

To improve their efforts to treat underserved populations, South Shore has implemented an action plan, the main part of which revolves around tapping into NS-LIJ's robust charity care program. Also, to increase charity care referrals, the facility has reached out to the Dolan Family Health Center, which is operated by Huntington Hospital and is part of NS-LIJ, and will reach out to Hudson River Healthcare, a Federally Qualified Health Center that is in the process of acquiring the operations of Suffolk County clinics. South Shore has provided a letter of understanding from the Dolan Center committing to refer appropriate uninsured and underinsured patients to the Center for treatment.

With these efforts and program changes, the applicant feels they can achieve a minimum charity care of 1.5% utilization by the end of Year One.

Capability and Feasibility

There are no project costs associated with this application.

North Shore-LIJ Multispecialty Ventures, LLC will acquire 50.1% of the operations of South Shore Surgery Center, LLC for \$ 5,261,965 which will be funded via cash equity from North Shore-LIJ. BFA Attachment B is North Shore-LIJ's 2012-2014 certified financial statements, which shows the entity has sufficient liquid assets to cover the purchase price associated with this project.

The submitted budget indicates an excess of revenues over expenses of \$1,160,813 during Year One. Revenues are based on current reimbursement methodologies for FASC services. The budget appears reasonable.

BFA Attachment A is South Shore's financial summary for 2012-2014, which shows the entity had an average negative working capital of \$85,338, an average positive equity position of \$300,184 and an average net income of \$1,386,679 for the period. The negative working capital position is due to standard operations of the facility. The members have an agreement in place whereby they agree to contribute equity as needed to cover any working capital shortfalls.

BFA Attachment B is the 2012-2014 financial summary for North Shore-LIJ, which shows a positive working capital position of \$1,411,464,000, a positive equity position of \$2,750,799,000 and a positive net income of \$234,918,000 for the period.

The applicant has demonstrated the capability to proceed in a financially feasible manner and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	South Shore Surgery Center, LLC 2012-2014 financial statements
BFA Attachment B	North Shore-LIJ 2012-2014 financial statements
BFA Attachment C	Organization Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to request for indefinite life for CON #042011 and transfer 50.1% membership interest to North Shore – LIJ Multi-Specialty Ventures, LLC as a Class C 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 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:

151200 E

FACILITY/APPLICANT:

South Shore Surgery Center

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate two years from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. Said reports should include:
 - a. Data showing actual utilization including procedures
 - b. Data showing breakdown of visits by payor source;
 - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - d. Data showing number of emergency transfers to a hospital;
 - e. Data showing percentage of charity care provided, and
 - f. Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission of a photocopy of the applicant's Restated and Amended Articles of Organization, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's filing with the Secretary of State of the Restated and Amended Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's Development and Administrative Service Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's First Amendment to the Amended and Restated Development and Administrative Service Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's Amended and Restated Operating Agreement acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's Purchase Agreement, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

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 # 151226-E
DHCH, LLC d/b/a Digestive Health Center of Huntington

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment **Acknowledged:** May 20, 2015

Executive Summary

Description

DHCH, LLC, an existing NY limited liability company, is requesting to become the new operator of an existing New York proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 195 East Main Street, Suite A, Huntington (Suffolk County). Digestive Health Center of Huntington, Inc. will transfer 100% of the Center's assets and liabilities to DHCH, LLC in exchange for 100% of the membership interest of DHCH, LLC. Simultaneously upon closing, Digestive Health Center of Huntington, Inc. will transfer 51% of its ownership interest in DHCH, LLC, to North Shore-LIJ Endoscopy Ventures, LLC through a Membership Interest Purchase Agreement. The Center's current lease agreement will be assigned to the newly established entity, DHCH, LLC. There will be no change or disruption in services.

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

<u>Current Operator</u>	
Digestive Health Center of Huntington, Inc. d/b/a Digestive Health Center of Huntington	
<u>Members:</u>	<u>%</u>
Paul Bermanski	37.25%
Richard Fried	37.25%
Zvi Alpern	9.90%
David Purow	7.60%
Michael Moseson	4.00%
Mark Dobriner	4.00%

<u>Proposed Operator</u>	
DHCH, LLC d/b/a Digestive Health Center of Huntington	
<u>Members:</u>	
Digestive Health Center of Huntington, Inc.	49%
<u>Members:</u>	
Paul Bermanski	37.25%
Richard Fried	37.25%
Zvi Alpern	9.90%
David Purow	7.60%
Michael Moseson	4.00%
Mark Dobriner	4.00%
North Shore-LIJ Endoscopy Ventures, LLC	51%
<u>Member:</u>	
North Shore University Hospital, Inc.	100%

The sole member of North Shore-LIJ Endoscopy Ventures, LLC is North Shore University Hospital, Inc., a voluntary not-for-profit 804-bed tertiary care hospital located at 300 Community Drive, Manhasset. North Shore University Hospital is a member of the North Shore-Long Island Jewish Health System, Inc. (NS-LIJ). NS-LIJ is a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the community it serves and to achieve economies of scale through consolidation, cooperation and joint planning among its members. Also, the hospital is a member of the NS-LIJ obligated group, formed to provide its members an enhanced credit position and expanded access to capital markets.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will not be any changes in services as a result of the proposed change in ownership.

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

North Shore-LIJ Endoscopy Ventures, LLC will acquire 51% interest in the operations of the Center via \$4,768,500 cash equity as provided for in the membership interest purchase agreement. The payment will be made by NS-LIJ from their current operations.

There are no project costs associated with this application.

Budget:	<u>Year One</u>
Revenues	\$3,615,485
Expenses	<u>2,703,950</u>
Net Income	\$911,535

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department.
[HSP]
2. Submission of an executed lease assignment agreement, acceptable to the Department of Health.
[BFA]
3. Submission of an executed contribution/asset transfer agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. Submission of the executed Articles of Organization of DHCH, LLC acceptable to the Department.
[CSL]
6. Submission of the executed Operating Agreement of DHCH, 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

October 8, 2015

Need Analysis

Project Description

DHCH, LLC is requesting approval to become the operator of Digestive Health Center of Huntington, Inc., an existing ambulatory surgery center specializing in gastroenterology ambulatory surgery services. The center is located at 195 East Main St, Huntington, 11743, in Suffolk County.

Background and Analysis

Digestive Health Center of Huntington, Inc. has been providing gastroenterology surgery services to the residents of Suffolk County since 2003. The center performed a total of 3,813 procedures in 2011; 4,443 procedures in 2012; and 4,708 procedures in 2013. (Source: AHCF cost reports) The applicant reports that physicians at the center performed 61 endoscopic procedures at no charge for patients at Huntington Hospital in 2014.

Conclusion

There will not be any changes in services as a result of the proposed change in ownership.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

DHCH, LLC is requesting approval to become the operator of Digestive Health Center of Huntington, Inc., an existing Article 28 Diagnostic and Treatment Center certified as a single (gastroenterology) specialty ambulatory surgery center, located at 195 East Main Street, Suite A in Huntington (Suffolk County). The current operator will convey assets and certain liabilities to DHCH, LLC in exchange for 100% of the membership interests of DHCH, LLC. Additionally, Digestive Health Center of Huntington, Inc. seeks to transfer 51.0% of its membership interest in DHCH, LLC to North Shore-LIJ Endoscopy Ventures, LLC.

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center (other than its ownership structure) in this application. Paul Bermanski, M.D., an existing founding member of the Center will continue to serve as the Center's Medical Director.

Character and Competence

Following this transaction, DHCH, LLCs ownership composition will be as follows:

<u>Member Name</u>	<u>Current</u>	<u>Proposed</u>
Digestive Health Center of Huntington, Inc.	100%	49.0%
*Paul Bermanski, MD (37.25%)		
*Richard Fried, MD (37.25%)		
*Zvi Alpern, MD (9.90%)		
*David Purow, MD (7.60%)		
*Michael Moseson, MD (4.00%)		
*Mark Dobriner, MD (4.00%)		
North Shore LIJ Endoscopy Ventures, LLC	-----	51.0%
Managers: Dennis Dowling Laurence A. Kraemer, Esq. John McGovern		

**Not subject to a Character and Competence Review for this project.*

The sole member of North Shore-LIJ Endoscopy Ventures, LLC is North Shore University Hospital (NSUH), an existing voluntary, not-for-profit tertiary care hospital located in Manhasset (Nassau County). NSUH is a member of the North Shore-Long Island Jewish Health System (NS-LIJ). The Board of Trustees for NS-LIJ is comprised of 131 members who were subject to Character and Competence review.

The existing, approved stockholders (6 individual physician members) of Digestive Health Center of Huntington, Inc. will not change as a result of this project. The proposed Managing Director of DHCH, LLC will be David Purow, M.D.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Mr. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.

Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of \$6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of \$19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of \$74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling \$13,353 were collected.

Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children's Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with CMF.

Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Dr. Peress disclosed one open malpractice case pending trial in Putnam County.

Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.

Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.

Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.

Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.

Compliance with Applicable Codes, Rules and Regulations

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

In a Stipulation and Order (S&O) dated October 16, 2006, Southside Hospital was fined \$14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.

In an S&O dated December 8, 2006, Forest Hills Hospital was fined \$12,000 after an investigation revealed that surgery was performed on the patient's right side although the patient entered the hospital for hernia repair on the left side.

In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.

In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH's conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Lease Assignment Agreement:

The applicant has submitted a draft Lease Assignment Agreement for the site, the terms of which are summarized below:

Premises:	4,856 sq. ft. clinic space, plus 205 sq. ft. of storage, located at 195 East Main Street, Huntington, NY 11743
Landlord:	Chavrusa Realty, LLC
Lessee:	Digestive Center of Huntington, Inc.
Assignor:	Digestive Center of Huntington, Inc.
Assignee:	DHCH, LLC
Term:	Current term expires January 31, 2018. There is one three-year renewal term remaining on the current lease, plus two subsequent five-year term renewal options.
Rental:	\$160,248 per year (\$13,354 per month) with 5% increase in rent per term.
Provisions:	Tenant is responsible for maintenance, utilities, proportionate share of real estate taxes, and insurance.

The applicant has submitted an affidavit stating the lease agreement is a non-arm's length arrangement in that there is a common ownership as Paul Bermanski, M.D. is 50% owner of the landlord entity, Chavrusa Realty, LLC. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

Contribution/Asset Transfer Agreement

The applicant has submitted a draft Contribution/Asset Transfer Agreement for transferring the assets and liabilities of Digestive Health Center of Huntington, Inc. for 100% ownership interest in DHCH, LLC. The terms are summarized below:

Transferor:	Digestive Health Center of Huntington, Inc.
Transferee:	DHCH, LLC
Assets Transferred:	Contributes, conveys, transfers, assign and delivers to its successors all right, title and interest in the assets used or held for use in connection with the ownership and operation of the Center. All cash, cash equivalents and marketable securities, all accounts, notes, refunds, other account receivables, assumed contracts, all rights under the equipment leases, all furniture fixtures & equipment, inventory, all books/records, all patient records, claims, cause of actions, the name of the company, all telephones, faxes, all intellectual properties, software used, all assets, properties, claims, rights and interest of company.
Excluded Assets:	All permits of company, to the extent not transferable; all benefit plans, all contracts other than the assumed contracts; personal items belonging to the owners; all rights and interest of company.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding, any agreement, arrangement or understanding between the applicant and transferor to the contrary, to be liable for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement for the transfer of 51% membership interest in DHCH, LLC to North Shore-LIJ Endoscopy Ventures, LLC to be effectuated upon Public Health and Health Planning Council approval of this application request. The terms of the agreement are summarized below:

Date:	January 21, 2015
Seller:	Digestive Health Center of Huntington, Inc. and DHCH, LLC
Buyer:	North Shore-LIJ Endoscopy Ventures, LLC
Assumption of Assets:	51% membership interest in administrative service agreement, amended lease, license agreement, bank accounts, Managing director agreement, books/records, permits, company assets, intellectual property & software, furniture/fixtures and equipment, real property used in operation of the Center; all water oil, gas, electrical, telecommunications, sewer storm and waste water systems, other utilities services; all contracts, employees, employee benefits plans, insurance; Seller's right, title and interest in all assets and properties owned/used by Seller in the business whether tangible, intangible, real, personal and mixed located on premises including fixed assets and inventories; all supplies, equipment, vehicles, machinery, furniture, fixtures, leasehold improvements and other tangible personal property; all proprietary knowledge, trade secrets, patient, physician and referral lists, technical information, quality control data, processes, methods or rights; customer and vendor lists, assigned contracts; all physical and electronic data relating to the business; all other tangible and intangible property, other than the excluded assets.

Assumption of Liabilities:	51% Interest in all debts, obligations or liabilities of the business, arising and whatever type of nature, accrued or un-accrued, fixed or contingent. All liabilities listed in asset purchase agreement as per membership interest.
Lease Assigned:	Lease associated with premises located at 195 Main Street, Huntington, NY 11743
Purchase Price:	\$4,768,500 (subject to change based on working capital balance prior to closing and long term debt balance at closing).
Hold Back Amount:	\$476,850 in escrow on signing for working capital and long term debt adjustment.
Payment of Purchase Price:	\$50,000 in escrow on signing \$4,718,500 balance minus hold back amount of \$476,850 at the closing.

Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement with North Shore LIJ Health Care Inc., which is summarized as follows:

Facility/Operator:	DHCH, LLC
Administrator:	North Shore Long Island Jewish Health Care, Inc.
Administrator Fee:	\$18,500 per month
Service Provided:	Administrator will oversee collection of accounts, payments of accounts and indebtedness, accounting and financial records, internal audit, depositories for funds, purchases and leases, insurance, managed care contracting, legal support, IT support service, health care analytics, credentialing services, recruitment and expansion, human resources services, payroll, partner distribution, project development, budgets and financial planning and contracts for services.

While North Shore Long Island Jewish Health care, Inc. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

There is a common ownership between the applicant and the administrative service agreement provider as shown on BFA Attachment B, post-closing organizational chart.

Operating Budget

The applicant has submitted the facility's year one operating budget, in 2015 dollars, as shown below:

Revenues:	
Medicaid Managed Care	\$204,798
Medicare Fee For Service	\$417,911
Commercial Managed Care	\$2,760,044
Private Pay	\$5,683
Government/Veterans Affairs	<u>\$227,049</u>
Total Revenue:	\$3,615,485
Expenses:	
Operating	\$2,405,327
Capital	<u>\$298,623</u>
Total Expense:	\$2,703,950
Net Income:	
Utilization (Procedures)	4,708
Cost Per Treatment	\$574.33

Utilization by payor source for the first year after the proposed change is as follows:

<u>Payor:</u>	<u>Visits</u>	<u>%</u>
Medicaid MC	282	5.99%
Medicare FFS	1153	24.49%
Commercial MC	2,971	63.11%
Private Pay	12	0.25%
Charity	95	2.02%
Government/Veterans Affairs	<u>195</u>	<u>4.14%</u>
Total	4,708	100.00%

Revenue, expense and utilization assumptions are based on the applicant's actual 2013 experience operating the Center projected forward. Utilization is expected to remain at the current year level of 4,708 procedures. The breakeven utilization is approximately 75% or 3,521 procedures.

The applicant indicated that the Center's physicians have been performing endoscopic procedures at no charge for patients of Huntington Hospital's Dolan Family Health Center since the Center opened in 2002. These charity care procedures are not included in Center's AHCF cost reports filings with the Department, as they were performed at Huntington Hospital. Effective May 1, 2015, the Center's physicians began providing charity care to Huntington Hospital patients at the FASC. The applicant is projecting to achieve a 2% charity care level by year one and expects to maintain a minimum 2% charity care going forward through year three. Medicaid utilization is anticipated to be approximately 6% annually.

Capability and Feasibility

There are no project costs associated with this application.

North Shore-LIJ Endoscopy Ventures, LLC will acquire 51% of the operations of DHCH, LLC d/b/a Digestive Health Center of Huntington for \$4,768,500 which will be satisfied from accumulated funds. BFA Attachment D is the 2013-2014 certified financial statements of North Shore-University Hospital, Inc., which shows the entity has sufficient liquid resources to meet the project's equity requirements.

Working capital requirements are estimated at \$450,658 based on two months of year one expenses. The proposed members will provide the working capital from accumulated funds. BFA Attachments C and D are the members' certified financial statements and summaries, which indicate sufficient liquid resources to meet the equity and working capital requirements.

BFA Attachment E is DHCH, LLC's pro forma balance sheet, which shows operations will start off with \$4,774,000 in members' equity.

The submitted budget indicates an excess of revenues over expenses of \$911,535 during the first year. Revenues are based on the Center's actual reimbursement rates by payor, except for Medicaid which is based on other similar facilities in region. The budget appears reasonable.

BFA Attachment C is the 2011-2014 financial summary for Digestive Health Center of Huntington, Inc., which shows an average working capital position of \$153,092, an average equity position of \$14,608 and an average net income of \$953,182 for the period.

BFA Attachment D is North Shore University Hospital, Inc.'s certified financial summary for 2013 through 2014 which shows an average working capital of \$ 1,494,764,500, an average equity position of \$ 2,911,158,500 and an average net income of \$ 85,735,000 for the period.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Pre Closing Organizational Chart
BFA Attachment B	Post Closing Organizational Chart
BFA Attachment C	Digestive Health Center of Huntington, Inc. 2011-2014 Financial Summary and Internal Financial Summary as of May 2015.
BFA Attachment D	North Shore- University Hospital, Inc,2013-2014 Certified Financial Statements
BFA Attachment E	DHCH, LLC's-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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish DHCH, LLC as the new operator of the Digestive Health Center of Huntington, 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:

151226 E

FACILITY/APPLICANT:

DHCH, LLC
d/b/a Digestive Health Center of Huntington

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
2. Submission of an executed lease assignment agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed contribution/asset transfer agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. Submission of the executed Articles of Organization of DHCH, LLC acceptable to the Department. [CSL]
6. Submission of the executed Operating Agreement of DHCH, 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 # 151258-E
Suffolk Surgery Center, LLC**

Program: Diagnostic and Treatment Center **County:** Suffolk
Purpose: Establishment **Acknowledged:** June 3, 2015

Executive Summary

Description

Suffolk Surgery Center, LLC (SSC), an existing Article 28 Diagnostic and Treatment Center (D&TC) located at 1500 William Floyd Parkway, Shirley (Suffolk County), requests approval to add North Shore-LIJ Multispecialty Ventures, LLC as a 70% member. The D&TC is certified as a multi-specialty freestanding ambulatory surgery center (FASC). There will be no change in services as a result of this proposed change in ownership.

The current and proposed ownership interest in SSC are as follows:

<u>Members:</u>	<u>Current</u>	<u>Proposed</u>
*John Passarelli, MD	39.62%	7.0%
*Timothy Groth, MD	17.67%	4.0%
*Brian McGuiness, MD	14.32%	4.0%
*Pamela Weber, MD	13.37%	4.0%
*Dhiren Mehta, MD	6.68%	4.0%
*Masoon Qadeer, MD	3.34%	2.0%
Aaron Avni, MD	2.00%	2.0%
Frank Sconzo, MD	1.00%	1.0%
Paul Choinski, MD	2.00%	2.0%
North Shore-LIJ Multispecialty Ventures, LLC	0.00%	70.0%
Total	100.00%	100.0%

* Physician members selling membership interest to North Shore-LIJ Multispecialty Ventures, LLC.

The sole member of North Shore-LIJ Multispecialty Ventures, LLC is North Shore

University Hospital, a 764-bed, voluntary not-for-profit, Article 28 hospital located at 300 Community Drive, Manhasset (Nassau County), New York. North Shore University Hospital is a member of, and co-operated by, North Shore-Long Island Jewish Health Care Inc.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no changes in services as a result of the proposed change in ownership.

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

Financial Summary
There are no project costs associated with this application and no budgeted incremental operating expenses or revenues.

North Shore-LIJ Multispecialty Ventures, LLC will purchase 70% ownership for \$7,615,000 via equity payable to the six physician members selling ownership interest based on the proportionate share of membership interest being conveyed.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed Administrative Services Agreement (ASA) acceptable to the Department. [HSP]
2. Submission of an updated and fully completed Schedule 1, acceptable to the Department. [CSL]
3. Submission of an updated and fully completed Schedule 3, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Articles of Organization of Suffolk Surgery Center, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the fully executed Landlord's Consent and Estoppel Certificate, acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed Assignment and Assumption of Membership Interest, acceptable to the Department. [CSL]
7. Submission of a legible copy of the Agreement of Lease between AMCare Realty, LLC and Long Island Eye Surgery Center, dated June 19, 1998, acceptable to the Department. [CSL]
8. Submission of a photocopy of the full executed Amended and Restated Operating Agreement of the Suffolk Surgery Center, LLC. [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

October 8, 2015

Need Analysis

Project Description

Suffolk Surgery Center, LLC, an existing multi-specialty ambulatory surgery center, requests approval for the transfer of 70% membership interest to North-Shore-LIJ Multispecialty Ventures, LLC. The center is located at 1500 William Floyd Parkway, Shirley, 11967, in Suffolk County.

Background and Analysis

Suffolk Surgery Center, LLC has been providing multi-specialty surgery services to the residents of Suffolk County since 2004. The center provided a total of 17,232 procedures in 2012, 12,902 procedures in 2013. (Source: AHCF cost reports).

Conclusion

There will be no change in services as a result of the proposed change in ownership.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Suffolk Surgery Center, LLC, an existing Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center located at 1500 William Floyd Parkway in Shirley (Suffolk County) requests approval to add North Shore-LIJ Multispecialty Ventures, LLC as a 70% member of the Center.

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center (other than its ownership structure). Internist Dhiren C. Mehta, M.D. will serve as the Center's Medical Director.

Character and Competence

The table below illustrates the current and proposed ownership structure of Suffolk Surgery Center.

Member Name	Current Membership Interest	Membership Interest Proposed
*John Passarelli, MD	39.62%	7.00%
*Timothy Groth, MD	17.67%	4.00%
*Brian McGuinness, MD	14.32%	4.00%
*Pamela Weber, MD	13.37%	4.00%
*Dhiren Mehta, MD	6.68%	4.00%
*Masoom Qadeer, MD	3.34%	2.00%
*Aaron Avni, MD	2.00%	2.00%
*Frank Sconzo, MD	1.00%	1.00%
*Paul Choinski, MD	2.00%	2.00%
North Shore LIJ Multispecialty Ventures, LLC		70.0%
Managers: Dennis Dowling Laurence A. Kraemer, Esq. John McGovern		

**Not subject to a Character and Competence Review for this project.*

The sole member of North Shore-LIJ Multispecialty Ventures, LLC, is North Shore University Hospital (NSUH), a voluntary, not-for-profit hospital located at 300 Community Drive in Manhasset (Nassau County). NSUH is the sole member of North Shore-Long Island Jewish Health Care Inc. and a member of North Shore-Long Island Jewish Health System (NSLIJHS).

The Board of Trustees for NSLIJHS is comprised of 131 members, all of whom were subject to Character and Competence review.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Mr. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.

Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of \$6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of \$19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of \$74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling \$13,353 were collected.

Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.

Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.

Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.

Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children's Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with CMF.

Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.

Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.

Dr. Peress disclosed one open malpractice case pending trial in Putnam County.

Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.

Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.

Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.

Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.

Compliance with Applicable Codes, Rules and Regulations

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

In a Stipulation and Order (S&O) dated October 16, 2006, Southside Hospital was fined \$14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.

In an S&O dated December 8, 2006, Forest Hills Hospital was fined \$12,000 after an investigation revealed that surgery was performed on the patient's right side although the patient entered the hospital for hernia repair on the left side.

In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.

In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.

In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.

In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.

In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.

In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.

In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.

In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.

In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH's conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.

Conclusion

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Costs and Financing

There are no project costs associated with this application. There are no budgeted incremental operating expenses or revenues associated with this project, since patient care services will not be affected.

Membership Interest Purchase Agreement

The applicant has submitted an executed membership interest purchase agreement for the change of 70% membership interest in SSC, the terms of which are summarized below:

Date:	April 9, 2015
Purpose:	The sale of 70% membership interests of Suffolk Surgery Center, LLC
Sellers:	*Six Physician Members of Suffolk Surgery Center, LLC (noted below)
Purchaser:	North Shore-LIJ Multispecialty Ventures, LLC
Purchase Price:	\$7,615,000
Payment of Purchase Price:	\$50,000 deposit paid and held in escrow. \$7,565,000 to be paid at closing.

The proposed new member will purchase membership into SSC with equity, payable to the physician sellers per the conveyance of membership interests and purchase price agreement as follows:

Physician Members:	Current Interest % Owned	Interest % Being Conveyed To Purchaser	Purchase Price
*John Passarelli, M.D.	39.62%	32.62%	\$3,548,590.10
*Timothy Groth, M.D.	17.67%	13.67%	\$1,487,100.71
*Brian McGuiness, M.D.	14.32%	10.32%	\$1,122,668.57
*Pamela Weber, M.D.	13.37%	9.37%	\$1,019,322.14
*Dhiren Mehta, M.D.	6.68%	2.68%	\$291,545.60
*Masoom Qadeer, M.D.	3.34%	1.34%	\$145,772.88
Aaron Avni, M.D.	2.00%	0.00%	\$0.00
Frank Sconzo, M.D.	1.00%	0.00%	\$0.00
Paul Choinski, M.D.	2.00%	0.00%	\$0.00
Total	100.00%	70.00%	\$7,615,000.00

* Physician members selling membership interest.

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

Capability and Feasibility

There are no project costs associated with this application.

North Shore-LIJ Multispecialty Ventures, LLC's sole member is North Shore University Hospital. BFA Attachment A presents the 2014 financial statements and financial summary for North Shore University Hospital. As shown, the entity had positive net assets, positive working capital position, and an excess of revenue over operating expenses of \$66,841,000 for 2014, which indicates the availability of sufficient funds.

BFA Attachment B provides the 2013 and 2014 certified financial statements of Suffolk Surgery Center, LLC and a summary of their internal financial statements as of June 30, 2015. As shown, the entity maintained positive working capital and positive members' equity, and achieved an average net income of \$1,771,770 for the 2013 to 2014 audited period.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

- BFA Attachment A 2014 Financial Statements & Summary for North Shore University Hospital
- BFA Attachment B 2013 & 2014 Certified and June 30, 2015 Internal Financial Statements & Summary for Suffolk Surgery Center, LLC
- BFA Attachment C Organizational Chart after proposed member change

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of ownership interest of North Shore-LIJ Multispecialty Ventures, LLC to become a 70% member of Suffolk Surgery Center, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

151258 E

FACILITY/APPLICANT:

Suffolk Surgery Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed Administrative Services Agreement (ASA) acceptable to the Department. [HSP]
2. Submission of an updated and fully completed Schedule 1, acceptable to the Department. [CSL]
3. Submission of an updated and fully completed Schedule 3, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Articles of Organization of Suffolk Surgery Center, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the fully executed Landlord's Consent and Estoppel Certificate, acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed Assignment and Assumption of Membership Interest, acceptable to the Department. [CSL]
7. Submission of a legible copy of the Agreement of Lease between AMCare Realty, LLC and Long Island Eye Surgery Center, dated June 19, 1998, acceptable to the Department. [CSL]
8. Submission of a photocopy of the full executed Amended and Restated Operating Agreement of the Suffolk Surgery Center, LLC. [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 # 151131-E
Latta Road Nursing Home West, LLC**

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: March 30, 2015

Executive Summary

Description

Latta Road Nursing Home West, LLC, a to-be-formed New York limited liability company, requests approval to be established as the operator of Latta Road Nursing Home, a 40-bed, proprietary, Article 28 residential health care facility (RHCF) located at 2100 Latta Road, Rochester (Monroe County). The applicant will enter into a services agreement with ROHM Services Corporation for the provision of general financial related services. There will be no change in services provided as a result of this application.

On March 19, 2015, Robert W. Hurlbut, on behalf of Latta Road Nursing Home West, LLC, entered into an asset purchase agreement with Morris E. Richardson for the sale and acquisition of the operating interests of Latta Road Nursing Home. On March 20, 2015, Robert W. Hurlbut, on behalf of the to-be formed Latta Road Nursing Home Realty, LLC, also purchased the real estate from M.E. & E.E. Richardson, Inc. Robert W. Hurlbut is the proposed owner and sole member of both the operating entity and the real estate entity.

It is noted that the proposed member of Latta Road Nursing Home West, LLC is seeking to acquire two other nursing facilities, Latta Road Nursing Home A under CON #151133 and Hamilton Manor Nursing Home under CON #151134. These two applications are being reviewed concurrently with this application..

The current and proposed operator are as follows:

Current
Morris E. Richardson 100%

Proposed
Latta Road Nursing Home West, LLC
Robert W. Hurlbut 100%

Robert W. Hurlbut has ownership interest in twelve NYS skilled nursing facilities and one skilled nursing facility in Florida.

OPCHSM Recommendation
Contingent Approval

Need Summary
Latta Road Nursing Home’s utilization was 97.1% in 2011, and 98.4% in 2012, and 96.3% in 2013. Current utilization, as of March 18, 2015 is 95.0%, with two vacant beds. While current utilization is near the Department’s planning optimum, historic utilization has typically met or exceeded the Department’s planning optimum, and this is expected to continue going forward.

This application will not result in a change to beds or services.

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

No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

Financial Summary

The purchase price for the acquisition of the operating interest of Latta Road Nursing Home is \$721,000 and will be paid as follows: Equity of \$180,250 from the proposed member

and a bank loan of \$540,750 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is \$524,500 and will be paid as follows: Equity of \$131,125 from the proposed member and a bank loan of \$393,375 at an interest rate of 4.66% for a twenty-year term.

Budget:	Revenues	\$3,718,714
	Expenses	<u>3,693,730</u>
	Net Income	\$24,984

Recommendations

Health Systems Agency

The Finger Lakes HSA recommendations Contingent Approval of the project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
2. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
3. Submission of an executed services agreement, acceptable to the Department. [BFA]
4. Submission of an executed building lease, acceptable to the Department. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
6. The sponsor signs the State's Medicaid Access Agreement. [HSA]
7. 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]
8. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
9. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
10. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.
[PMU]

Council Action Date

October 8, 2015

Need Analysis

Project Description

Latta Road Nursing Home West, LLC seeks approval to become the established operator of Latta Road Nursing Home, a 40-bed Article 28 residential health care facility (RHCF) located at 2100 Latta Road, Rochester, 14612, in Monroe County.

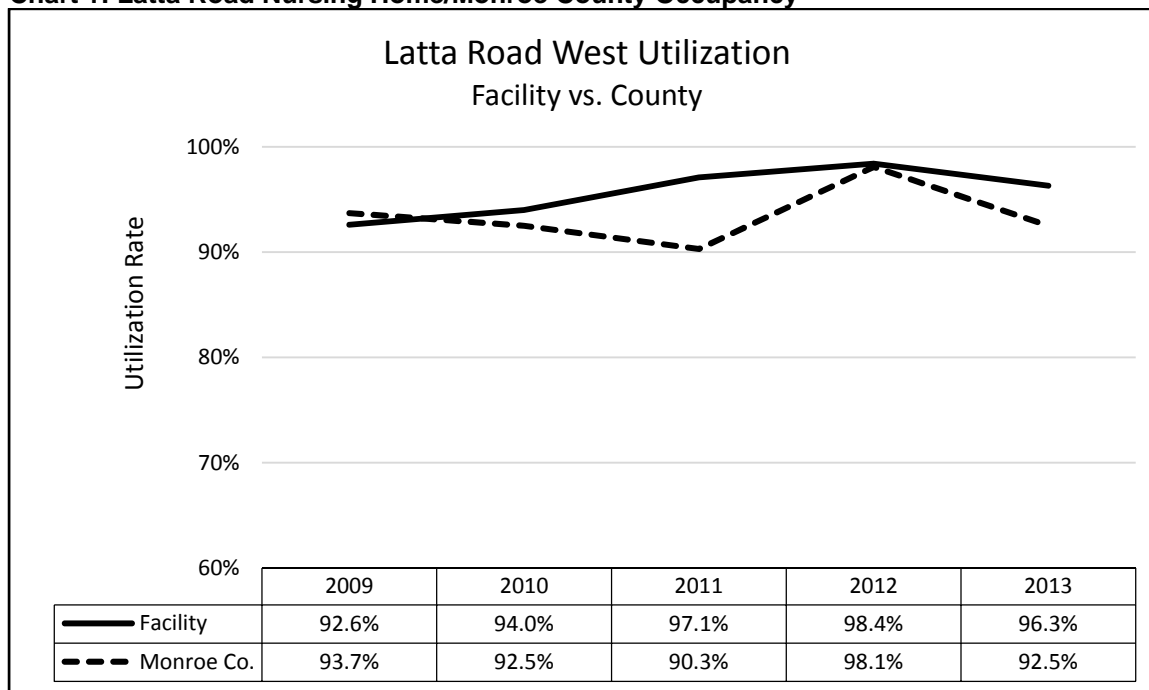
Analysis

There is currently a surplus of 908 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County is 92.5% for 2013 as indicated in Chart 1.

Table 1: RHCF Need – Monroe County

2016 Projected Need	4,167
Current Beds	5,142
Beds Under Construction	-67
Total Resources	5,075
Unmet Need	-908

Chart 1: Latta Road Nursing Home/Monroe County Occupancy



Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Latta Road Nursing Home's Medicaid admissions for 2012 was 4.2% and did not exceed Monroe County 75% rate of 13.3%. In 2013, Latta Road Nursing Home's Medicaid admissions for 2013 was 15.6% and exceeded Monroe County 75% rate of 12.8%.

Conclusion

Approval of this application will result in providing a needed resource for the residents it serves.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Latta Road Nursing Home	Latta Road Nursing Home West, LLC
Address	2100 Latta Road Rochester, NY 14626	Same
RHCF Capacity	40	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Sole Proprietorship	Proprietary
Operator	Eleanor E. Richardson d/b/a	Latta Nursing Home West, LLC <u>Member</u> Robert W. Hurlbut 100.00%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	09/2005 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	09/2005 to present
Hornell Gardens, LLC	04/2007 to present
The Hurlbut, LLC	09/2005 to present
Newark Manor Nursing Home, Inc.	09/2015 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center, LLC	09/2005 to present
The Shore Winds, LLC	09/2005 to present
Wedgewood Nursing Home, Inc.	09/2005 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

Individual Background Review

Robert Hurlbut lists his profession as nursing home owner. Mr. Hurlbut discloses the following nursing home ownership interests:

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	02/1997 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	1/1994 to present
Hornell Gardens, LLC	04/2007 to present

The Hurlbut, LLC	01/2003 to present
Newark Manor Nursing Home, Inc.	07/1998 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center	03/2003 to present
The Shore Winds, LLC	03/2003 to present
Wedgewood Nursing Home, Inc.	01/1994 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of The Brightonian, Inc. for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-11-006 issued March 3, 2011 for surveillance findings on February 12, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of Elm Manor Nursing Home, Inc. for the period identified above reveals the following:

- The facility has been fined \$10,000 pursuant to a pending Stipulation and Order for surveillance findings on July 30, 2012. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care Unnecessary Drugs.

A review of Hornell Gardens, LLC for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to a Stipulation and Order NH-15-015 issued September 1, 2015 for surveillance findings on July 12, 2013. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 415.12(h)(1).

A review of The Shore Winds LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-15-016 issued September 1, 2015 for surveillance findings on February 8, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 10NYCRR 415.12(h)(1) Quality of Care: Accidents.

A review of operations of for the nursing homes identified above for the periods specified results in a conclusion of a consistently high level of care as there were no repeat enforcements.

A review of Avon Nursing Home, LLC, Conesus Lake Nursing Home, Newark Manor Nursing Home, Inc., Penfield Place, LLC, Seneca Nursing & Rehabilitation Center, Wedgewood Nursing Home and Woodside Manor Nursing Home, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the sale of the operation, as summarized below:

Date:	March 19, 2015
Seller:	Morris E. Richardson
Purchaser:	Robert W. Hurlbut
Assets Acquired:	Seller's rights under any third party programs, excluding amounts due but not yet paid for services rendered by Seller for periods prior to the Closing Date; all equipment, furniture, appliances, tools, supplies and other personal property owned by Seller; all leases, contracts and other agreements, which Buyer expressly elects to assume; all rights to the telephone and facsimile numbers of the Facility; the name "Latta Road Nursing Home"; any and all policy and procedure manuals, intellectual property and/or software used by the Facility; all residents' funds held in trust and all security deposits held by Seller and all retroactive rate increases and/or lump sum payments from any source for services rendered by the Facility prior to the Closing Date.
Excluded Assets:	Seller's rights to any income tax, sales tax, usage tax, franchise tax, special assessments, revenue assessments required by the New York State Department of Health and any other refunds due to the Seller prior to the Effective Date; any non-transferable or non-assignable governmental or regulatory licenses; Seller's cash on hand; Seller's bank accounts and records, deferred investments, stocks, bonds and any other securities that exist on the date of Closing and Seller's account receivable prior to the Closing Date.
Assumed Liabilities:	Resident funds held in trust.
Purchase Price:	\$721,000
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via proposed member	\$180,250
Bank Loan (4.66% for a twenty-year term)	540,750

A bank letter of interest for the financing has been provided.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding liabilities.

Real Estate Agreement

The applicant has submitted an executed real estate purchase agreement for Latta Road Nursing Home and Latta Road Nursing Home A (jointly), which is summarized below:

Date:	March 20, 2015
Premises:	Real property identified as tax map account number 045.12-2-43.1 consisting of approximately 32.5 acres of land and existing improvements located at 2100 Latta Road in the Town of Greece, New York.
Seller:	M.E. & E.E. Richardson, Inc.
Buyer:	Robert W. Hurlbut, on behalf of Latta Road Nursing Home Realty, LLC

Purchase Price:	\$1,049,000 total allocated as follows: <ul style="list-style-type: none"> • \$524,500 for Latta Road Nursing Home • \$524,500 for Latta Road Nursing Home A
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via proposed member	\$131,125
Bank Loan (4.66% for a twenty-year term)	<u>393,375</u>
	\$524,500

A bank letter of interest for the financing has been provided.

Administrative Services Agreement

The applicant has submitted a draft services agreement, which is summarized below:

Provider:	ROHM Services Corporation
Facility:	Latta Road Nursing Home West, LLC
Services:	The provider shall provide the following services: general financial services including preparation of resident statements, invoicing all payors, processing of all payments received, review of invoices and preparation of bank deposits, preparation and negotiation of purchasing bids subject to final approval of Latta Road Nursing Home West, review of audit reports, and debt collection services.
Term:	The agreement shall continue until December 31, 2017. Unless either party gives notice to the other party of its intent not to renew this agreement at least thirty days prior to the end of the term, or any renewal thereof, this agreement will be automatically renewed for additional one year term.
Compensation:	The compensation shall be \$120,000 per year.

While ROHM Services Corporation will provide the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations. This agreement specifically does not delegate to ROHM the following responsibilities: authority to hire or fire the administrator or other key management employees, maintenance and control of the books and records of the Facility, authority over disposition of assets and incurring liabilities on behalf of the Facility, and the adoption and enforcement of policies regarding the operation of Latta Road Nursing Home West.

Lease Rental Agreement

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

Premises:	The site located at 2100 Latta Road, Rochester, New York
Lessor:	Latta Road Nursing Home Realty, LLC
Lessee:	Latta Road Nursing Home West, LLC
Term:	20 years
Rental:	\$76,500 annually (paid in equal monthly installments of \$6,375)
Provisions:	Lessee shall be responsible for real estate taxes, maintenance and utilities.

The lease agreement will be a non-arm's length lease arrangement. There is common ownership between the landlord and tenant in that the proposed owner is the sole member of both the operating entity and the real estate entity.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$196.49	\$1,886,885
Medicare Fee For Service	506.12	711,610
Private Pay	354.77	955,754
Other	336.33	<u>164,465</u>
Total Revenues		\$3,718,714
Expenses:		
Operating	\$252.59	\$3,584,709
Capital	<u>7.68</u>	<u>109,021</u>
Total Expenses	\$260.27	\$3,693,730
Net Income		\$24,984
Utilization: (patient days)		14,192
Occupancy		97.21%
Breakeven Occupancy		96.58%

Utilization broken down by payor source during the first year after the change in ownership is summarized:

Medicaid Managed Care	67.66%
Medicare Fee For Service	9.91%
Private Pay	18.98%
Other	3.45%

The following is noted with respect to the submitted budget:

- Medicaid and Medicare revenue assumptions are based on the facility's current payment rates for the respective payors. The Medicaid Fee-For-Service rate serves as the benchmark rate for the Medicaid Managed Care payments. For Medicare, the applicant has incorporated a conservative increase in Medicare Part A and Part B based on his ownership experience with the other NYS facilities he operates.
- Private pay rates are anticipated to increase by 10% to remain at market levels.
- Expense and utilization assumptions are based on the facility's 2014 historical experience.
- Breakeven occupancy is projected at 96.58% or 14,100 patient days.

The budget appears reasonable.

Capability and Feasibility

The purchase price for the acquisition of the operating interest is \$721,000. The purchase price will be met as follows: Equity of \$180,250 via the proposed member and \$540,750 via a bank loan at an interest rate of 4.66% for a twenty-year term. The purchase price for the real estate interest is \$524,500 and will be met as follows: Equity of \$131,125 via the proposed member and \$324,500 via a bank loan at an interest rate of 4.66% for a twenty-year term. The applicant has submitted bank letters of interest in regard to the financing.

Working capital requirements are estimated at \$615,621, which is equivalent to two months of first year expenses. The applicant will finance \$307,810 at an interest rate of 3.25% for a five-year term. The remaining \$307,811 will be met via equity from the proposed member. BFA Attachment A is the personal net worth statement for the proposed member of Latta Road Nursing Home West, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and purchase price equity portion. BFA Attachment B is the pro forma balance sheet for the first day of operation, which indicates a positive net asset position of \$431,435. Assets include \$517,000 in goodwill, which is not a liquid

resource, nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would be a negative \$85,565.

The submitted budget indicates a net income of \$24,984 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Latta Road Nursing Home for the period 2012 through 2014. As shown, the entity had an average positive working capital position, an average positive net asset position, and incurred an average loss of \$351,899 from 2012 through 2104. The applicant has indicated that the reason for the annual historical losses shown was due to the facility having little Part A and Part B residents.

The following is a comparison of the facility's 2014 historical performance to projected revenue and expenses for year one following the change in ownership:

	<u>Annual 2014</u>	<u>Year 1</u>
Revenues	\$3,201,109	\$3,718,714
Expenses	<u>3,529,751</u>	<u>3,693,730</u>
Net Income	(\$328,672)	\$24,984
Incremental Net Income:		<u>\$353,656</u>

To improve operations, the applicant is proposing to implement the following corrective actions when they begin operating the facility:

- Currently facility has little or no Medicare Part A and Part B. The buyer plans to add on staff for PT and OT services and improve the therapy programs.
- Dietary service and food costs are currently double the other comparable facilities benchmarked. The facility also has an employee benefit whereby all employees eat free of charge. The dietary service and food costs will be brought in line to benchmarked facilities, and the employee plan will be modified to require a small charge for one meal per shift.
- All nursing personnel will be employee staff. No contract nurses will be used.
- Nursing supplies are greatly in excess of the other comparable facilities and will be brought in line as well.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is the 2012 through 2014 financial summary of the NYS facilities the proposed member has ownership interest in. The facilities and summary of operations for the period are as follows:

- Woodside Manor Nursing Home (44 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$384,785.
- Wedgewood Nursing Home (29 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$19,632. The applicant indicated that the loss in 2012 was due to bad debt write-offs in 2012.
- The Shore Winds (229 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$804,990.
- Seneca Nursing & Rehabilitation Center (20 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$746,604.
- Penfield Place (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$358,440.

- Newark Manor Nursing Home (60 beds): The entity had an average negative working capital position, an average negative net asset position, and had an average net loss of \$24,290 for the period. The applicant indicated that the reason for the average negative working capital position is due to past historical losses. The entity had a loss in 2012 due to low occupancy. They worked hard in 2013 and 2014 to strengthen their relationship with Newark Wayne Hospital to better manage their costs.
- The Hurlbut (160 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$638,044.
- Hornell Gardens (114 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$595,542.
- Elm Manor Nursing Home (46 beds): The entity had an average positive working capital position, an average positive net asset position, and had an average net loss of \$202,196 for the period. The entity had a loss in 2012 due to the following: an occupancy decrease from 2011, and a one-time bad debt expense write-off. The entity implemented the following steps to improve operations: improved occupancy in 2013 and 2014.
- Conesus Lake Nursing Home (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$711,230.
- The Brightonian (54 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$761,346.
- Avon Nursing Home (40 beds): The entity had an average positive working capital position, an average negative net asset position, and achieved an average net income of \$257,723. The reason for the average negative net asset position was due to prior year historical losses. The applicant improved operations in 2013.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Personal Net Worth Statement of Proposed Member
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	2012 - 2014 Financial Summary - Latta Road Nursing Home
BFA Attachment D	2012 - 2014 Financial Summary - Other Owned Facilities

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Latta Road Nursing Home West, LLC as the new operator of Latta Road Nursing Home, a 40-bed facility located at 2100 Latta Road, Rochester, 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:

151131 E

Latta Road Nursing Home West, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
2. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
3. Submission of an executed services agreement, acceptable to the Department. [BFA]
4. Submission of an executed building lease, acceptable to the Department. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
6. The sponsor signs the State's Medicaid Access Agreement. [HSA]
7. 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]
8. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
9. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
10. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]

12. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 151133-E
Latta Road Nursing Home East, LLC**

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: March 30, 2015

Executive Summary

Description

Latta Road Nursing Home East, LLC, a to-be-formed New York limited liability company, requests approval to be established as the operator of Latta Road Nursing Home A, a 40-bed, proprietary, Article 28 residential healthcare facility (RHCF) located at 2102 Latta Road, Rochester (Monroe County). The applicant will enter into a services agreement with ROHM Services Corporation for the provision of general financial services. There will be no change in services as a result of this application.

On March 19, 2015, Robert W. Hurlbut, on behalf of Latta Road Nursing Home East, LLC, entered into an Asset Purchase Agreement with Morris E. Richardson for the sale and acquisition of the operating interests of Latta Road Nursing Home A. On March 20, 2015, Robert W. Hurlbut, on behalf of the to-be formed Latta Road Nursing Home Realty, LLC, also purchased the real estate from M.E. & E.E. Richardson, Inc. Robert W. Hurlbut is the proposed owner and sole member of both the operating entity and the real estate entity.

It is noted that the proposed member of Latta Road Nursing Home East, LLC is seeking to acquire two other nursing facilities, Latta Road Nursing Home under CON #151131 and Hamilton Manor Nursing Home under CON #151134. These two applications are being reviewed concurrently with this one.

The current and proposed operator of the RHCF are as follows:

Current
Morris E. Richardson 100%

Proposed
Latta Road Nursing Home East, LLC
Robert W. Hurlbut 100%

Robert W. Hurlbut has ownership interest in twelve NYS skilled nursing facilities and one skilled nursing facility in Florida.

OPCHSM Recommendation
Contingent Approval

Need Summary
Latta Road Nursing Home A's utilization was 95.7% in 2011, 94.4% in 2012, and 94.9% in 2013. Current utilization, as of March 18, 2015 is 97.5%, with one vacant bed. While historic utilization is near the Department's planning optimum, in 2014 and thus far in 2015 utilization has exceeded the Department's planning optimum.

This application will not result in a change to beds or services.

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

Financial Summary

The purchase price for the acquisition of the operating interests of Latta Road Nursing Home A is \$776,000 and will be paid as follows: Equity of \$194,000 from the proposed member and a bank loan of \$582,000 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is \$524,500 and will be paid as follows: Equity

of \$131,125 from the proposed member and a bank loan of \$393,375 at an interest rate of 4.66% for a twenty-year term.

Budget:	Revenues	\$3,763,243
	Expenses	<u>3,525,757</u>
	Net Income	\$237,486

Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency recommends Contingent Approval of this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
6. Submission of an executed services agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease, acceptable to the Department. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
9. The sponsor signs the State's Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [FLA]
10. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.
[PMU]

Council Action Date

October 8, 2015

Need Analysis

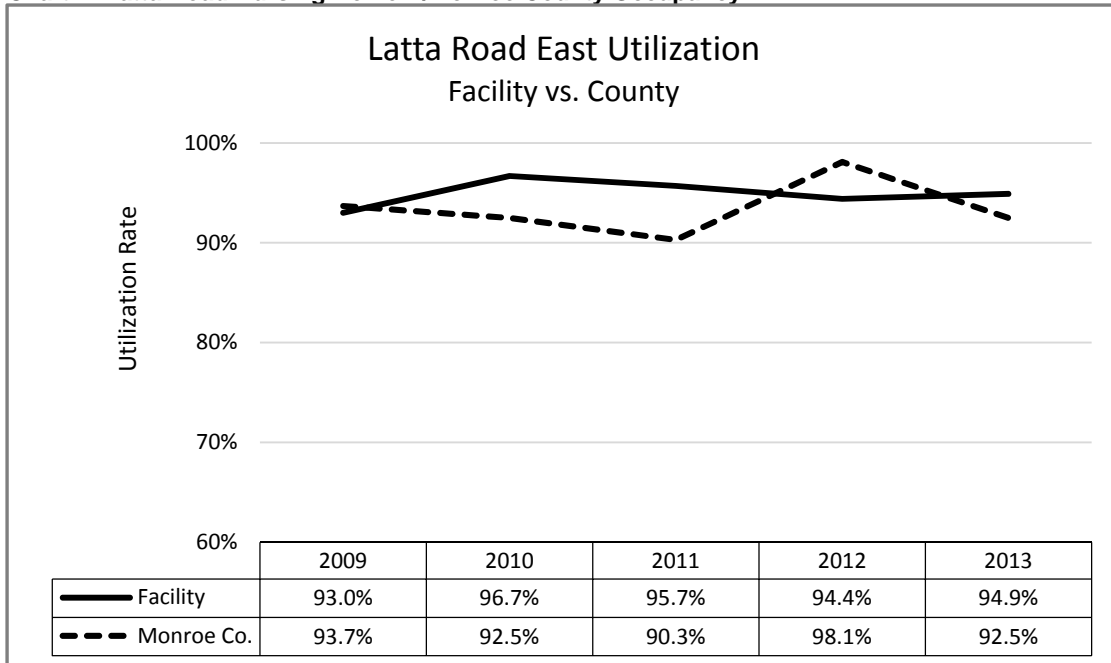
Analysis

There is currently a surplus of 908 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County was 92.5% in 2013 as indicated in Chart 1.

Table 1: RHCN Need – Monroe County

2016 Projected Need	4,167
Current Beds	5,142
Beds Under Construction	-67
Total Resources	5,075
Unmet Need	-908

Chart 1: Latta Road Nursing Home A/Monroe County Occupancy



Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Latta Road Nursing Home A's Medicaid admissions for 2012 was 12.1% and exceeded Monroe County 75% rate of 13.3%. In 2013, Latta Road Nursing Home A's Medicaid admissions for 2013 was 10.6% and did not exceed Monroe County 75% rate of 12.8% and will be required to follow the contingency plan as noted.

Conclusion

Approval of this application will result in providing a needed resource for the residents it serves.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with ROHM Services Corporation for financial services.

Facility Information

	Existing	Proposed
Facility Name	Latta Road Nursing Home A	Latta Road Nursing Home East, LLC
Address	2102 Latta Road Rochester, NY 14612	Same
RHCF Capacity	40	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Sole Proprietorship	Proprietary
Operator	Eleanor E. Richardson d/b/a	Latta Nursing Home West, LLC Member: Robert W. Hurlbut 100.00%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	09/2005 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	09/2005 to present
Hornell Gardens, LLC	04/2007 to present
The Hurlbut, LLC	09/2005 to present
Newark Manor Nursing Home, Inc.	09/2015 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center, LLC	09/2005 to present
The Shore Winds, LLC	09/2005 to present
Wedgewood Nursing Home, Inc.	09/2005 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

Individual Background Review

Robert Hurlbut lists his profession as nursing home owner. Mr. Hurlbut discloses the following nursing home ownership interests:

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	02/1997 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	01/1994 to present
Hornell Gardens, LLC	04/2007 to present
The Hurlbut, LLC	01/2003 to present
Newark Manor Nursing Home, Inc.	07/1998 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center	03/2003 to present

The Shore Winds, LLC
Wedgewood Nursing Home, Inc.
Woodside Manor Nursing Home, Inc.

03/2003 to present
01/1994 to present
04/2007 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of The Brightonian, Inc. for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-11-006 issued March 3, 2011 for surveillance findings on February 12, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of Elm Manor Nursing Home, Inc. for the period identified above reveals the following:

- The facility has been fined \$10,000 pursuant to a pending Stipulation and Order for surveillance findings on July 30, 2012. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care Unnecessary Drugs.

A review of Hornell Gardens, LLC for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to a Stipulation and Order NH-15-015 issued September 1, 2015 for surveillance findings on July 12, 2013. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 415.12(h)(1).

A review of The Shore Winds LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-15-016 issued September 1, 2015 for surveillance findings on February 8, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 10NYCRR 415.12(h)(1) Quality of Care: Accidents.

A review of operations of for the nursing homes identified above for the periods specified results in a conclusion of a consistently high level of care as there were no repeat enforcements.

A review of Avon Nursing Home, LLC, Conesus Lake Nursing Home, Newark Manor Nursing Home, Inc., Penfield Place, LLC, Seneca Nursing & Rehabilitation Center, Wedgewood Nursing Home and Woodside Manor Nursing Home, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the sale of the operation, as summarized below:

Date:	March 19, 2015
Seller:	Morris E. Richardson
Purchaser:	Robert W. Hurlbut
Assets Acquired:	Seller's rights under any third party programs, excluding amounts due but not yet paid for services rendered by Seller for periods prior to the Closing Date; all equipment, furniture, appliances, tools, supplies and other personal property owned by Seller; all leases, contracts and other agreements, which Buyer expressly elects to assume; all rights to the telephone and facsimile numbers of

	the Facility; the name "Latta Road Nursing Home A"; any and all policy and procedure manuals, intellectual property and/or software used by the Facility; all residents' funds held in trust and all security deposits held by Seller and all retroactive rate increases and/or lump sum payments from any source for services rendered by the Facility prior to the Closing Date.
Excluded Assets:	Seller's rights to any income tax, sales tax, usage tax, franchise tax, special assessments, revenue assessments required by the New York State Department of Health and any other refunds due to the Seller prior to the Effective Date; any non-transferable or non-assignable governmental or regulatory licenses; Seller's cash on hand; Seller's bank accounts and records, deferred investments, stocks, bonds and any other securities that exist on the date of Closing and Seller's account receivable prior to the Closing Date.
Assumed Liabilities:	Resident funds held in trust.
Purchase Price:	\$776,000
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via proposed member	\$194,000
Bank Loan (4.66% for a twenty-year term)	582,000

A bank letter of interest for the financing has been provided.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments, or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility.

Real Estate Agreement

The applicant has submitted an executed real estate purchase and sale agreement for Latta Nursing Home and Latta Nursing Home A (jointly), which is summarized below:

Date:	March 20, 2015
Premises:	Real property identified as tax map account number 045.12-2-43.1 consisting of approximately 32.5 acres of land and existing improvements located at 2100 Latta Road in the Town of Greece, New York.
Seller:	M.E. & E.E. Richardson, Inc.
Buyer:	Robert W. Hurlbut, on behalf of Latta Road Nursing Home Realty, LLC
Purchase Price:	\$1,049,000 total allocated as follows: <ul style="list-style-type: none"> • \$524,500 for Latta Nursing Home • \$524,500 for Latta Nursing Home A
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via the proposed member	\$131,125
Bank Loan (4.66% for a twenty-year term)	<u>393,375</u>
	\$524,500

A bank letter of interest for the financing has been provided.

Administrative Services Agreement

The applicant has submitted a draft services agreement, which is summarized below:

Provider:	ROHM Services Corporation
Facility:	Latta Road Nursing Home East, LLC
Services:	The provider shall perform the following services: general financial services including preparation of resident statements, invoicing all payors, processing of all payments received, review of invoices and preparation of bank deposits, preparation and negotiation of purchasing bids subject to final approval of Latta Road Nursing Home East, review of audit reports, and debt collection services.
Term:	The agreement shall continue until December 31, 2017. Unless either party gives notice to the other party of its intent not to renew this agreement at least thirty days prior to the end of the term, or any renewal thereof, this agreement will be automatically renewed for additional one year term.
Compensation:	The compensation shall be \$120,000 per year.

While ROHM Services Corporation will provide the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations. This agreement specifically does not delegate to ROHM the following responsibilities: authority to hire or fire the administrator or other key management employees, maintenance and control of the books and records of the Facility, authority over disposition of assets and incurring liabilities on behalf of the Facility, and the adoption and enforcement of policies regarding the operation of Latta Road Nursing Home East.

Lease Rental Agreement

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

Premises:	The site located at 2102 Latta Road, Rochester, New York
Lessor:	Latta Road Nursing Home Realty, LLC
Lessee:	Latta Road Nursing Home East, LLC
Term:	20 years
Rental:	\$76,500 annually (paid in equal monthly installments of \$6,375)
Provisions:	Lessee shall be responsible for real estate taxes, maintenance and utilities.

The lease agreement will be a non-arm's length lease arrangement. There is common ownership between the landlord and tenant in that the proposed owner is the sole member of both the operating entity and the real estate entity.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$183.92	\$1,640,758
Medicare Fee For Service	498.94	780,340
Private Pay	363.14	992,085
Other	350.06	<u>350,060</u>
Total Revenues		\$3,763,243
Expenses:		
Operating	\$240.86	\$3,424,283
Capital	<u>7.14</u>	<u>101,474</u>
Total Expenses	\$248.00	\$3,525,757
Net Income		\$237,486

Utilization (Patient Days)	14,217
Occupancy	97.38%
Breakeven Occupancy	91.55%

Utilization by payor source during the first year after the change in ownership:

Medicaid Managed Care	62.75%
Medicare Fee-For-Service	11.00%
Private Pay	19.22%
Other	7.03%

The following is noted with respect to the submitted budget:

- Medicaid and Medicare revenue assumptions are based on the facility's current payment rates for the respective payors. The Medicaid Fee-For-Service rate serves as the benchmark rate for the Medicaid Managed Care payments. For Medicare, the applicant has incorporated a conservative increase in Medicare Part A and Part B based on his ownership experience with the other NYS facilities he operates.
- Private pay rates are anticipated to increase by 10% to remain at market levels.
- Expense and utilization assumptions are based on the facility's 2014 historical experience.
- Breakeven utilization is projected at 91.55% or 13,366 patient days.

The budget appears reasonable.

Capability and Feasibility

The purchase price for the acquisition of the operating interest is \$776,000. The purchase price will be met as follows: Equity of \$194,000 via the proposed member and \$582,000 via a bank loan at an interest rate of 4.66% for a twenty-year term. The purchase price for the real estate interest is \$524,000 and will be met as follows: Equity of \$131,125 via the proposed member and \$393,375 via a bank loan at an interest rate of 4.66% for a twenty-year term. The applicant has submitted bank letters of interests in regard to the financing.

Working capital requirements are estimated at \$587,626, which is equivalent to two months of first year expenses. The applicant will finance \$293,813 at an interest rate of 3.25% for a five-year term. The remaining \$293,813 will be met via equity from the proposed member. BFA Attachment A is the personal net worth statement for the proposed member of Latta Road Nursing Home East, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and the purchase price equity portion. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$471,438. Assets include \$571,000 in goodwill, which is not a liquid resource, nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would be a negative \$99,562.

The submitted budget indicates a net income of \$237,486 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Latta Road Nursing Home A for the period 2012 through 2014. As shown, the entity had an average positive working capital position, an average positive net asset position, and incurred an average loss of \$299,305 from 2012 through 2014. The applicant has indicated that the reason for the annual historical losses shown was due to the facility having little Part A and Part B residents.

The following is a comparison of the facility's 2014 historical performance to projected revenue and expenses for year one following the change in ownership:

	<u>Annual 2014</u>	<u>Year 1</u>
Revenues:	\$ 3,262,440	\$3,763,243
Expenses:	<u>3,685,013</u>	<u>3,525,757</u>
Net Income:	(\$422,573)	\$237,486
Incremental Net Income:		<u>\$660,059</u>

To improve operations, the applicant is proposing to implement the following corrective actions when they begin operating the facility:

- Currently facility has little or no Medicare Part A and Part B. The buyer plans to add on staff for PT and OT services and improve the therapy programs.
- Dietary service and food costs are currently double the other comparable facilities benchmarked. The facility also has an employee benefit whereby all employees eat free of charge. The dietary service and food costs will be brought in line to benchmarked facilities, and the employee plan will be modified to require a small charge for one meal per shift.
- All nursing personnel will be employee staff. No contract nurses will be used.
- Nursing supplies are greatly in excess of the other comparable facilities and will be brought in line as well.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D presents the 2012 through 2014 financial summary of the NYS facilities the proposed member has ownership interest in. The facilities and summary of operations for the period are as follows:

- Woodside Manor Nursing Home (44 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$384,785.
- Wedgewood Nursing Home (29 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$19,632. The applicant indicated that the loss in 2012 was due to bad debt write-offs in 2012.
- The Shore Winds (229 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$804,990.
- Seneca Nursing & Rehabilitation Center (20 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$746,604.
- Penfield Place (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$358,440.
- Newark Manor Nursing Home (60 beds): The entity had an average negative working capital position, an average negative net asset position, and had an average net loss of \$24,290 for the period. The applicant indicated that the reason for the average negative working capital position is due to past historical losses. The entity had a loss in 2012 due to low occupancy. They worked hard in 2013 and 2014 to strengthen their relationship with Newark Wayne Hospital to better manage their costs.
- The Hurlbut (160 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$638,044.
- Hornell Gardens (114 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$595,542.
- Elm Manor Nursing Home (46 beds): The entity had an average positive working capital position, an average positive net asset position, and had an average net loss of \$202,196 for the period. The entity had a loss in 2012 due to the following: an occupancy decrease from 2011, and a one-time bad debt expense write-off. The entity implemented the following steps to improve operations: improved occupancy in 2013 and 2014.

- Conesus Lake Nursing Home (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$711,230.
- The Brightonian (54 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$761,346.
- Avon Nursing Home (40 beds): The entity had an average positive working capital position, an average negative net asset position, and achieved an average net income of \$257,723. The reason for the average negative net asset position was due to prior year historical losses. The applicant improved operations in 2013.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	2012 - 2014 Financial Summary - Latta Road Nursing Home A
BFA Attachment D	2012 - 2014 Financial Summary - Other Owned Facilities.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Latta Road Nursing Home East, LLC as the new operator of Latta Road Nursing Home, a 40-bed facility located at 2102 Latta Road, Rochester, 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:

151133 E

Latta Road Nursing Home East, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
6. Submission of an executed services agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease, acceptable to the Department. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
9. The sponsor signs the State's Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [FLA]
10. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



**Project # 151134-E
Hamilton Manor Nursing Home, LLC**

Program: Residential Health Care Facility
Purpose: Establishment

County: Monroe
Acknowledged: March 30, 2015

Executive Summary

Description

Hamilton Manor Nursing Home, LLC, a to-be-formed New York limited liability company, requests approval to be established as the operator of Hamilton Manor Nursing Home, a 40-bed, sole proprietor, Article 28 residential health care facility (RHCF) located at 1172 Long Pond Road, Rochester (Monroe County). The applicant will enter into a services agreement with ROHM Services Corporation for the provision of general financial services. There will be no change in services provided as a result of this application.

On March 19, 2015, Robert W. Hurlbut, on behalf of Hamilton Manor Nursing Home, LLC, entered into an asset purchase agreement with Morris E. Richardson, executor of the estate of Eleanor E. Richardson, for the sale and acquisition of the operating interest of Hamilton Manor Nursing Home. On March 20, 2015, Robert W. Hurlbut, on behalf of the to-be formed Hamilton Manor Nursing Home Realty, LLC, also purchased the real estate from Eleven Seventy Two Long Pond Road, Inc. and Morris Richardson. Robert Hurlbut is the proposed owner and sole member of both the operating entity and the real estate entity.

The proposed member of Hamilton Manor Nursing Home, LLC is also seeking to acquire two other nursing facilities, Latta Road Nursing Home under CON #151131 and Latta Road Nursing Home A under CON #151133. These two applications are being reviewed concurrent with this application request.

The current and proposed operators are as follows:

Current

Morris E. Richardson, Executor of the Estate of Eleanor E. Richardson 100%

Proposed

Hamilton Manor Nursing Home, LLC
Robert Hurlbut 100%

Robert W. Hurlbut has ownership interest in twelve NYS skilled nursing facilities and one skilled nursing facility in Florida.

OPCHSM Recommendation
Contingent Approval

Need Summary

Hamilton Manor Nursing Home's utilization was 95.2% in 2011, 94.9% in 2012, and 95.2% in 2013. Current utilization, as of March 18, 2015 is 92.5%, with 3 vacant beds. In 2014, and overall in 2015, utilization at this facility has increased to 97.6% and 96.1%, respectively, which closely coincide with the Department's planning optimum.

This application will not result in a change to beds or services.

Program Summary

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

No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

Financial Summary

The purchase price for the acquisition of the operating interest of Hamilton Manor Nursing Home is \$773,000 and will be paid as follows: Equity of \$193,250 from the proposed member and a bank loan of \$579,750 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is \$481,000 and will be paid as follows: Equity of \$120,250 from the proposed member and a bank loan of \$360,750 at an interest rate of 4.66% for a twenty-year term.

Budget:	Revenues	\$3,877,748
	Expenses	<u>3,587,575</u>
	Net Income	\$290,173

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Contingent Approval of this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
6. Submission of an executed services agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease, acceptable to the Department. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
9. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]
12. The sponsor signs the State's Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [HSA]

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

October 8, 2015

Need Analysis

Project Description

Hamilton Manor Nursing Home, LLC, seeks approval to become the established operator of Hamilton Manor Nursing Home, a 40-bed Article 28 residential health care facility (RHCF) located at 1172 Long Pond Road, Rochester, 14626, in Monroe County.

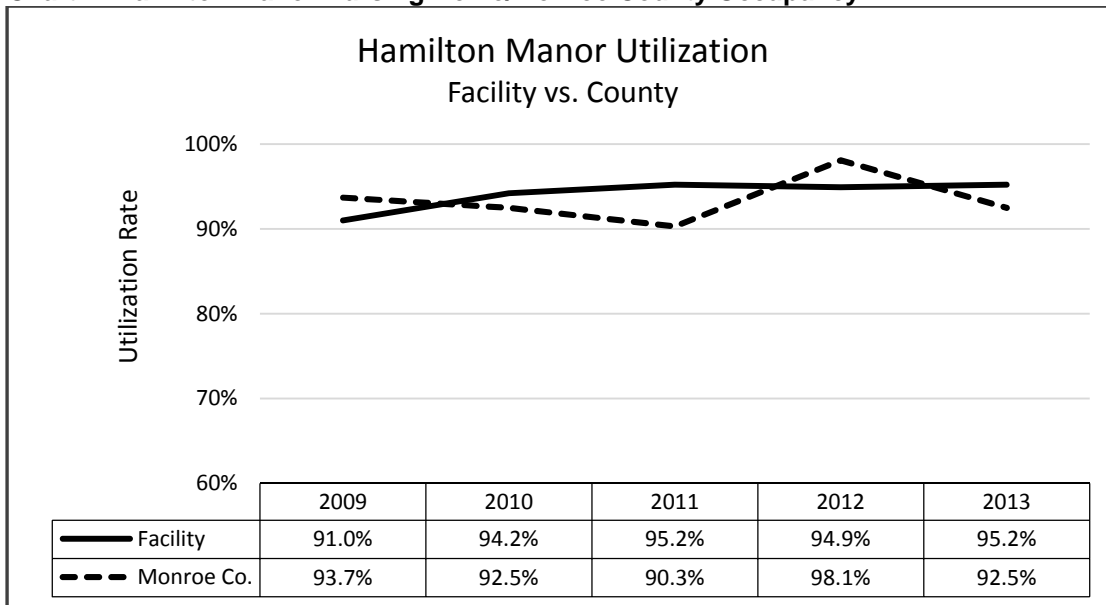
Analysis

There is currently a surplus of 908 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County is 92.5% for 2013, as indicated in Chart 1.

Table 1: RHCF Need – Monroe County

2016 Projected Need	4,167
Current Beds	5,142
Beds Under Construction	-67
Total Resources	5,075
Unmet Need	-908

Chart 1: Hamilton Manor Nursing Home/Monroe County Occupancy



Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Hamilton Manor Nursing Home's Medicaid admissions for both 2012 and 2013 was 0.0% which did not exceed Monroe County 75% rates in 2012 and 2013 of 13.3% and 12.8%, respectively. The new operator will be required to follow the contingency plan as noted on the green sheet.

Conclusion

Approval of this application will result in retaining a needed resource for the residents it serves.

Recommendation

From a need perspective, contingent approval is recommended.

<h2 style="margin: 0;">Program Analysis</h2>
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Facility Information

	Existing	Proposed
Facility Name	Hamilton Manor Nursing Home	Hamilton Manor Nursing Home, LLC
Address	1172 Long Pond Road Rochester, NY 14626	Same
RHCF Capacity	40	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Sole Proprietorship	Proprietary
Operator	Eleanor E. Richardson d/b/a	Hamilton Manor Nursing Home, LLC Member Robert W. Hurlbut 100.00%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	09/2005 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	09/2005 to present
Hornell Gardens, LLC	04/2007 to present
The Hurlbut, LLC	09/2005 to present
Newark Manor Nursing Home, Inc.	09/2015 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center, LLC	09/2005 to present
The Shore Winds, LLC	09/2005 to present
Wedgewood Nursing Home, Inc.	09/2005 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

Individual Background Review

Robert Hurlbut lists his profession as nursing home owner. Mr. Hurlbut discloses the following nursing home ownership interests:

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	02/1997 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	01/1994 to present
Hornell Gardens, LLC	04/2007 to present

The Hurlbut, LLC	01/2003 to present
Newark Manor Nursing Home, Inc.	07/1998 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center	03/2003 to present
The Shore Winds, LLC	03/2003 to present
Wedgewood Nursing Home, Inc.	01/1994 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of The Brightonian, Inc. for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-11-006 issued March 3, 2011 for surveillance findings on February 12, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of Elm Manor Nursing Home, Inc. for the period identified above reveals the following:

- The facility has been fined \$10,000 pursuant to a pending Stipulation and Order for surveillance findings on July 30, 2012. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care Unnecessary Drugs.

A review of Hornell Gardens, LLC for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to a Stipulation and Order NH-15-015 issued September 1, 2015 for surveillance findings on July 12, 2013. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 415.12(h)(1).

A review of The Shore Winds LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-15-016 issued September 1, 2015 for surveillance findings on February 8, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 10NYCRR 415.12(h)(1) Quality of Care: Accidents.

A review of operations of for the nursing homes identified above for the periods specified results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of Avon Nursing Home, LLC, Conesus Lake Nursing Home, Newark Manor Nursing Home, Inc., Penfield Place, LLC, Seneca Nursing & Rehabilitation Center, Wedgewood Nursing Home and Woodside Manor Nursing Home, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the sale of the operation, as summarized below:

Date:	March 19,,2015
Seller:	Morris E. Richardson, as Executor of the Estate of Eleanor E. Richardson
Purchaser:	Robert W. Hurlbut
Assets Acquired:	Seller's rights under any third party payor programs, excluding amounts due but not yet paid for services rendered by Seller for periods prior to the Closing Date; all equipment, furniture, appliances, tools, supplies and other personnel property owned by Seller; all leases, contracts and other agreements which Buyer expressly elects to assume; all rights to the telephone and facsimile numbers of the Facility; the name "Hamilton Manor Nursing Home"; any and all policy and procedure manuals, intellectual property and/or software used by the Facility; all resident funds held in trust and all security deposits held by Seller and all retroactive rate increases and/or lump sum payments from any source for services rendered by the Facility prior to the Closing Date.
Excluded Assets:	Seller's rights to any income tax, sales tax, usage tax, franchise tax, special assessment, revenue assessments required by the New York State Department of Health and any other refunds due to Seller prior to the Closing Date; any non-transferable or non-assignable governmental or regulatory licenses; Seller's cash on hand; Seller's bank accounts and records, deferred income taxes, stocks, bonds on the date of Closing and Seller's accounts receivable prior to the Closing Date.
Assumed Liabilities:	Resident funds held in trust
Purchase Price:	\$773,000
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via the proposed member	\$193,250
Bank Loan (4.66% interest rate for a twenty-year term)	579,750

A bank letter of interest for the financing has been provided.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding liabilities or assessments.

Real Estate Agreement

The applicant has submitted an executed real estate purchase agreement for the real estate associated with Hamilton Manor Nursing Home, which is summarized below:

Date:	March 20, 2015
Premises:	1172 Long Pond Road in the Town of Greece, New York
Seller:	Eleven Seventy Two Long Pond Road, Inc. and Morris E. Richardson
Buyer:	Robert W. Hurlbut
Purchase Price	\$481,000
Payment of Purchase Price	Cash at Closing

The applicant's financing plan appears as follows:

Equity via the proposed member	\$120,250
Bank Loan (4.66% interest rate for a twenty-year term)	360,750

A bank letter of interest for the financing has been provided.

Administrative Services Agreement

The applicant has submitted a draft services agreement, which is summarized below:

Provider:	ROHM Services Corporation
Facility:	Hamilton Manor Nursing Home, LLC
Services Provided:	The provider shall provide the following services: general financial services including preparation of resident statements, invoicing all payors, processing of all payments received, review of invoices and preparation of bank deposits, preparation and negotiation of purchasing bids subject to final approval of Hamilton Manor Nursing Home and review of audit reports and debt collection services.
Term:	The agreement shall continue until December 31, 2017. Unless either party gives notice to the other party of its intent not to renew this agreement at least thirty days prior to the end of the term, or any renewal thereof, this agreement will be automatically renewed for additional one year term.
Compensation:	The compensation shall be \$120,000 per year.

While ROHM Services Corporation will provide the above services, the licensed operator retains ultimate authority, responsibility, and control for the operations. This agreement specifically does not delegate to ROHM the following responsibilities: authority to hire or fire the administrator or other key management employees, maintenance and control of the books and records of the facility, authority over disposition of assets and incurring liabilities on behalf of the facility, and the adoption and enforcement of policies regarding the operation of Hamilton Manor Nursing Home.

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement, which is summarized below:

Premises:	The site located at 1172 Long Pond Road, Rochester, New York
Lessor:	Hamilton Manor Nursing Home Realty, LLC
Lessee:	Hamilton Manor Nursing Home, LLC
Term:	20 years
Rental:	\$75,000 annually
Provisions:	The lessee shall be responsible for insurance, utilities, maintenance and real estate taxes.

The lease arrangement will be a non-arm's length lease arrangement. There is common ownership between the landlord and tenant in that the proposed owner is the sole member of both the operating entity and the real estate entity.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$180.08	\$1,469,772
Medicare Fee For Service	505.13	720,310
Private Pay	357.06	1,411,462
Other	386.84	<u>276,204</u>
Total Revenues		\$3,877,748
Expenses:		
Operating	\$246.36	\$3,511,806
Capital	<u>5.32</u>	<u>75,769</u>
Total Expenses	\$251.68	\$3,587,575
Net Income		\$290,173
Utilization (Patient Days)		14,255
Occupancy		97.64%
Breakeven Occupancy		90.30%

Utilization broken down by payor source during the first year after the change in ownership is summarized below:

Medicaid Managed Care	57.0%
Medicare Fee For Service	10.0%
Private Pay	28.0%
Other	5.0%

The following is noted with respect to the submitted budget:

- Medicaid and Medicare revenue assumptions are based on the facility's current payment rates for the respective payors. The Medicaid Fee-For-Service rate serves as the benchmark rate for the Medicaid Managed Care payments. For Medicare, the applicant has incorporated a conservative increase in Medicare Part A and Part B based on his ownership experience with the other NYS facilities he operates.
- Private pay rates are anticipated to increase by 10% to remain at market levels.
- Expense and utilization assumptions are based on the facility's 2014 historical experience.
- Breakeven utilization is projected at 90.30% or 13,183 patient days.

The budget appears reasonable.

Capability and Feasibility

The purchase price for the acquisition of the operating interest of Hamilton Manor Nursing Home is \$773,000 and will be paid as follows: Equity of \$193,250 from the proposed member and a bank loan of \$579,750 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is \$481,000 and will be paid as follows: Equity of \$120,250 from the proposed member and a bank loan of \$360,750 at an interest rate of 4.66% for a twenty-year term. The applicant has submitted bank letters of interests in regard to the financing.

Working capital requirements are estimated at \$597,930, which is equivalent to two months of first year expenses. The applicant will finance \$298,965 at an interest rate of 3.25% for a five-year term. The remaining \$298,965 will be met via equity from the proposed member. BFA Attachment A is the personal net worth statement for the proposed member of Hamilton Manor Nursing Home, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and the purchase price equity portion. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$348,215. Assets include \$629,000 in goodwill, which is not a liquid

resource, nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would be a negative \$280,785.

The submitted budget indicates a net income of \$290,173 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Hamilton Manor Nursing Home for the period 2012 through 2014. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2014. Also, the entity achieved an average operating net income of \$40,847 from 2012 through 2014. The entity incurred a loss in 2012 due to food costs that were double comparable market costs. The entity improved operations through 2014 due to improved occupancy.

The following is a comparison of the facility's 2014 historical performance to projected revenue and expenses for year one following the change in ownership:

	<u>Annual 2014</u>	<u>Year 1</u>
Revenues	\$3,426,118	\$3,877,748
Expenses	<u>3,399,198</u>	<u>3,587,575</u>
Net Income	\$26,920	\$290,173
 Incremental Net Income:		 <u>\$263,253</u>

To further improve operations, the applicant is proposing to implement the following corrective actions when they begin operating the facility:

- Currently facility has little or no Medicare Part A and Part B. The buyer plans to add on staff for PT and OT services and improve the therapy programs.
- Dietary service and food costs are currently double the other comparable facilities benchmarked. The facility also has an employee benefit whereby all employees eat free of charge. The dietary service and food costs will be brought in line to benchmarked facilities, and the employee plan will be modified to require a small charge for one meal per shift.
- All nursing personnel will be employee staff. No contract nurses will be used.
- Nursing supplies are greatly in excess of the other comparable facilities and will be brought in line as well.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D is the 2012 through 2014 financial summary of the NYS facilities the proposed member has ownership interest in. The facilities and summary of operations for the period are as follows:

- Woodside Manor Nursing Home (44 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$384,785.
- Wedgewood Nursing Home (29 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$19,632. The applicant indicated that the loss in 2012 was due to bad debt write-offs in 2012.
- The Shore Winds (229 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$804,990.
- Seneca Nursing & Rehabilitation Center (20 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$746,604.
- Penfield Place (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$358,440.

- Newark Manor Nursing Home (60 beds): The entity had an average negative working capital position, an average negative net asset position, and had an average net loss of \$24,290 for the period. The applicant indicated that the reason for the average negative working capital position is due to past historical losses. The entity had a loss in 2012 due to low occupancy. They worked hard in 2013 and 2014 to strengthen their relationship with Newark Wayne Hospital to better manage their costs.
- The Hurlbut (160 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$638,044.
- Hornell Gardens (114 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$595,542.
- Elm Manor Nursing Home (46 beds): The entity had an average positive working capital position, an average positive net asset position, and had an average net loss of \$202,196 for the period. The entity had a loss in 2012 due to the following: an occupancy decrease from 2011, and a one-time bad debt expense write-off. The entity implemented the following steps to improve operations: improved occupancy in 2013 and 2014.
- Conesus Lake Nursing Home (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$711,230.
- The Brightonian (54 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$761,346.
- Avon Nursing Home (40 beds): The entity had an average positive working capital position, an average negative net asset position, and achieved an average net income of \$257,723. The reason for the average negative net asset position was due to prior year historical losses. The applicant improved operations in 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	2012 - 2014 Financial Summary - Hamilton Manor Nursing Home
BFA Attachment D	2012 - 2014 Financial Summary - Other Owned Nursing Facilities

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 8th day of October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Hamilton Manor Nursing Home, LLC as the new operator of Hamilton Manor Nursing Home, a 40-bed facility located at 1172 Long Pond Road, Rochester, 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:

151134 E

Hamilton Manor Nursing Home, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
Other factors as determined by the applicant to be pertinent.
The DOH reserves the right to require continued reporting beyond the two year period.
[RNR]
4. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
6. Submission of an executed services agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease, acceptable to the Department. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
9. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]

11. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]
12. The sponsor signs the State's Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [HSA]

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 # 151099-E
HCR**

Program: Certified Home Health Agency
Purpose: Establishment

County: Monroe
Acknowledged: March 11, 2015

Executive Summary

Description

L. Woerner, Inc. d/b/a HCR is an existing Article 36 certified home health agency (CHHA) whose main office is located in Rochester (Monroe County). In 2006, HCR established an Employee Stock Ownership Plan (ESOP) and Trust applicable to all facilities operated at the time, as well as all subsequent facility/program acquisitions. Per this application, HCR requests Public Health and Health Planning Council approval to add Mr. Duane Tolander as an Independent Trustee. BFA Attachment A is the organizational chart of HCR before and after the addition of the new trustee.

Trustees of the ESOP have the authority to:

- Establish fair market value of the trust fund, to include use of qualified independent appraisers;
- Subject to any required regulatory approvals, purchase and sell stock or other plan assets and otherwise manage and invest trust assets.
- Hold the trust assets and render accounts or their administration of the trust;
- Vote the trust's shares of the company if and as provided in the plan and consistent with ERISA;

- Determine the amount of the trust's income or loss;
- Appoint and delegate investment duties to an investment manager;
- Determine the trust's investment policy in light of the plan's funding policy and method; and
- Employ advisors, agents and counsel to fulfill these duties.

**OPCHSM Recommendation
Contingent Approval**

Program Summary

A review of the personal qualifying information indicates there is nothing in the background of the stockholders, trustees, board members, and officers to adversely affect their positions with L. Woerner, Inc. d/b/a HCR / HCR Home Care. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Financial Summary

There are no total project costs or operating budgets associated with this application.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the executed Written Consent of Directors and Shareholders to the Amendment to the Certificate of Incorporation. [CSL]
2. Submission of a photocopy of the executed Amendment to the Certificate of Incorporation. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Proper notice must be given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
3. No employee or any other individual or entity may own/control 10% or more of the corporation's stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as required. [CHA]

Council Action Date

October 8, 2015

Program Analysis

Review Summary

L. Woerner, Inc. d/b/a HCR / HCR Home Care currently operates seven Article 36 CHHAs and five Article 36 LTHHCPs in New York State as follows:

1. HCR / HCR Home Care in Canastota – CHHA serving Madison, Cayuga, Jefferson, Onondaga, and Oswego Counties, and LTHHCP serving Madison County only.
2. HCR / HCR Home Care in Cobleskill – CHHA serving Schoharie and Otsego Counties.
3. HCR / HCR Home Care in Delhi – CHHA and LTHHCP serving Delaware County only.
4. HCR / HCR Home Care in Homer – CHHA serving Cortland County only.
5. HCR / HCR Home Care in Hudson Falls – CHHA and LTHHCP serving Washington County only.
6. HCR / HCR Home Care in Plattsburgh – CHHA serving Clinton, Essex, Franklin, Hamilton, St. Lawrence, and Warren Counties, and LTHHCP serving Clinton County only.
7. HCR / HCR Home Care in Rochester (with an additional branch office practice location in Batavia) – CHHA serving Monroe, Genesee, Orleans, Livingston, Ontario, and Wayne Counties, and LTHHCP serving Genesee County only.

L. Woerner, Inc. d/b/a HCR / HCR Home Care also currently operates two Article 36 LHCSAs in New York State as follows:

1. HCR / HCR Home Care in Rochester – serving Livingston, Monroe, Ontario, Orleans, and Wayne Counties.
2. HCR / HCR Home Care in Batavia – serving Genesee, Monroe, Orleans, and Wyoming Counties.

This CHHA/LTHHCP CON application applies only to the seven L. Woerner, Inc. d/b/a HCR / HCR Home Care CHHAs and the five L. Woerner, Inc. d/b/a HCR / HCR Home Care LTHHCPs, which are each identified above. A separate LHCSA application (# 2606-L) has been submitted for the two L. Woerner, Inc. d/b/a HCR / HCR Home Care LHCSAs, identified above. Both the CHHA/LTHHCP CON application # 151099-E, and the LHCSA application # 2606-L, are being presented at this PHHPC meeting.

The current proposal seeks approval for L. Woerner, Inc. d/b/a HCR / HCR Home Care to add Duane Tolander as a new trustee for their Employee Stock Ownership Plan Trust, and to update the current status of the corporation's stockholders, officers, board members, and trustees. Mr. Tolander would be an independent trustee, in that he will not also be a stockholder, director, officer, or employee of L. Woerner, Inc., thereby removing any possible conflicts of interest with respect to his management and investment decisions for the funds held in the Employee Stock Ownership Plan Trust. Mr. Tolander is also currently a trustee of the Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust, as approved by PHHPC in 2011. The current proposal also updates the current assumed name (d/b/a) of the corporation, by adding a new additional assumed name (d/b/a) HCR Home Care, to the existing assumed name (d/b/a) HCR.

In 2006, L. Woerner, Inc. d/b/a HCR / HCR Home Care (CON project # 061088-E) received both State Hospital Review and Planning Council and Public Health Council approval to convert 90% of the shares of corporate stock (which up to that time were owned 90.5% by Louise Woerner and 9.5% by Mark Maxim), to an Employee Stock Ownership Plan (ESOP) and establish a trust to control and manage the assets, including the stock, held by the ESOP. At that point in time, Ms. Woerner retained 7% of the shares, and Mr. Maxim retained 3% of the shares, and Ms. Woerner and Mr. Maxim were named the sole trustees of the ESOP trust.

At the current time, L. Woerner, Inc. d/b/a HCR / HCR Home Care is reporting instead (as disclosed in detail below) that the ESOP now owns 71.00%, Lawrence Peckham owns 10.07%, Don H. Kollmorgen owns 9.49%, Louise Woerner owns 9.34%, and Clayton Osborne owns 0.10% of the corporation's issued stock, with Ms. Woerner the sole trustee of the ESOP trust, and Duane Tolander being added as a new additional trustee of the ESOP trust. Mr. Maxim has left the organization and no longer has any role as stockholder, trustee, director, officer, or employee. As previously stated, Mr. Tolander would be an independent trustee, in that he will not also be a stockholder, director, officer, or employee of L. Woerner,

Inc., thereby removing any possible conflicts of interest with respect to his management and investment decisions for the funds held in the Employee Stock Ownership Plan Trust.

Each employee participating in the L. Woerner, Inc. d/b/a HCR / HCR Home Care Employee Stock Ownership Plan (ESOP) does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant's stock accounts on the basis of the number of shares held by the participant's account. The duties and powers of the ESOP Trustee (or Trustees) are outlined in the HCR / HCR Home Care Employee Stock Ownership Trust Agreement under the HCR / HCR Home Care Employee Stock Ownership Plan. The Trustee (or Trustees) has/have the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the Trustee(s) in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction, which must be approved by the shareholders of L. Woerner, Inc. d/b/a HCR / HCR Home Care, pursuant to applicable New York State law. The HCR / HCR Home Care Employee Stock Ownership Trust Agreement permits a Trustee to be removed by the Board of Directors, or to resign his/her position as Trustee, at any time. Any Successor Trustee(s) must receive prior approval of the New York State Department of Health and/or Public Health and Health Planning Council. Upon appointment, any and all Successor Trustees will be granted the same power, rights, and duties as the previous Trustee. Additional Trustees may be appointed in the future (upon prior approval of the New York State Department of Health and/or Public Health and Health Planning Council), and will have the same rights, powers, and duties of the Trustee as granted by the HCR / HCR Home Care Employee Stock Ownership Trust Agreement. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no stockholder shall control 10% or more of the stock, of L. Woerner, Inc., without first obtaining New York State Department of Health and/or Public Health and Health Planning Council approval, as appropriate.

CON project # 061088-E also noted that L. Woerner, Inc. d/b/a HCR / HCR Home Care operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc. d/b/a HCR / HCR Home Care wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed, and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure.

L. Woerner, Inc. d/b/a HCR / HCR Home Care is currently authorized 4,000,000 shares of stock, with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust	1,749,604 shares	71.00%
Louise Woerner	230,180 shares	9.34%
Don H. Kollmorgen	233,824 shares	9.49%
Lawrence Peckham	248,236 shares	10.07%
Clayton Osborne	2500 shares	0.10%

All of the above listed stockholders are disclosed in detail below.

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

<p>Louise Woerner Chief Executive Officer, L. Woerner, Inc. d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA) Affiliations: HealthNow New York, Inc., Buffalo (Managed Care Plan) – 4/1/02 to 4/10/08</p>	<p>Duane E. Tolander, CPA (Iowa) Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support); Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust</p>
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The members of Board of Directors of L. Woerner, Inc. d/b/a HCR / HCR Home Care, are as follows:

<p>Louise Woerner, Chairperson, Secretary, Treasurer (9.34% stockholder) Disclosed above</p>	<p>Don H. Kollmorgen (9.49% stockholder) Retired</p>
<p>Lawrence L. Peckham (10.07% stockholder) Retired</p>	<p>Joseph J. Castiglia, CPA Retired</p>
<p>Clayton H. Osborne, MSW, LCSW (0.10% stockholder) Retired Vice President of Human Resources and Talent Management, Bausch and Lomb (Vision Products Manufacturer)</p>	

An additional officer of L. Woerner, Inc. d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN

President / Administrator, L. Woerner, Inc. d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA)
 Affiliation: DePaul Adult Care Communities, Inc., Rochester (licensed ACFs/ALPs, in New York State, North Carolina, and South Carolina) – April 2009 to present

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne. The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander. In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc. d/b/a HCR / HCR Home Care for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc. d/b/a HCR / HCR Home Care for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present. The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present. It has been determined that the L. Woerner, Inc. d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc. LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc. (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc. are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc. were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc. has had no enforcement actions imposed within the previous twelve months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one of the twelve licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc. has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc. have had no enforcement actions imposed since April 2009.

A review of the personal qualifying information indicates there is nothing in the background of the stockholders, trustees, board members, and officers to adversely affect their positions with L. Woerner, Inc. d/b/a HCR / HCR Home Care. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Agreement to Provide Trustee Services

The applicant has submitted an executed Agreement to Provide Trustee Services, which is summarized below:

Date:	May 1, 2014
By:	Louise Woerner – Chairwoman & CEO, L. Woerner, Inc.
With:	Duane Tolander – Proposed Individual Trustee
Terms:	Effective from May 1, 2014, and renewable annually
Service/Duties Provisions:	Professional services as Independent Fiduciary under the Trust, Plan and ERISA including: approve Trust's independent financial advisor to assist in evaluation of proposed transactions, stock agreements, and to perform the annual valuation and other valuations required; prepare/maintain adequate records of the Trustee's actions/decisions, preserve such records, and make them available as reasonably requested; retain the Trustee's own independent legal counsel of his choosing in connection with any proposed transaction.
Excluded Duties:	Daily administrative and ministerial functions under the Plan. The parties agree that such duties shall be the responsibility of the Plan Administrator and shall not be delegated to Mr. Tolander.
Compensation:	\$15,000 annually, plus \$325/hour for necessary special work outside of normal responsibilities covered by this agreement.

Capability and Feasibility

There are no project costs or operating budgets associated with this application.

BFA Attachment B is the 2012 and 2013 certified financial statements of L. Woerner, Inc. As shown, the facility had an average negative working capital position and an average negative shareholders position during 2012 and 2013. The applicant has indicated that the reason for the average negative working capital position and the average negative shareholders position was the result of historical operating losses and ESOP contributions. Also, the applicant incurred an average net loss of \$1,906,718 from 2012 through 2013. The applicant has indicated that the reasons for the loss are as follows: ESOP contributions of \$1,000,000, expenses incurred due to the facility expanding into the newly acquired counties, and delays in receiving reimbursement from its two largest payors, Medicaid and Medicare, as the enrollment process took an average of nine months to complete for each of the newly acquired agencies. The applicant has indicated that they have improved Medicaid case mix, increased volumes and reduced costs through efficiencies implemented through new software technology.

BFA Attachment C is the preliminary 2014 certified financial statements of L. Woerner, Inc. As shown, the entity had a negative working capital position and a negative shareholders position through December 31, 2014. The applicant has indicated that the reasons for the negative working capital position and the negative shareholders position are prior year historical losses and ESOP contributions. Also, the facility incurred a net loss of \$2,003,482 through December 31, 2014. The applicant has indicated that the reason for the loss was the result of start-up associated with providing home care in the ten new counties throughout New York State. The applicant has indicated that they have significantly improved the revenue and operating margins of the CHHA segment of their business and are now profitable in 2015.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart before and after the addition of the new trustee.
BFA Attachment B	2012 and 2013 certified financial statements of HCR
BFA Attachment C	Preliminary 2014 certified financial statements of HCR

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 October, 2015, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to add a new trustee for their Employee Stock Ownership Plan Trust and update the current status of the corporation's stockholders, officers, board members, and trustees, 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

151099 E

HCR

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of the executed Written Consent of Directors and Shareholders to the Amendment to the Certificate of Incorporation. [CSL]
2. Submission of a photocopy of the executed Amendment to the Certificate of Incorporation. [CSL]

APPROVAL CONDITIONED UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Proper notice must be given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
3. No employee or any other individual or entity may own/control 10% or more of the corporation's stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as required. [CHA]

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: Members of the Establishment and Project Review Committee
Public Health and Health Planning Council

From: Christopher Delker, Director
Division of Planning and Licensure

Date: September 15, 2015

Subject: CON #151186 Premier Ambulatory Surgery Center

At their meeting of July 23, 2015, Committee members heard statements from Mr. John Galati, CEO of TLC Health Lake Sore Hospital (TLC Lake Shore), concerning cases that would potentially be lost to the proposed Premier ASC, and the associated impact on hospital revenues and operations.

Members voted to defer this application one cycle to enable the Department to obtain data from TLC Lake Shore clarifying the number of cases that could be transferred from the hospital to the ASC by Premier ASC's participating physicians, specifically:

- Whether the applicant ophthalmologist, Dr. Sharma, had ceased performing surgery at TLC Lake Shore earlier in 2015, thus rendering the potential transfer of his cases to the proposed ASC a moot question.
- Whether Premier's gastroenterologist, Dr. Miqdadi, was currently maintaining his traditional caseload at TLC Lake Shore, which would support the applicant's statement that Dr. Miqdadi planned to continue practicing at the hospital and did not intend to transfer any of his TLC Lake Shore caseload to the proposed Premier ASC.

TLC Lake Shore has submitted payment data to the Department showing that Dr. Sharma had 497 ambulatory surgery cases at TLC Lake Shore in 2014 but only 90 cases in the first six months of 2015. The latter figure is consistent with Dr. Sharma's statements that he ceased practicing at TLC Lake Shore earlier in 2015.

The hospital has also submitted payment data to the Department showing that Dr. Miqdadi had 1,129 ambulatory gastroenterology cases at TLC Lake Shore in 2014 and 592 from January 1, 2015 through June 30, 2015. This latter figure seems to indicate that Dr. Miqdadi is maintaining his traditional level of activity at TLC Lake Shore and is consistent with the applicant's statement that Dr. Miqdadi does not intend to transfer any of his TLC Lake Shore cases to the proposed Premier ASC.



Project # 151186-B
Premier Ambulatory Services Development Company, LLC
d/b/a Premier Ambulatory Surgery Center

Program: Diagnostic and Treatment Center **County:** Erie
Purpose: Establishment and Construction **Acknowledged:** April 29, 2015

Executive Summary

Description
 Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Premier), a recently formed New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a multi-specialty freestanding ambulatory surgery center (ASC) initially specializing in ophthalmology and gastroenterology procedures. Premier will lease 6,925 square feet of space in a multi-tenant building located at 2816 Pleasant Avenue, Hamburg (Erie County). The ASC will include two operating rooms (one class C and one Class B), plus eight pre-op/post-op beds along with the requisite support areas.

The proposed members of Premier Ambulatory Services Development Company, LLC and their ownership percentages are as follows:

Premier Ambulatory Services Development Company, LLC	
<u>Members:</u>	<u>%</u>
Vishal Sharma, M.D.	50%
Nisha Sharma, M.D.	50%

OPCHSM Recommendation
 Contingent Approval with an expiration of the operating certificate five years from the date of its issuance.

Need Summary
 The number of projected procedures is 1,800 in Year 1 with Medicaid at 6.2% and charity care at 2.0%.

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

Financial Summary
 Project cost of \$495,218 will be met as follows: \$60,218 in members' equity and \$435,000 via a five-year term bank loan at 5% interest. A letter of interest has been provided by First Niagara Bank.

Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,341,136	\$1,421,478
Expenses	<u>\$1,186,777</u>	<u>\$1,224,885</u>
Net Income	\$154,359	\$196,593

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payer source;
 - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided; and
 - Number of nosocomial infections recorded during the year in question. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

7. Construction must start on or before November 1, 2015 and construction must be completed by March 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
8. No additional physicians shall be allowed to perform surgical or interventional procedures at the Center without the Department's prior approval, to allow an assessment of the impact of such additions on TLC Health Network – Lake Shore Hospital, for a period of five years from the date of the issuance of the operating certificate.

Council Action Date

July 23, 2015 EPRC – Recommended Deferral

August 6, 2015 PHHPC - Deferred

October 8, 2015

Need Analysis

Analysis

The service area consists of Erie County. Erie County has a total of seven freestanding multi-specialty ASC's and two freestanding single-specialty ASC's. The table below shows the number of patient visits at ambulatory surgery centers in Erie County for 2013 and 2014.

ASC Type	Name of Facility	Total Patients 2013	Total Patients 2014
Multi	Ambulatory Surgery Center of Western New York LLC	13,291	15,102
Multi	Buffalo Ambulatory Surgery Center	10,093	10,273
Multi	Buffalo Surgery Center, LLC	4,822	5,100
Multi	Center for Ambulatory Surgery LLC	10,201	10,026
Multi	Endoscopy Center of Western New York, LLC	10,259	10,892
Single	Eye Health Associates Inc.	4,119	4,221
Multi	Millard Fillmore Surgery Center, LLC	6,049	5,437
Multi	Sterling Surgical Center, LLC	5,472	5,564
Single	WNY Medical Management (opened 4/2013)	401	584
Total		64,707	67,199

Source: SPARCS-2015

For Erie County, the total number of patient visits was 64,707 in 2013 and 67,199 in 2014. This represents an approximately 4% year-to-year increase in the number of patients served by ambulatory surgery centers in Erie County.

The number of projected procedures is 1,800 in Year 1 and 1,908 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Premier Ambulatory Surgery Center for Year 1 and Year 3.

Projections	Year 1 Procedures	Year 1 %	Year 3 Procedures	Year 3 %
Commercial Ins	992	55.1%	1,051	55.1%
Medicare	660	36.7%	700	36.7%
Medicaid	112	6.2%	119	6.2%
Private Pay	0	0.0%	0	0.0%
Charity Care	36	2.0%	38	2.0%
Total	1,800	100.0%	1,908	100.0%

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

Conclusion

Approval of this project will provide additional access to surgical services in an Article 28 setting for the residents of Erie County and neighboring areas.

Recommendation

From a need perspective, contingent approval is recommended for a limited period of five years.

Program Analysis

Project Proposal

Premier Ambulatory Services Development Company, LLC, d/b/a Premier Ambulatory Surgery Center, seeks approval to establish and construct an Article 28 freestanding multi-specialty ambulatory surgery center procedures to be located at 2816 Pleasant Avenue in Hamburg (Erie County).

Proposed Operator	Premier Ambulatory Services Development Company, LLC
Doing Business As	Premier Ambulatory Surgery Center
Site Address	2816 Pleasant Avenue Hamburg, NY (Erie County)
Surgical Specialties	Multi-Specialty: Ophthalmology Gastroenterology
Operating Rooms	2 (Class B – 1, Class C – 1)
Procedure Rooms	0
Hours of Operation	Monday through Friday from 7:00 am to 3:00 p.m. Weekend and/or evening surgery will be available, if needed, to accommodate patient scheduling issues.
Staffing (1st Year / 3rd Year)	6.4 FTEs / 6.4 FTEs
Medical Director(s)	Vishal Sharma, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Erie County Medical Center 17 miles / 20 minutes
On-call service	Calls to the surgeon's service will be directed to the surgeon or to another physician of the surgeon's specialty on-call.

Character and Competence

The members of Premier Ambulatory Services Development Company, LLC are:

Name	Percentage
Nisha Sharma, MD	50%
Vishal Sharma, MD	50%

Drs. Sharma are both practicing physicians with roughly ten years of experience in their respective fields. Dr. Nisha Sharma is board-certified in Family Medicine and Dr. Vishal Sharma is a board-certified ophthalmologist.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Integration with Community Resources

The medical staff members will require that their patients, whenever possible, have a medical clearance appointment with a primary care physician prior to surgery. If a primary care relationship does not exist, the members will encourage the establishment of one. The facility plans to reach out to primary care physicians and physician groups in its service area to inform them about the facility and its capabilities, including its participation with Medicare and Medicaid. The facility is committed to creating a program that facilitates access to all populations and they will serve all patients needing care regardless of their ability to pay or the source of payment.

The applicant plans on utilizing an Electronic Medical Record (EMR) and would consider becoming part of an Accountable Care Organization or Medical Home if one were to develop in its service area. Additionally, the facility would also consider participating in a Regional Health Information Organization (RHIO) or Health Information Exchange (HIE).

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Total Project Cost and Financing

The total project cost for telecommunications, movable equipment, and fees is estimated at \$495,218, broken down as follows:

Other fees	\$20,000
Telecommunications	\$38,000
Movable Equipment	\$432,520
Application Fees	\$2,000
Additional Processing Fees	<u>\$2,698</u>
Total Project Cost	\$495,218

Financing for this project will be as follows:

Members Equity	\$60,218
Bank loan (five-year term at 5% interest)	<u>\$435,000</u>
Total	\$495,218

A letter of interest has been provided by First Niagara Bank.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site to be occupied, the terms of which are summarized below:

Date:	April 7, 2015
Premises:	6925 sq. ft., located at 2816 Pleasant Avenue, Hamburg, NY
Landlord:	Sharma Development, LLC
Lessee:	Premier Ambulatory Services Development Company, LLC
Term:	15 years with two five-year renewal options
Rental:	\$273,537 annually (39.50 per sq. feet), A 2% increase in rent per year beginning the 11th year
Provisions:	Taxes, Utilities, Insurance, Maintenance fee.

The applicant has submitted an affidavit stating the lease agreement is a non-arm's length arrangement.

The applicant has also submitted two letters from NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues:</u>		
Medicaid-MC	\$53,008	\$56,256
Medicare -MC	\$458,160	\$486,022
Commercial-MC	822,768	871,560
Charity	<u>7,200</u>	<u>7,640</u>
Total Revenue	\$1,341,136	\$1,421,478
<u>Expenses:</u>		
Operating	\$794,580	\$842,825
Capital	<u>392,197</u>	<u>382,060</u>
Total Expense	\$1,186,777	\$1,224,885
Net Income	\$154,359	\$196,593
Total Visits	1,800	1,908
Total Cost Per Visits	659.32	641.97

Utilization by payor source for Years 1 and 3 is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Commerical-MC	992	55.1%	1,051	55.1%
Medicare-MC	660	36.7%	700	36.7%
Medicaid-MC	112	6.2%	119	6.2%
Charity Care	<u>36</u>	<u>2.0%</u>	<u>38</u>	<u>2.0%</u>
Total	1,800	100.0%	1,908	100.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current payment rates by payor for ambulatory ophthalmology and gastroenterology procedures.
- Utilization assumptions are based the number of outpatient case that Dr. Vishal Sharma, a board-certified ophthalmologist, and Dr. Jehad Miqdadi, a board-certified gastroenterologist, will transfer from other facilities including: Sterling Surgical Center, Buffalo General Hospital, Sister's Hospital, Lake Shore Medical Center and West Seneca Center for Ambulatory Surgery. Both physicians have provided a letters supporting the year one utilization.
- Expense assumptions are based on the historical experience of similar service D&TCs in the proposed FASC's service area, adjusted for operating the facility three days a week. The breakeven point is approximately 88% or 1,592 visits in ear one.

Capability and Feasibility

The total project cost of \$495,218 will be satisfied from \$60,218 in members' equity with the \$435,000 balance being provided through a loan at the above stated terms. First Niagara Bank has provided a letter of interest.

Working capital requirements are estimated at \$204,147 based on two months of third year expenses. The applicant will provide \$104,147 from the members' equity. The remaining \$100,000 will be satisfied through a five-year loan at 5% interest rate from First Niagara Bank. BFA Attachments A is members' net worth summary which shows the members have sufficient liquid resources to meet both the project's equity and working capital requirements.

BFA Attachment B is the pro-forma balance sheet for Premier Ambulatory Services Development Company, LLC that shows operation will start off with \$169,667 in members' equity.

The submitted budget projects a net income of \$154,359 and \$196,593 during years one and three of operations, respectively. Medicare reimbursement was based on the 2014 Medicare fee schedule. Based upon the physicians' historical experience, commercial reimbursement for ophthalmology and gastroenterology was estimated at 118% and 158% of the of Medicare case rate. Medicaid Manage Care payment was estimated at 90% of Medicare case rate. The budget appears reasonable.

The applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

Surrounding Hospital Responses

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: TLC Health Network Lake Shore Hospital
845 Routes 5 & 20
Irving, New York 14081

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	<u>Inpatient</u> 5% of volume	<u>Ambulatory</u> 95% of volume		
40%			1,768	Not indicated

TLC Health Network (TLC) opposes the application, stating that the proposed ASC would result in a loss of a vast majority of the 1,768 cases currently performed at TLC Lake Shore by the two applicant physicians. This would result in a loss of \$2,090,023 in net patient revenues annually, which represents 8.6 percent of TLC's 2014 total net patient revenue. The hospital states that ambulatory surgery represents over 95 percent of total surgical volume at TLC Lake Shore and contends that the proposed ASC would have a "disastrous" effect on the financially fragile TLC system and seriously threaten its ability to continue providing quality health care to the community. The hospital does not describe the community-oriented services that would be affected by the projected loss of revenues to the ASC.

TLC also contends that there is no need for the proposed ASC because of the hospital's current operating room utilization of less than 40 percent, which indicates an abundant capacity for growth. TLC also cites the presence of several other nearby ASCs, in Orchard Park, Amherst and other parts of Erie County, whence 42 percent of TLC's patients come. The TLC Lake Shore hospital itself is located just 20 minutes from the site of the proposed ASC.

TLC filed for Chapter 11 bankruptcy in December, 2013. In 2013, TLC had current assets of \$8.8 million on current liabilities of \$16.6 million, for a ratio of 0.53. In 2014 current assets totaled \$6.0 million while current liabilities came to \$14.4 million, for a ratio of 0.42. (In both 2013 and 2014, current liabilities included liabilities subject to compromise by the United States Bankruptcy Court.) In 2013, TLC had revenues of \$33.2 million on expenses of \$43.5 million, for an operating loss of \$10.3 million. TLC experienced \$1.5 million in bad debt and provided \$1.6 million in charity care. In 2014, TLC had revenues of \$25.1 million on expenses of \$32.6 million for an operating loss of \$7.5 million. In 2014, TLC experienced \$1.2 million in bad debt and provided \$1.3 million in charity care.

Facility: Sisters of Charity Hospital -- **No Response**
2157 Main Street
Buffalo, NY 14214

Facility: Mercy Hospital -- **No Response**
565 Abbott Road
Buffalo, NY 14220

Facility: Bertrand Chaffee Hospital -- **No Response**
224 East Main Street
Springville, NY 14141

Supplemental Information from Applicant

Need and Source of Cases: The applicant states that the proposed ASC will provide ambulatory surgery services to patients of physicians on its medical staff who elect to use the ASC to perform their outpatient surgeries. Surgeries performed at the ASC would otherwise be performed at area hospitals or other ambulatory surgery centers. In addition, the applicant points out that there are no freestanding ASCs in the Town of Hamburg, a fast-growing southern Erie County community, or in Chautauqua County, where many of the applicant ophthalmologist's patients reside. The applicant also expects that patients will prefer to have their surgeries performed at a new, patient-friendly, state-of-the-art ambulatory surgery center. In addition to enhanced patient satisfaction, the applicant expects that there will be a high level of physician satisfaction as a result of the ASC's seeking to accommodate its medical staff's scheduling, equipment selection and staffing preferences.

Staff Recruitment and Retention: The applicant states that employees will be recruited from accredited schools and training programs as well as through advertisements in local newspapers and professional publications. The ASC may hire some of its nursing staff from one of the applicant physician's medical practice. The ASC plans to offer competitive salary and benefits and will maintain good human resource and communication systems. In addition, the Center will provide a positive work environment and flexible working hours.

Office-Based Cases: The applicant states that none of the cases projected for the proposed ASC are currently performed in office settings. The anticipated 800 ophthalmological procedures are currently performed in a proprietary freestanding ASC, while the expected 1,000 gastroenterological procedures are currently distributed among three hospitals (Buffalo General Medical Center, Sisters of Charity Hospital and TLC Lake Shore Hospital) and the West Seneca Center for Ambulatory Surgery.

DOH Comment

TLC Health Network's comments in opposition to the application assume that a vast majority of the 1,768 procedures currently performed at TLC Lake Shore Hospital by the applicant physicians would be lost to the proposed ASC. However, this assumption is at odds with the applicant's statement that the 800 ophthalmological procedures projected for the ASC are currently performed in a freestanding ASC, not at TLC Lake Shore or other hospitals. It is also not consistent with the applicant's statement that the 1,000 remaining (gastroenterological) procedures projected for the ASC are currently performed at two other hospitals in addition to TLC Lake Shore and at a freestanding ASC. TLC's projection of net patient

revenue to be lost to the proposed ASC therefore cannot be assessed with precision and must be discounted. In view of this circumstance and in the absence of comments from other area hospitals, the Department finds insufficient basis for reversal or modification of the recommendation for approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

Attachments

BPNR Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Members of Premier Ambulatory Services Development Company, LLC.
BFA Attachment B	Pro-Forma balance sheet of Premier Ambulatory Services Development Company, LLC.

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a free standing multi-specialty ambulatory surgery center to be located at 2816 Pleasant Avenue, Hamburg , 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:

151186 B

FACILITY/APPLICANT:

Premier Ambulatory Services Development
Company, LLC d/b/a Premier 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 of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payer source;
 - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided; and
 - Number of nosocomial infections recorded during the year in question. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by March 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
8. No additional physicians shall be allowed to perform surgical or interventional procedures at the Center without the Department's prior approval, to allow an assessment of the impact of such additions on TLC Health Network – Lake Shore Hospital, for a period of five years from the date of the issuance of the operating certificate.

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 # 151060-E

Warren Operations Associates, LLC d/b/a Warren Center for
Rehabilitation and Healthcare

Program: Residential Health Care Facility

County: Warren

Purpose: Establishment

Acknowledged: February 18, 2015

Executive Summary

Description

Warren Operations Associates LLC, d/b/a Warren Center for Rehabilitation and Healthcare, an existing New York limited liability company, requests approval to be established as the operator of Westmount Health Facility, an 80-bed, public county, Article 28 residential health care facility (RHCF) located at 42 Gurney Lane, Queensbury (Warren County). The facility is currently operated by Warren County. Warren Operations Associates LLC's sole member is David Greenberg. A separate entity, Warren Land Associates, LLC, will acquire the real property. There will be no change in services provided.

On December 31, 2014, Warren County entered into an Asset Purchase Agreement (APA) with Warren Operations Associates LLC for the sale and acquisition of the operating interests of Westmount Health Facility for a purchase price of \$800,000. The APA was executed by Kenneth Rozenberg as managing member of Warren Operations Associates LLC. Mr. Rozenberg will no longer be a member of Warren Operations Associates LLC and has provided an Assignment of Membership Interests Agreement, executed September 15, 2015, assigning his membership and ownership interest in Warren Operations Associates LLC solely to David Greenberg.

On December 31, 2014, in conjunction with the APA, Warren Land Associates, LLC, a New York limited liability company whose members are Daryl Hagler and Jonathan Hagler, entered into a Land Sale Contract (LSC) with Warren County

for the sale and acquisition of the real property interest of the RHCF for a purchase price of \$1,500,000. The closing of the LSC will be concurrent with the closing of the transactions contemplated by the APA. The applicant will lease the premises from Warren Land Associates, LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant in that the members of each company have previous business relationships involving real estate transactions of other nursing homes.

OPCHSM Recommendation Contingent Approval

Need Summary

This application will not result in a change to beds or services. Westmount Health Facility's occupancy was 96.9% in 2011, 90.4% in 2012 and 89.1% in 2013. Occupancy as of May 6, 2015 was 96.3%, with 3 vacant beds.

Program Summary

No changes in the program or physical environment are proposed in this application. No negative information has been received concerning the character and competence of the proposed applicant. The individual background review indicates the applicant has met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Financial Summary

The purchase price for the operations is \$800,000 to be funded as follows: \$40,000 deposit paid and held in escrow, \$190,000 member's equity due at closing, and the balance of \$570,000 to be funded via a bank loan at 5% interest for a ten-year term with a twenty-five year amortization.

There are no project costs associated with this application.

Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$6,768,515	\$6,911,009
Expenses	<u>6,740,132</u>	<u>6,728,251</u>
Net Income	\$28,383	\$182,758

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. (RNR)
4. Submission of a programmatically acceptable name for the facility. [LTC]
5. Submission and review of an acceptable consulting and services agreement. [LTC]
6. Submission of and programmatic approval of a transition plan that will outline proactive measures to be undertaken to ensure that the quality of care at the facility is maintained immediately following the transfer of ownership. [LTC]
7. Submission of an executed loan commitment for the purchase of the operations of the RHCF, acceptable to the Department of Health. (BFA)
8. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
9. Submission of the executed restated Articles of Organization of Warren Operations Associates, 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
October 8, 2015

Need Analysis

Background

Warren Operations Associates, LLC, doing business as Warren Center for Rehabilitation and Healthcare, seeks approval to become the established operator of Westmount Health Facility, an 80-bed Article 28 residential health care facility (RHCF), located at 42 Gurney Lane, Queensbury, 12804 in Warren County. The current operator is Warren County.

Analysis

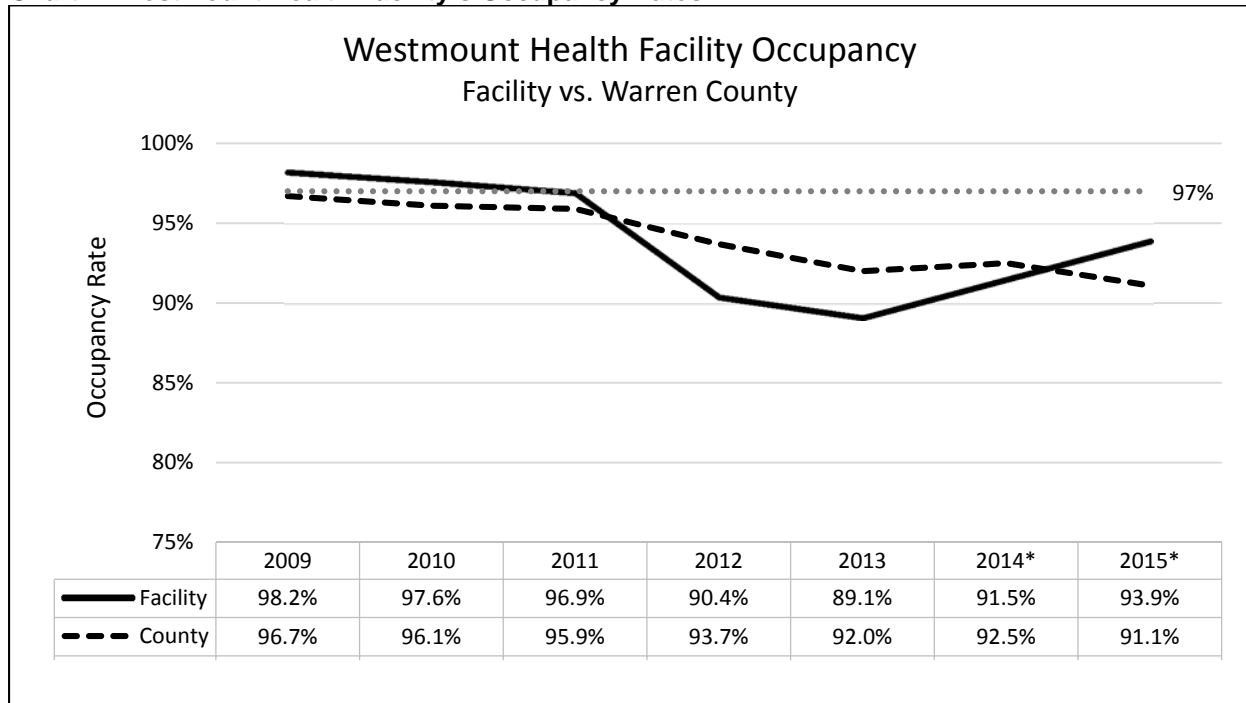
There is currently a need for 15 beds in Warren County as indicated in the table below:

Table 1: RHCF Need – Warren County

2016 Projected Need	417
Current Beds	402
Beds Under Construction	0
Total Resources	402
Unmet Need	15

The overall occupancy for Warren County was 92.0% in 2013 as indicated in the chart below:

Chart 1: Westmount Health Facility's Occupancy Rates



*unaudited; based on weekly census

Westmount Health Facility's occupancy was 96.9% in 2011, 90.4% in 2012 and 89.1% in 2013. Occupancy as of May 6, 2015 was 96.3%, with 3 vacant beds. The decline in occupancy from 2011 to 2013 is attributed to below average Centers for Medicare and Medicaid Services facility ratings. To increase occupancy, the proposed operators plan to remedy existing deficiencies, strengthen relationships with hospital discharge planners and implement the following additional services: tracheostomy care, cardiac rehabilitation, enhanced wound care, IV therapy and complex clinical services.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Westmount Health Facility's Medicaid admissions for 2012 and 2013 are 85.4% and 78.9% respectively. This facility exceeded Warren County's 75% Medicaid admission threshold rates in 2012 and 2013 of 16.0% and 17.2%, respectively.

Conclusion

It is reasonable to expect that the applicant's plan to remedy existing deficiencies at the nursing home, to strengthen its relationships with local discharge planners and to provide new specialized services will restore the facility's occupancy rates to sustainable optimum levels. Approval of this application will help preserve a needed source of RHCF care for the Warren County community, including for its Medicaid-eligible population.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Westmount Health Facility	Warren Center for Rehabilitation and Healthcare
Address	42 Gurney Lane Queensbury, NY. 12804	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	Warren County	Warren Operations Associates LLC Member: David Greenberg 100%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Corning Center for Rehabilitation
Steuben Center for Rehab

07/2013 to present
07/2014 to present

Individual Background Review

David Greenberg is employed as the administrator of record at Boro Park Center for Rehabilitation and Health Care in Brooklyn. Mr. Greenberg holds nursing home administrator licenses in the states of New York and New Jersey, in good standing. Mr. Greenberg discloses the following nursing home ownership interests:

Corning Center for Rehabilitation and Health Care
Steuben Center for Rehabilitation and Health Care

06/2013 to present
07/2014 to present

Character and Competence - Analysis

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

The review of operations of Corning Center for Rehabilitation and Steuben Center for Rehabilitation for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

This application proposes to establish Warren Operations Associates, LLC as the new operator of Westmount Health Facility. Warren Operations Associates, LLC consists of David Greenburg as the sole member. Mr. Greenburg has been employed as the administrator of record in New Jersey and New York, and has had an ownership interest in two nursing homes since 2013.

No changes in the program or physical environment are proposed in this application. The new operator of the facility intends to enter into an administrative and consulting services agreement with Centers Healthcare (Centers). The agreement will cover administrative services such as billing and other office support as well as provide clinical consulting services. Centers provides similar services to numerous residential health care facilities across the state. A contingency regarding the submission and review of an acceptable consulting and service agreement will be necessary to ensure the applicant will have available sufficient clinical and administrative services during the transition period of the facility from public to private ownership.

Conclusion

No negative information has been received concerning the character and competence of the proposed applicant. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicant has met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed Asset Purchase Agreement for the purchase of the operating interests, as summarized below:

Date:	December 31, 2014
Seller:	County of Warren
Buyer:	Warren Operations Associates, LLC
Asset Acquired:	All assets, properties, and rights used or usable solely in the operation of the Facility except those listed in excluded assets.
Excluded Assets:	Cash, cash equivalents, investments, pension funds, pre-closing receivables, retroactive rate adjustments from third parties for services performed prior to closing date, funded depreciation, refunds or credits prior to closing, deposits to utility companies, inter-governmental receivables, grant monies, and Medicaid reimbursements.
Excluded Liabilities:	All liabilities or obligations arising from or relating to the assets, ownership or operation of the Facility prior to closing.
Purchase Price:	\$800,000
Payment of Purchase Price:	\$40,000 deposit paid/held in escrow, with the balance due at closing as follows: \$190,000 member's equity; and \$570,000 financed at 5% for ten years with a twenty-five year amortization.

The applicant will finance the balance due at closing as follows:

Equity – Warren Operations Associates LLC	\$190,000
Bank Loan (5% interest, ten-year term, twenty-five year principal payout)	\$570,000

A bank letter of interest for the loan has been provided by Greystone. The applicant indicated the loan will be refinanced when the balloon payment becomes due. David Greenberg has submitted an affidavit stating he will fund the balloon payment from his personal resources should acceptable financing be unavailable at the time of refinancing.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of the liability and responsibility. Currently, there are no outstanding Medicaid liabilities or assessments.

Assignment of Membership Interests Agreement

At the time the APA was executed, Kenneth Rozenberg, as managing member of Warren Operations Associates LLC, had the authority to enter the agreement. As Mr. Rozenberg will no longer be a member of Warren Operations Associates LLC, the applicant has submitted an executed Assignment of Membership Interests Agreement, the terms of which are as follows:

Date:	September 15, 2015
Company:	Warren Operations Associates LLC
Assignor:	Kenneth Rozenberg
Assignee:	David Greenberg
Assignment:	55% of all the issued and outstanding membership and ownership interests in Warren Operations Associates LLC, free and clear of all liens and encumbrances (other than those relating to any financing arrangements made by the Company existing as of the date hereof) and Assignor fully withdraws from all positions within the Company.
Assignment Price:	\$10

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the RHCF, as summarized below:

Date:	January 6, 2015
Premises:	An 80-bed RHCF located at 42 Gurney Lane, Queensbury, NY 12804
Lessor:	Warren Land Associates, LLC
Lessee:	Warren Operations Associates, LLC
Terms:	10 years
Rental:	\$550,000 net annual basic rent (payable in equal monthly installments)
Provisions:	Property taxes/assessments, public utilities, water and sewer fees

The lease arrangement is an arm's lease agreement. Letters from two NYS licensed realtors have been provided attesting to the per square foot rental rate being of fair market value.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first and third year subsequent to the change in operator, as summarized below:

	<u>Per Diem</u>	<u>Year One</u>	<u>Per Diem</u>	<u>Year Three</u>
Revenues:				
Medicaid Managed Care	\$160.57	\$3,153,126	\$160.57	\$3,219,507
Medicare Managed Care	\$480.00	1,498,011	\$480.00	1,529,548
Private Pay/Other	\$425.00	<u>2,117,378</u>	\$425.00	<u>2,161,954</u>
Total Revenue		\$6,768,515		\$6,911,009
Expenses:				
Operating		\$6,078,585		\$6,078,585
Capital		<u>661,547</u>		<u>649,666</u>
Total		\$6,740,132		\$6,728,251
Net Income		<u>\$28,383</u>		<u>\$182,758</u>
Utilization (Patient Days)		27,740		28,324
Occupancy		95.0%		97.0%

The following is noted with respect to the submitted budget:

- Medicaid Managed Care revenues are projected based on the current operator's actual January 2014 Medicaid Fee-For-Service (FFS) rate as benchmark. The Department notes that subsequent revisions to reflect updated case mix (July 2014 rate also reflected in the current 2015 rate) suggest that projected Medicaid revenues are conservative, given that the July 2014 and January 2015 rates increased by approximately \$15 and \$20, respectively, over the January 2014 payment level.
- Medicare revenues are based on the applicant's historical experience operating skilled nursing facilities, with consideration for Medicare rate increases related to services provided to higher acuity patients.
- The Private Pay rates are based on the facility's actual 2014 rates trended to 2015.
- Expense assumptions are based on the historical experience of the facility, taking into consideration reductions to be implemented based on the applicant's analysis of the current operator's staffing and operational expenses that can be brought into line. Reductions are anticipated in the following areas:
 - Salary and Wages decrease by \$750,173 related to FTE reductions (21.4 total) in the following areas: Management, LPNs; Aides, Physical Therapy, Food Service and Clerical. It is noted that the applicant will be increasing FTEs in these areas: Technicians, RNs, Social Worker and Psychology, Occupational Therapy, Speech Therapy, Activities and Transportation.
 - Employee Health Benefits decrease by \$1,646,694 related to the reduction of FTE's and reduced pension costs.

- Purchased services decrease by \$138,778.
- Non-Medical Supplies decrease by \$61,427.
- Other Direct Expenses decrease by \$125,060.
- Utilization was at 89% in 2013, but previously averaged 93.5% for 2010-2012 based on the RHCF cost report data. With a focus on staff education, training, and improved services, the applicant anticipates maintaining 95% occupancy in year one and 97% by year three.
- Utilization by payor source for the first and third years is anticipated as follows:

Medicare Managed Care	11.3%
Medicaid Managed Care	70.8%
Private Pay / Other	18.0%
- Breakeven utilization in the first year is projected at 94.6% or 27,624 patient days.

Capability and Feasibility

The purchase price for the operating interests is \$800,000 and will be met via a \$40,000 deposit paid at APA signing and held in escrow, \$190,000 member's equity due at closing, and a bank loan of \$570,000 at an interest rate of 5% for a ten-year term with payout period of twenty-five years. The applicant intends to refinance the loan when the balloon payment becomes due and has submitted an affidavit indicating he will fund the balloon payment from his personal resources if acceptable refinancing is not available at that time.

Working capital requirements are estimated at \$1,123,356, which is equivalent to two months of the first year expenses. The applicant will finance \$561,678 at an interest rate of 5% for a term of five years. The remaining \$561,678 will be provided from member's equity. A bank letter of interest from Greystone at the stated terms has been provided.

BFA Attachment A is the personal net worth statement of the proposed operator, which indicates the availability of sufficient resources to fund both the equity contribution for the purchase price and the working capital requirement.

BFA Attachment C shows the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$791,678. Assets includes \$800,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would become a negative \$8,322.

The submitted budget indicates a net income of \$28,383 and \$182,758 for the first and third year, respectively, subsequent to the change in operator. The budget appears reasonable.

The following is a comparison of 2014 historical and projected revenues and expenses for Year One and Year Three:

<u>Operating:</u>	<u>Annual 2014</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$ 6,210,585	\$6,768,514	\$6,911,009
Expenses	<u>9,184,427</u>	<u>6,740,547</u>	<u>6,728,251</u>
Net Operating Income	(\$2,973,842)	\$28,383	\$182,751
 Incremental Net Income:		 <u>\$3,002,225</u>	 <u>\$ 3,156,593</u>

The increase in projected income comes from a decrease in total expenses based on administrative efficiencies under new management. The most significant decrease will be from Salaries and Employee Benefits tied to the change in staffing pattern, for a total reduction of \$2,396,867. Employee Benefits accounts for \$1,646,694 of the total decrease. The applicant indicated that the current operator has an Employee Benefits expense of approximately 72% of Salaries and Wages (inclusive of pension costs). The applicant will renegotiate union contracts and anticipates Employee Benefits expenses to be brought down to 35% of the facility's projected Salaries and Wages.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate

payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B is a financial summary of Westmount Health Facility for the period 2012 through 2014. As shown, the entity had an average positive working capital position and an average negative net asset position from 2012 through 2014. Also, the facility had an average operating loss of \$2,826,638 for the period shown. The facility received Intergovernmental Transfer payments of \$1,400,000 in 2013 and \$2,874,531 in 2014 to support operations.

BFA Attachment D is the 2013-2014 financial summary of the Corning Center for Rehabilitation and Healthcare, in which the proposed member has 5% ownership interest. The facility maintained an average positive net asset position and had positive income from operations for the periods shown. Financial statements for Steuben Center for Rehabilitation are not available as the facility was newly acquired in 2014.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

Recommendation




















From a financial perspective, contingent approval is recommended.

Attachments










BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Personal Net Worth Statement of Proposed Member
BFA Attachment B	2012-2014 Financial Summary - Westmount Health Facility
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary - Applicant's Affiliated RHCF

Westmount Health Facility

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking 
<p> Self-report moderate to severe pain (short stay) Reporting period: April 2014 to March 2015 5.2% This Facility 13.7% State average 18.3% National average</p>	<p> 4 out of 5 stars</p>
<p> Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 0.0% This Facility 1.0% State average 0.9% National average</p>	<p> 5 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 96.6% This Facility 84.6% State average 82.8% National average</p>	<p> 5 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 92.9% This Facility 83.3% State average 81.9% National average</p>	<p> 4 out of 5 stars</p>
<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 2.7% This Facility 2.3% State average 2.4% National average</p>	<p> 2 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 29.2% This Facility 14.4% State average 15.6% National average</p>	<p> 1 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 0.9% This Facility 4.9% State average 7.4% National average</p>	<p> 4 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 3.5% This Facility 7.5% State average 5.9% National average</p>	<p> 5 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015</p>	<p> 1 out of 5 stars</p>

151060 BNHLC Attachment A – Quality Measures and Inspection Report

<p>10.2% This Facility 6.1% State average 7.0% National average</p>	
<p>? Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 34.7% This Facility 45.7% State average 45.0% National average</p>	<p> 4 out of 5 stars</p>
<p>? Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 2.5% This Facility 2.6% State average 3.1% National average</p>	<p> 3 out of 5 stars</p>
<p>? Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 4.9% This Facility 5.6% State average 5.7% National average</p>	<p> 3 out of 5 stars</p>
<p>? Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 2.0% This Facility 11.4% State average 6.0% National average</p>	<p> 4 out of 5 stars</p>
<p>? Were physically restrained (long stay) Reporting period: July 2014 to March 2015 3.4% This Facility 1.5% State average 1.1% National average</p>	<p> 1 out of 5 stars</p>
<p>? Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 3.9% This Facility 2.7% State average 3.2% National average</p>	<p> 2 out of 5 stars</p>
<p>? Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 99.5% This Facility 94.8% State average 92.6% National average</p>	<p> 5 out of 5 stars</p>
<p>? Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 100.0% This Facility 96.7% State average 93.8% National average</p>	<p> 5 out of 5 stars</p>
<p>? Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 19.3% This Facility 17.6% State average 19.2% National average</p>	<p> 2 out of 5 stars</p>

Westmount Health Facility

Inspection Report

Report Period: August 2011 to July 2015

PFI: 1008

Regional Office: [Capital District Regional Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

Measure	This Facility	Statewide Average
Standard Health Deficiencies	30	23
Life Safety Code Deficiencies	7	12
Total Deficiencies	37	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	1	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	3%	3%

Corning Center for Rehabilitation and Healthcare















The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p> Self-report moderate to severe pain (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>9.5% This Facility</p> <p>13.7% State average</p> <p>18.3% National average</p>	<p></p> <p> 3 out of 5 stars</p>

151060 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Have pressure sores that are new or worsened Reporting period: April 2014 to March 2015 0.6% This Facility 1.0% State average 0.9% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (short stay) Reporting period: April 2014 to March 2015 65.3% This Facility 84.6% State average 82.8% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine Reporting period: April 2014 to March 2015 69.9% This Facility 83.3% State average 81.9% National average</p>	<p> 1 out of 5 stars</p>
<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 8.1% This Facility 2.3% State average 2.4% National average</p>	<p> 1 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 16.0% This Facility 14.4% State average 15.6% National average</p>	<p> 2 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 5.0% This Facility 4.9% State average 7.4% National average</p>	<p> 2 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 13.7% This Facility 7.5% State average 5.9% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 11.2% This Facility 6.1% State average 7.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 74.0% This Facility 45.7% State average 45.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 3.4% This Facility 2.6% State average 3.1% National average</p>	<p> 2 out of 5 stars</p>

151060 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 2.4% This Facility 5.6% State average 5.7% National average</p>	<p> 5 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 37.4% This Facility 11.4% State average 6.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 5.2% This Facility 1.5% State average 1.1% National average</p>	<p> 1 out of 5 stars</p>
<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 2.1% This Facility 2.7% State average 3.2% National average</p>	<p> 3 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 90.2% This Facility 94.8% State average 92.6% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 97.6% This Facility 96.7% State average 93.8% National average</p>	<p> 2 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 26.6% This Facility 17.6% State average 19.2% National average</p>	<p> 1 out of 5 stars</p>

Corning Center for Rehabilitation and Healthcare

Inspection Report

Report Period: August 2011 to July 2015

PFI: 0867

Regional Office: [WRO--Rochester Area Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

151060 BNHLC Attachment A – Quality Measures and Inspection Report

This table summarizes the citations in the details section of this report and compares them against the statewide average.





















Measure	This Facility	Statewide Average
Standard Health Deficiencies	80	23
Life Safety Code Deficiencies	10	12
Total Deficiencies	90	35
Deficiencies Related to Actual Harm or Immediate Jeopardy	1	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	1%	3%









Steuben Center for Rehabilitation and Healthcare

The following table shows how this nursing home performs in key quality measure areas.

Percentage of residents who...	Performance Ranking
<p>Self-report moderate to severe pain (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>27.2% This Facility</p> <p>13.7% State average</p> <p>18.3% National average</p>	<p>1 out of 5 stars</p>
<p>Have pressure sores that are new or worsened</p> <p>Reporting period: April 2014 to March 2015</p> <p>3.0% This Facility</p> <p>1.0% State average</p> <p>0.9% National average</p>	<p>1 out of 5 stars</p>
<p>Were given, appropriately, the seasonal influenza vaccine (short stay)</p> <p>Reporting period: April 2014 to March 2015</p> <p>97.7% This Facility</p> <p>84.6% State average</p> <p>82.8% National average</p>	<p>5 out of 5 stars</p>
<p>Were given, appropriately, the pneumococcal vaccine</p> <p>Reporting period: April 2014 to March 2015</p> <p>94.1% This Facility</p> <p>83.3% State average</p> <p>81.9% National average</p>	<p>4 out of 5 stars</p>

151060 BNHLC Attachment A – Quality Measures and Inspection Report

<p> Newly received an antipsychotic medication Reporting period: April 2014 to March 2015 0.9% This Facility 2.3% State average 2.4% National average</p>	<p> 4 out of 5 stars</p>
<p> Needed increased help with daily activities (long stay) Reporting period: July 2014 to March 2015 6.0% This Facility 14.4% State average 15.6% National average</p>	<p> 5 out of 5 stars</p>
<p> Self-report moderate to severe pain (long stay) Reporting period: July 2014 to March 2015 4.3% This Facility 4.9% State average 7.4% National average</p>	<p> 3 out of 5 stars</p>
<p> Have pressure sores (long stay) Reporting period: July 2014 to March 2015 11.6% This Facility 7.5% State average 5.9% National average</p>	<p> 1 out of 5 stars</p>
<p> Lose too much weight (long stay) Reporting period: July 2014 to March 2015 3.8% This Facility 6.1% State average 7.0% National average</p>	<p> 4 out of 5 stars</p>
<p> Lose control of their bowels or bladder (long stay, low risk) Reporting period: July 2014 to March 2015 61.5% This Facility 45.7% State average 45.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Had a catheter inserted and left in their bladder (long stay) Reporting period: July 2014 to March 2015 2.1% This Facility 2.6% State average 3.1% National average</p>	<p> 3 out of 5 stars</p>
<p> Had a urinary tract infection (long stay) Reporting period: July 2014 to March 2015 8.8% This Facility 5.6% State average 5.7% National average</p>	<p> 1 out of 5 stars</p>
<p> Have depressive symptoms (long stay) Reporting period: July 2014 to March 2015 48.2% This Facility 11.4% State average 6.0% National average</p>	<p> 1 out of 5 stars</p>
<p> Were physically restrained (long stay) Reporting period: July 2014 to March 2015 0.4% This Facility 1.5% State average 1.1% National average</p>	<p> 3 out of 5 stars</p>

<p> Experienced one or more falls with major injury (long stay) Reporting period: July 2014 to March 2015 5.3% This Facility 2.7% State average 3.2% National average</p>	<p> 1 out of 5 stars</p>
<p> Were given, appropriately, the seasonal influenza vaccine (long stay) Reporting period: July 2014 to March 2015 99.2% This Facility 94.8% State average 92.6% National average</p>	<p> 4 out of 5 stars</p>
<p> Were given, appropriately, the pneumococcal vaccine (long stay) Reporting period: July 2014 to March 2015 98.5% This Facility 96.7% State average 93.8% National average</p>	<p> 3 out of 5 stars</p>
<p> Received an antipsychotic medication (long stay) Reporting period: July 2014 to March 2015 22.1% This Facility 17.6% State average 19.2% National average</p>	<p> 2 out of 5 stars</p>

Steuben Center for Rehabilitation and Healthcare

Inspection Report Report Period: August 2011 to July 2015

PFI: 0875
 Regional Office: [WRO--Rochester Area Office](#)

This report displays citations for Certification Surveys and Complaint Surveys during the reporting period.

Summary

This table summarizes the citations in the details section of this report and compares them against the statewide average.

Measure	This Facility	Statewide Average
Standard Health Deficiencies	33	23
Life Safety Code Deficiencies	10	12
Total Deficiencies	43	35

151060 BNHLC Attachment A – Quality Measures and Inspection Report

Measure	This Facility	Statewide Average
Deficiencies Related to Actual Harm or Immediate Jeopardy	0	1
% of Deficiencies Related to Actual Harm or Immediate Jeopardy	0%	3%

<u>Westmount Health Facility</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>
Current Assets	\$2,067,380	\$4,096,636	\$3,033,849
Non-Current Assets	<u>3,751,471</u>	<u>2,985,240</u>	<u>3,335,244</u>
Total Assets	\$5,818,851	\$7,081,876	\$6,369,093
Current Liabilities	1,926,139	2,901,611	1,689,646
Long Term Liabilities	<u>6,406,709</u>	<u>6,795,941</u>	<u>6,066,661</u>
Total Liabilities	8,332,848	9,697,552	7,756,307
Net Assets	(\$2,513,997)	(\$2,615,676)	(\$1,387,214)
Working Capital Position	\$141,241	\$1,195,025	\$1,344,203
Operating Revenues	\$6,210,585	\$6,415,380	\$6,224,594
Operating Expenses	<u>9,184,427</u>	<u>9,234,331</u>	<u>8,911,716</u>
Operating Net Deficit	(\$2,973,842)	(\$2,818,951)	(\$2,687,122)

Westmount Health Facility
(An Enterprise Fund of the County of Warren, New York)

Balance Sheets
December 31, 2014 and 2013

<u>Assets</u>	<u>2014</u>	<u>2013</u>
Current assets:		
Cash	\$ 920,916	\$ 487,503
Restricted cash - patient funds	18,790	15,167
Assets limited as to use	1,006	13,168
Patient accounts receivable, net	723,914	990,593
Due from third party payors, current	125,258	2,342,453
Supplies	60,685	59,242
Due from County, current	55,660	11,790
Prepaid expenses	161,151	176,720
Total current assets	<u>2,067,380</u>	<u>4,096,636</u>
Due from third party payors, long-term	1,066,463	-
Due from County, long-term	61,255	73,568
Property, plant, and equipment, net	<u>2,623,753</u>	<u>2,911,672</u>
Total assets	<u>\$ 5,818,851</u>	<u>\$ 7,081,876</u>
 <u>Liabilities and Fund Equity</u>		
Current liabilities:		
Current portion of capital lease payable	\$ 384,403	\$ 335,653
Accounts payable	132,540	96,951
Due to County, current	1,112,912	2,037,887
Accrued payroll and related benefits	90,169	189,666
Vacation leave and related benefits	180,732	179,472
Due to third party payors	6,425	46,205
Patient funds	18,790	15,167
Deferred revenue	168	610
Total current liabilities	<u>1,926,139</u>	<u>2,901,611</u>
Long-term liabilities:		
Due to County, net of current portion	-	500,000
Sick leave and related benefits	170,762	189,140
Capital lease payable, net of current portion	553,269	937,672
Postemployment health benefits	5,682,678	5,169,129
Total long-term liabilities	<u>6,406,709</u>	<u>6,795,941</u>
Fund equity (deficit):		
Invested in property and equipment, net of related debt	1,686,081	1,638,347
Restricted	1,006	13,168
Unrestricted	<u>(4,201,084)</u>	<u>(4,267,191)</u>
Total fund equity (deficit)	<u>(2,513,997)</u>	<u>(2,615,676)</u>
Total liabilities and fund equity	<u>\$ 5,818,851</u>	<u>\$ 7,081,876</u>

Westmount Health Facility
(An Enterprise Fund of the County of Warren, New York)

Statements of Revenues and Expenses and Fund Equity
Years Ended December 31, 2014 and 2013

	2014	2013
Operating revenues:		
Net patient service revenue	\$ 6,206,285	\$ 6,408,642
Other operating revenue	4,300	6,738
Total operating revenues	<u>6,210,585</u>	<u>6,415,380</u>
Operating expenses:		
Nursing services	2,947,253	3,279,773
Ancillary services	444,147	471,531
Dietary services	716,360	678,207
Housekeeping	183,155	217,169
Laundry service	89,612	81,605
Maintenance	409,161	412,116
Administrative and fiscal services	709,574	619,802
Employee benefits	2,667,947	2,697,118
New York State tax assessment	324,607	266,065
Depreciation	369,683	361,016
Provision for bad debts	322,928	149,929
Total operating expenses	<u>9,184,427</u>	<u>9,234,331</u>
Loss from operations	<u>(2,973,842)</u>	<u>(2,818,951)</u>
Non-operating revenue (expense):		
Indirect costs from County	249,877	246,557
Intergovernmental transfers	2,874,531	1,400,000
Investment income	2,779	1,585
Interest expense	(51,666)	(59,371)
Other revenue	-	1,718
Total non-operating revenue, net	<u>3,075,521</u>	<u>1,590,489</u>
Increase (decrease) in fund equity	101,679	(1,228,462)
Fund equity (deficit), beginning	(2,615,676)	(1,387,214)
Fund equity (deficit), ending	<u>\$ (2,513,997)</u>	<u>\$ (2,615,676)</u>

PRO FORMA

<u>Assets</u>	
Current Assets	
Working Capital	\$ 1,123,356
Tangible/Intangible Assets	\$ 800,000
TOTAL:	\$1,923,356
<u>Liabilities</u>	
Current Liabilities	
Acquisition Loan	\$ 570,000
Working Capital Loan	\$ 561,678
TOTAL:	\$1,131,678
<u>Members' Equity</u>	
David Greenberg	\$ 791,678
TOTAL:	\$791,678

<u>Corning Center for Rehab</u>	<u>2014</u>	<u>2013</u>
Current Assets	\$3,018,606	\$2,618,462
Non-Current Assets	<u>4,465,775</u>	<u>3,399,601</u>
Total Assets	\$7,484,381	\$6,018,063
Current Liabilities	1,624,114	2,538,488
Long Term Liabilities	<u>2,213,968</u>	<u>197,824</u>
Total Liabilities	3,838,082	\$2,736,312
Net Assets	\$3,646,299	\$3,281,751
Working Capital Position	\$1,394,492	\$79,974
Operating Revenues	\$11,837,524	\$5,004,234
Operating Expenses	<u>11,003,841</u>	<u>4,723,686</u>
Operating Net Income	\$833,683	\$280,548

Ownership Interest	Date Acquired	# of Beds
5.00%	June 2013	120

<u>Steuben Center for Rehab</u>	<u>2014</u>
Current Assets	\$2,586,350
Non-Current Assets	<u>7,297,840</u>
Total Assets	\$9,884,190
Current Liabilities	2,117,735
Long Term Liabilities	<u>6,011,004</u>
Total Liabilities	8,128,739
Net Assets	\$1,755,451
Working Capital Position	\$468,615
Operating Revenues	\$5,682,378
Operating Expenses	<u>5,545,548</u>
Operating Net Income	\$136,830

Ownership Interest	Date Acquired	# of Beds
5.00%	July 2014	105

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 October, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Warren Operations Associates, LLC as the new operator of the 80-bed facility located at 42 Gurney Lane, Queensbury that is currently operated as Westmount Health Facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

151060 E

Warren Operations Associates, LLC
d/b/a Warren Center for Rehabilitation and
Healthcare

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. (RNR)
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. (RNR)

4. Submission of a programmatically acceptable name for the facility. [LTC]
5. Submission and review of an acceptable consulting and services agreement. [LTC]
6. Submission of and programmatic approval of a transition plan that will outline proactive measures to be undertaken to ensure that the quality of care at the facility is maintained immediately following the transfer of ownership. [LTC]
7. Submission of an executed loan commitment for the purchase of the operations of the RHCF, acceptable to the Department of Health. (BFA)
8. Submission of an executed working capital loan commitment, acceptable to the Department of Health. (BFA)
9. Submission of the executed restated Articles of Organization of Warren Operations Associates, 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*.

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: MedPro Homecare Agency, Inc.
Address: Kew Gardens
County: Queens
Structure: Proprietary Corporation
Application Number: 1909L

Description of Project:

MedPro Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

MedPro Homecare Agency, Inc. has authorized 200 shares of stock. The shareholders comprise the following individuals:

Natalya Chornaya, RN – 10 shares Marina Rabinovich, Esq. - 190 shares

The Board of Directors of MedPro Homecare Agency, Inc. is comprised of the following individuals:

Natalya Chornaya, RN, President
RN, Mount Sinai Beth Israel

Affiliations:
NC Homecare Agency of NY, Inc. (8/11/12 – present)
Unihelp Homecare, Inc. (2008-2009)

Marina Rabinovich, Esq. Vice President
Attorney, Law Office of Marina Rabinovich, Esq.

Affiliation:
MR Homecare Agency of NY, Inc. (5/25/12 – present)

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

A Certificate of Good Standing has been received for the attorney.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 119-40 Metropolitan Avenue, Unit CU2 – Suite 151, Kew Gardens, New York 11415

Queens	Kings	Bronx
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Supplies, Equipment and Appliances		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

MR Homecare Agency of NY, Inc. (May 2012 – present)
NC Homecare Agency of NY, Inc. (August 2012 – present)
Unihelp Homecare, Inc. (2008-2009)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 24, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Touch of Love Homecare Agency Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2042-L

Description of Project:

Touch of Love Homecare Agency Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Touch of Love Homecare Agency Inc. has authorized 200 shares of stock, which are owned solely by Lev Paukman.

The Board of Directors of Touch of Love Homecare Agency Inc. comprises the following individual:

Lev Paukman, MD, President/Director
Private Practice, Lev J. Paukman, MD

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

The Office of the Professions of the State Education Department and the New York State Department of Health Office of Professional Medical Conduct indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 396-400 Avenue X, Brooklyn, New York 11223:

Bronx	Kings	Queens
Richmond	New York	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper
Medical Equipment, Supplies and Appliances		

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 20, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Victory Home Care Services, Inc.
Address: Central Islip
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2059-L

Description of Project:

Victory Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Victory Home Care Services, Inc. has authorized 200 shares of stock. The shareholders will consist of Beverly Dean, Cynthia Exhem Williams and Paul St. Juste with each shareholder owning 10 shares. The remaining 170 shares will be unissued.

The Board of Directors of Victory Home Care Services, Inc. comprises the following individuals:

Paul St. Juste, President President, General Island Taxi, Inc. Pastor, Victory Gospel Assembly Church	Beverly Dean, DNP., Vice President/Vice Chairperson Adjunct Professor, Pace University Adjunct Professor, Medford Multicare Nurse Educator
Cynthia Exhem Williams, PA, Treasurer President/Physician Assistant, House Calls Plus, Inc.	

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 917 W. Suffolk Avenue, Brentwood, NY 11717:

Suffolk Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Audiology	Medical Social Services	Nutrition
Homemaker	Housekeeper	Respiratory Therapy

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 20, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Theresa Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For Profit Corporation
Application Number: 2133-L

Description of Project:

Theresa Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Theresa Home Care, Inc. has authorized 200 shares of stock which are owned solely by Vashti Ramlogan.

The members of the Board of Directors of Theresa Home Care, Inc. comprise the following individual:

Vashti Ramlogan, Nursing Assistant
Unemployed

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

The applicant proposes to serve the residents of the following counties from an office located at 522 Chauncey Street, Brooklyn, New York 11233:

New York	Bronx	Richmond
Kings	Queens	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Medical Supplies, Equipment & Appliances	

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 24, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Kirenaga Home Care Brooklyn, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2184-L

Description of Project:

Kirenaga Home Care Brooklyn, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are solely owned by Kirenaga Home Care, LLC.

The Board of Directors of Kirenaga Home Care Brooklyn, Inc. comprises the following individual:

David Muson, President
FINRA, Series 7, 63, 79
Operator, SonicLiebs d/b/a Synergy HomeCare

Affiliations:

SonicLiebs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014)

The membership of Kirenaga Home Care, LLC comprises the following:

Kirenaga Partners, LLC – 99%	David Muson – 1%
	Disclosed Above

The membership of Kirenaga Partners, LLC comprises the following:

Kirenaga Management, LLC – 30%	Solely Economic Investors – 70%
	Non-Voting/Non-Operating members

The membership of Kirenaga Management, LLC comprises the following:

Kirenaga, Inc. – 33.33%	David Muson, Inc. – 33.33%
	Disclosed Above

Berland Investments Incorporated – 33.33%

Kirenaga, Inc. has authorized 1,500 shares of stock which are solely owned by David Scalzo.

The Board of Directors of Kirenaga, Inc. comprises the following individual:

David Scalzo, MBA
Founder/President, Kirenaga Partners, LLC

David Muson, Inc. has authorized 200 shares of stock, which are solely owned by David Muson.

The Board of Directors of David Muson, Inc. comprises the following individual:

David Muson
Disclosed Above

Berland Investments Incorporated has authorized 1,000 shares of stock, which are solely owned by Terrance Berland.

The Board of Directors of Berland Investments Incorporated comprises the following individual:

Terrance Berland, MBA
Former Senior Management Associate, Bridgewater Associates, LP

Affiliations:

Stamford Health System (2003 – 2009, 2014 – Present)

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

The applicant proposes to serve the residents of the following counties from an office located at 575 Lexington Avenue, New York, New York 10022:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

SonicLiebs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014, New Jersey)
Stamford Health System (2008 – 2009, 2014 – Present, Connecticut)

The information provided by the Division of Home and Community Based Services has indicated that home care agency has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the New Jersey Office of the Attorney General, Division of Consumer Affairs Office of Consumer Protection has indicated that Synergy HomeCare of Hudson County has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the State of Connecticut Department of Public Health, Division of Health Systems Regulation indicated that there were not any enforcement actions and the Stamford Health System has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: September 8, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Kirenaga Home Care Queens, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2186-L

Description of Project:

Kirenaga Home Care Queens, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are solely owned by Kirenaga Home Care, LLC.

The Board of Directors of Kirenaga Home Care Queens, Inc. comprises the following individual:

David Muson, President
FINRA, Series 7, 63, 79
Operator, SonicLiebs d/b/a Synergy HomeCare

Affiliations:

SonicLiebs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014)

The membership of Kirenaga Home Care, LLC comprises the following:

Kirenaga Partners, LLC – 99%	David Muson – 1%
	Disclosed Above

The membership of Kirenaga Partners, LLC comprises the following:

Kirenaga Management, LLC – 30%	Solely Economic Investors – 70%
	Non-Voting/Non-Operating members

The membership of Kirenaga Management, LLC comprises the following:

Kirenaga, Inc. – 33.33%	David Muson, Inc. – 33.33%
	Disclosed Above

Berland Investments Incorporated – 33.33%

Kirenaga, Inc. has authorized 1,500 shares of stock which are solely owned by David Scalzo.

The Board of Directors of Kirenaga, Inc. comprises the following individual:

David Scalzo, MBA
Founder/President, Kirenaga Partners, LLC

David Muson, Inc. has authorized 200 shares of stock, which are solely owned by David Muson.

The Board of Directors of David Muson, Inc. comprises the following individual:

David Muson
Disclosed Above

Berland Investments Incorporated has authorized 1,000 shares of stock, which are solely owned by Terrance Berland.

The Board of Directors of Berland Investments Incorporated comprises the following individual:

Terrance Berland, MBA
Former Senior Management Associate, Bridgewater Associates, LP

Affiliations:

Stamford Health System (2003 – 2009, 2014 – Present)

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

The applicant proposes to serve the residents of the following counties from an office located at 575 Lexington Avenue, New York, New York 10022:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

SonicLiebs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014, New Jersey)
Stamford Health System (2008 – 2009, 2014 – Present, Connecticut)

The information provided by the Division of Home and Community Based Services has indicated that home care agency has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the New Jersey Office of the Attorney General, Division of Consumer Affairs Office of Consumer Protection has indicated that Synergy HomeCare of Hudson County has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the State of Connecticut Department of Public Health, Division of Health Systems Regulation indicated that there were not any enforcement actions and the Stamford Health System has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: September 8, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Imo's Nursing Agency, Inc.
Address: Hollis
County: Queens
Structure: For-Profit Corporation
Application Number: 2193-L

Description of Project:

Imo's Nursing Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows: Vivette Griffiths owns 5 shares and Joan Duncan owns 5 shares. The remaining 190 are unissued.

The Board of Directors of Imo's Nursing Agency, Inc. comprises the following individuals:

Vivette Griffiths, RN, NP, President/CEO
RN, Emergency Medicine, Winthrop University Hospital
Clinical Instructor, Critical Care, Malloy College

Joan Duncan, RN, FNP, Vice President
Assistant Nurse Manager, Neonatal ICU, New York Hospital Queens

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

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 205-04 109th Avenue, Hollis, New York 11412:

Queens	Kings	Bronx
New York	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Homemaker	Housekeeper	

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 24, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Loyal Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2293-L

Description of Project:

Loyal Home Care, Inc, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Tsilistina Ryabicheva owns 100 shares and Tsisnami Gogilashvili owns 100 shares.

The Board of Directors of Loyal Home Care, Inc. is comprised of the following individuals:

Tsilistina Ryabicheva, RN - President
Outreach Community Liaison RN, Four Seasons CHHA

Tsisnami Gogilashvili – Vice-President
Provider Relations, Home Care Services of NY

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

The Office of Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 3730 Cypress Avenue, Brooklyn, New York 11224:

Kings	Bronx	Queens	Richmond	New York
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Homemaker	Medical Social Services
Housekeeper		

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 10, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: HT&T Corporation d/b/a HT&T Home Care
Address: Flushing
County: Queens
Structure: For-Profit Corporation
Application Number: 2362-L

Description of Project:

HT&T Corporation d/b/a HT&T Home Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows: Yin Nog Tang owns 184 shares and Tao Huang owns 16 shares.

The Board of Directors of HT&T Corporation d/b/a HT&T Home Care comprises the following individuals:

Yin Nog Tang, RN, Chairman
Community Health Nurse, Centerlight Health System

Tao Huang, MBA, Vice Chairman/Secretary
Student

Jessica Yu, Treasury
Enrolled Agent, Department of Treasury
President/Manager, HT Tax Professionals, Inc.

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 31-30 138th Street, Apartment 3C, Flushing, New York 11354:

Queens	Brooklyn	New York
Kings	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 24, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Sundance Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2381-L

Description of Project:

Sundance Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Sundance Home Care, Inc. has authorized 200 shares of stock which are owned as follows: Lex Consulting of NJ, LLC owns 90 shares and Denning Corporation owns 90 shares. The remaining 20 shares are unissued.

The Board of Directors of Sundance Home Care, Inc. is comprised of the following individual:

Steven Metelsky, RN – President, Vice-President, Secretary, Treasurer
Executive Director, Sundance SADC, Inc.

The members of Lex Consulting of NJ, LLC comprise the following individuals:

Steven Metelsky, RN – 50%
(Disclosed above)

Tatiana Volovnik – 50%
Unemployed

Affiliation
Sundance SADC, Inc. (2012-present)

Denning Corporation has authorized 200 shares of stock which are owned solely by Pavel Soltanov.

The Board of Directors of Denning Corporation is comprised of the following individual:

Pavel Soltanov, President
Assistant Executive Director, Sundance SADC, Inc.

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1460 Flatbush Avenue, Brooklyn, New York, 11210:

Kings Queens New York Bronx Richmond Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 24, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Queens Home Care, Inc.d/b/a Home Instead Senior Care Franchise #765
Address: Forest Hills
County: Queens
Structure: For-Profit Corporation
Application Number: 2405-L

Description of Project:

Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Queens Home Care, Inc. has proposed to operate as a franchisee of Home Instead, Inc.

The applicant has authorized 200 shares of stock which are owned as follows: Beverly Silver owns 104 shares and Ilan David owns 96 shares.

The Board of Directors of Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 comprises the following individuals:

Ilan David, President
Operations Coordinator, Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 (Companion Care, 2011 – Present)
International Sales Manager, New Yorker Electronics

Beverly Silver, Esq., Secretary
Owner/Director, Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 (Companion Care, 2011 – Present)
Owner/Attorney, The Law Offices of Beverly Silver, Esq.

A Certificate of Good Standing has been received for the attorney associated with this application.

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

The applicant proposes to serve the residents of the following counties from an office located at 102-40A 67th Drive, Suite C2, Forest Hills, New York 11375:

Queens	Bronx	Kings
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 18, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Artful Home Care, Inc.
Address: Southampton
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2437-L

Description of Project:

Artful Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Beth McNeill-Muhs owns 100 shares. The remaining 100 shares are unissued.

The Board of Directors of Artful Home Care, Inc. comprises the following individual:

Beth McNeill-Muhs, PCA, President
Principal, McNeill Art Group, Inc.

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

The New York State Home Care Registry indicates no issues with the certification of the Personal Care Aide associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 565 Montauk Highway, Southampton, NY 11968:

Suffolk Nassau

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Nutrition

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 18, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Companion Angels Home Care Solutions, LLC
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 2452-L

Description of Project:

Companion Angels Home Care Solutions, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Companion Angels Home Care Solutions, LLC is the following individual:

Rama Akanni, RN – 100%
Owner/Operator, Companion Angels Home Care Solutions, LLC (Companion Care)
Registered Nurse Recovery Room/Operating Room, Manhattan Eye, Ear and Throat Hospital

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 2117A Williams Bridge Road, Bronx, New York 10461:

New York	Bronx	Kings
Queens	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Housekeeper		

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 10, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: 1st Home Care of NY Corp.
Address: Jackson Heights
County: Queens
Structure: For-Profit Corporation
Application Number: 2467-L

Description of Project:

1st Home Care of NY Corp., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are solely owned by Dilya Khalitova.

The Board of Directors of 1st Home Care of NY Corp. comprises the following individual:

Dilya Khalitova, President/CEO
Marketing Consultant, Maaser Social Adult Day Care

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

The applicant proposes to serve the residents of the following counties from an office located at 34-40 78th Street, Apartment 2C, Jackson Heights, New York 11372:

Queens	Bronx	Kings
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 10, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Zenith Home Care of NY, LLC
Address: New Rochelle
County: Westchester
Structure: Limited Liability Company
Application Number: 2469-L

Description of Project:

Zenith Home Care of NY, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The membership of Zenith Home Care of NY, LLC comprises the following individuals:

Alwell Nwankwoala, PhD – 51%
Senior Research Scientist, Sandoz Pharmaceutical, Inc.

Uchechi Nwankwoala, RN, BSN – 49%
RN, Connecticut/New York
Charge Nurse, Surgical and Step Down Unit, Montefiore Medical Center

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The State of Connecticut Department of Public Health indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 201 Coligni Avenue, New Rochelle, New York 10801:

Westchester	Putnam	Bronx
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Speech-Language Pathology	Medical Social Services
Homemaker		

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 25, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Acute Care Experts of New York, Inc.
Address: Nassau
County: Nassau
Structure: For-Profit Corporation
Application Number: 2474-L

Description of Project:

Acute Care Experts of New York, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Frederick Lucich.

The Board of Directors of Acute Care Experts of New York, Inc. is comprised of the following individual:

Frederick Lucich, RN – President/Owner
Owner/President, Acute Care Experts, Inc. (NJ)

Affiliations:

Acute Care Experts, Inc. (NJ)
Acute Care Experts, Inc. (NY; 12/31/12-present)

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office to be located in Nassau County:

Nassau	Suffolk	Dutchess	Orange	Putnam
Rockland	Sullivan	Ulster	Westchester	

The applicant proposes to provide the following health care service:

Nursing

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Acute Care Experts, Inc. (NJ)
Acute Care Experts, Inc. (NY; 12/31/12-present)

The information provided by the New Jersey regulatory agency indicated that the Acute Care Experts, Inc. has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the home care services agency has provided sufficient supervision to prevent harm to the health, safety, and welfare of residents and to prevent recurrent code violations.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 31, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: SR Miracle Care Agency, Inc.
Address: Bronx
County: Bronx
Structure: For-Profit Corporation
Application Number: 2475-L

Description of Project:

SR Miracle Care Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Sophia Perkins.

The Board of Directors of SR Miracle Care Agency, Inc. is comprised of the following individuals:

Sophie Perkins – President
Executive Director, SR Miracle Care Agency, Inc. (Companion Care)

Rory Perkins – Vice-President/Treasurer
Administrator, SR Miracle Care Agency, Inc. (Companion Care)

Zatanya Cooke - Secretary
Secretary, SR Miracle Care Agency, Inc. (Companion Care)

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

The applicant proposes to serve the residents of the following counties from an office located at 760 Burke Avenue, Bronx, New York 10467:

Bronx	New York	Kings
Queens	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 26, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Trivium of New York, LLC
Address: Forest Hills
County: Queens
Structure: Limited Liability Company
Application Number: 2492-L

Description of Project:

Trivium of New York, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The membership of Trivium of New York, LLC comprises the following individuals:

Nigel Douglas – 51%
Operations Consultant, Better Care Nursing Services, LLC

Adaku Nwachuku, MBA, DO – 49%
Attending Physician, Advanced Spine and Pain

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

The Office of the Professions of the New York State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs indicates no issues with the license of the healthcare professional associated with this application.

The State of Maryland Board of Physicians indicates no issues with the license of the healthcare professional associated with this application.

The State of Pennsylvania, Department of State indicates that the license of the healthcare professional associated with this application is currently expired. There were no issues with the license during the time of registration (July 2011 – November 2014).

The applicant proposes to serve the residents of the following counties from an office located at 118-35 Queens Boulevard, Suite 400, Forest Hills, New York 11375:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 26, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: L. Woerner, Inc. d/b/a HCR/HCR Home Care
Address: Cobleskill
County: Schoharie
Structure: For-Profit Corporation
Application Number: 2503-L

Description of Project:

L. Woerner, Inc. d/b/a HCR/HCR Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 4,000,000 shares of stock with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)
Louise Woerner – 230,180 shares (9.34%)
Don H. Kollmorgen – 233,824 shares (9.49%)
Lawrence Peckham – 248,236 shares (10.07%)
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner
Chief Executive Officer, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliations: HealthNow New York, Inc., Buffalo
(Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)
Partner / Managing Director, HDH Advisors, LLC,
West Des Moines, Iowa (Financial Advisory
Services / Professional Consulting / Corporate and
Business Valuations / Litigation Support); Trustee,
Bestcare, Inc. (LHCSA) Employee Stock
Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer
(9.34% stockholder)
Disclosed above

Don H. Kollmorgen (9.49% stockholder)
Retired

Lawrence L. Peckham (10.07% stockholder)
Retired

Joseph J. Castiglia, CPA
Retired

Clayton H. Osborne, MSW, LCSW (0.10%
stockholder)
Retired Vice President of Human Resources and
Talent Management, Bausch and Lomb (Vision
Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN
President / Administrator, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliation: DePaul Adult Care Communities, Inc.,
Rochester (licensed ACFs/ALPs, in New York
State, North Carolina, and South Carolina) – April
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 795 East Main Street, Suite 10, Cobleskill, New York 12043:

Schoharie	Otsego	Delaware
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Housekeeper

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

L. Woerner, Inc., d/b/a HCR / HCR Home Care
Bestcare, Inc. (2011 – Present)
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)
DePaul Adult Care Communities, Inc. (2009 – Present)
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been

in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP

located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 10, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: L. Woerner, Inc. d/b/a HCR/HCR Home Care
Address: Plattsburgh
County: Clinton
Structure: For-Profit Corporation
Application Number: 2504-L

Description of Project:

L. Woerner, Inc. d/b/a HCR/HCR Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 4,000,000 shares of stock with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)
Louise Woerner – 230,180 shares (9.34%)
Don H. Kollmorgen – 233,824 shares (9.49%)
Lawrence Peckham – 248,236 shares (10.07%)
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner
Chief Executive Officer, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliations: HealthNow New York, Inc., Buffalo
(Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)
Partner / Managing Director, HDH Advisors, LLC,
West Des Moines, Iowa (Financial Advisory
Services / Professional Consulting / Corporate and
Business Valuations / Litigation Support); Trustee,
Bestcare, Inc. (LHCSA) Employee Stock
Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer
(9.34% stockholder)
Disclosed above

Don H. Kollmorgen (9.49% stockholder)
Retired

Lawrence L. Peckham (10.07% stockholder)
Retired

Joseph J. Castiglia, CPA
Retired

Clayton H. Osborne, MSW, LCSW (0.10%
stockholder)
Retired Vice President of Human Resources and
Talent Management, Bausch and Lomb (Vision
Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN
President / Administrator, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliation: DePaul Adult Care Communities, Inc.,
Rochester (licensed ACFs/ALPs, in New York
State, North Carolina, and South Carolina) – April
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 176 US Oval, Suite 3, Plattsburgh, New York 12903:

Clinton	Franklin	Essex
Hamilton	Warren	Washington
St. Lawrence		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Medical Social Services	Nutrition
Housekeeper		

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

L. Woerner, Inc., d/b/a HCR / HCR Home Care
Bestcare, Inc. (2011 – Present)
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)
DePaul Adult Care Communities, Inc. (2009 – Present)
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised

sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul

Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 10, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: L. Woerner, Inc. d/b/a HCR/HCR Home Care
Address: Canastota
County: Madison
Structure: For-Profit Corporation
Application Number: 2505-L

Description of Project:

L. Woerner, Inc. d/b/a HCR/HCR Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 4,000,000 shares of stock with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)
Louise Woerner – 230,180 shares (9.34%)
Don H. Kollmorgen – 233,824 shares (9.49%)
Lawrence Peckham – 248,236 shares (10.07%)
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner
Chief Executive Officer, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliations: HealthNow New York, Inc., Buffalo
(Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)
Partner / Managing Director, HDH Advisors, LLC,
West Des Moines, Iowa (Financial Advisory
Services / Professional Consulting / Corporate and
Business Valuations / Litigation Support); Trustee,
Bestcare, Inc. (LHCSA) Employee Stock
Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer
(9.34% stockholder)
Disclosed above

Don H. Kollmorgen (9.49% stockholder)
Retired

Lawrence L. Peckham (10.07% stockholder)
Retired

Joseph J. Castiglia, CPA
Retired

Clayton H. Osborne, MSW, LCSW (0.10%
stockholder)
Retired Vice President of Human Resources and
Talent Management, Bausch and Lomb (Vision
Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN
President / Administrator, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliation: DePaul Adult Care Communities, Inc.,
Rochester (licensed ACFs/ALPs, in New York
State, North Carolina, and South Carolina) – April
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 7080 Commercial Drive, Canastota, New York 13032:

Madison	Onondaga	Cayuga
Oswego	Jefferson	Cortland

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Housekeeper

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

L. Woerner, Inc., d/b/a HCR / HCR Home Care
Bestcare, Inc. (2011 – Present)
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)
DePaul Adult Care Communities, Inc. (2009 – Present)
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been

in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

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An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP

located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 10, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: GM Family Resources, Inc.
Address: Staten Island
County: Richmond
Structure: For-Profit Corporation
Application Number: 2521-L

Description of Project:

GM Family Resources, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Yue Mei Meng owns 51 shares and Guo Ping Liu owns 49 shares. The remaining 100 shares are unissued.

The Board of Directors of GM Family Resources, Inc. comprises the following individuals:

Yue Mei Meng, HHA/PCA, President/Treasurer
New York State License in Nail Specialty
Owner/Manager, Garden Rose Nails, Inc.
HHA, LH Wellbeing Care, Inc.

Guo Ping Liu, HHA/PCA, Vice President/Secretary
Manager of Facility/Billing Director, LH Wellbeing Care, Inc.

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

The New York State Home Care Registry indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 1057 Olympia Boulevard, Staten Island, New York 10306:

Richmond	Kings	Queens
New York	Bronx	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 10, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Edira Family Home Care LLC
Address: Jamaica
County: Queens
Structure: Limited Liability Company
Application Number: 2546-L

Description of Project:

Edira Family Home Care LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The membership of Edira Family Home Care LLC comprises the following individuals:

Irina Korneyeva – 50%
Patient Service Coordinator, Geriatric Resource

Larisa Shusterman, RN – 50%
Director of Patient Services, Geriatric Resource

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

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 82-08 135th Street, #3M, Jamaica, New York 11435:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 26, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Exceptional Home Care Services Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2573-L

Description of Project:

Exceptional Home Care Services Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of common stock which are owned as follows:

Esmira Yusufova, RN – 200 Shares

The following individual is the sole member of Board of Directors of Exceptional Home Care Services Inc.:

Esmira Yusufova, RN – President
Nurse Educator and Utilization Management Review Nurse, Village Care

Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

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

The applicant proposes to serve the residents of the following counties from an office located at 1825 Coney Island Avenue, 2nd FL FR Brooklyn, New York 11230:

Bronx	Kings	New York	Queens
Richmond			

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 30, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Albemarle Terrace, Inc. d/b/a Terrace Home Care
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2300-L

Description of Project:

Albemarle Terrace, Inc. d/b/a Terrace Home Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program to be operated by Albemarle Terrace, Inc. d/b/a Albemarle Terrace Assisted Living.

The applicant has authorized 200 shares of stock, which are owned as follows:

Moses J. Scharf – 200 shares

The Board of Directors of Albemarle Terrace, Inc. d/b/a Terrace Home Care is comprised by the following individuals:

Moses J. Scharf – President/Board Member
Owner/Operator, Ateret Avoth, LLC

Elisa H. Stern, LCSW – Board Member
Director of Supportive Serviced Project for
Holocaust Survivors, Bikur Cholim Chesed
Organization

Joel E. Shafran – Secretary/Treasurer/Board Member
President/JM Management of N.Y. Corp.

Allen Spielman – Board Member
Administrator/Director of Operations, New
Century Home Care

Temi Fink – Board Member
Director of Community Outreach, New Century Home
Care

Eliyahu Scharf – Board Member
Manager, Ateret Avoth, LLC

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

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

The applicant proposes to serve the residents of the following counties from an office located at 385 McDonald Avenue, Brooklyn, New York 11219.

Bronx	Kings	New York	Richmond
Queens			

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Occupational Therapy
Respiratory Therapy	Physical Therapy	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper	Speech Language Pathology

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 27, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Samuel Konig d/b/a Park Inn Home Care
Address: Rockaway Park
County: Queens
Structure: Sole Proprietorship
Application Number: 2605-L

Description of Project:

Samuel Konig d/b/a Park Inn Home Care, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program to be operated by Samuel Konig d/b/a Park Inn Assisted Living.

The sole proprietor of Samuel Konig d/b/a Park Inn Home Care is the following individual:

Samuel Konig
Owner/Operator, Park Inn Home (Adult Home, 1978 – Present)

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

The applicant proposes to serve the residents of the following counties from an office located at 115-02 Ocean Promenade, Rockaway Park, New York 11694:

Queens	Bronx	Kings
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Park Inn Home

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 17, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Marquis Home Care, LLC
Address: Bardonia
County: Rockland
Structure: Limited Liability Company
Application Number: 2188L

Description of Project:

Marquis Home Care, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

All Pro Home & Health Care Services, Inc. was previously approved as a home care services agency by the Public Health Council at its July 21, 2005 meeting and subsequently licensed as 9655L001 and 9655L002. Subsequently, All Pro Home & Health Care Services, Inc submitted LHCSA application number 1842L for a change in stock ownership which was contingently approved by the Public Health and Health Planning Council at the June 16, 2011 meeting, but the applicant never finalized the approval process for this change of ownership.

Marquis Home Care, LLC entered into a management agreement with All Pro Home & Health Care Services, Inc. which has been approved by the Department of Health.

The members of Marquis Home Care, LLC are:

Eric Newhouse, Esq. – 75%
CEO, MedWiz Solutions

Neil Zelman – 25%
Chief of Operations, Adult Care Management, LLC

Affiliations:
The Eliot at Erie Station ALP (2007-present)
The Eliot at Catskill (8/2010- present)

Affiliations:
The Eliot at Erie Station ALP (2011-present)
The Eliot at Catskill (8/2010- present)

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

A Certificate of Good Standing has been received for Eric Newhouse, Esq.

The applicant proposes to serve the residents of the counties indicated below from offices located at the addresses specified.

230 North Main St., Spring Valley, NY 10977

Rockland	Orange	Nassau	Suffolk
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440 Beach 21st St., Far Rockaway, NY 11691

Queens Bronx	Kings Richmond	New York Westchester
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Nutrition	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

The Eliot at Erie Station ALP
The Eliot at Catskill (8/2010 to present)

The Eliot at Erie Station was fined ten thousand dollars (\$10,000) pursuant to a stipulation and order dated July 6, 2010 for inspection findings of September 29, 2009 for violations of Article 7 of the Social Services Law and 18 NYCRR 487 Standards for Adult Homes.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance unit has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 25, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Paramount Homecare Agency, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2436-L

Description of Project:

Paramount Homecare Agency, Inc. a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Paramount Homecare Agency, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 8, 2011 meeting and subsequently licensed 1952L001. At that time it was owned as follows: Michael Pinter – 100 Shares and Reuben Grabel – 100 Shares.

Through a Stock Purchase Agreement, Roman Offengeym will become the sole stock holder of Paramount Homecare Agency, Inc.

The applicant has authorized 200 shares of stock, which will be owned as follows:

Roman Offengeym, LPN – 200 Shares

The following individual will be the sole member of Board of Directors of Paramount Homecare Agency, Inc.:

Roman Offengeym, LPN – President/Secretary
Administrator, Paramount Home Care Agency, Inc.

The Office of the Professions of the State Education Department indicate no issues with the licensure of the health professional associated with this application.

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

The applicant proposes to continue to serve the residents of the following counties from an office located at 1711 Kings Highway, Suite 2, Brooklyn, New York 11229.

Kings	Queens	Bronx
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Homemaker	Housekeeper	Speech-Language Pathology
Physical Therapy	Nutrition		

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: July 17, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Kirenaga Home Care Manhattan, Inc. d/b/a Synergy HomeCare
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2441-L

Description of Project:

Kirenaga Home Care Manhattan, Inc. d/b/a Synergy HomeCare, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

SonicLeibs, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its February 7, 2013 meeting and subsequently licensed as 1979L001. At that time SonicLeibs, Inc. d/b/a Synergy HomeCare was solely owned by David S. Muson.

The applicant has authorized 200 shares of stock which are solely owned by Kirenaga Home Care, LLC.

The Board of Directors of Kirenaga Home Care Manhattan, Inc. comprises the following individual:

David Muson, President
FINRA, Series 7, 63, 79
Operator, SonicLeibs d/b/a Synergy HomeCare

Affiliations:

SonicLeibs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014)

The membership of Kirenaga Home Care, LLC comprises the following:

Kirenaga Partners, LLC – 99%	David Muson – 1%
	Disclosed Above

The membership of Kirenaga Partners, LLC comprises the following:

Kirenaga Management, LLC – 30%	Solely Economic Investors – 70%
	Non-Voting/Non-Operating members

The membership of Kirenaga Management, LLC comprises the following:

Kirenaga, Inc. – 33.33%	David Muson, Inc. – 33.33%
	Disclosed Above

Berland Investments Incorporated – 33.33%

Kirenaga, Inc. has authorized 1,500 shares of stock which are solely owned by David Scalzo.

The Board of Directors of Kirenaga, Inc. comprises the following individual:

David Scalzo, MBA
Founder/President, Kirenaga Partners, LLC

David Muson, Inc. has authorized 200 shares of stock, which are solely owned by David Muson.

The Board of Directors of David Muson, Inc. comprises the following individual:

David Muson
Disclosed Above

Berland Investments Incorporated has authorized 1,000 shares of stock, which are solely owned by Terrance Berland.

The Board of Directors of Berland Investments Incorporated comprises the following individual:

Terrance Berland, MBA
Former Senior Management Associate, Bridgewater Associates, LP

Affiliations:

Stamford Health System (2003 – 2009, 2014 – Present)

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

The applicant proposes to serve the residents of the following counties from an office located at 575 Lexington Avenue, New York, New York 10022:

New York	Bronx	Queens
Kings	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

SonicLiefs d/b/a Synergy HomeCare (2013 – Present)
Synergy HomeCare of Hudson County (2011 – 2014, New Jersey)
Stamford Health System (2008 – 2009, 2014 – Present, Connecticut)

The information provided by the Division of Home and Community Based Services has indicated that home care agency has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the New Jersey Office of the Attorney General, Division of Consumer Affairs Office of Consumer Protection has indicated that Synergy HomeCare of Hudson County has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the State of Connecticut Department of Public Health, Division of Health Systems Regulation indicated that there were not any enforcement actions and the Stamford Health System has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: September 8, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: CareGuardian, Inc. d/b/a Hometeam
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2501-L

Description of Project:

CareGuardian, Inc. d/b/a Hometeam, a Delaware business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

New Universal Home Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 6, 2011 meeting and subsequently licensed 1764L001. At that time it was owned as follows: Felix Salinas – 200 Shares.

CareGuardian, Inc. d/b/a Hometeam has obtained a Certificate of Authority to Do Business in New York State from the New York State Department of State.

The applicant has authorized 2,930,052 shares of stock of which 1,500,000 shares are Common Stock. 1,072,909 shares are Preferred Stock and 357,143 Employee Incentive Stock Options which are owned as follows:

Josh M. Bruno – 1,200,000 Shares Common Stock	Akash A. Shah – 300,000 Shares Common Stock
Lux Capital LP – 515,855 Shares Preferred Stock	IA Ventures Strategies Fund II LP – 533,509 Shares Preferred Stock

In addition, the applicant has authorized 357,143 shares of Employee Incentive Stock Options with 91,124 issued with the remaining 266,019 shares unissued. No individuals owns 10% or more of the issued shares.

The Managing Partner of IA Ventures Strategies Fund II LP is:

Bradford W. Gillespie

The Principal of Lux Capital LP is:

Adam L. Goulburn, Ph.D.

The proposed Board of Directors of CareGuardian, Inc. d/b/a Hometeam comprises the following individuals:

Josh M. Bruno – President Co-Founder and CEO, CareGuardian, Inc. Operations Consultant, Home Care Agency Consultant	Akash A. Shah Co-Founder and COO, CareGuardian, Inc. Operations & IT Consultant, Healthcare Services Consultant
Bradford W. Gillespie – Board Member Managing Partner, IA Ventures Strategies Fund II, LP	Adam L. Goulburn, Ph.D. – Board Member Principal, Lux Capital LP

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

The response received from the New Jersey Office of the Attorney General, Division of Consumer Affairs, Office of Consumer Protection Responses indicated that CareGuardian, Inc. is currently active and that they have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients.

The applicant disclosed that they have recently been granted a home care agency license in the State of Pennsylvania in preparation to begin operations in 2015.

The applicant proposes to continue to serve the residents of the following counties from an office located at 740 Broadway #1203, New York, New York 10003.

New York Kings Queens Bronx Richmond

The applicant proposes to provide the following health care services:

Nursing Personal Care Homemaker

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 18, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Better Choice Home Care, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2542-L

Description of Project:

Better Choice Home Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Reliable Choice Home Health Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 4, 2011 meeting and was subsequently licensed as 1737L001.

The applicant has authorized 200 Shares of stock which are owned as follows:

David Li – 200 Shares

The Board of Directors of Better Choice Home Care, Inc. is comprised of the following individual:

David Li, CEO/President/Director
Licensed Acupuncturist, D.L. Acupuncture

A search for David Li named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

The applicant proposes to continue to serve the residents of the following counties from an office located at 7104 18th Avenue, Brooklyn, New York 11204:

Bronx	Kings	New York	Queens
Richmond	Nassau		

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 18, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: All Boro Home Care, Inc.
Address: Flushing
County: Queens
Structure: For-Profit Corporation
Application Number: 2547-L

Description of Project:

All Boro Home Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

YWCA of Queens, Inc. d/b/a Y Evergreen Care, a not-for-profit corporation, was previously approved as a home care services agency by the Public Health Council at its March 2, 2007 meeting and subsequently licensed 1467L001.

Through a Purchase and Sale Agreement the applicant proposes to purchase the Licensed Home Care Services Agency currently operated by YWCA of Queens, Inc. d/b/a Y Evergreen Care

The applicant has authorized 200 Shares of stock which are owned as follows:

Yong Ho Lee – 10 Shares

190 shares remain unissued.

The Board of Directors of All Boro Home Care, Inc. is comprised of the following individual:

Yong Ho Lee – Director
President, X-Treme Care, LLC

Affiliations:

- X-Treme Care, LLC (LHCSA)
- Agewell New York, Inc. (MLTCP)
- Cassena at Norwalk (CT – Nursing and Rehab Facility: 2010 - Present)

A search for Yong Ho Lee named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following facilities was performed as part of this review (unless otherwise noted):

- X-Treme Care, LLC (LHCSA)
- Agewell New York, Inc. (MLTCP)
- Cassena at Norwalk (CT – Nursing and Rehab Facility: 2010 - Present)

The information provided by the Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the home care agency has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the State of Connecticut, Department of Public Health, Facility Licensing and Investigation Section has indicated that Cassena at Norwalk holds a current valid license and that all license entities must adhere to a minimum standard dictated by the Public Health Care of the State of Connecticut.

The applicant proposes to serve the residents of the following counties from an office located at 149-06 41st Avenue, 2nd Floor, Flushing, New York 11355:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Occupational Therapy	Physical Therapy	Homemaker	Housekeeper

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 21, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency
Address: Rockaway Beach
County: Queens
Structure: Limited Liability Company
Application Number: 2554-L

Description of Project:

Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency was previously approved as a home care services agency by the Public Health Council at its May 16, 2003 meeting and subsequently licensed 1150L001. At that time the membership of the LLC consisted of Bert Fried and Tividar Marcovici with both individuals owning a 50% membership interest. Subsequently, the agency submitted a Transfer of Ownership Interest Notice in which 9.9% of membership was transferred to Daniel Lifschutz. Therefore, the current membership of this LLC is Bert Fried – 45.05%, Tividar Marcovici – 45.05% and Daniel Lifschutz – 9.9%. The purpose of the application is transfer the remaining 90.9% ownership interest to Mr. Lifschutz

The proposed sole member of Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency is as follows:

Daniel Lifschutz

Director: Overseeing Operations, Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare home Care Agency

Affiliations:

- Kings Adult Care Center (February 2010 – Present)
- Promenade Rehabilitation and Health Care Center (July 2007 – Present)

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

A seven year review was conducted for the following healthcare facilities:

- Kings Adult Care Center (February 2010 – Present)
- Promenade Rehabilitation and Health Care Center (July 2007 – Present)
- Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency (January 27, 2015 – Present)

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Assisted Living has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 214 Beach 96th Street, Rockaway Beach, New York 11693.

Bronx	Nassau	New York	Kings
Queens	Richmond		

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Physical Therapy	Nutrition	Speech-Language Pathology

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Hakuna, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2592-L

Description of Project:

Hakuna, Inc., a Delaware business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Finest Home Care Corp. was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 6, 2012 meeting and subsequently licensed as 1663L001.

The applicant has authorized 10,000,000 shares of stock, which are owned as follows: Kevin Liu owns 1,668,000 shares and the remaining 8,332,000 shares are unissued.

The Board of Directors of Hakuna, Inc. comprises the following individual:

Kevin Liu, MBA, Chairman
Owner/Operator, Hakuna, Inc. (Companion Care Agency, 2014 – Present)

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

The applicant proposes to serve the residents of the following counties from an office located at 550 West 45th Street, #243, New York, New York 10036:

New York	Kings	Queens
Bronx	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: September 3, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Allcare Family Services, Inc.
Address: Buffalo
County: Erie
Structure: For-Profit Corporation
Application Number: 151264-E

Description of Project:

Allcare Family Services, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Allcare Family Services, Inc. was previously approved as a home care services agency by the Public Health Council at its May 23, 1986 meeting and subsequently licensed 0067L001. At that time Joseph LoTempio and Joseph Mosey Jr. each owned 25 shares of stock.

Joseph LoTempio died April 25, 2013 and left his shares of stock to Laura Macy in his Last Will and Testament. Joseph Mosey, Jr. died October 10, 2014 and his shares went to his estate per his Last Will and Testament. The executor of the Estate of Joseph Mosey Jr. advised that they are not interested in staying in the home health care business and proposed that Laura Macy purchase the stock.

The applicant has authorized 200 shares of stock which will be owned as follows:

Laura A. Macy – 50 Shares
Administrator, Officer – Allcare Family Services, Inc.

150 shares of stock remain unissued.

The following individual is the sole member of Board of Directors of Allcare Family Services, Inc.,

Laura A. Macy – President/Secretary/Treasurer
(Previously Disclosed)

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

The applicant proposes to continue to serve the residents of Erie County from an office located at 625 Delaware Avenue Suite 150, Buffalo, New York 14202.

The applicant proposes to continue to provide the following health care services:

Nursing Home Health Aide Personal Care Housekeeper

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 31, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: CDS Monarch, Inc.
Address: Webster
County: Monroe
Structure: Not-For-Profit Corporation
Application Number: 2280-L

Description of Project:

CDS Monarch, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Board of Directors of CDS Monarch, Inc. comprises the following individuals:

Mark S. Peterson, MBA, CFRE, Board Chair/Executive Committee Chair
President/CEO, Greater Rochester Enterprise

Joseph J. Gabriel, Vice Chair/Facilities Committee Chair
Associate Administrator/Director of IT, University of Rochester Medical Center – The Flaum Eye Institute

William Woodard, Treasurer/Finance Committee Chair
CFO, Fibertech Networks

Gregory Gribben, JD, Secretary
Attorney/Partner, Woods, Oviatt, Gilman LLP

Jennifer Carlson, MPA, Program Assessment Committee Chair
Director of Quality Assurance, Finger Lakes Addiction Counseling & Referral Agency

Richard T. Yarmel, JD, Guardianship and Executive Committees
Partner, Harter, Secrest & Emery, LLP

Jerry McCullough, Wolf Foundation Board Chair
General Manager, Ryan Plumbing, Heating, Air Conditioning and Fire Protection, LLC

Dennis Buchan, Member
Retired

Richard H. Ferrari, MBA, Member
Senior Vice President, Relationship Management and Commercial Lending, Wells Fargo Bank N.A.

Claire Kaler, Member
Owner, K2 Communications

Dennis B. Olbrich, MBA, Member
President, Paper & Output Systems Business, Kodak Alaris, Inc.

Daniel Skinner, Member
Assembly Positions, CDS Monarch Vocational Services

Susan Travis, Member
Judicial Assistant, United States Federal Courts, Western District of New York

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Azor Care at Home, Inc. d/b/a Azor Home Care
 Address: New Rochelle
 County: Westchester
 Structure: Not-for-Profit
 Application Number: 2158-L

Description of Project:

Azor Care at Home, Inc. d/b/a Azor Home Care, a not-for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Azor Home Care, Inc., a business corporation, was previously approved as a home care services agency by the Public Health Council at its March 20, 1998 meeting and subsequently licensed as 0587L001 on June 18, 1999. Approval is sought for the conveyance of the interests in Azor Home Care, Inc. including the operations of the Licensed Home Care Services Agency to Azor Care at Home, Inc. All other aspects of the operations will remain the same.

Azor Care at Home, Inc. previously received approval by the Public Health Council for the change of ownership from the Azor Home Care, Inc. to Azor Care at Home, Inc. at the May 8, 2009 Public Health Council meeting under application number 1699L. The applicant did not finalize the approval with the regional office and that application was withdrawn from consideration.

The proposed Board of Directors of Azor Care at Home, Inc. d/b/a Azor Home Care is comprised of the following individuals:

<p>Rita C. Mabli, LNHA, President President/CEO, United Hebrew Geriatric Center</p> <p><u>Affiliations:</u> United Hebrew Geriatric Center (2007 – Present)</p>	<p>Michael R. Rozen, Chairman Retired</p> <p><u>Affiliations:</u> United Hebrew Geriatric Center (2002 – Present)</p>
<p>Malcolm H. Lazarus, Vice Chairman Chairman, Polished Metals Ltd, Inc.</p> <p><u>Affiliations:</u> United Hebrew Geriatric Center (1981 – Present)</p>	<p>Donald Duberstein, Secretary President, The Duberstein Organization, Ltd.</p> <p><u>Affiliations:</u> United Hebrew Geriatric Center (1978 – Present)</p>
<p>Linda Forman, Treasurer Senior Advisor to the President, United Hebrew Geriatric Center</p>	

The Bureau of Professional Credentialing has indicated that the Licensed Nursing Home Administrator associated with this application holds a Nursing Home Administrator license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or their license.

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

The applicant proposes to continue to serve the residents of the following counties from an office located at 391 Pelham Road, New Rochelle, New York 10805:

New York
Bronx

Kings
Richmond

Queens
Westchester

The applicant proposes to continue to provide the following health care services:

Nursing
Physical Therapy

Home Health Aide
Occupational Therapy

Personal Care
Speech-Language Pathology

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

United Hebrew Geriatric Center

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: August 24, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: L. Woerner, Inc.d/b/a HCR/HCR Home Care
Address: Batavia
County: Genesee
Structure: For-Profit Corporation
Application Number: 2606-L

Description of Project:

L. Woerner, Inc. d/b/a HCR/HCR Home Care, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

L. Woerner, Inc. d/b/a HCR was previously approved as a home care services agency by the Public Health Council at its October 3, 2006 meeting and subsequently licensed as 1477L001 and 1477L002.

L. Woerner, Inc. d/b/a HCR requests approval to add Duane Tolander as a new trustee for their Employee Stock Ownership Plan Trust and to update the current status of the corporation's stockholders, officers, board members and trustees. Mr. Tolander would be an independent trustee, in that he will not also be a stockholder, director, officer, or employee of L. Woerner, Inc., thereby removing any possible conflicts of interest with respect to his management and investment decisions for the funds held in the Employee Stock Ownership Plan Trust. Mr. Tolander is also currently a trustee of the Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust, as approved by PHHPC in 2011. The current proposal also updates the current assumed name (d/b/a) of the corporation, by adding a new additional assumed name (d/b/a) HCR Home Care, to the existing assumed name (d/b/a) HCR.

The corporation L. Woerner, Inc., d/b/a HCR / HCR Home Care, is currently authorized 4,000,000 shares of stock, with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)
Louise Woerner – 230,180 shares (9.34%)
Don H. Kollmorgen – 233,824 shares (9.49%)
Lawrence Peckham – 248,236 shares (10.07%)
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner
Chief Executive Officer, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliations: HealthNow New York, Inc., Buffalo
(Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)
Partner / Managing Director, HDH Advisors, LLC,
West Des Moines, Iowa (Financial Advisory
Services / Professional Consulting / Corporate and
Business Valuations / Litigation Support); Trustee,
Bestcare, Inc. (LHCSA) Employee Stock
Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer
(9.34% stockholder)
Disclosed above

Don H. Kollmorgen (9.49% stockholder)
Retired

Lawrence L. Peckham (10.07% stockholder)
Retired

Joseph J. Castiglia, CPA
Retired

Clayton H. Osborne, MSW, LCSW (0.10%
stockholder)
Retired Vice President of Human Resources and
Talent Management, Bausch and Lomb (Vision
Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a
stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN
President / Administrator, L. Woerner, Inc., d/b/a
HCR / HCR Home Care (CHHA, LTHHCP, and
LHCSA)
Affiliation: DePaul Adult Care Communities, Inc.,
Rochester (licensed ACFs/ALPs, in New York
State, North Carolina, and South Carolina) – April
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues
with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW
license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license
of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers,
employers, and health care affiliations revealed no matches on either the New York State
Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider
Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at
211 East Main Street, Batavia, New York 14020:

Genesee
Wyoming

Monroe

Orleans

85 Metro Park, Rochester, New York 14623:

Monroe
Orleans

Livingston
Wayne

Ontario

The applicant proposes to provide the following health care services:

Nursing
Physical Therapy
Speech-Language Pathology
Medical Equipment and
Supplies

Home Health Aide
Occupational Therapy
Medical Social Services

Personal Care
Respiratory Therapy
Nutrition

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

L. Woerner, Inc., d/b/a HCR / HCR Home Care
Bestcare, Inc. (2011 – Present)
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)
DePaul Adult Care Communities, Inc. (2009 – Present)
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are

now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: August 10, 2015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 8th day of October, 2015, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

<u>NUMBER:</u>	<u>FACILITY:</u>
1909 L	MedPro Homecare Agency, Inc. (Queens, New York, Kings, Richmond, Bronx, and Nassau Counties)
2042 L	Touch of Love Homecare Agency Inc. (Bronx, Richmond, Kings, New York, Queens, and Nassau Counties)
2059 L	Victory Home Care Services, Inc. (Suffolk and Nassau Counties)
2133 L	Theresa Home Care, Inc. (New York, Kings, Bronx, Queens, Richmond, and Nassau Counties)

- 2184 L Kirenaga Home Care Brooklyn, Inc.
(New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
- 2186 L Kirenaga Home Care Queens, Inc.
(New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)
- 2193 L Imo's Nursing Agency, Inc.
(Queens, New York, Kings, Richmond, and Bronx Counties)
- 2260 L ABR Homecare of NY, Inc.
(Suffolk and Nassau Counties)
- 2280 L CDS Monarch, Inc.
(Monroe and Wayne Counties)
- 2293 L Loyal Home Care, Inc.
(Kings, Bronx, Queens, Richmond and New York Counties)
- 2362 L HT&T Corporation d/b/a HT&T Home Care
(Queens, Kings, Brooklyn, Richmond, New York and Nassau Counties)
- 2381 L Sundance Home Care, Inc.
(Kings, Queens, New York, Bronx, Richmond, and Nassau Counties)
- 2405 L Queens Home Care, Inc.
d/b/a Home Instead Senior Care Franchise #765
(Queens, New York, Bronx, Richmond, Kings and Nassau Counties)
- 2414 L Collins Anyanwu-Mueller
d/b/a Angelic Touching Home Health Care Agency
(Westchester and Rockland Counties)
- 2437 L Artful Home Care, Inc.
(Suffolk and Nassau Counties)
- 2452 L Companion Angels Home Care Solutions, LLC
(New York, Queens, Bronx, Richmond, and Kings Counties)

- 2456 L America Homecare Agency Services Corporation
(Schenectady, Rensselaer, Warren, Saratoga,
Schoharie, Albany and Washington Counties)
- 2459 L Family First Home Companions of New York, Inc.
(Suffolk, Nassau, and Queens Counties)
- 2467 L 1st Home Care of NY Corp.
(Queens, New York, Bronx, Richmond, Kings and
Nassau Counties)
- 2469 L Zenith Home Care of NY, LLC
(Westchester, Putnam, and Bronx Counties)
- 2474 L Acute Care Experts of New York, Inc.
(Nassau, Rockland, Suffolk, Sullivan, Dutchess, Ulster,
Orange, Westchester, and Putnam Counties)
- 2475 L SR Miracle Care Agency, Inc.
(Bronx, Queens, New York, Richmond, Kings, and
Westchester Counties)
- 2485 L Qualycare Home Care
(Bronx, New York, and Queens Counties)
- 2490 L ZaQia Chaplin, LLC
d/b/a Trusting Hands Homecare Agency
(Nassau, Suffolk, and Queens Counties)
- 2492 L Trivium of New York, LLC
Queens, Bronx, Kings, Richmond, New York and
Nassau Counties)
- 2493 L Brookside Home Care Inc.
(Nassau, Suffolk and Queens Counties)
- 2503 L L. Woerner, Inc. d/b/a HCR/HCR Home Care
(Schoharie, Otsego, and Delaware Counties)
- 2504 L L. Woerner, Inc. d/b/a HCR/HCR Home Care
(Clinton, Hamilton, St. Lawrence, Franklin, Warren,
Essex and Washington Counties)

- 2505 L L. Woerner, Inc. d/b/a HCR/HCR Home Care
(Madison, Oswego, Onondaga, Jefferson, Cayuga and Cortland Counties)
- 2521 L GM Family Resources, Inc.
(Richmond, New York, Kings, Bronx, Queens, and Nassau Counties)
- 2546 L Edira Family Home Care LLC
(Queens, Bronx, Kings, Richmond, New York and Nassau Counties)
- 2573 L Exceptional Home Care Services, Inc.
(Bronx, Richmond, Kings, New York and Queens Counties)
- 2300 L Albemarle Terrace, Inc. d/b/a Terrace Home Care
(Bronx, Queens, Kings, New York and Richmond Counties)
- 2605 L Samuel Konig d/b/a Park Inn Home Care
(Queens, New York, Bronx, Richmond, Kings and Nassau Counties)
- 2158 L Azor Care at Home, Inc. d/b/a Azor Home Care
(New York, Bronx, Kings, Richmond, Queens, and Westchester Counties)
- 2188 L Marquis Home Care, Inc.
(Queens, Bronx, Kings, Richmond, New York and Westchester Counties)
- 2436 L Paramount Homecare Agency, Inc.
(Kings, New York, Queens, Richmond, Bronx, and Nassau Counties)
- 2441 L Kirenaga Home Care Manhattan, Inc.
d/b/a Synergy Homecare
(New York, Kings, Bronx, Richmond, Queens, and Westchester Counties)
- 2501 L CareGuardian, Inc. d/b/a Hometeam
(New York, Kings, Queens, Bronx, and Richmond Counties)

- 2542 L Better Choice Home Care, Inc.
(Bronx, Richmond, Kings, Nassau, New York, and
Queens Counties)
- 2547 L All Boro Home Care, Inc.
(Bronx, Richmond, Kings, Westchester, New York and
Queens Counties)
- 2554 L Surfside Manor Home for Adults Licensed Home Care
Services Agency, LLC d/b/a ExtraCare Home Care
Agency
(Bronx, Queens, Nassau, Richmond, New York, and
Kings Counties)
- 2592 L Hakuna, Inc.
(New York, Bronx, Kings, Richmond, Queens, and
Westchester Counties)
- 2606 L L Woerner, Inc. d/b/a HCR/HCR Home Care
(Genesee, Wyoming, Monroe, Orleans, Orleans,
Livingston, Wayne, and Ontario Counties)
- 151264 E Allcare Family Services, Inc.
(Erie County)



STATE OF NEW YORK - DEPARTMENT OF HEALTH

M E M O R A N D U M

TO: Public Health and Health Planning Council

FROM: Richard Zahnleuter, General Counsel

DATE: September 11, 2015

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. This not-for-profit corporation seeks approval to change its name to "Housing Works Community Healthcare, Inc." The corporation also seeks approval to include additional purposes. Public Health and Health Planning Council approval for the certificate of amendment is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (2).

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments



DELANEY CORPORATE SERVICES, LTD.

99 Washington Ave., Ste. 805A, Albany, NY 12210
800-717-2810 • 518-465-9242 • 518-465-7883 (fax)
nick@delaneycorporate.com

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July 8, 2015

STATE OF NEW YORK DEPARTMENT OF HEALTH
Public Health and Health Planning Council
Corning Tower, 24th Fl.
The Governor Nelson A. Rockefeller Empire State Plaza
Albany, New York 12237
518-473-3233

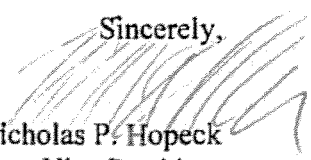
RE: HOUSING WORKS HEALTH SERVICES III, INC.

To whom this may concern:

I hereby respectfully request your consent to the filing of the attached certificate of amendment for the above reference NYS Not-for-Profit Corporation. A copy of all charter documents are attached from the New York Secretary of State.

If you have any questions or require further information, please do not hesitate to contact me. Otherwise, please issue your consent to the undersigned at your earliest convenience.

Sincerely,


Nicholas P. Hopeck
Vice President

RESTATED CERTIFICATE OF INCORPORATION
OF
HOUSING WORKS HEALTH SERVICES III, INC.

(Under Section 805 of the Not-for-Profit Corporation Law)

The undersigned, being the Secretary of Housing Works Health Services III, Inc., in accordance with Section 805 of the New York Not-for-Profit Corporation Law, does hereby certify:

1. The name of the corporation is Housing Works Health Services III, Inc.
2. The Certificate of Incorporation of Housing Works Health Services III, Inc. was filed by the Department of State on the 4th day of April, 1995.
3. The Certificate of Incorporation as now in full force and effect is hereby amended to effect the following amendments:

Article **FIRST** of the Certificate of Incorporation, setting forth the name of the corporation, is hereby amended to read, in its entirety, as follows

FIRST: The name of the corporation is Housing Works Community Healthcare, Inc. (hereinafter referred to as the "Corporation").

Article **FOURTH** of the Certificate of Incorporation, setting forth the purposes of the corporation, is hereby amended to read, in its entirety, as follows:

FOURTH: The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any

low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases and sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with applicable law;

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(f) operating 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 understands that it may not establish any facility or program without first obtaining such operating certificate.

Article **FIFTH**, subsection (a) of the Certificate of Incorporation, setting forth the powers and authorities of the corporation in furtherance of its corporate purposes, is hereby amended to read as follows:

FIFTH

...(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal or mixed, by private or public appeal, by advertisement or by any other lawful means for any corporate purpose;

Article **SEVENTH**, subsection (d) of the Certificate of Incorporation, regarding Internal Revenue Code requirements, is hereby amended to read as follows:

SEVENTH

...(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

Article **EIGHTH**, setting forth the principal office of the corporation, is hereby amended to read as follows:

EIGHTH: The principal office of the Corporation is to be located in Kings County, State of New York.

Article **TENTH**, setting forth the initial Board of Directors, is hereby deleted, and the Certificate of Incorporation is hereby renumbered to reflect such deletion.

Article **ELEVENTH**, setting forth the address of the corporation, is hereby renumbered and amended to read as follows:

TENTH: The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Community Healthcare, Inc.
57 Willoughby St.
Brooklyn, NY 11201

6. The text of the Certificate of Incorporation is hereby restated to set forth its entire text, as amended, as follows:

FIRST: The name of the corporation is Housing Works Community Healthcare, Inc. (hereinafter referred to as the "**Corporation**").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law having the purposes set forth in Article Fourth below.

THIRD: Pursuant to Section 601 of the Not-for-Profit Corporation Law, the Corporation shall have one class of members, the sole member of which shall be Housing Works, Inc. (hereinafter referred to as "**Housing Works**"), a New York corporation organized under the Not-for-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "**Code**"; all references

herein to Sections of the Code shall be to Sections thereof, as amended from time to time, and to corresponding provisions of subsequent United States Internal Revenue laws).

FOURTH: The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases and sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with applicable law;

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(f) operating 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 understands that it may not establish any facility or program without first obtaining such operating certificate.

FIFTH: In furtherance, but not in limitation, of the purposes set forth in Article Fourth above, the Corporation shall have the power and authority to do the following:

(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal or mixed, by private or public appeal, by advertisement or by any other lawful means for any corporate purpose;

(b) receive, own, repair, administer and maintain, as applicable, money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, received by grant, contribution, donation, gift, deed, bequest, devise or loan from any source, private, public or governmental, and otherwise to acquire money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, and to own, hold, repair, invest, lease, loan, expend, contribute, use, sell, transfer, pledge, hypothecate, encumber, mortgage, grant a security interest in or otherwise dispose of or deal with, as applicable, any and all such money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights or services so acquired for any corporate purpose;

(c) aid, support and assist by gifts, contributions or otherwise, other domestic or foreign corporations, community chests, funds and foundations that are organized and operated exclusively for charitable, educational, religious, scientific, literary or cultural purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and which do not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(d) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would require the approval or consent of the State of New York or any

official, department, agency or instrumentality thereof as required by Section 404 of the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder.

(b) Nothing in this Certificate of Incorporation shall authorize the Corporation to engage in any activity which is not in furtherance of the purposes set forth in Article Fourth above.

(c) Notwithstanding anything in this Certificate of Incorporation to the contrary, whenever the Corporation proposes to lease premises in which the operation of the Center is to be conducted, it shall do so in accordance with the provisions of Article 28 of the Public Health Law and the relevant regulations in effect from time to time thereunder, and in particular, insofar as required by any such regulations, any such lease agreement shall include the following language:

“The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in Article 28 of the Public Health Law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossession proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before the expiration of the lease.

Upon receipt of notice from landlord of his intent to exercise his right of reentry or upon the service of process in dispossession proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, of the receipt of such notice or service of such process or that the lease is about to expire.”

or other such language, if any, as may be required by applicable law to be contained in any such lease agreement.

(d) The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision of the Commissioner to the extent required by provisions of Article 28-B of the Public Health Law and the relevant regulations in effect from time to time thereunder.

SEVENTH: (a) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable, scientific and educational purposes as specified in Section 501(c)(3) of the Code and the Corporation shall not carry on any activity not permitted to be carried on (i) by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code or (ii) by a corporation the contributions, transfers, or gifts to which are deductible under Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Code.

(b) The Corporation is not formed for pecuniary profit or for financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual, except to the extent permitted by the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets of the Corporation upon 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 in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene (including the publishing or distributing of statements) in, any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

EIGHTH: The principal office of the Corporation is to be located in Kings County, State of New York.

NINTH: The number of Directors shall be as specified in the by-laws of the Corporation, but in no event shall there be fewer than three Directors.

TENTH: The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Community Healthcare, Inc.
57 Willoughby St.
Brooklyn, NY 11201

ELEVENTH: In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed, subject to the approval of a Justice of the Supreme Court of the State of New York, but only to one or more organizations as shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Code.

TWELFTH: The Corporation's existence shall be perpetual.

7. The changes included in this Restated Certificate of Incorporation and the restatement of this Certificate of Incorporation were authorized by the sole member of the Corporation.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, this restated certificate of incorporation has been signed, and the statements made herein are affirmed as true, under the penalties of perjury, this 24th day of June , 2015.



Daronne Hudson
Secretary

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 July 8, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

F 950404000599

CERTIFICATE OF INCORPORATION

OF

HOUSING WORKS HEALTH SERVICES III, INC.

Under Section 402 of the Not-for-Profit Corporation Law
of the State of New York

I, the undersigned, a natural person eighteen years of age or older, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York, as amended (hereinafter referred to as the "Not-for-Profit Corporation Law"), do hereby certify as follows:

FIRST: The name of the corporation is Housing Works Health Services III, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law having the purposes set forth in Article Fourth below.

THIRD: Pursuant to Section 601 of the Not-for-Profit Corporation Law, the Corporation shall have one class of members, the sole member of which shall be Housing Works, Inc. (hereinafter referred to as "Housing Works"), a New York corporation organized under the Not-for-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code");

all references herein to Sections of the Code shall be to Sections thereof, as amended from time to time, and to corresponding provisions of subsequent United States Internal Revenue laws).

FOURTH: The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include, but are not limited to, the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-

disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases, sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with; and

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public.

FIFTH: In furtherance, but not in limitation, of the purposes set forth in Article Fourth above, the Corporation shall have the power and authority to do the following:

(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal and mixed, by private or public appeal, by

advertisement or by any other lawful means for any corporate purpose;

(b) receive, own, repair, administer and maintain, as applicable, money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, received by grant, contribution, donation, gift, deed, bequest, devise or loan from any source, private, public or governmental, and otherwise to acquire money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description; and to own, hold, repair, invest, lease, loan, expend, contribute, use, sell, transfer, pledge, hypothecate, encumber, mortgage, grant a security interest in or otherwise dispose of or deal with, as applicable, any and all such money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights or services so acquired for any corporate purpose;

(c) aid, support and assist by gifts, contributions or otherwise, other domestic or foreign corporations, community chests, funds and foundations that are organized and operated exclusively for charitable, educational, religious, scientific, literary or cultural purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is

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carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(b) of the Code), and which do not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(d) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would

carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(b) of the Code), and which do not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(d) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would

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require the approval or consent of the State of New York or any official, department, agency or instrumentality thereof as required by Section 404 of the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder.

(b) Nothing in this Certificate of Incorporation shall authorize the Corporation to engage in any activity which is not in furtherance of the purposes set forth in Article Fourth above.

(c) Notwithstanding anything in this Certificate of Incorporation to the contrary, whenever the Corporation proposes to lease premises in which the operation of the Center is to be conducted, it shall do so in accordance with the provisions of Article 28 of the Public Health Law and the relevant regulations in effect from time to time thereunder, and in particular, insofar as required by any such regulations, any such lease agreement shall include the following language:

"The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in Article 28 of the Public Health Law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossession proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before the expiration of the lease.

Upon receipt of notice from landlord of his intent to exercise his right of reentry or upon the service of process in dispossession proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified

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mail the New York State Department of Health,
Tower Building, Empire State Plaza, Albany, NY
12237, of the receipt of such notice or service of
such process or that the lease is about to
expire."

or such other language, if any, as may be required by applicable
law to be contained in any such lease agreement.

(d) The Corporation has been organized exclusively to
serve a public purpose and it shall be and remain subject to the
supervision of the Commissioner to the extent required by the
provisions of Article 28-B of the Public Health Law and the
relevant regulations in effect from time to time thereunder.

SEVENTH: (a) Notwithstanding any other provision of
this Certificate of Incorporation, the Corporation is organized
exclusively for charitable, scientific and educational purposes
as specified in Section 501(c)(3) of the Code and the Corporation
shall not carry on any activity not permitted to be carried on
(i) by a corporation exempt from Federal income taxation under
Section 501(c)(3) of the Code or (ii) by a corporation the
contributions, transfers, or gifts to which are deductible under
Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Code.

(b) The Corporation is not formed for pecuniary profit
or for financial gain and no part of its assets, income or profit
shall be distributed to or inure to the benefit of any private
individual, except to the extent permitted by the Not-for-Profit
Corporation Law and the Public Health Law and the relevant
regulations in effect from time to time thereunder. Reasonable
compensation, however, may be paid for services rendered to or

for the Corporation in furtherance of one or more of its purposes. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets of the Corporation upon 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 in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene (including the publishing or distributing of statements) in, any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945(d) of the Code.

EIGHTH: The principal office of the Corporation is to be located in the County and State of New York.

NINTH: The number of Directors shall be as specified in the by-laws of the Corporation, but in no event shall there be fewer than three Directors.

TENTH: The names and addresses of the persons constituting the initial Board of Directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Mindy Fullilove, M.D.	715 Park Avenue Hoboken, New Jersey 07030
Dennis de León, Esq.	337 West 14th St. #51 New York, New York 10014
Valerie Jiménez	262 East 2d St. Apt. 1B New York, New York 10009
Teri Hagan	239 East 2d St. Apt. #2 New York, New York 10009

ELEVENTH: The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation

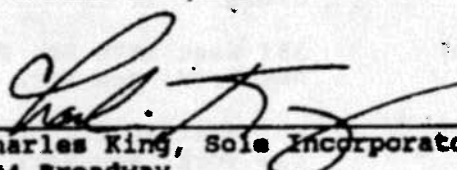
served upon him is:

Housing Works Health Services III, Inc.
594 Broadway
7th Floor, Suite 700
New York, New York 10012
Attn: Charles King

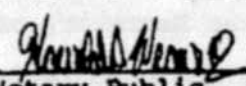
TWELFTH: In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed, subject to the approval of a Justice of the Supreme Court of the State of New York, but only to one or more organizations as shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Code.

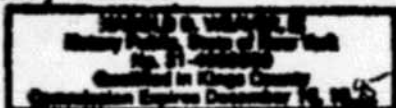
THIRTEENTH: The Corporation's existence shall terminate on January 20, 1998.

IN WITNESS WHEREOF, I, CHARLES KING, as sole incorporator, hereby subscribe and affirm, under penalties of perjury, this Certificate of Incorporation as true this 15th day of February, 1995.


Charles King, Sole Incorporator
594 Broadway
7th Floor, Suite 700
New York, NY 10012

Subscribed and Sworn to this
15th day of February, 1995


Notary Public





STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

March 23, 1995

Mr. Charles King
Co-Executive Director
Housing Works, Inc.
594 Broadway, Suite 700
New York, NY 10012

Re: Application No. 941006 - Housing Works Health Services III,
Inc. d/b/a Housing Works East New York HIV/AIDS Adult Day
Health Care Program (Kings Co.)

Dear Mr. King:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Housing Works Health Services III, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of January 20, 1995.

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.

To complete the requirements for certification approval, please contact the New York City Area Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 5th Floor, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, or (212) 613-4258 within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt
Executive Secretary



STATE OF NEW YORK
DEPARTMENT OF HEALTH
COWING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

March 23, 1995

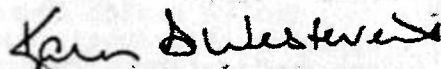
Mr. Charles King
Co-Executive Director
Housing Works, Inc.
594 Broadway, Suite 700
New York, NY 10012

Re: Certificate of Incorporation of Housing Works Health
Services III, Inc.

Dear Mr. King:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of January, 1995, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Housing Works Health Services III, Inc., dated February 15, 1995, for a limited life duration expiring on January 20, 1998.

Sincerely,


Karen S. Westervelt
Executive Secretary

12

F 950404000 599

CERTIFICATE OF INCORPORATION

OF

HOUSING WORKS HEALTH SERVICES III, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION
LAW OF THE STATE OF NEW YORK

APR 4 5 12 PM '95

FILED

BILLED
NCR-26

FILED BY:
HOUSING WORKS, INC.
594 BROADWAY
NEW YORK, N.Y. 10012

1-00
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 04 1995
TAX \$ 0
BY: JW
NEW YORK

APR 3 12 09 PM '95

13

950404000639

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 July 8, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

PH-32

CERTIFICATE OF AMENDMENT

OF THE CERTIFICATE OF INCORPORATION

PH-32

OF

Housing Works Health Services III, Inc.

F 950804000 462

Under Section 803 of the
Not-For-Profit Corporation Law

We, the undersigned, Charles King and Craig Stier, being respectively the Vice-President and Secretary of Housing Works Health Services III, Inc. (hereinafter referred to as the "Corporation"), hereby certify:

1. The name of the Corporation under which it was originally incorporated is Housing Works Health Services III, Inc.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on the 4th day of April, 1995 and the law under which it was formed is Section 402 of the New York Not-For-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the New York Not-for-Profit Corporation law and is a Type B corporation under Section 201 of the New York Not-For-Profit Corporation Law. Pursuant to Section 601 of the Not-For-Profit Corporation Law, the Corporation has one class of member, the sole member of which is Housing Works, Inc., a New York corporation organized under the Not-For-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 501(a) (1) of the Internal Revenue Code of 1986, as amended.

4. (a) Article THIRTEENTH of the Corporation's Certificate of Incorporation is amended to extend the existence of the Corporation from terminating on January 20, 1998 to perpetual existence.

(b) To effect the foregoing, Article THIRTEENTH of the Corporation's Certificate of Incorporation is amended to read in its entirety as follows:

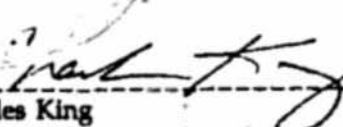
THIRTEENTH: The Corporation's existence shall be perpetual.

(c) this amendment was authorized by the unanimous vote of the Board of Directors of the Corporation present at a duly convened meeting of the Board of Directors of the Corporation held on July 26, 1995 at which all of the members of the Board of Directors of the Corporation were present.

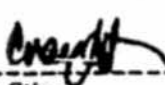
5. The Secretary of State is designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Health Services III, Inc.
594 Broadway
7th Floor, Suite 7000
New York, New York 10012
Attn: Charles King

INN WITNESS WHEREOF, the undersigned have executed this
Certificate of Amendment on the 27th day of July, 1995 and affirm the statements
contained herein as true under penalties of perjury.



Charles King
Vice-President



Craig Stier
Secretary

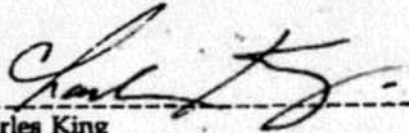
3

VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK)

Charles King, being duly sworn, deposes and says that he is the Vice-President of Housing Works Health Services III, Inc., and that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. and knows the contents thereof, and that the contents thereof are, of his own personal knowledge, true and correct, except as to statements based upon information and belief, and as to those matters, he believes them to be true.

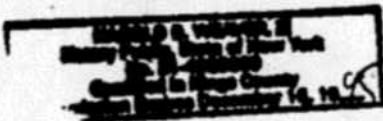


Charles King
Vice-President

Sworn to before me this
27th day of July, 1995



Notary Public

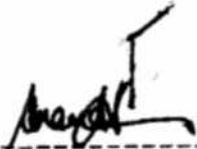


VERIFICATION

STATE OF NEW YORK)

COUNTY OF NEW YORK)

Craig Stier, being duly sworn, deposes and says that he is the Secretary of Housing Works Health Services III, Inc., and that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. and knows the contents thereof, and that the contents thereof are, of his own personal knowledge, true and correct, except as to statements based upon information and belief, and as to those matters, he believes them to be true.

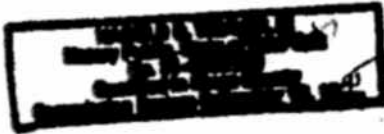


Craig Stier
Secretary

Sworn to before me this
27th day of July, 1995



Notary Public





STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

August 4, 1995

Mr. Charles King
Co-Executive Director
Housing Works, Inc.
594 Broadway, Suite 700
New York, NY 10012

Re: Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc.

Dear Mr. King:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of January, 1995, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of Housing Works Health Services III, Inc., dated July 27, 1995.

Sincerely,

Karen S. Westervelt
Executive Secretary

PH-32

GERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

F 950 80 40 00 462

HOUSING WORKS HEALTH SERVICES III, INC.

Under Section 803 of the
Not-For-Profit Corporation Law

ICC

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED AUG 04 1995

TAX S

BY:

*SAC
New York*

Aug 4 1 50 PM '95
Aug 4 1 52 PM '95

Craig S. Stier, Esq.
Housing Works, Inc.
594 Broadway - suite 700
New York, NY 10012
(212)966-0466

BILLED

(7)

950 80 40 00 487

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 July 8, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

f030506000/78

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
41 State Street
Albany, NY 12231

CERTIFICATE OF CHANGE

Housing Works Health ^{OF} Services III, Inc.
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for Profit Corporation Law

FIRST: The name of the corporation is: Housing Works Health Services III, Inc.

If the name of the corporation has been changed, the name under which it was formed is: _____

SECOND: The certificate of incorporation was filed by the Department of State on: 4/4/95

THIRD: The change(s) effected hereby are: (Check appropriate box(es))

The county location, within this state, in which the office of the corporation is located, is changed to: _____

The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to: 320 West 134th Street 4th Floor
new York, NY 10014

The corporation hereby: (Check one) (N/A)
- Designates _____ as its registered agent upon whom process against the corporation may be served.

The street address of the registered agent is: _____

Changes the designation of its registered agent to: _____
The street address of the registered agent is: _____

Changes the address of its registered agent to: _____

Revokes the authority of its registered agent.

f 030506000/75

FOURTH: The change was authorized by the board of directors.

[Signature]
(Signature)

Keith Cylan - Co-President / CEO
(Name and Capacity of Signer)

CERTIFICATE OF CHANGE

OF

Housing Works Health Services III, Inc.
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name Kris Cavanaugh
Address 320 West 13th Street 4th Floor
City, State and Zip Code NY, NY 10014

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$20 filing fee.

STATE OF NEW YORK
DEPARTMENT OF STATE

For Office Use Only

MAY 06 2003

FILED
TAXS
BY: [Signature]

NEWY

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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Restated Certificate of Incorporation of Housing Works Health Services III, Inc. dated June 24, 2015.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council
FROM: Richard J. Zahnleuter,  Acting General Counsel
DATE: September 10, 2015
SUBJECT: Proposed Name Change of Samaritan Village, Inc.

Samaritan Village, Inc. requests Public Health and Health Planning Council approval of its proposed name change to Samaritan Daytop Village, Inc. in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law.

Attached are the following with regard to this matter:

1. Letter dated August 13, 2015, from the applicant's counsel, requesting Public Health and Health Planning Council approval of the proposed name change.
2. Proposed Certificate of Amendment of the applicant's Certificate of Incorporation setting forth the proposed name change.
3. Existing Certificate of Incorporation and amendments thereto.

The proposed Certificate of Amendment is in legally acceptable form.

Tricia A. Asaro
518-689-1400
asarot@gtlaw.com

August 13, 2015

VIA E-MAIL

Colleen Leonard
NYS Department of Health
Corning Tower, Room 1805
Albany, New York 12237
colleen.leonard@health.ny.gov

Re: Proposed Name Change of Samaritan Village, Inc.

Dear Ms. Leonard:

I am writing to follow up on my August 12, 2015 telephone conversation with Michael Stone, Barbara Del Cogliano, Keith Servis, and Mark Furnish of the Department of Health ("DOH"), and Mark Boss of the Office of Alcoholism and Substance Abuse Services ("OASAS"), during which the topic of Samaritan Village, Inc.'s proposed name change to Samaritan Daytop Village, Inc. was discussed.

During the course of the conversation, the participants came to the conclusion that Samaritan Village's proposed name change requires approval of the Public Health and Health Planning Council ("PHHPC") pursuant to Sections 404 and 804 of the New York Not-for-Profit Corporation Law. Accordingly, I have attached hereto as Exhibit A, for the PHHPC's consideration and approval, a proposed certificate of amendment to Samaritan Village's Certificate of Incorporation to change the corporation's name to "Samaritan Daytop Village, Inc." I have also attached Samaritan Village's existing Certificate of Incorporation, with all prior amendments, as Exhibit B.

Due to the time sensitivity of this request, we respectfully request that the amendment be presented for consideration at the September 24, 2015 PHHPC Committee meeting and the October 8, 2015 full Council meeting. Please let me know as soon as possible if there is anything further that you need in order for the Department or PHHPC to consider and approve this name change amendment within that timeframe.

Very truly yours,

GREENBERG TRAUIG, LLP



Tricia A. Asaro

ALBANY
AMSTERDAM
ATLANTA
AUSTIN
BOCA RATON
BOSTON
CHICAGO
DALLAS
DELAWARE
DENVER
FORT LAUDERDALE
HOUSTON
LAS VEGAS
LONDON*
LOS ANGELES
MEXICO CITY*
MIAMI
MILAN*
NEW JERSEY
NEW YORK
NORTHERN VIRGINIA
ORANGE COUNTY
ORLANDO
PHILADELPHIA
PHOENIX
ROME*
SACRAMENTO
SAN FRANCISCO
SEOUL*
SHANGHAI
SILICON VALLEY
TALLAHASSEE
TAMPA
TEL AVIV*
WARSAW
WASHINGTON, D.C.
WESTCHESTER COUNTY
WEST PALM BEACH
*OPERATES AS GREENBERG TRAUIG MAHER LLP
*OPERATES AS GREENBERG TRAUIG, S.C.
STRATEGIC ALLIANCE
*OPERATES AS GREENBERG TRAUIG LLP FOREIGN LEGAL CONSULTANT OFFICE
*A BRANCH OF GREENBERG TRAUIG, P.A. FLORIDA, USA
*OPERATES AS GREENBERG TRAUIG GRZESIAK SPC

Colleen Leonard
August 13, 2015

BMF/TAA/map
Attachments

cc: Mr. Mark Furnish (via email)
Mr. Mark Boss (via email)
Ms. Barbara Del Cogliano (via email)
Mr. Keith Servis (via email)

New York State
Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

Samaritan Village, Inc.

(Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

Samaritan Village, Inc.

If the name of the corporation has been changed, the name under which it was formed is

SECOND: The certificate of incorporation was filed by the Department of State on
December 29, 1981.

THIRD: The law the corporation was formed under is

Section 402 of the Not-for-Profit Corporation Law of the State of New York.

FOURTH: The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of
Section 102 of the Not-for-Profit Corporation Law.

FIFTH: The certificate of incorporation is amended as follows:

Paragraph FIRST of the Certificate of Incorporation regarding
the name of the Corporation

is hereby [check the appropriate box] added amended to read in its entirety as follows:

"FIRST: The name of the Corporation is Samaritan Daytop Village, Inc."

SIXTH: The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is

Samaritan Daytop Village, Inc.
138-02 Queens Boulevard
Briarwood, New York, 11435

SEVENTH: The certificate of amendment was authorized by *(Check the appropriate box)*

- a vote of a majority of the members at a meeting.
- the unanimous written consent of the members entitled to vote thereon.
- a vote of a majority of the entire board of directors. The corporation has no members.



(Signature)

Chief Operating Officer

(Capacity of Signer)

Doug Apple

(Print or Type Signer's Name)

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

Samaritan Village, Inc.

(Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name Benjamin M. Friedman, Esq.

Address 54 State Street, 6th Floor

City, State and Zip Code Albany, New York 12207

NOTE: The certificate must be submitted with a \$30 filing fee. This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.

For Office Use Only



The University of the State of New York

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 SAMARITAN VILLAGE, 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 6th day of November, 1951.

Gordon M. Ambrose
Commissioner of Education

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 7 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.

CERTIFICATE OF INCORPORATION OF

SAMARITAN VILLAGE, INC.

Under Section 402 of the Not-For-Profit
Corporation Law

The undersigned hereby certify:

FIRST: The name of the Corporation is SAMARITAN VILLAGE, INC.

SECOND: The Corporation is a Corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation is distributable to, or inures to the benefit of its members, directors or officers or any private person except to the extent permissible under the Not-For-Profit Corporation Law.

THIRD: The purposes for which the Corporation is formed are:

To establish, maintain, and operate programs and facilities for the care, education and treatment of persons who because of drug dependency or other mental, physical or emotional conditions cannot be cared for, educated or treated in regular public or private programs, including, but not limited to, the operation of "drug-free" residential facilities, residential facilities offering a methadone to abstinence rehabilitation program, and ambulatory and day care programs for the treatment of drug addicts, drug abusers and others;

To operate a diagnostic and treatment center, a methadone clinic, under the medical supervision of a physician for the care, treatment and rehabilitation of heroin addicts and to render such other services pursuant to Articles 28 and 33 of the Public Health Law necessary to carry out such care, treatment and rehabilitation;

To operate a substance abuse program, providing substance abuse services 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, which shall in accordance therewith include, but not be limited to, the power to provide intervention, prevention, diagnostic testing, detoxification, chemotherapy, counseling, vocational remediation, educational remediation, referral and other necessary services. Such services may be provided in either residential or non-residential setting;

To provide information as to narcotics addiction and abuse;

To stimulate research and community concern about drug dependency, emotional and mental illness;

To provide counseling service to all within its bounds who are in need of help, guidance or some form of care;

To provide a place or places where such persons may receive opportunities for personal counseling, social and recreational activities;

To solicit and administer funds, grants-in-aid and

donations of real and personal property and apply the principal and income to corporate purposes;

To finance and plan to do all acts incidental to the execution of therapeutic programs for narcotic addicts;

In furtherance of the above-mentioned purposes, the Corporation, in addition to the powers granted under the laws of the State of New York, shall have the following powers:

a) To solicit donations of property, and administer gifts, legacies, bequests, devises, whether real or personal, of any sort or nature without limitation as to amount or value, and to use, apply, employ, expend, disburse and/or donate the income and/or principal thereof.

b) To receive and maintain a fund or funds, to have, control and manage such fund or funds, change the investments thereof, to invest and reinvest the same and the proceeds thereof and to collect and receive the income and profits thereof and therefrom.

c) To voluntarily aid and/or assist institutions, organizations, and governmental bodies, the activities of which shall be such as to further, accomplish, foster or attain any of the purposes for which the Corporation is organized, including, without limiting the foregoing, the acquisition of property and the making of such property and any improvements thereto available to any such institution, organization or governmental body with or without charge.

d) To acquire, purchase, sell, hold title, lease, improve, maintain, manager, operate, conduct, control,

supervise, direct, fit out, license the use of and generally deal in any manner in and with any and all real and personal property.

e) To borrow money, and, from time to time, to make, accept, endorse, execute and issue bonds, debentures, promissory notes, bills of exchange or other obligations.

f) To make and adopt by-laws, and rules and regulations for the admission, suspension and expulsion of the members of the Corporation, and for their government, and for the establishment of one or more classes of membership, for the collection of fees and dues, for the election and appointment of the directors and officers of the Corporation, and the definition of their duties, and for the safekeeping and protection of the property and funds of the Corporation, and in general to regulate, manage and preserve the property and interests of the Corporation, and from time to time to alter, repeal, rescind or vary such by-laws, rules and regulations, or any of them.

g) Either directly to worthy or needy individuals or indirectly alone or in conjunction or cooperation with other whether such others be persons or organizations of any sort or nature, such as firms, associations, trusts, syndicates, institutions, agencies, corporations or government bureaus, departments or agencies to do any and all lawful acts and things, including the making and carrying out of any contract, and to engage in any and all lawful activities which may be necessary, useful, suitable,

desirable and proper to the fostering or attainment of any or all of the foregoing purposes and powers.

Nothing herein contained shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law Section 404(b-t).

FOURTH: No part of the activities of the Corporation shall consist of carrying on 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.

FIFTH: In the event of dissolution, all of the remaining assets and property of the corporation shall after necessary expenses thereof be distributed to another organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws, or to the Federal government, or state or local government for a public purpose.

SIXTH: Any person who shall be made a party to any action, suit or proceeding by reason of the facts that he or she, his or her testator or testatrix or intestate is or was a director, officer, or employee of the Corporation or of any corporation which he served as such at the request of the Corporation, shall be indemnified by the Corporation against the reasonable expenses, including attorneys fees, actually

and necessarily incurred by him or her in connection with the defense of such action; suit or proceeding, or in connection with any appeal in such action, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, director or employee is liable for negligence or misconduct in the performance of the duties as director. Indemnification shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled apart from this provision.

SEVENTH: The Corporation is a Type B corporation under Section 20d of the Not-For-Profit Corporation Law.

EIGHTH: The principal office of the Corporation is to be located in the City and State of New York, County of Queens.

NINTH: The territory in which the operations of the Corporation are principally to be conducted is the United States of America.

TENTH: The number of directors shall not be less than three and not more than twenty-five.

ELEVENTH: The names and places of residence of the persons to be directors until its first annual meeting are as follows:

<u>NAME</u>	<u>PLACE OF RESIDENCE</u>
MALLACE E. LEINBEARDT	105 Wheatley Road Brooklyn, New York 11545
GARRY LISCHIN	123-60 83 Avenue Kew Gardens, New York 11415
AUDREY BROOKNER	84-51 Beverly Road Kew Gardens, New York 11415


TWELFTH: All of the subscribers of this Certificate are of full age; at least two-thirds are citizens of the United States; at least one is a resident of the State of New York, and of the persons named as directors at least one is a citizen of the United States and resident of the State of New York.

THIRTEENTH: The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is c/o WALLACE L. LEINHEARDT, Suite 1907, 125-10 Queens Boulevard, Kew Gardens, New York 11415.

FOURTEENTH: Prior to the delivery of this Certificate of Incorporation to the Department of State for filing, all approvals or consents required by the Not-For-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, the undersigned incorporators each affirm that the statements made herein are true under the penalties of perjury.

Dated: Kew Gardens, New York
September 21, 1961


WALLACE L. LEINHEARDT
105 Wheatley Road
Brookville, N.Y. 11545


GARY LISCHNY
125-60 57th Avenue
Kew Gardens, N.Y. 11415


AUDREY BROOKNER
84-51 Haverly Road
Kew Gardens, N.Y. 11415



STATE OF NEW YORK
DIVISION OF SUBSTANCE ABUSE SERVICES
Office of Alcoholism and Substance Abuse
EXECUTIVE PARK SOUTH
ALBANY, NEW YORK 12203

JULIDA MARTINEZ
Director

ROBERT A. BOSMAN
Chief Counsel
(518) 487-1758

October 22, 1981

Garry Lischin, Esq.
Wallace L. Reinhardt, P.C.
125-10 Queens Boulevard
New Gardens, New York 11415-1586

Re: Samaritan Village, Inc.
Your File No. 1-211-826

Dear Mr. Lischin:

This is to acknowledge receipt of your letter dated October 5, 1981, which was received in this office on October 16th, enclosing a copy of proposed Certificate of Incorporation of Samaritan Village, Inc. to be formed under Section 402 of the Not-For-Profit Corporation Law.

Please be advised that the approval of this Agency is not required under Not-For-Profit Corporation Law, Sections 404 or 804 for purposes of filing certificates of incorporation or certificates of amendment thereto. However, our approval must be obtained under Mental Hygiene Law, Section 23.01 before a program can provide substance abuse services.

This letter should accompany the original of the proposed Certificate of Incorporation when submitting same to the Attorney General for purposes of waiver of statutory notice of approval by a Justice of the Supreme Court of the Eleventh Judicial District.

Very truly yours,

A. Thomas Storaco
Assistant Counsel

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4827307

SURFACE MAIL
GENERAL DELIVERY
SPECIAL PERMIT

NOV 21 PM 12 19

RECEIVED

CERTIFICATE OF INCORPORATION
OF

SAMARITAN VILLAGE, INC.

Under Section 402 of the
Not-for-Profit Corporation
Law.

12/8
B

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED DEC 29 1981

AMT. OF CHECK \$ 50
FILING FEE \$ 50
TAX \$ _____
COUNTY FEE \$ _____
COPY \$ _____
CERT \$ _____
REFUND \$ _____
SPEC HANDLE \$ _____

BY: [Signature]

Type B
Checks

704570

Law Offices
WALLACE L. LEINHEARDT, P.C.
125 10 SUZANA BOULEVARD
NEW GARDENS, NEW YORK 11518
516-544-5727

[Handwritten signatures and scribbles]



The University of the State of New York

STATE OF NEW YORK

COUNTY OF ALBANY

6170704

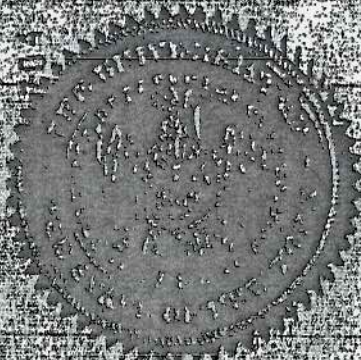
In accordance with the provisions of section 804 of the Not-for-Profit Corporation Law, consent is hereby given to the change of purposes of SAMARITAN VILLAGES, INC. contained in the annexed certificate of amendment to the Certificate of Incorporation.

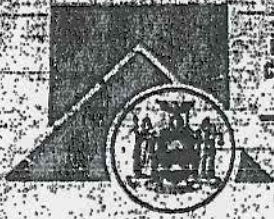
This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use 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.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 31st day of January, 1984.

Gordon W. Ambach
Commissioner of Education

Robert D. Stone
Counsel and Deputy Commissioner
for Legal Affairs





STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

January 5, 1984

KNOW ALL MEN BY THESE PRESENTS

I hereby certify that after inquiry and investigation, the application of Samaritan Village, Inc. to operate Samaritan Village, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of September 16, 1983.

The Certificate of Amendment to Certificate of Incorporation of Samaritan Village, 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.

Public Health Council approval 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 this application) of responsibility and liability for any Medicaid (Medical Assistance Program - Title XIX of the Social Security Act) or 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. The State shall continue to hold any such transferor responsible and liable for any such overpayments.

Nancy A. Massaroni

NANCY A. MASSARONI
Acting Secretary

Sent to: Ms. Elizabeth Barton
Vice President for Administration
Samaritan Village, Inc.
118-21 Queens Boulevard
Forest Hills, New York 11375

cc: Wallace L. Leinhardt, Esq.
125-10 Queens Boulevard
Kew Gardens, New York 11415

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AMENDMENT TO CERTIFICATE OF INCORPORATION

OF

SAMARITAN VILLAGE, INC.

Under Section 802 of the
Not-For-Profit Corporation Law

We, the undersigned, being the President and Secretary of
SAMARITAN VILLAGE, INC., do hereby certify:

1. The name of the Corporation is SAMARITAN
VILLAGE, INC.
2. The Certificate of Incorporation was filed with
the Department of State on December 29, 1981.
3. The Corporation was formed under Section 402 of
the Not-For-Profit Corporation Law of the State of New York.
4. By Order dated August 11, 1983 of the Supreme
Court of the State of New York, County of Queens, it was
ordered that a Plan of Assignment dated March 23, 1983 between
SAMARITAN HALFWAY SOCIETY, INC., a religious Corporation, and
SAMARITAN VILLAGE, INC. be approved effective July 1, 1983.
5. The Corporation is a Corporation as defined in
subparagraph (a) (5) of Section 101 (definitions) and the
Corporation is a type B Corporation under Section 201 (purposes
of the Not-For-Profit Corporation Law).
6. The Certificate of Incorporation dated
September 21, 1981, is to be amended by adding the following:
A) Paragraph "SECOND" is to be deleted and amended
to read as follows:

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B 102 0394

"SECOND: The Corporation is a Corporation as defined in subparagraph (a)(3) of Section 102 of the Not-For-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation is distributable to, or inures to the benefit of its members, directors or officers or any private person."

B) Paragraph "THIRD" is to be deleted and amended to read as follows:

"THIRD: The purposes for which the Corporation is formed are:

To establish, maintain and operate community based programs and facilities for the care, education and treatment of persons who because of drug abuse or dependency or other mental, physical or emotional conditions cannot be cared for, educated or treated in regular public or private programs, including, but not limited to, the operation of "drug-free" substance abuse programs, psychotherapy programs utilizing methadone, and ambulatory and day care prevention and other specialized services programs for substance abusers, specialized groups or the general public;

To operate a substance abuse program, providing substance abuse services within the meaning of Articles 19 and 23 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall in accordance therewith include, but not be limited to, the power to provide intervention, prevention,

diagnostic testing, detoxification, chemotherapy, counseling, vocational remediation, educational remediation, referral and other necessary services. Such services may be provided in either residential or non-residential settings.

To operate a methadone-to-abstinence clinic offering a range of treatment procedures and services for the rehabilitation of heroin addicts as defined in Article 23 of the Mental Hygiene Law.

To operate medical facilities such as diagnostic and treatment centers providing health services under Article 28 of the Public Health Law; and

To render such other services pursuant to Articles 28 and 33 of the Public Health Law as may be necessary to carry out such care, treatment and rehabilitation.

To provide information as to narcotics addiction and abuse;

To stimulate research and community concern about drug dependency, emotional and mental illness;

To provide counseling services to all within its bounds who are in need of help, guidance or some form of care;

To provide a place or places where such persons may receive opportunities for personal counseling, social and recreational activities;

To solicit and administer funds, grants-in-aid and donations of real and personal property and apply the principal and income to corporate purposes;

To finance and plan to do all acts incidental to

the execution of therapeutic programs for narcotic addicts.

In furtherance of the above-mentioned purposes, the Corporation, in addition to the powers granted under the laws of the State of New York, shall have the following powers:

a) To solicit donations of property, and administer gifts, legacies, bequests, devises, whether real or personal, of any sort or nature without limitation as to amount or value, and to use, apply, employ, expend, disburse and/or donate the income and/or principal thereof.

b) To receive and maintain a fund or funds, to have, control and manage such fund or funds, change the investments thereof, to invest and reinvest the same and the proceeds thereof and to collect and receive the income and profits thereof and therefrom.

c) To voluntarily aid and/or assist institutions, organizations, and governmental bodies, the activities of which shall be such as to further, accomplish, foster or attain any of the purposes for which the Corporation is organized, including, without limiting the foregoing, the acquisition of property and the making of such property and any improvements thereto available to any such institution, organization or governmental body with or without charge.

d) To acquire, purchase, sell, hold title, lease, improve, maintain, manage, operate, conduct, control, supervise, direct, fit out, license the use of and generally deal in any manner in and with any and all real and personal property.

e) To borrow money, and, from time to time, to make, accept, endorse, execute and issue bonds, debentures, promissory notes, bills of exchange or other obligations.

f) To make and adopt by-laws, and rules and regulations for the admission, suspension and expulsion of the members of the Corporation, and for their government, and for the establishment of one or more classes of membership, for the collection of fees and dues, for the election and appointment of the directors and officers of the Corporation, and the definition of their duties, and for the safekeeping and protection of the property and funds of the Corporation, and in general to regulate, manage and preserve the property and interests of the Corporation, and from time to time to alter, repeal, rescind or vary such by-laws, rules and regulations, or any of them.

g) Either directly to worthy or needy individuals or indirectly alone or in conjunction or cooperation with other whether such others be persons or organizations of any sort or nature, such as firms, associations, trusts, syndicates, institutions, agencies, corporations or government bureaus, departments or agencies to do any and all lawful acts and things, including the making and carrying out of any contract, and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable and proper to the fostering or attainment of any or all of the foregoing purposes and powers.

Nothing herein contained shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law Section 404 (b through n, p through s).

C) Paragraph "FIFTEENTH" is to be added as follows:

"FIFTEENTH: Notwithstanding any other provision of these articles, the corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, and educational purposes, as specified in section 501 (c)(3) of the Internal Revenue Code of 1954, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954."

D) Paragraph "SIXTEENTH" is to be added as follows:

"SIXTEENTH: 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 on dissolution of the corporation."

7. This Amendment was authorized by the vote of a majority of the entire Board.

3. The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The Post Office address to which the Secretary shall mail a copy of any process against the corporation served him is: Wallace L. Leinhardt, P.O., 125-10 Queens Boulevard, Kew Gardens, New York 11415.

IN WITNESS WHEREOF, the undersigned have executed and signed this certificate on November 21, 1963. *Richard Gross* President
Wallace L. Leinhardt Secretary

RICHARD GROSS, President

WALLACE L. LEINHARDT, Secretary

SVI/2
11/21/63

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0102 0400

The undersigned has no objection to the granting
of judicial approval of the within Amendment to Certificate of
Incorporation and waives statutory notice.

Dated: ^{November} October 4, 1983



ROBERT ABRAMS
Attorney General of the State
of New York


By: Robert R. Miller
Assistant Attorney General
of the State of New York

HON. EDWIN KASSOFF
Justice

of the Supreme Court of the State of New York, Eleventh
Judicial District, do hereby approve the foregoing Amendment to
the Certificate of Incorporation of SAMARITAN VILLAGE, INC.,
and of the filing thereof.

Dated: Jamaica, New York

December 2, 1983



Justice of the Supreme Court
of the State of New York
Eleventh Judicial District

SVL
10/13/83

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0182 8481

F030814000182

New York State
Department of State
Division of Corporations, State Records
and Uniform Commercial Code
41 State Street
Albany, NY 12231

CERTIFICATE OF CHANGE
OF

SAMARITAN VILLAGE, INC.

(Insert Name of Domestic Corporation)

Under Section 805-A of the Business Corporation Law

FIRST: The name of the corporation is: Samaritan Village, Inc.

If the name of the corporation has been changed, the name under which it was formed is: _____

SECOND: The certificate of incorporation was filed by the Department of State on: _____
December 29, 1981

THIRD: The change(s) effected hereby are: *(Check appropriate box(es))*

- The county location, within this state, in which the office of the corporation is located, is changed to: _____
- The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to: Samaritan Village, Inc., 138-02 Queens Boulevard, Briarwood, New York 11435
- The corporation hereby: *(Check one)*
 - Designates _____
as its registered agent upon whom process against the corporation may be served.
 - Changes the designation of its registered agent to: _____
 - Changes the address of its registered agent to: _____
 - Revokes the authority of its registered agent.

FOURTH: The change was authorized by the board of directors.

F0307 1:000 182

Wallace L. Leinhardt
(Signature)

WALLACE LEINHEARDT, SECRETARY
(Name and Capacity of Signer)

CERTIFICATE OF CHANGE
OF
SAMARITAN VILLAGE, INC.

(Insert Name of Domestic Corporation)

Under Section 805-A of the Business Corporation Law

Filer's Name Wallace L. Leinhardt, Esq.

Address 300 Garden City Plaza

City, State and Zip Code Garden City, New York 11530

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$30 filing fee.

For Office Use Only

STATE OF NEW YORK
DEPARTMENT OF STATE

AUG 14 2003

FILED
TAXS
BY: *MR*

Queens

MR

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Drawdown

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CERTIFICATE OF MERGER
OF
VERITAS THERAPEUTIC COMMUNITY, INC.
(a New York not-for-profit corporation)
INTO
SAMARITAN VILLAGE, INC.
(a New York not-for-profit corporation)
Under Section 904 of the
New York Not-for-Profit Corporation Law

We, the undersigned, Veritas Therapeutic Community, Inc., a New York not-for-profit corporation, and Samaritan Village, Inc., a New York not-for-profit corporation, do hereby certify the following:

I. Names

- A. The names of the constituent corporations are:
1. Veritas Therapeutic Community, Inc. ("Veritas"); and
 2. Samaritan Village, Inc. ("Samaritan").
- B. The surviving corporation will be Samaritan.

II. Members

Neither Veritas nor Samaritan has a membership.

III. Certificates of Incorporation

- A. The certificate of incorporation of Veritas was filed by the Department of State of the State of New York on September 26, 1973.
- B. The certificate of incorporation of Samaritan was filed by the Department of State of the State of New York on December 29, 1981.
- C. The certificate of incorporation of the surviving corporation will be the certificate of incorporation of Samaritan, as amended to add the following at the end of Article Third of the certificate of incorporation:

"Except as authorized by Title VIII of the Education Law or other applicable statute, nothing herein shall authorize the corporation to engage in the practice of any profession in New York, unless authorized to do so under an operating certificate or license by an appropriate State, regional or local agency; and

"Such services will be carried out by individuals authorized to do so pursuant to Title VIII of the Education Law, including New York State licensed psychologists, social workers, mental health counselors, marriage and family therapists, psychoanalysts and creative arts therapists. Such practitioners will provide such services for the corporation only to the extent permitted under section 6503-a of the Education Law."

IV. Manner of Authorization

- A. The Board of Directors of Veritas approved and adopted the Plan of Merger by unanimous written consent of the directors dated as of May 22, 2012. This action has not been rescinded or amended.
- B. The Board of Directors of Samaritan approved and adopted the Plan of Merger by resolution adopted by majority vote of the directors present at a duly convened meeting held on May 9, 2012 at which a quorum was present. One director abstained from voting, and no votes were cast against the resolution. This action has not been rescinded or amended.

V. Capital Certificates and Subvention Certificates

Neither Veritas nor Samaritan has any outstanding capital certificates or subvention certificates.

VI. Effective Date

The effective date of the merger shall be upon the filing of this Certificate of Merger by the Department of State of the State of New York.

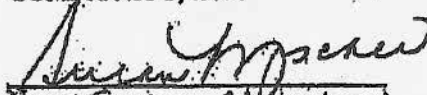
[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the constituent corporations have caused this Certificate of Merger to be duly executed by their respective officers thereunto duly authorized as of this 5th day of April, 2013.

VERITAS THERAPEUTIC
COMMUNITY, INC.

SAMARITAN VILLAGE, INC.

By:


Name: Susan Mescher
Title: Vice Chair

By: _____


Name:
Title:

IN WITNESS WHEREOF, the constituent corporations have caused this Certificate of Merger to be duly executed by their respective officers thereunto duly authorized as of this 5th day of April, 2013.

VERITAS THERAPEUTIC
COMMUNITY, INC.

By: _____
Name:
Title:

SAMARITAN VILLAGE, INC.

By: 
Name: Florentino Hernandez
Title: President /CEO

STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
Albany, New York

CONSENT TO FILING WITH THE DEPARTMENT OF STATE
(Consolidation or Merger)

Consent is hereby given to the filing of the annexed

MERGER

[certificate of consolidation or certificate of merger]

of Veritas Therapeutic Community, Inc. and Samaritan Village, Inc.

[name of each constituent entity that is being consolidated or merged]

into Samaritan Village, Inc.

[name of consolidated or merged entity].

pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.



IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed.

JOHN B. KING, JR.
Commissioner of Education

By: Kathleen M. Marinelli
Kathleen Marinelli

Commissioner's authorized designee

Date 4/22/13

THIS DOCUMENT IS NOT VALID WITHOUT THE SIGNATURE OF THE
COMMISSIONER'S AUTHORIZED DESIGNEE AND THE OFFICIAL SEAL OF THE
STATE EDUCATION DEPARTMENT.

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 Article 32 of the Mental Hygiene Law, and Section 909 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Merger of

SAMARITAN VILLAGE, INC.

&

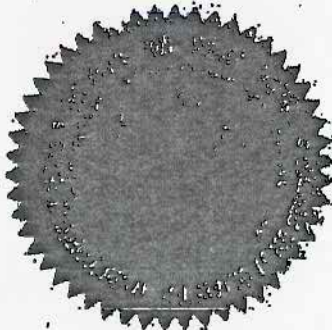
VERTAS THERAPEUTIC COMMUNITY, INC.

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 to be 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 the 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 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 10th day of February, 2013

ROBERT A. KENT
GENERAL COUNSEL,
NYS OASAS

By: Janet L. Paloski
Acting Director
Bureau of Certification and
Systems Management



Janet Paloski

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

June 5, 2013

William F. Gaske, Esq.
Patterson Belknap Webb & Tyler, LLP
1133 Avenue of the Americas
New York, New York 10036-6710


Re: Proposed Certificate of Merger of Veritas Therapeutic Community, Inc. into Samaritan Village, Inc.

Dear Mr. Gaske:

The above referenced Certificate of Merger, dated April 5, 2013 and signed by Susan Mescher and Florentino Hernandez, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law, Social Services Law or the Not-for-Profit Corporation Law, since the Certificate does not add, change or delete from the Certificate of Incorporation of Samaritan Village, Inc., the surviving corporation, a purpose that requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the Certificate being filed with the Department of State.

Sincerely,


Michael M. Stone
Assistant Counsel
Bureau of House Counsel

HEALTH.NY.GOV
facebook.com/NYSDOH
twitter.com/HealthNYGov

ORDERED, that the corporations be, and they hereby are, authorized to file with the Secretary of State of New York a Certificate of Merger in accordance with Section 904 of the Not-for-Profit Corporation Law; and it is further

ORDERED, that upon filing of the Certificate of Merger together with a certified copy of this order as required by Section 907 of the Not-for-Profit Corporation Law, all of the assets of Veritas Therapeutic Community, Inc. shall thereupon and thereby be transferred and conveyed to Samaritan Foundation, Inc., in accordance with the Plan of Merger, to be held by it subject to the purposes set forth in its certificate of incorporation, as from time to time amended; and it is further

ORDERED, that a signed copy of this Order shall be sent to the New York State Attorney General's Office; and it is further

ORDERED, that a copy of the Certificate of Merger filed with the Secretary of State of New York shall be sent to the New York State Attorney General's Office; and it is further

ORDERED, that the merger of the corporations shall have the effect provided by Section 905 of the Not-for-Profit Corporation Law of the State of New York.

Enter,



J.S.C.

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN,
HAS NO OBJECTION TO THE GRANTING OF
JUDICIAL APPROVAL HEREON, ACKNOWLEDGES
RECEIPT OF STATUTORY NOTICE, AND DEMANDS
SERVICE OF ALL PAPERS SUBMITTED HEREIN
INCLUDING ALL ORDERS, JUDGMENTS AND
ENDORSEMENTS OF THE COURT. SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE MATTER
TO THE COURT WITHIN 90 DAYS HEREAFTER.



ASSISTANT ATTORNEY GENERAL

DATE

Michele L. Adels 6/28/13

CSC 45
Drawdown

130719000227

FILED

2013 JUL 19 AM 10:45

RECEIVED

2013 JUL 19 AM 9:24

CERTIFICATE OF MERGER
OF
VERITAS THERAPEUTIC COMMUNITY, INC.
(a New York not-for-profit corporation)
INTO
SAMARITAN VILLAGE, INC.
(a New York not-for-profit corporation)
Under Section 904 of the
New York Not-for-Profit Corporation Law

Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710

Cost & F 731254TRT

Ice
STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JUL 19 2013
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BY: *Pub*
Queens

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RESOLUTION


RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Samaritan Village, Inc., dated as attached.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

M E M O R A N D U M

TO: Public Health and Health Planning Council

FROM: Richard J. Zahnleutner,  Acting General Counsel

DATE: September 10, 2015

SUBJECT: Proposed Certificate of Amendment to the Certificate of Incorporation of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI") requests Public Health and Health Planning Council approval of its proposed Certificate of Amendment to its Certificate of Incorporation, in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law, and Sections 2854 and 2855 of the Public Health Law.

Attached are the following with regard to this matter:

1. Letter dated August 21, 2015, from SSI's counsel, requesting Public Health and Health Planning Council approval of the proposed Certificate of Amendment, and setting forth the reasons for the request.
2. Proposed Certificate of Amendment of SSI's Certificate of Incorporation.
3. Existing Certificate of Incorporation and amendments thereto.

The proposed Certificate of Amendment is in legally acceptable form.

The attached letter also discuss a Certificate of Amendment to the Certificate of Incorporation of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc. ("SBSI Fund"). The original Certificate of Incorporation for the SBSI Fund did not require the formal approval of the Department of Health, or of the Public Health Council, since no approval was necessary for the purposes set forth therein. The amendments effected by the Certificate of Amendment do not add any purposes for which approval is required. Therefore, the filing of the Certificate of Amendment does not require the consent or approval of the Department of Health, or of the Public Health and Health Planning Council, and we have provided a letter to SBSI Fund's counsel reciting this.

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015
212 653 8700 main
212 653 8701 main fax
www.sheppardmullin.com

212.634.3084 direct
trosenberg@sheppardmullin.com

August 21, 2015

File Number: 43SG-207827

VIA FEDEX

Mark Furnish
Senior Attorney
New York State Department of Health
Division of Legal Affairs
Bureau of House Counsel
Empire State Plaza,
Corning Tower
Albany, New York 12237-0031

Re: The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc.

Dear Mr. Furnish:

Thank you for your help during our recent telephone conversation and your willingness to review the request below on an expedited basis.

Per our conversation, I am writing on behalf of (1) The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI"); and (2) The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc. ("SBSI Fund"), to request that the New York State Department of Health (the "DOH") issue a letter to each of the foregoing entities stating that the DOH consents to, or that its consent is not required for, the filing of the Certificates of Amendment of SSI and SBSI Fund. Copies of the executed Certificates of Amendment for SSI and SBSI Fund are attached as **Exhibit 1** and **Exhibit 2**, respectively. I have also attached the current Certificate of Incorporation, and all amendments thereto, of both SSI and SBSI Fund, for your reference, as **Exhibit 3** and **Exhibit 4**, respectively.

By way of background, SSI and SBSI Fund are affiliates of The Brookdale Hospital Medical Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law operating in Brooklyn, New York (the "Hospital"). SSI and SBSI Fund have historically operated as constituents of and for the benefit of the Hospital and its affiliated health system. SSI was incorporated in 1968 under the name "Brookdale Hospital Center Nursing Home Company, Inc." SBSI Fund was incorporated in 1973 to support SSI. (Both entities have since undergone multiple changes in their legal names.)

The Hospital has been experiencing severe financial distress in recent years and has been receiving critical financial support through the DOH in coordination with the Dormitory Authority

SheppardMullin

Mark Furnish
August 21, 2015
Page 2

of the State of New ("DASNY"). In connection with a loan issued by DASNY to the Hospital in February of 2014, DASNY requested that SSI and SBSI Fund pledge and mortgage their real and personal property in favor of DASNY to secure obligations of the Hospital relating to such loan. To enable such pledges and mortgages, the proposed Certificates of Amendment would clarify the purposes of SSI and SBSI Fund to expressly provide for supporting the purposes of the Hospital and the Brookdale health system as a whole.

As we discussed by phone, it took several months to receive a response to our previous request for consent to the filing of the attached Certificates of Amendment, despite several phone calls to check on the status. We ultimately received only one consent letter, for SBSI Fund, and by the time it was received, the changes to the New York State Not-for-Profit Corporation Law made by the Nonprofit Revitalization Act became effective, necessitating modifications to both Certificates of Amendment. We also subsequently learned that the individual at the DOH who worked on our requests no longer works at the DOH. Given this history and the strong desire by DASNY to file the enclosed Certificates of Amendment as promptly as possible, we greatly appreciate your assistance in expediting your review of the Certificates. Please be in touch by phone with any questions.

Thank you very much.

Sincerely,



Tamar R. Rosenberg
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:215578439.1
Encls.

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND
REHABILITATION, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

The undersigned, Mark E. Toney, hereby certifies that he is the President and Chief Executive Officer of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the corporation is The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on January 11, 1968 under Section 402 of the NPCL. The name under which the Corporation was formed is Brookdale Hospital Center Nursing Home Company, Inc.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. Paragraph II of the Corporation's Certificate of Incorporation, which sets forth the Corporation's purposes, including to provide nursing home accommodations and engage in related activities, is hereby amended to explicitly establish and clarify that the purposes of the Corporation include providing nursing home accommodations and engaging in related activities for the purpose of benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, of which the Corporation has historically been a constituent, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the constituent entities of the Brookdale Health System, which the Corporation has historically served. Accordingly, Paragraph II of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

"II. The Company is organized and shall be operated exclusively for the charitable, scientific and educational purposes of promoting, facilitating and

improving the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the "Brookdale Health System," a system of affiliated health care providers and related entities, by:

(i) providing nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of Article 28-A of the New York State Public Health Law; and

(ii) benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System that are exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code, including, in particular, The Brookdale Hospital Medical Center, a charitable New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law, including through the provision of financial and/or other support to such entities, as shall be determined by the Company's Board of Directors from time to time.

5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the unanimous approval of the Corporation's sole member, acting through its Board of Trustees, at a duly constituted meeting of such Board of Trustees, in accordance with Section 802(a)(1) of the NPCL.
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., Attn: General Counsel, One Brookdale Plaza, Brooklyn, New York 11212.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on August 19, 2015.


By: Mark E. Toney
Title: President and Chief Executive Officer

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND
REHABILITATION, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

Filed By:

Jay E. Gerzog, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015

RECEIVED

NOV 1 1966

SECRETARY
N. Y. STATE DEPT. OF
SOCIAL WELFARE

Certificate of Incorporation

of

The Brookdale Hospital Center Nursing Home Company

Pursuant to the Membership Corporations Law and the Public Health Law,

we, the undersigned, for the purpose of forming a

Nursing Home Company pursuant to the Membership Corporations Law

and the Public Health Law of the State of New York hereby certify:

I

The Name of the proposed corporation is The Brookdale Hospital Center Nursing Home Company, Inc. (hereinafter referred to as the "Company").

II

The purposes for which the company is to be formed are to provide nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

III

The territory in which the operations of the company will be principally conducted is the State of New York.

IV

The principal office of the company is to be located in the City of New York, Borough of Brooklyn, County of Kings, State of New York.

V

The number of Directors of the company shall be not less than three (3) nor more than fifteen (15). Directors shall be elected by the members of the company. One (1) additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the commissioner shall not be personally liable for the debts, obligations or liabilities of the company.

VI

The names and residences of the Directors of the company until the first annual meeting are:

<u>Name</u>	<u>Address</u>
Mr. Benne Katz	802 Shore Boulevard, Brooklyn, New York 11235
Mr. Arnold Schwartz	Ritz Towers, 57th Street and Park Avenue, New York, New York 10022
Mr. David Bergner	70 East 10th Street, New York, New York 10003
Mr. Emanuel Kugler	124 Richmond Place, Lawrence, Long Island 11559
Mr. Paul Bluth	770 Empire Boulevard, Brooklyn, New York 11213
Mr. Samuel C. Rubin	10 Plaza Street, Brooklyn, New York 11238
Mr. Harry Rudolph	34 Plaza Street, Brooklyn, New York 11238
Mr. William Marx	12 Hastings Street, Brooklyn, New York 11235
Mr. Harry Koepfel	35 East 75th Street, New York, New York 10021
Mr. Nathan Packer	3600 Bedford Avenue, Brooklyn, New York 11210
Mr. Bernard Gordon	1199 Park Avenue, New York, New York 10028
Mr. Harry Maslow	20 Plaza Street, Brooklyn, New York 11238
Mr. Harold Levin	912 Fifth Avenue, New York, New York 10021

VII

The names and residences of the Subscribers to this Certificate of Incorporate are:

<u>Name</u>	<u>Address</u>
Mr. Benne Katz	802 Shore Boulevard, Brooklyn, New York 11235
Mr. Arnold Schwartz	Ritz Towers, 57th Street and Park Avenue, New York, New York 10022
Mr. David Bergner	70 East 10th Street, New York, New York 10003
Mr. Emanuel Kugler	124 Richmond Place, Lawrence, Long Island 11559
Mr. Paul Bluth	770 Empire Boulevard, Brooklyn, New York 11213
Mr. Samuel C. Rubin	10 Plaza Street, Brooklyn, New York 11238
Mr. Harry Rudolph	34 Plaza Street, Brooklyn, New York 11238

* 3

Mr. Harry Maslow 35 East 75th Street
Mr. Nathan Packer 3600 Bedford Avenue
Mr. Bernard Gordon 1139 Park Avenue
Mr. Harry Maslow 20 Plaza Street
Mr. Harold Levin 912 Fifth Avenue, New York

VIII

✓ The duration of the company is for a period of ten years from the date of the filing of this Certificate by the Secretary of State.

IX

The real property of the company shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law.

X

The company has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the commissioner pursuant to the provisions of the Public Health Law.

XI

All income and earnings of the company shall be used exclusively for its corporate purposes.

XII

No part of the net income or net earning of the company shall inure to the benefit or profit of any private individual, firm or corporation. Nothing herein contained shall be deemed to include any power, activity or purpose or to authorize the company to engage in any business or activity which would disqualify the company from an exemption under §501 (c) (3) of the United States Internal Revenue Code of 1954, as amended. In the event of dissolution or other liquidation of the assets of the company, its assets shall be distributed to non-profit and charitable corporations or institutions as may be designated by directors, subject to the approval of a Justice of the Supreme Court.

No part of the net income or net assets of the corporation shall be paid in dividends or otherwise to the benefit or profit of any individual.

XIII

All of the Subscribers to this Certificate of Incorporation are of full age. At least two-thirds of them are citizens of the United States and at least one of them is a resident of the State of New York. At least one of the persons named as a Director of the company is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 11th day of October, 1966.

William Marx

(Mr. William Marx)

Harry Koepfel

(Mr. Harry Koepfel)

Nathan Packer

(Mr. Nathan Packer)

Bernard Gordon

(Mr. Bernard Gordon)

Harry Maslow

(Mr. Harry Maslow)

Harold Levin

(Mr. Harold Levin)

Benne Katz

(Mr. Benne Katz)

Arnold Schwartz

(Mr. Arnold Schwartz)

David Bergner

(Mr. David Bergner)

Emanuel Kugler

(Mr. Emanuel Kugler)

Paul Bluth

(Mr. Paul Bluth)

Samuel C. Rubin

(Mr. Samuel C. Rubin)

Harry Rudolph

(Mr. Harry Rudolph)

STATE OF NEW YORK)

SS.

COUNTY OF KINGS)

On this 11th day of October, 1966, before me personally
came Mr. Benne Katz, Mr. Arnold Schwartz, Mr. David Bergman,
Mr. Emanuel Kugler, Mr. Paul Bluth, Mr. Samuel G. Rubin,
Mr. Harry Rudolph, Mr. William Marx, Mr. Harry Koepfel,
Mr. Nathan Packer, Mr. Bernard Gordon, Mr. Harry Maslow,
and Mr. Harold Levin, to me known and known to me to be the
persons described in and who executed the foregoing Certificate of
Incorporation of The Brookdale Hospital Center Nursing Company, Inc.
and they duly acknowledged to me that they executed the same.

Pauline Cutler
Notary Public

PAULINE CUTLER
NOTARY PUBLIC, State of New York
No. 24-0837780
Qualified in Kings County
Commission Expires March 30, 1968
1967

Consent to Incorporation By

Commissioner of Health

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health of the

State of New York, do this 26 day of December, 1967, pursuant

to Article 28-A of the Public Health Law hereby certify that I consent

to the filing of the foregoing Certificate of Incorporation of The Brookdale

Home Hospital Center Nursing/Company, Inc. with the Secretary of State of

the State of New York.

HOLLIS S. INGRAHAM, M.D.
Commissioner of Health

By: *Robert P. Whalen*
Robert P. Whalen, M.D.
Deputy Commissioner

~~HOLLIS S. INGRAHAM, M.D.
Commissioner of Health~~

The undersigned, a Justice of the Supreme Court of the State of
New York, wherein is located the principal office of The Brookdale

Home Hospital Center Nursing/Company, Inc., hereby approves the within

Certificate of Incorporation of The Brookdale Hospital Center Nursing Home
Company, Inc. and the filing thereof.

HON. FRANK S. SAMANSKY

Dated: *January 3, 1968*
Burdette Key

Frank S. Samansky
Justice of the Supreme Court
2nd Judicial District

ice of Application Waived
is is not to be deemed an
roval on behalf of any
artment or Agency of the
te; of New York, nor an
horisation of activities
erwise limited by law.)

January 3, 1968
LOUIS J. LEFKOWITZ
Attorney General

By: *Louis J. Lefkowitz*

7

CERTIFICATE

OF

INCORPORATION

OF

BROOKDALE HOSPITAL CENTER
NURSING HOME COMPANY, INC.

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 11 1958

W. S. C.

JK

294 King

BERGNER & BERGNER

ATTORNEYS AT LAW

ELEVEN PARK PLACE

NEW YORK CITY

BARCLAY 7-8280

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 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State



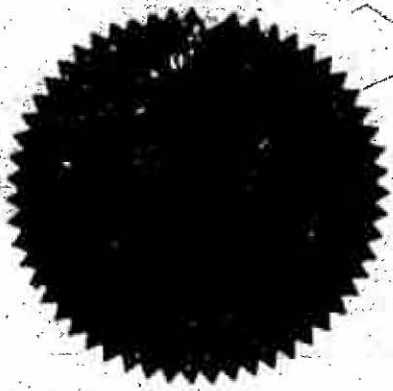
State Board of Social Welfare

Albany

659362

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the nineteenth day of December, 1967, due inquiry and investigation having been made, the Board approved the application of BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC., No. 6-27, a membership corporation, for approval of the proposed certificate of incorporation pursuant to Section 35 of the Social Services Law and Article 28-A of the Public Health Law, empowering it to establish, maintain and operate a 200 bed nursing home at Brookdale Plaza, Brooklyn, New York.



In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this twentieth day of December, in the year one thousand nine hundred and sixty-seven.

[Signature]
Secretary

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 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State



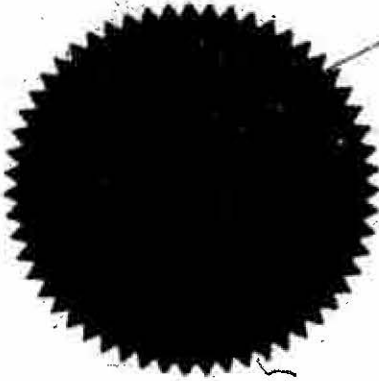
State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the twentieth day of January, 1970, due inquiry and investigation having been made, the Board approved the proposed certificate of revival of existence of BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. pursuant to Section 49 of the General Corporation Law of the State of New York.

812131



In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this twenty-first day of January, in the year one thousand nine hundred and seventy.

[Signature]
Secretary

CERTIFICATE OF REVIVAL OF
EXISTENCE OF

BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

(a Membership corporation)


Pursuant to Section 49 of the General Corporation Law

We, the undersigned, HARRY KOEPPEL, President, and MILTON
COHEN, Secretary of BROOKDALE HOSPITAL CENTER NURSING
HOME COMPANY, INC. C E R T I F Y:

1. The name of the Corporation is Brookdale Hospital
Center Nursing Home Company, Inc.
2. The Certificate of Incorporation was filed in the office
of the Secretary of State on January 11, 1968.
3. The term of existence specified in the original Certificate
of Incorporation expired on January 11, 1970.
4. The duration of the Corporation shall be extended for a
period of one year, to wit; January 11, 1971.

IN WITNESS WHEREOF, we have executed this Certificate this

8th day of January, 1970.


Harry Koepfel, President


Milton Cohen, Secretary

STATE OF NEW YORK ss.
COUNTY OF KINGS

On the 8th day of January, 1970, before me
personally came HARRY KOEPPEL and MILTON COHEN, to me known
and known to me to be the persons described and who executed
the foregoing Certificate of Revival of Existence and they

thereupon severally duly acknowledged to me that they executed the same.

Arnold Simon

Notary Public

STATE OF NEW YORK)
COUNTY OF KINGS) SS.

HARRY KOEPEL and MILTON COHEN, being severally duly sworn, depose and say, each for himself deposes and says, that he, HARRY KOEPEL, is the President of Brookdale Hospital Center Nursing Home Company, Inc. and he, MILTON COHEN, is the Secretary of said Corporation, that they were duly authorized to execute and file the foregoing Certificate of Revival of Existence of said Corporation by the votes, cast in person or by proxy, of a majority of the members of record of said Corporation, at a meeting of the members called for that purpose upon like notice as that required for the annual meetings of the Corporation, the said meeting having been held at Brooklyn, New York, on January 8, 1970.

Harry Koepfel

Harry Koepfel, President

Milton Cohen

Milton Cohen, Secretary

SWORN to before me this
8th day of January, 1970

Arnold Simon

Notary Public

ARNOLD SIMON
Notary Public, State of New York
No. 3094124
Qualified in Nassau County
Commission Expires March 10, 1972

3

CONSENT TO FILING CERTIFICATE OF EXTENSION
OF EXISTENCE BY COMMISSIONER OF HEALTH

I, Hollis S. Ingraham, M.D., Commissioner of Health of the State of New York, do this 29th day of January 1970, pursuant to Article 28-A of the Public Health Law, hereby certify that I consent to the filing of the foregoing Certificate of Revival of Existence of the Brookdale Hospital Center Nursing Home Company, Inc. with the Secretary of State of the State of New York.

Hollis S. Ingraham, M.D.
Commissioner of Health

By Donald G. Dickson
Donald G. Dickson, M.D.
Deputy Commissioner

812131

CERTIFICATE

of

REVIVAL OF EXISTENCE OF

BROOKDALE HOSPITAL CENTER NURSING
HOME COMPANY, INC.

(a Membership Corporation)

Pursuant to Section 49 of the
General Corporation Law

1/11/68 Kings
duration 2 yrs

B

659362-8

STATE OF NEW YORK
DEPARTMENT OF STATE
FILES FEB 3 1970
FILE NO. 30

Secretary of State
By [Signature]
24 Kings

BERGNER & BERGNER

ATTORNEYS AT LAW

ELEVEN PARK PLACE

NEW YORK CITY

BARCLAY 7-8280

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 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

CERTIFICATE OF TYPE OF
NOT-FOR-PROFIT CORPORATION OF

THE BROOKDALE HOSPITAL CENTER
NURSING HOME COMPANY, INC.

Under Section 113 of the Not-For-Profit Corporation Law

We the undersigned President and Secretary of
The Brookdale Hospital Center Nursing Home Company, Inc.,
certify:

1. The name of the corporation is: The
Brookdale Hospital Center Nursing Home Company, Inc.
2. The name under which the corporation was
originally incorporated was The Brookdale Hospital
Center Nursing Home Company, Inc.
3. The Certificate of Incorporation of the
Corporation was originally filed by the Department of
State on January 11, 1968 and the corporation was
formed pursuant to the Membership Corporations Law
and the Public Health Law.
4. The post office address within the State
of New York to which the Secretary of State shall mail a
copy of any notice required by law is Linden Bouelvard
and Rockaway Parkway, Brooklyn, New York.
5. Under Section 201 (Purposes) of the Not-
For-Profit Corporation Law, The Brookdale Hospital Center
Nursing Home Company, Inc. is a Type D Not-For-Profit
Corporation as defined in this Chapter.

In Witness Whereof, we have executed this

Certificate this 19th day of October, 1970.

Harry Koepfel
President - Harry Koepfel

Milton Cohen
Secretary - Milton Cohen


STATE OF NEW YORK)

SS.:

COUNTY OF NEW YORK)

HARRY KOEPEL, and MILTON COHEN each being severally duly sworn, severally depose and say, each for himself, that he HARRY KOEPEL, is the President of The Brookdale Hospital Center Nursing Home Company, Inc. and he MILTON COHEN is the Secretary of said Corporation; that they have read the foregoing Certificate of Type of Not-For-Profit Corporation of The Brookdale Hospital Center Nursing Home Company, Inc. under Section 113 of the Not-For-Profit Corporation Law and know the contents thereof; that the same is true to their own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters they believe it to be true.


Harry Koepel, President


Milton Cohen, Secretary

Sworn to before me this
19th day of October, 1970.


Notary Public

ARNOLD SIMON
Notary Public, New York
No. 110701473
Qualified in Nassau County
Commission Expires March 30, 1972

3

M

CERTIFICATE OF TYPE OF
NOT-FOR-PROFIT CORPORATION OF

THE BROOKDALE HOSPITAL CENTER
NURSING HOME COMPANY, INC.

Under Section 13 of the Not-For-
Profit Corporation Law

BERGNER & BERGNER
ATTORNEYS AT LAW
ELEVEN PARK PLACE
NEW YORK CITY
BARCLAY 7-8280

mem

1/11/68

Ringer

659362-8

S

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED OCT 27 1970

TAX \$ *None*
FILING FEE \$ *10*

John P. Eminger
SECRETARY OF STATE

2 P Kings
Type B

4

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 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

Under Section 803 of the Not-
For-Profit Corporation Law

870653
The undersigned, being the President and Secretary of The Brookdale Hospital Center Nursing Home Company, Inc. certify:

1. The name of the Corporation is The Brookdale Hospital Center Nursing Home Company, Inc. It was formed under that name and the name has not been changed.

2. The certificate of incorporation of said Corporation was filed in the office of the Department of State on January 11, 1968.

3. The existence of the said Corporation expired on January 11, 1970. By Certificate of Revival of Existence filed in the Office of the Department of State on February 3, 1970, the existence of the Corporation was extended to January 11, 1971.

4. The term of existence of the Corporation is to be amended to make such existence perpetual.

5. The manner in which the Amendment of the Certificate of Incorporation was authorized was by the consent of all members of Board of Directors of the Corporation voting in person at a meeting duly called for that purpose; said meeting was held at the Brookdale Hospital Center, Brooklyn, New York on October 19, 1970. There are no members eligible to vote.

6. The corporate purposes are not enlarged,
limited or in any way changed, except as above set forth.

IN WITNESS WHEREOF, we have executed this
certificate the 30th day of October, 1970.

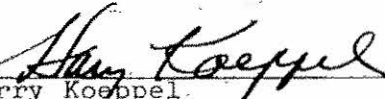

Harry Koepfel, President


Milton Cohen, Secretary

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

HARRY KOEPPEL, being duly sworn, deposes and says:

That deponent is the President of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its President.


Harry Koepfel

Subscribed and sworn to before
me this 5th day of October, 1970.



ARNOLD SIMON
Notary Public, State of New York
No. 24-3557000
Qualified in Putnam County
Commission Expires March 30, 1971

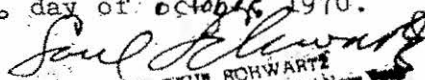
STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

MILTON COHEN, being duly sworn, deposes and says:

That deponent is the Secretary of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its Secretary.


Milton Cohen

Subscribed and sworn to before
me this 3rd day of October, 1970.

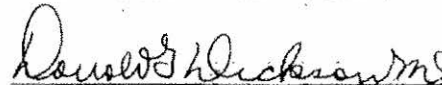

SAUL SCHWARTZ
NOTARY PUBLIC, State of New York
No. 24-3557000
Qualified in Kings County
Commission Expires March 30, 1971

CONSENT TO FILING CERTIFICATE OF AMENDMENT
RELATING TO THE EXTENSION OF THE DURATION
OF

THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

I, HOLLIS S. INGRAHAM, Commissioner of Health of the State of New York, do this 18 day of December, 1970, pursuant to Article 28-A of the Public Health Law, hereby certify that I consent to the filing of the foregoing Certificate of Amendment relating to the extension of the duration of The Brookdale Hospital Center Nursing Home Company, Inc. with the Secretary of State of the State of New York.

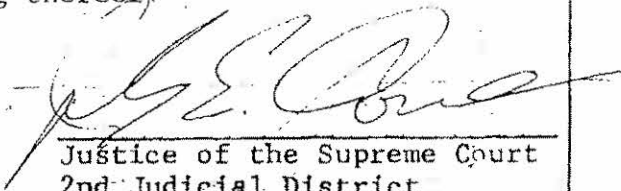
Hollis S. Ingraham, M.D.
Commissioner of Health


By Donald G. Dickson, M.D.
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of the State of New York, 2nd Judicial District wherein is located the principal office of The Brookdale Hospital Center Nursing Home Company, Inc. hereby approves the within Certificate of Amendment to the Certificate of Incorporation of The Brookdale Hospital Center Nursing Home Company, Inc. and the filing thereof.

Dated: December 21, 1970
Brooklyn - New York

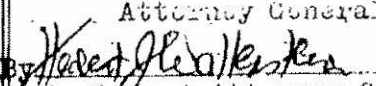
Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of any activities otherwise prohibited by law.)


Justice of the Supreme Court
2nd Judicial District

HON. JOHN E. CONE

Dated: December 18, 1970

LOUIS J. BERKOWITZ
Attorney General


Assistant Attorney General

STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY, NEW YORK

PUBLIC HEALTH COUNCIL

RICHARD H. MATTOX, EXECUTIVE SECRETARY

WHEREAS, the certificate of incorporation of The Brookdale Hospital Center Nursing Home Co., Inc. was heretofore approved by the State Board of Social Welfare and the certificate of incorporation was filed with the Secretary of State on January 11, 1968, and

WHEREAS, the aforementioned certificate limited the duration of the Corporation for the period of two years, and

WHEREAS, on February 3, 1970, the existence of the Corporation was extended to January 11, 1971; and

WHEREAS, the Staff of the New York State Department of Health has recommended, in a report to this Council, that the life of the Corporation be extended so as to make its existence perpetual, and has further recommended the approval of a certificate of amendment relating to the disposition of the assets of the Corporation upon the dissolution of the Corporation in order to conform with the requirements of the Internal Revenue Service, now therefore be it

RESOLVED, that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. extending the existence of the corporation so as to make it perpetual, and that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. relating to the disposition of the assets of the corporation upon the dissolution of the corporation in order to conform with the requirements of the Internal Revenue Service, are hereby approved, provided that properly executed certificates of amendment are presented to the New York State Department of Health in a form acceptable to the Department.

ALBANY, NEW YORK
DATED : DECEMBER 18, 1970

Richard H. Mattox
SECRETARY

memo

1/11/68 KingCo

Rev of Exp to 1/11/71

659362-8

S

CERTIFICATE OF AMENDMENT

876653-6

OF

CERTIFICATE OF INCORPORATION

OF

THE BROOKDALE HOSPITAL CENTER
NURSING HOME COMPANY, INC.

Under Section 803 of the Not-
For-Profit Corporation Law

P

STATE OF NEW YORK
DEPARTMENT OF STATE
DEC 22 1970
TAX \$ *none*
FILING FEE \$ *30*

John P. Tompkins
Secretary of State

MB
24 Kingo

6

BERGNER & BERGNER
ATTORNEYS AT LAW
ELEVEN PARK PLACE
NEW YORK CITY
BARCLAY 7-8280

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 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

Under Section 803 of the Not-
For-Profit Corporation Law

870054

The undersigned, being the President and Secretary of The Brookdale Hospital Center Nursing Home Company, Inc. certify:

1. The name of the Corporation is The Brookdale Hospital Center Nursing Home Company, Inc. It was formed under that name and the name has not been changed.

2. The certificate of incorporation of said Corporation was filed in the office of the Department of State on January 11, 1968.

3. The existence of the said Corporation expired on January 11, 1970. By Certificate of Revival of Existence filed in the Office of the Department of State on February 3, 1970, the existence of the Corporation was extended to January 11, 1971. The duration of the Corporation was made perpetual by Certificate of Amendment under Section 803 of the Not-For-Profit Law which such certificate is intended to be filed simultaneously with the filing of this certificate.

4. Paragraph XII of the Certificate of Incorporation is to be amended. The present paragraph XII of the Certificate of Incorporation to be eliminated by the execution and filing of this certificate for amendment is as follows:

"No part of the net income or net earning of the company shall inure to the benefit or profit of any private individual, firm or corporation. Nothing herein contained shall be deemed to include any power, activity or purpose or to authorize the company to engage in any business or activity which would disqualify the company from an exemption under §501 (c) (3) of the United States Internal Revenue Code of 1954, as amended. In the event of dissolution or other liquidation of the assets of the company its assets shall be distributed to non-profit and charitable corporations or institutions as may be designated by directors, subject to the approval of a Justice of the Supreme Court."

5. The new paragraph XII of the Certificate of Incorporation to be substituted for the foregoing is as follows:

"12. The Company is organized and shall be operated as a non-profit organization, shall not have power to issue certificates of stock or to declare or pay dividends and shall be operated exclusively for the purposes enumerated in Article 11 hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Company shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Company shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Company shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties."

Upon the dissolution of the Company, the Board of Directors, shall after paying or making provisions for the payment of all of the liabilities of the Company, distribute all of the remaining assets of the Company exclusively for the purposes of the Company or for a similar public use or purpose, to such organization or organizations organized and operating exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provision of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a local government within the State of New York, as the Board of Directors shall determine or in the absence of such determination by the Board of Directors, such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of this Company. In no event shall the assets of this Company upon dissolution be distributed to a director, officer, employee or member of this Company.

The dissolution of this Company and any distribution

of the assets of this Company incident thereto shall be subject to such law, if any, then in force as may require the approval or consent thereto by any Court or Judge thereof having jurisdiction or by any governmental department or agency or official thereof.

6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by the consent of all members of Board of Directors of the Corporation voting in person at a meeting duly called for that purpose; said meeting was held at the Brookdale Hospital Center, Brooklyn, New York on October 19, 1970. There are no members eligible to vote.

7. The corporate purposes are not enlarged, limited or in any way changed, except as above set forth.

IN WITNESS WHEREOF, we have executed this certificate the 30th day of October, 1970.


Harry Koeppe, Pres.


Milton Cohen, Secretary

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

HARRY KOEPPPEL, being duly sworn, deposes and says:

That deponent is the President of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief; and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its President.

Harry Koepfel
Harry Koepfel

Subscribed and sworn to before me this 30 day of *October*, 1970.

Arnold Stein
ARNOLD STEIN
Notary Public, State of New York
Qualified in Kings County
Commission Expires March 31, 1971

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

MILTON COHEN, being duly sworn, deposes and says:

That deponent is the Secretary of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief; and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its Secretary.

Milton Cohen
Milton Cohen

Subscribed and sworn to before me this 30 day of *October*, 1970.

Paul Schwartz
PAUL SCHWARTZ
NOTARY PUBLIC, State of New York
No. 24-557800
Qualified in Kings County
Commission Expires March 31, 1971

CONSENT TO FILING CERTIFICATE OF AMENDMENT
RELATING TO THE DISPOSITION OF ASSETS UPON
THE DISSOLUTION, AND NON-PROFIT CHARACTER
OR

THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

I, HOLLIS S. INGRAHAM, Commissioner of Health of
the State of New York, do this 18 day of December, 1970,
pursuant to Article 28-A of the Public Health Law, hereby
certify that I consent to the filing of the foregoing
Certificate of Amendment relating to the Disposition of
Assets Upon the Dissolution and Non-Profit Character of
The Brookdale Hospital Center Nursing Home Company, Inc.
with the Secretary of State of the State of New York.

Hollis S. Ingraham, M.D.
Commissioner of Health

By Donald G. Dickson, M.D.
Donald G. Dickson, M.D.
Deputy Commissioner

The undersigned, a Justice of the Supreme Court
of the State of New York, 2nd Judicial District wherein
is located the principal office of The Brookdale Hospital
Center Nursing Home Company, Inc., hereby approves the
within Certificate of Amendment to the Certificate of
Incorporation of The Brookdale Hospital Center Nursing Home
Company, Inc. and the filing thereof.

Dated: December 21, 1970.
Brooklyn, New York

Notice of Application Waived
(This is not to be deemed an
approval on behalf of any
Department or any of the
State of New York, or any
authorities thereof, unless
otherwise indicated.)

John E. Cone
Justice of the Supreme Court
2nd Judicial District

HON. JOHN E. CONE

Dated: Dec 18, 1970

LOUIS J. ...
Attorney General

By Robert J. Wallenstein
Assistant Attorney General, 5

WHEREAS, the certificate of incorporation of The Brookdale Hospital Center Nursing Home Co., Inc. was heretofore approved by the State Board of Social Welfare and the certificate of incorporation was filed with the Secretary of State on January 11, 1968, and

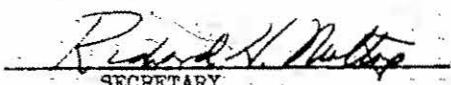
WHEREAS, the aforementioned certificate limited the duration of the Corporation for the period of two years, and

WHEREAS, on February 3, 1970, the existence of the Corporation was extended to January 11, 1971, and

WHEREAS, the Staff of the New York State Department of Health has recommended, in a report to this Council, that the life of the Corporation be extended so as to make its existence perpetual, and has further recommended the approval of a certificate of amendment relating to the disposition of the assets of the Corporation upon the dissolution of the Corporation in order to conform with the requirements of the Internal Revenue Service, now therefore be it

RESOLVED, that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. extending the existence of the corporation so as to make it perpetual, and that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. relating to the disposition of the assets of the corporation upon the dissolution of the corporation in order to conform with the requirements of the Internal Revenue Service, are hereby approved, provided that properly executed certificates of amendment are presented to the New York State Department of Health in a form acceptable to the Department.

ALBANY, NEW YORK
DATED : DECEMBER 18, 1970

6

SECRETARY

memo 1/11/68 Kings Co

Rev of Expt to 1/11/71

876654-7

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

THE BROOKDALE HOSPITAL CENTER
NURSING HOME COMPANY, INC.

Under Section 803 of the Not-
For-Profit Corporation Law

659362-8

S

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 22 1970
TAX \$ *None*
FILING FEE \$ *30*

John P. Long
Secretary of State
NA
24 Kings

B

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BERGNER & BERGNER
ATTORNEYS AT LAW
ELEVEN PARK PLACE
NEW YORK CITY
BARCLAY 7-8250

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 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

4997188

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
BROOKDALE HOSPITAL CENTER NURSING HOME
COMPANY, INC.

Under Section 801 of The Not-For-Profit Corporation Law
and the Public Health Law

WE, the undersigned, hereby certify: -

1. The name of the corporation is BROOKDALE HOSPITAL
CENTER NURSING HOME COMPANY, INC. It was formed under that name
and the name has not been changed.

2. The Certificate of Incorporation of said corporation
was filed by the Department of State of January 11, 1968. The
corporation was formed under the Not-For-Profit Corporation Law
and the Public Health Law.

3. The corporation is a corporation as defined in sub-
paragraph (a)(5) of Section 102 (Definition) of the Not-For-
Profit Corporation Law, and is a Type D corporation under
Section 201 (Purposes).

4. The Secretary of State, pursuant to Section 402(a)(7)
is hereby designated as agent of the corporation upon whom process
against it may be served. The post office address to which the
Secretary shall mail a copy of any process against the corporation
served upon him is 555 Rockaway Parkway, Brooklyn, New York 11212.

5. Paragraph 1 of the Certificate of Incorporation relating to the name of the corporation is amended to read as follows:

"1. The name of the Corporation shall be THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION."


6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the membership of the corporation voting in person at a special meeting of the membership, duly called for that purpose upon due notice to all members of record given in the manner required for a special meeting of the corporation; said meeting was held at 1060 Ocean Parkway, Brooklyn, New York at 6:15 P.M. on October 18th, 1982; a majority of the members were present; the certificate of Incorporation of the corporation does not require the consent of more than a majority of the members to change the name of the corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

and the following approvals or consents will be endorsed upon
or annexed to this Certificate of Amendment prior to its de-
livery to the Department of State:

Commissioner of Health, Public Health Council,
Justice of the Supreme Court, Waiver of the
Attorney General

IN WITNESS WHEREOF, we have executed this Certificate
of Amendment this 31st day of January, 1983 and affirmed that the
statements made herein are true under the penalties of perjury.

Edwin Schulman
New York, New York


EDWIN SCHULMAN - President

David Schlang
New York, New York


DAVID SCHLANG - Secretary

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.

EDWIN SCHULMAN and DAVID SCHLANG, being severally duly sworn, depose and say: -

1. That he EDWIN SCHULMAN is the President of THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate, and was such President at the time of the consent mentioned therein for the change of name of the corporation from BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

2. That he DAVID SCHLANG is the Secretary of THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate, and was such Secretary at the time of the consent mentioned therein for the change of name of the corporation from BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

3. That at a special meeting of the membership duly called at which a quorum was present, the membership duly authorized the execution and filing of the foregoing Certificate of Amendment by action of a majority of the entire membership.

4. Such consent was given by affirmative votes cast in person by a majority of the entire membership at a special meeting of the membership after due notice to the entire membership.

of the corporation given in the manner required for a special meeting of the membership of the corporation.

5. That the Certificate of Incorporation of this corporation does not require a consent of more than a majority of the entire membership to change the name of the corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

Edwin T. Schulman
EDWIN SCHULMAN

David Schlang
DAVID SCHLANG

Sworn to before me this

31st day of *January*, 1983

Clark K. Kendall
NOTARY PUBLIC

NOTARY PUBLIC
No. 4
Term Expires March 30, 1984


CONSENT TO AMENDMENT OF
CERTIFICATE OF INCORPORATION
BY
COMMISSIONER OF HEALTH

I, David Axelrod, M.D., Commissioner of Health of the State of New York, on this 26th day of April, 1983, pursuant to Article 28-A of the Public Health Law and Section 804 of the Not-For-Profit Corporation Law, hereby certify that I consent to the filing of the foregoing Certificate of Amendment to change the name of the Corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION", with the Secretary of State of the State of New York.

COMMISSIONER OF HEALTH

BY:



 STATE OF NEW YORK DEPARTMENT OF HEALTH
OFFICE OF HEALTH SYSTEMS MANAGEMENT

MEMORANDUM

TO: Public Health Council

FROM: Peter J. Millock, General Counsel *PM*

DATE: March 1, 1983

SUBJECT: Certificate of Amendment of Certificate of
Incorporation of Brookdale Hospital Center
Nursing Home Company, Inc.

Brookdale Hospital Center Nursing Home Company, Inc., a not-for-profit corporation formed, with State Board of Social Welfare approval, on December 1967, requests Public Health Council approval of the attached certificate of amendment of its certificate of incorporation. The corporation operates a nursing home in Brooklyn, New York.

The sole purpose of the attached amendment is to change the corporate name to "The Samuel Schuiman Institute for Nursing and Rehabilitation," a name deemed by the directors to honor the corporation's deceased former president, as well as to indicate the corporation's scope and purposes.

The attached document has been found to comply with the requirements of the Not-For-Profit Corporation Law.

Attachment

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WAIVER OF NOTICE OF APPLICATION
BY ATTORNEY GENERAL

Notice of Application waived: (This is not to be deemed
an approval on behalf of any Department or Agency of the
State of New York, nor an authorization of activities
otherwise limited by law.)

DATED:

1983

ATTORNEY GENERAL OF THE
STATE OF NEW YORK

BY:

Assistant Attorney General

see next page

CONSENT TO AMENDMENT OF
CERTIFICATE OF INCORPORATION
BY A RESIDENT SUPREME COURT JUSTICE

The undersigned, a Justice of the Supreme Court of the State of New York, for the Second Judicial District, hereby approves the within Certificate to change the name of the corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

DATED: ^{BROOKLYN} ~~Brooklyn~~, N.Y.,
JUNE 28 1983.

Gerald Adler

J. S. C.

Gerald Adler,

JUN 28 1983

SUPREME COURT
KINGS COUNTY
SPECIAL TERM
PART 2

June 9, 1983

THE UNDERSIGNED HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL
APPROVAL HEREIN AND WAIVES
STATUTORY NOTICE.

EDBERT LEHARS, ATTORNEY GEN.
STATE OF NEW YORK

Howard Holt

HOWARD HOLT
Associate Attorney

BILLED

USC

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JUL - 7 1983

AMT. OF CHECK \$ 47.50
FILING FEE \$ 30
TAX \$ _____
COUNTY FEE \$ _____
COPY \$ 7.50
CERT. \$ _____
H. F. F. \$ _____
SPEC. HANDLE \$ 10

USC

BY: Type D
Kings

CERTIFICATE OF AMENDMENT
OF
CERTIFICATE OF INCORPORATION
OF
BROOKDALE HOSPITAL CENTER NURSING HOME
COMPANY, INC.

RECEIVED
JUL 5 2 1983

Under Section 803 of The Not-For-Profit Corporation Law
and the Public Health Law

1/11/68 Kings

9362-3

(- 8X65V-)

W.P. Type 2

10/1/68 Kings

B. Kings

01.15 = 2000 Kings

as with Kings

RECEIVED
JUL 5 1983

LANAU, BERKOWITZ & NOSTRAND
Attorneys-at-Law
60 East 42nd Street - Suite 2501
New York, New York 10165
(212) 687 - 2226

X 7/16
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0000 0766

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 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION

UNI

Under Section 803
of the Not-For-Profit Corporation Law

We, the undersigned being the President and Secretary
of The Samuel Schulman Institute For Nursing and Rehabilitation
("Corporation") do hereby certify:

(1) The name of the Corporation is The Samuel Schulman
Institute For Nursing And Rehabilitation. The name under which
the Corporation was formed is Brookdale Hospital Center Nursing
Home Company, Inc.

(2) The Certificate of Incorporation was filed by the
Department of State on the 11th day of January 1968. The said
Corporation was formed under the Membership Corporation Law and
the Public Health Law of the State
of New York.

(3) The Corporation is a corporation as defined in
subparagraph (a) (5) of section 102 of the Not-For-Profit
Corporation Law and is a Type D corporation under section 201 of
said law.

C146100

16100

(4) Paragraph I of the Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended to read as follows:

"The name of the Corporation is The Samuel and Bertha Schulman Institute For Nursing and Rehabilitation."

(5) This amendment to the Certificate of Incorporation was authorized by the unanimous written consent of the sole member of the Corporation, pursuant to Section 614 of the Not-For-Profit Corporation Law.

(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 555 Rockaway Parkway, Brooklyn, New York 11212, Attention: Office of the President.

IN WITNESS WHEREOF, the undersigned have executed this certificate this 26 day of October, 1989.

It is affirmed that the statements made herein are true under the penalties and perjury.


Edwin L. Schulman
President

David Schlang
David Schlang
Secretary

STATE OF NEW YORK)
) ss.:
COUNTY OF *Queens*)

On this *26* day of *October*, 1989, before me personally came *Edward Schubert* and *David Schlang*, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Amendment of Certificate of Incorporation and they duly acknowledged to me that they severally and independently executed the same.

Joyce E. Smith
Notary Public

JOYCE E. SMITH
Notary Public, State of New York
No. 41-4885995
Qualified in Queens County
Commission Expires April 30, 1991

9.12.3/BM1

The under signed has no objection to the granting of judicial approval to the attached Certificate of Amendment and waives statutory notice.

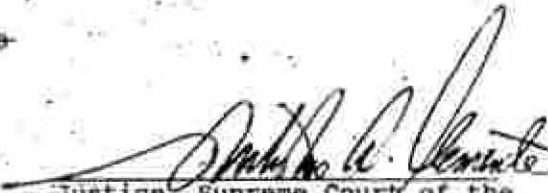
Robert Abrams
Attorney General
State of New York

By: _____

Dated: _____

I, HON. NICHOLAS A. CLEMENTE, a Justice of the Supreme Court of the State of New York, Second Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of The Samuel Schulman Institute For Nursing And Rehabilitation, and consent that the same be filed.

Date: MAY 14 1990
Brooklyn, New York


Justice, Supreme Court of the
State of New York
Second Judicial District

THE UNDERSIGNED
TO THE COUNCIL
APPROVAL BY THE
STATUTORY NOTICE

ROBERT ABRAMS, ATTORNEY GENERAL
STATE OF NEW YORK

by Laura Werner
May 9, 1990

ASSISTANT ATTORNEY GENERAL



DAVID AXELROD, M.D.
COMMISSIONER

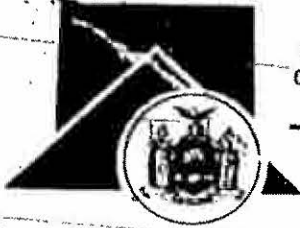
STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY

UNI

CONSENT
TO FILING A CERTIFICATE OF AMENDMENT OF THE
CERTIFICATE OF INCORPORATION
BY THE
COMMISSIONER

I, DAVID AXELROD, M.D., Commissioner of Health of
the State of New York, do this *22nd* day of *May* 1990,
consent to the filing with the Secretary of State of the
Certificate of Amendment of the Certificate of Incorporation
of Samuel Schulman Institute for Nursing and Rehabilitation,
as executed on the 26th of October 1989, pursuant to
Section 2854 of the Public Health Law.

David Axelrod, M.D.
Commissioner of Health



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

UNI

April 23, 1990

Ms. Beth Margolis
Kalkines, Arky, Zall & Bernstein
885 Third Avenue
New York, NY 10022-4802

Re: Certificate of Amendment of the Certificate of Incorporation of The
Samuel Schulman Institute for Nursing and Rehabilitation

Dear Ms. Margolis:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of April, 1990, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of The Samuel Schulman Institute for Nursing and Rehabilitation hereafter to be known as The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation dated October 26, 1989 is approved.

Sincerely,

Karen S. Westervelt
Executive Secretary

b

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RESOLUTION

RESOLVED, that the Public Health Council, on this 20th day of April, 1990, approves the filing of the Certificate of Amendment to the Certificate of Incorporation of The Samuel Schulman Institute for Nursing and Rehabilitation, hereafter to be known as The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation dated October 26, 1989.

AFFIDAVIT OF BERTHA SCHULMAN

BERTHA SCHULMAN, being duly sworn, deposes and says:

1. I have no objection to the addition of my name to the titles of The Samuel Schulman Institute For Nursing And Rehabilitation ("SSI") and The Samuel-Schulman Institute For Nursing And Rehabilitation Fund, Inc. (the "Fund").

2. I am honored by the addition of my name to the titles of SSI and the Fund so that the new titles will be "The Samuel And Bertha Schulman Institute For Nursing And Rehabilitation" and "The Samuel And Bertha Schulman Institute For Nursing And Rehabilitation Fund, Inc."

Bertha Schulman
BERTHA SCHULMAN

Sworn to before me
this 24 day of
January, 1990

Joyce E. Smith
Notary Public

8801-10.3x1

JOYCE E. SMITH
Notary Public, State of New York
No. 41-4885925
Qualified in Queens County
Commission Expires April 30, 1991

0000 1224

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C148100

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED MAY 29 1980

AMT. OF DOLLARS
FIVE HUNDRED
THIRTY
COUNTY OF
SHERMAN
CENTRE
RECORDS
SECTION FILED TO
BY: *[Handwritten Signature]*

UNI

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION

Under Section 803 of the Not-For-Profit
Law of the State of New York:

and 11183

CPR

NPA 4850

[Handwritten Signature]

623820

555 Rockaway Parkway Bklyn N.Y.

L-A947188-11

11212

BRONX: BROOKDALE HOSPITAL CENTER NURSING HOME (CO) INC.

1/11/60

Kalkines Arky Zell & Bernstein
1575 Broadway - 27th Floor
New York, New York 10019

654362

111-111-1111

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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 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

F991215000 763

**CERTIFICATE OF MERGER
OF
THE DOROTHY AND DAVID I. SCHACHNE INSTITUTE
FOR NURSING AND REHABILITATION
AND
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE
FOR NURSING AND REHABILITATION
INTO
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE
FOR NURSING AND REHABILITATION**

**Under Section 904 of the New York
Not-for-profit Corporation Law**

The undersigned, being respectively the President and Secretary of the The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, (hereinafter "DDISI"), and the President and Secretary of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, (hereinafter "SBSI"), hereby certify as follows:

1. (a) The names of the constituent Corporations are DDISI and SBSI. DDISI was formed under the name Linroe Nursing Home, Inc. SBSI was formed under the name The Brookdale Hospital Center Nursing Home Company, Inc.

(b) The Corporations are corporations as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and are Type D Corporations under Section 201 of said law.

(c) The name of the surviving Corporation is SBSI.

2. Neither of the constituent corporations has issued any certificates evidencing capital contributions of subventions.

3. The sole member of DDISI is Linroe Community Service Corporation, Inc. (hereinafter "LCSC"). The sole member of SBSI is LCSC. The surviving corporation's sole member is LCSC.

4. The Certificate of Incorporation of the surviving corporation is hereby amended to effect the following amendments authorized by the Not-for-Profit Corporation Law:

(a) The original Paragraph 1.0 of the Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended to read in its entirety as

follows: The name of the Corporation is The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

(b) The Paragraph 6 of the Amended Certificate of Incorporation, which designates the Secretary of State as agent of the Corporation upon whom process may be served, is amended to read in its entirety as follows: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

One Brookdale Plaza
Brooklyn, New York 11212-3198
Att: President & Chief Executive Officer
The Brookdale University Hospital
and Medical Center

5. The effective date of the Merger shall be the date on which this Certificate of Merger is filed by the Department of State of the State of New York (the "Department of State").

6. (a) The Certificate of Incorporation for the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation was filed by the Department of State on the 17th day of December, 1990. The said corporation was formed under the 104 (e) of the not-for-profit corporation law and section 2854 (2) (a) of the Public Health Law.

(b) The Certificate of Incorporation for The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation was filed by the Department of State on the 11th day of January, 1968. The said Corporation was formed under the Membership Corporation Law and the Public Health Law of the State of New York.

7. (a) The merger was authorized with respect to the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation in the Following manner: A plan of merger providing for the Merger (the "Plan") was duly adopted by a majority of the members of the Board of Directors of the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, at a meeting on February 17, 1998.

(b) The merger was authorized with respect to the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation in the following manner: A plan of merger providing for the merger (the "Plan") was duly adopted by a majority of the members of the Board of Directors of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, at a meeting held on February 17, 1998.

(c) The Plan has not been abandoned.

IN WITNESS WHEREOF, the undersigned, on behalf of the constituent Corporations,
herby subscribe this certificate and affirm it as true under the penalties of perjury as of the 31st
day of August, 1998.

Martin J. Simon, Chairman
The Dorothy and David L. Schachne Institute
for Nursing and Rehabilitation, Inc.

Asner L. Mespel, M.D., Secretary
The Dorothy and David L. Schachne Institute
for Nursing and Rehabilitation, Inc.

Edwin L. Schulman, President
The Samuel and Bertha Schulman Institute
for Nursing and Rehabilitation, Inc.

David Schlang

David Schlang, Secretary
The Samuel and Bertha Schulman Institute
for Nursing and Rehabilitation, Inc.

IN WITNESS WHEREOF, the undersigned, on behalf of the constituent Corporations, hereby subscribe this certificate and affirm it as true under the penalties of perjury as of the 31st day of August, 1998.


Martin J. Simon, Chairman
The Dorothy and David I. Schachne Institute
for Nursing and Rehabilitation, Inc.

Ascher L. Mestel, M.D.
Ascher L. Mestel, M.D., Secretary
The Dorothy and David I. Schachne Institute
for Nursing and Rehabilitation, Inc.

Edwin L. Schulman, President
The Samuel and Bertha Schulman Institute
for Nursing and Rehabilitation, Inc.

David Schlang, Secretary
The Samuel and Bertha Schulman Institute
for Nursing and Rehabilitation, Inc.

IN WITNESS WHEREOF, the undersigned, on behalf of the constituent Corporations,
hereby subscribe this certificate and affirm it as true under the penalties of perjury as of the 31st
day of August, 1998.



Martin J. Simon, Chairman
The Dorothy and David I. Schachne Institute
for Nursing and Rehabilitation, Inc.

Ascher L. Mestel, M.D., Secretary
The Dorothy and David I. Schachne Institute
for Nursing and Rehabilitation, Inc.

Edwin L. Schulman, President
The Samuel and Bertha Schulman Institute
for Nursing and Rehabilitation, Inc.

David Schlang, Secretary
The Samuel and Bertha Schulman Institute
for Nursing and Rehabilitation, Inc.

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Supreme Court of the State of
New York, held in and for the
County of Kings, at the
Courthouse thereof, located at
360 Adams Street, Brooklyn,
New York, on the 27 day of
Dec, 1999

P R E S E N T:

Hon. _____, Justice

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application)
of)

THE SAMUEL AND BERTHA SCHULMAN)
INSTITUTE FOR NURSING AND REHABILITA-)
TION, INC. and THE DOROTHY AND DAVID I.)
SCHACHNE INSTITUTE FOR NURSING AND)
REHABILITATION, INC.)

ORDER APPROVING
MERGER

Index No. 48345/99

For an order approving their)
plan of merger under Section 907 of)
the Not-for-Profit Corporation Law)
into THE SAMUEL AND BERTHA SCHULMAN)
INSTITUTE FOR NURSING AND REHABILITA-)
TION, INC. and authorizing the filing)
of the Certificate of Merger)
under Section 904 of said Law.)

The Samuel and Bertha Schulman Institute for Nursing and
Rehabilitation, Inc. and The Dorothy and David I. Schachne
Institute for Nursing and Rehabilitation, Inc., having duly made
joint application for an order, pursuant to section 907 of the
Not-for-Profit Corporation Law ("N-PCL"), approving the plan of
merger of said corporations and authorizing the filing of the

certificate of merger in accordance with N-PCL § 904, and said application having regularly come on to be heard,

Now upon reading the joint affidavit of Edwin L. Schulman, the President of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc. and Martin J. Simon, the Chairman of The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc., sworn to on June 9, 1949, and the plan of merger designated Exhibit A herein, and the certificate of merger of said corporations into The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc., under section 904 of the Not-For-Profit Corporation Law, all in support of the application, and after due deliberation having been held thereon, and it appearing that the interests of the constituent corporations and the public interest will not be adversely affected by the proposed merger,

Now, upon the petition of Edwin L. Schulman, President of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc. and Martin J. Simon, Chairman of The Dorothy and David Schachne Institute for Nursing and Rehabilitation, Inc., it is

ORDERED, that the plan of merger between The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc. and The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc. designated Exhibit A herein, be and the same is hereby approved, and it is further

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ORDERED, that the aforesaid certificate of merger is authorized to be filed by the Department of State in accordance

with N-PCL § 904, to which certificate a certified copy of this order shall be annexed.

ENTER,

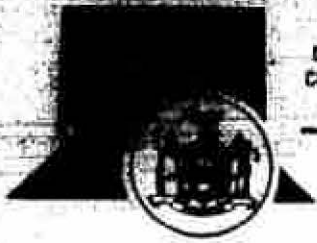
THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE ELIOT SPITZER, ATTORNEY GENERAL OF THE STATE OF NEW YORK

J. S. C.

STATE OF NEW YORK
CLERK OF THE SUPREME COURT
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STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

July 29, 1999

Frank T. Cicero
Cicero Shapiro Velazquez & Cicero
701 Westchester Avenue - Suite 210W
White Plains, New York 10604

Re: Certificate of Merger of the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc., into the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc., and Amendment to the Samuel and Bertha Schulman Institute Certificate of Incorporation

Dear Mr. Cicero:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 30th day of October, 1998, I hereby certify that the Certificate of Merger of Certificate of Merger of the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc. into the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc. and Amendment to the Samuel and Bertha Schulman Institute Certificate of Incorporation dated February 17, 1998 is approved.

Sincerely,

Donna Peterson
Karen S. Westervelt *for*
Executive Secretary

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CERTIFICATE OF MERGER
OF
THE DOROTHY AND DAVID L. SCHACHNE INSTITUTE
FOR NURSING AND REHABILITATION
AND
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE
FOR NURSING AND REHABILITATION
INTO
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE
FOR NURSING AND REHABILITATION

UNDER SECTION 904 OF THE NEW YORK NOT-FOR-PROFIT
CORPORATION LAW

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FILED BY:
KALKINES, ARKY, ZALL & BERNSTEIN LLP
1675 BROADWAY, 27TH FLOOR
NEW YORK, NEW YORK 10019

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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Amendment of Certificate of Incorporation of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., dated August 19, 2015.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council
FROM: Richard J. Zahnleuter, Acting General Counsel
DATE: September 28, 2015
SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Brookdale Family Care Centers, Inc.

Brookdale Family Care Centers, Inc. requests Public Health and Health Planning Council approval of its proposed Certificate of Amendment to its Certificate of Incorporation, in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law, and Section 2801-a of the Public Health Law.

The Corporation's initial Certificate of Incorporation, and a previous amendment thereto changing the corporate duration to perpetual, were approved by the Public Health Council. This amendment adds to the corporate purposes, as described in the attached letter from corporate counsel.

Attached are the following with regard to this matter:

1. Letter dated September 18, 2015, from corporate counsel, requesting Public Health and Health Planning Council approval of the proposed Certificate of Amendment, and setting forth the reasons for the request.
2. Proposed Certificate of Amendment of the Certificate of Incorporation.
3. Existing Certificate of Incorporation and amendment thereto.

The proposed Certificate of Amendment is in legally acceptable form.

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015
212.653.8700 main
212.653.8701 main fax
www.sheppardmullin.com

September 18, 2015

212.634.3084 direct
trosenberg@sheppardmullin.com

File Number: 43SG-207827

VIA FEDEX

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Center for Health Care Facility Planning,
Licensure and Finance
Corning Tower, Room 1805
Albany, New York 12237

Re: Brookdale Family Care Centers, Inc.
Urban Strategies/Brookdale Family Care Center, Inc.

Dear Ms. Leonard:

I am writing to request that the Public Health and Health Planning Council (the "PHHPC") of the New York State Department of Health (the "DOH") review and consent to the filing of the proposed Certificates of Amendment of the Certificates of Incorporation of Brookdale Family Care Centers, Inc. ("BFCC") and Urban Strategies/Brookdale Family Care Center, Inc. ("Urban Strategies") with the Department of State at the October 8, 2015 meeting of the PHHPC. This special request for expedited review is made in coordination with the Dormitory Authority of the State of New York ("DASNY"), for whose benefit the proposed Certificates of Amendment are being filed, as described below.

By way of background, BFCC and Urban Strategies are affiliates of The Brookdale Hospital Medical Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law operating in Brooklyn, New York (the "Hospital"). BFCC and Urban Strategies are each a New York not-for-profit corporation located in Brooklyn, New York, and each is licensed as a diagnostic and treatment center under Article 28 of the New York State Public Health Law. BFCC and Urban Strategies have historically operated as constituents of and for the benefit of the Hospital and its affiliated health system.

The Hospital has been experiencing severe financial distress in recent years and has been receiving critical financial support through the DOH in coordination with DASNY in order to cover the Hospital's operating shortfalls, cash flow needs and capital improvement expenses. In

SheppardMullin

Colleen M. Leonard
September 18, 2015
Page 2

connection with a loan issued by DASNY to the Hospital on August 27, 2015 in the aggregate amount of \$13,491,266.00, DASNY required the Hospital to covenant to cause BFCC and Urban Strategies to issue guaranties and to pledge and mortgage their real and personal property in favor of DASNY to secure the Hospital's repayment of both such loan and other outstanding indebtedness to DASNY, including amounts advanced to the Hospital under a non-revolving credit line loan pursuant to which the Hospital may borrow an aggregate amount of up to \$78,000,000.00.

The proposed Certificates of Amendment would clarify the purposes of BFCC and Urban Strategies to more explicitly establish that their purposes include operating in support of the Hospital and the health system of which it is a part, and promoting the health of the community served by such health system. Such amendments are proposed to ensure that the Hospital Affiliates have the requisite corporate authority under the New York Not-for-Profit Corporation Law to enter into the guaranties, pledges and other agreements and instruments required by DASNY.

Copies of the Certificates of Amendment of BFCC and Urban Strategies are attached as Exhibit 1 and Exhibit 2, respectively, and copies of their respective Certificates of Incorporation and all amendments thereto are attached as Exhibit 3 and Exhibit 4, respectively.

The agenda for the October 8, 2015 meeting of the PHHPC currently includes the proposed Certificate of Amendment of another affiliate of the Hospital, The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI"). SSI seeks to amend its Certificate of Incorporation for the same reason as BFCC and Urban Strategies. SSI's Certificate of Amendment was reviewed by Mark Noordsy, a Senior Attorney in the DOH's Division of Legal Affairs.

DASNY is requiring that SSI, BFCC and Urban Strategies enter into the required guaranties, pledges, mortgages and other instruments and agreements prior to the Hospital's receipt of additional loan funds from DASNY. Given the Hospital's urgent need for such funds in order to cover essential operating expenses, we respectfully request the PHHPC's review of the proposed Certificates of Amendment, together with SSI's proposed Certificate of Amendment, at its October 8, 2015 meeting. We greatly appreciate any assistance you can offer in this regard.

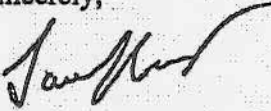
Given DASNY's close coordination with the DOH with respect to the Hospital, we understand that DASNY is separately making the same request to the DOH and that, accordingly, you may be separately contacted on this matter by DASNY or other DOH representatives.

SheppardMullin

Colleen M. Leonard
September 18, 2015
Page 3

Thank you very much.

Sincerely,



Tamar R. Rosenberg
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:224259732.2
Encls.

cc: Mark Noordsy, Esq. (DOH)
Deryck A. Palmer, Esq. (Pillsbury)

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BROOKDALE FAMILY CARE CENTERS, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

The undersigned, Reginald Bullock Jr, hereby certifies that he is the Assistant Secretary of Brookdale Family Care Centers, Inc., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the corporation is Brookdale Family Care Centers, Inc. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on October 27, 1994 under Section 402 of the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. The Corporation's Certificate of Incorporation is hereby amended as follows:
 - a. Article THIRD of the Corporation's Certificate of Incorporation, which sets forth the Corporation's purposes, including to establish, operate and maintain one or more diagnostic and treatment centers and engage in related activities, is hereby amended to explicitly establish and clarify that the purposes of the Corporation include establishing, operating and maintaining one or more diagnostic treatment centers and engaging in related activities for the purpose of benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, Inc., of which the Corporation has historically been a constituent, and improving and enhancing the general health and well-being of the communities of Brooklyn, New York served by the constituent entities of the Brookdale Health System, Inc., which the Corporation has historically served. Accordingly, Article THIRD of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

THIRD: The Corporation is organized and shall be operated exclusively for the charitable, scientific and educational purposes of promoting, facilitating and improving the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the "Brookdale Health System, Inc.," a system of affiliated health care providers and related entities, by:

(i) establishing, operating and maintaining 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;

(ii) benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, Inc. that are exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code, including, in particular, The Brookdale Hospital Medical Center, a charitable New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law, including through the provision of financial and/or other support to such entities, as shall be determined by the Corporation's Board of Directors from time to time; and

(iii) without limiting the generality of the foregoing, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to corporations incorporated under the NPCL, in furtherance of accomplishing the foregoing purposes.

- b. Article ELEVENTH of the Corporation's Certificate of Incorporation, which designates the Secretary of State of the State of New York as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation, is hereby amended to read in its entirety as follows:

ELEVENTH: The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

Brookdale Family Care Centers, Inc.
c/o The Brookdale Hospital Medical Center
ATTN: General Counsel
One Brookdale Plaza
Brooklyn, New York 11212

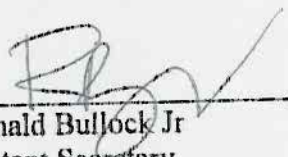
5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the Corporation's sole member, Brookdale Health System, Inc., acting through the affirmative vote of its Board of Trustees at a duly constituted meeting thereof, in accordance with Section 802(a)(1) of the NPCL.
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

Brookdale Family Care Centers, Inc.
c/o The Brookdale Hospital Medical Center
ATTN: General Counsel
One Brookdale Plaza
Brooklyn, New York 11212

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on September 22nd, 2015.



By: Reginald Bullock Jr
Title: Assistant Secretary

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
BROOKDALE FAMILY CARE CENTERS, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

Filed By:

**Tamar R. Rosenberg, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015**

F 941027000352

CERTIFICATE OF INCORPORATION

PH-32

PH-32

BROOKDALE FAMILY CARE CENTERS, INC.

(Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, a natural person at least 18 years of age, for the purpose of forming a corporation under section 402 of the Not-for-Profit Corporation Law of New York, does hereby certify:

FIRST: The name of the corporation is Brookdale Family Care Centers, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (c) (5) of Section 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,

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deformity or physical condition; and
B. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein.

FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth in Article THIRD hereof or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof.

FIFTH: Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in N-PCL § 404(a)-(n), (p)-(s) and (u)-(v). The approvals required by N-PCL § 404 (o) and (r) are annexed.

SIXTH: 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 Section 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).

SEVENTH: 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.

EIGHTH: Upon the dissolution of the Corporation, its Board of Directors, after making provision for the payment of all of the liabilities of the Corporation, shall arrange for either the direct distribution of all of the assets of the Corporation for the tax-exempt purposes of the Corporation (as set forth in Article THIRD hereof), or distribution to one or more organizations that qualify for exemption under the provisions of I.R.C. § 501(c)(3) and the Treasury Regulations promulgated thereunder, subject to the laws of the State of New York.

NINTH: 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, and the corresponding laws of the State of New York, 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).

TENTH: The office of the Corporation shall be located in the County of Kings, State of New York.

ELEVENTH: 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:

Brookdale Family Care Centers, Inc.
c/o Brookdale Hospital Medical Center
Linden Boulevard at Brookdale Plaza
Brooklyn, New York 11212

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TWELFTH: All references herein to "T.R.C." shall be deemed to include both amendments thereto and statutes which succeed such provisions (i.e., the corresponding provisions of future United States Internal Revenue Laws).

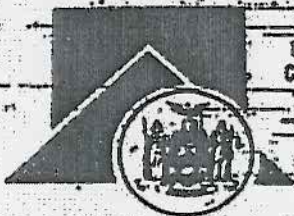
THIRTEENTH: The names and addresses of the initial directors, until the first annual meeting, are:

<u>Name</u>	<u>Address</u>
Robert A. Koepfel	1035 Fifth Avenue New York, New York 10028
Michael Levin	210 East 86th Street New York, New York 10028
Henrietta Fuller Massena	421 Herzl Street Brooklyn, New York 11212

FOURTEENTH: The duration of the Corporation shall be for a period expiring on September 23, 1995.

IN WITNESS WHEREOF, I, the undersigned, have executed and signed this certificate this 7th day of October, 1994, and affirm that the statements herein are true under the penalties of perjury.

Michael Levin
Michael Levin, Incorporator
210 East 86th Street
New York, New York 10028



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

October 24, 1994

Jeffrey C. Thrope, Esq.
Kalkines, Arky, Zail & Bernstein
Attorneys at Law
1675 Broadway
New York, NY 10019-6809

Re: Certificate of Incorporation of Brookdale Family Care Centers, Inc.

Dear Mr. Thrope:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of September, 1994, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Brookdale Family Care Centers, Inc., dated October 7, 1994, for a one year limited life duration expiring on September 23, 1995.

Sincerely,

Karen S. Westervelt
Executive Secretary



STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on August 17, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

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DC-08

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

BROOKDALE FAMILY CARE CENTERS, INC.

(Under Section 803 of the Not-for-Profit Corporation Law)

We, the undersigned, being the President and Secretary of Brookdale Family Care Centers, Inc., do hereby certify:

1. The name of the corporation is Brookdale Family Care Centers, Inc. (the "Corporation").

2. The certificate of incorporation of the Corporation was filed by the Department of State on the 27th day of October, 1954. 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 of the Not-for-Profit Corporation Law and is a Type B corporation under section 201 of said law.

4. Paragraph FOURTEENTH of the certificate of incorporation of the Corporation, which sets forth the duration of the Corporation, is hereby amended to read as follows:

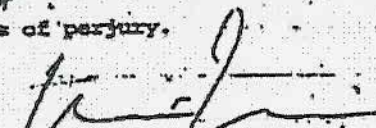
FOURTHENTH: The duration of the Corporation shall be PERPETUAL.


5. This amendment to the certificate of incorporation of the Corporation was authorized by the vote of a majority of the directors of Linroc Community Service Corporation, the Corporation's sole member.

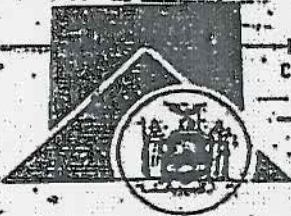
6. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon her as agent of the Corporation is:

Brookdale Family Care Centers, Inc.
c/o Linroc Community Service Corporation
Linden Boulevard at Brookdale Plaza
Brooklyn, New York 11213

IN WITNESS WHEREOF, the undersigned have executed this certificate and affirm that the statements made herein are true under the penalties of perjury.


Michael Levin, President 7/9/57
Date


Robert A. Koeppl, Secretary 12-7-57
Date



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

April 26, 1995

Jeffrey C. Thrope
Kalkines, Arky, Zall & Bernstein
1675 Broadway
New York, NY 10019-5820

Re: Certificate of Amendment of the Certificate of Incorporation
of Brookdale Family Care Centers, Inc.

Dear Mr. Thrope:

AFTER INQUIRY and INVESTIGATION and in accordance with
action taken at a meeting of the Public Health Council held on
the 23rd day of September, 1994, I hereby certify that the Public
Health Council consents to the filing of the Certificate of
Amendment to the Certificate of Incorporation of Brookdale Family
Care Centers, Inc., dated December 8, 1994.

Sincerely,

Karen S. Westervelt

Karen S. Westervelt
Executive Secretary

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CERTIFICATE OF
INCORPORATION

BROOKDALE FAMILY CARE CENTERS, INC.

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FILED

STATE OF NEW YORK
DEPARTMENT OF STATE
MAY 02 1995

Filed By:
Kalkines Arky Zall & Bernstein
1675 Broadway
New York

NY 10019-5820

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950502000614

RESOLUTION


RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Brookdale Family Care Centers, Inc., dated September 22, 2015.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: Richard J. Zahnleuter,  Acting General Counsel

DATE: September 28, 2015

SUBJECT: Proposed Certificate of Amendment of the Certificate of Incorporation of Urban Strategies/Brookdale Family Care Center, Inc.

Urban Strategies/Brookdale Family Care Center, Inc. requests Public Health and Health Planning Council approval of its proposed Certificate of Amendment to its Certificate of Incorporation, in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law, and Section 2801-a of the Public Health Law.

The Corporation's initial Certificate of Incorporation, and a previous amendment thereto changing the corporate duration to perpetual, were approved by the Public Health Council. This amendment adds to the corporate purposes, as described in the attached letter from corporate counsel.

Attached are the following with regard to this matter:

1. Letter dated September 18, 2015, from corporate counsel, requesting Public Health and Health Planning Council approval of the proposed Certificate of Amendment, and setting forth the reasons for the request.
2. Proposed Certificate of Amendment of the Certificate of Incorporation.
3. Existing Certificate of Incorporation and amendment thereto.

The proposed Certificate of Amendment is in legally acceptable form.

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015
212.653.8700 main
212.653.8701 main fax
www.sheppardmullin.com

212.634.3084 direct
trosenberg@sheppardmullin.com

File Number: 43SG-207827

September 18, 2015

VIA FEDEX

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
New York State Department of Health
Center for Health Care Facility Planning,
Licensure and Finance
Corning Tower, Room 1805
Albany, New York 12237

Re: Brookdale Family Care Centers, Inc.
Urban Strategies/Brookdale Family Care Center, Inc.

Dear Ms. Leonard:

I am writing to request that the Public Health and Health Planning Council (the "PHHPC") of the New York State Department of Health (the "DOH") review and consent to the filing of the proposed Certificates of Amendment of the Certificates of Incorporation of Brookdale Family Care Centers, Inc. ("BFCC") and Urban Strategies/Brookdale Family Care Center, Inc. ("Urban Strategies") with the Department of State at the October 8, 2015 meeting of the PHHPC. This special request for expedited review is made in coordination with the Dormitory Authority of the State of New York ("DASNY"), for whose benefit the proposed Certificates of Amendment are being filed, as described below.

By way of background, BFCC and Urban Strategies are affiliates of The Brookdale Hospital Medical Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law operating in Brooklyn, New York (the "Hospital"). BFCC and Urban Strategies are each a New York not-for-profit corporation located in Brooklyn, New York, and each is licensed as a diagnostic and treatment center under Article 28 of the New York State Public Health Law. BFCC and Urban Strategies have historically operated as constituents of and for the benefit of the Hospital and its affiliated health system.

The Hospital has been experiencing severe financial distress in recent years and has been receiving critical financial support through the DOH in coordination with DASNY in order to cover the Hospital's operating shortfalls, cash flow needs and capital improvement expenses. In

SheppardMullin

Colleen M. Leonard
September 18, 2015
Page 2

connection with a loan issued by DASNY to the Hospital on August 27, 2015 in the aggregate amount of \$13,491,266.00, DASNY required the Hospital to covenant to cause BFCC and Urban Strategies to issue guaranties and to pledge and mortgage their real and personal property in favor of DASNY to secure the Hospital's repayment of both such loan and other outstanding indebtedness to DASNY, including amounts advanced to the Hospital under a non-revolving credit line loan pursuant to which the Hospital may borrow an aggregate amount of up to \$78,000,000.00.

The proposed Certificates of Amendment would clarify the purposes of BFCC and Urban Strategies to more explicitly establish that their purposes include operating in support of the Hospital and the health system of which it is a part, and promoting the health of the community served by such health system. Such amendments are proposed to ensure that the Hospital Affiliates have the requisite corporate authority under the New York Not-for-Profit Corporation Law to enter into the guaranties, pledges and other agreements and instruments required by DASNY.

Copies of the Certificates of Amendment of BFCC and Urban Strategies are attached as Exhibit 1 and Exhibit 2, respectively, and copies of their respective Certificates of Incorporation and all amendments thereto are attached as Exhibit 3 and Exhibit 4, respectively.

The agenda for the October 8, 2015 meeting of the PHHPC currently includes the proposed Certificate of Amendment of another affiliate of the Hospital, The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI"). SSI seeks to amend its Certificate of Incorporation for the same reason as BFCC and Urban Strategies. SSI's Certificate of Amendment was reviewed by Mark Noordsy, a Senior Attorney in the DOH's Division of Legal Affairs.

DASNY is requiring that SSI, BFCC and Urban Strategies enter into the required guaranties, pledges, mortgages and other instruments and agreements prior to the Hospital's receipt of additional loan funds from DASNY. Given the Hospital's urgent need for such funds in order to cover essential operating expenses, we respectfully request the PHHPC's review of the proposed Certificates of Amendment, together with SSI's proposed Certificate of Amendment, at its October 8, 2015 meeting. We greatly appreciate any assistance you can offer in this regard.

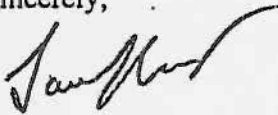
Given DASNY's close coordination with the DOH with respect to the Hospital, we understand that DASNY is separately making the same request to the DOH and that, accordingly, you may be separately contacted on this matter by DASNY or other DOH representatives.

SheppardMullin

Colleen M. Leonard
September 18, 2015
Page 3

Thank you very much.

Sincerely,



Tamar R. Rosenberg
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:224259732.2
Encls.

cc: Mark Noordsy, Esq. (DOH)
Deryck A. Palmer, Esq. (Pillsbury)

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

The undersigned, Reginald Bullock Jr., hereby certifies that he is the Assistant Secretary of Urban Strategies/Brookdale Family Care Center, Inc., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the corporation is Urban Strategies/Brookdale Family Care Center, Inc. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on October 28, 1994 under Section 402 of the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. The Corporation's Certificate of Incorporation is hereby amended as follows:
 - a. Article THIRD of the Corporation's Certificate of Incorporation, which sets forth the Corporation's purposes, including to establish, operate and maintain one or more diagnostic and treatment centers and engage in related activities, is hereby amended to explicitly establish and clarify that the purposes of the Corporation include establishing, operating and maintaining one or more diagnostic treatment centers and engaging in related activities for the purpose of benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, Inc., of which the Corporation has historically been a constituent, and improving and enhancing the general health and well-being of the communities of Brooklyn, New York served by the constituent entities of the Brookdale Health System, Inc., which the Corporation has historically served. Accordingly, Article THIRD of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

THIRD: The Corporation is organized and shall be operated exclusively for the charitable, scientific and educational purposes of promoting, facilitating and improving the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the "Brookdale Health System, Inc.," a system of affiliated health care providers and related entities, by:

(i) establishing, operating and maintaining 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;

(ii) benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, Inc. that are exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code, including, in particular, The Brookdale Hospital Medical Center, a charitable New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law, including through the provision of financial and/or other support to such entities, as shall be determined by the Corporation's Board of Directors from time to time; and

(iii) without limiting the generality of the foregoing, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to corporations incorporated under the NPCL, in furtherance of accomplishing the foregoing purposes.

- b. Article ELEVENTH of the Corporation's Certificate of Incorporation, which designates the Secretary of State of the State of New York as the agent of the Corporation upon whom process against it may be served, and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation, is hereby amended to read in its entirety as follows:

ELEVENTH: The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him or her as agent of the Corporation is:

Urban Strategies/Brookdale Family Care Center, Inc.
c/o The Brookdale Hospital Medical Center

ATTN: General Counsel
One Brookdale Plaza
Brooklyn, New York 11212

5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the Corporation's sole member, Brookdale Health System, Inc., acting through the affirmative vote of its Board of Trustees at a duly constituted meeting thereof, in accordance with Section 802(a)(1) of the NPCL.
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

Urban Strategies/Brookdale Family Care Center, Inc.
c/o The Brookdale Hospital Medical Center
ATTN: General Counsel
One Brookdale Plaza
Brooklyn, New York 11212

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on September 22nd, 2015.



By: Reginald Bullock Jr
Title: Assistant Secretary

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.**

**Under Section 803 of the
New York State Not-For-Profit Corporation Law**

Filed By:

**Tamar R. Rosenberg, Esq.
Sheppard Mullin Richter & Hampton LLP
30 Rockefeller Plaza
New York, NY 10112-0015**

941 028000 212

PH-32

CERTIFICATE OF INCORPORATION
OF

PH-32

URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.

(Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, a natural person at least 18 years of age, for the purpose of forming a corporation under section 402 of the Not-for-Profit Corporation Law of New York, does hereby certify:

FIRST: The name of the corporation is Urban Strategies/Brookdale Family Care Center, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a) (5) of Section 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,

deforality or physical condition; and

B. To engage in any and all other lawful activities

incidental to and in pursuit of the foregoing

purposes, except as restricted herein.

FOURTH: In furtherance of its corporate purposes, the Corporation shall have all general powers enumerated in N-PCL § 202, together with the power to solicit grants and contributions for corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes set forth in Article THIRD hereof or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof.

FIFTH: Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in N-PCL § 404(a)-(n), (p)-(s) and (u)-(v). The approvals required by N-PCL § 404 (o) and (t) are annexed.

SIXTH: 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 (1) which is exempt from Federal income taxation under Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as

2

"I.R.C. 501(c)(3), 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).

SEVENTH: 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.

EIGHTH: Upon the dissolution of the Corporation, its Board of Directors, after making provision for the payment of all of the liabilities of the Corporation, shall arrange for either the direct distribution of all of the assets of the Corporation for the tax-exempt purposes of the Corporation (as set forth in Article THIRD hereof), or distribution to one or more organizations that qualify for exemption under the provisions of I.R.C. 501(c)(3) and the Treasury Regulations promulgated thereunder, subject to the laws of the State of New York.

NINTH: The Corporation is organized and operated exclusively for charitable purposes qualifying it for exemption from taxation under I.R.C. § 501(c)(3). No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as may be permitted by the I.R.C., including without limitation Sections 501(c)(3) and 501(h). 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).

TENTH: The office of the Corporation shall be located in the County of Kings, State of New York.

ELEVENTH: 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 by her as agent of the Corporation is:

Urban Strategies/Brookdale Family Care Center, Inc.
Linroc Community Services Corp.
President's Office
Linden Boulevard at Brookdale Plaza
Brooklyn, New York 11212

TWELFTH: All references herein to "I.R.C." shall be deemed to include both amendments thereto and statutes which suc-


ceed such provisions (i.e., the corresponding provisions of future United States Internal Revenue Laws).

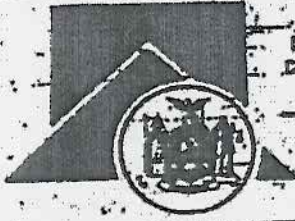
THIRTEENTH: The names and addresses of the initial directors, until the first annual meeting, are:

NAME	Address
Eric Johnson	1542 St. Marks Avenue Brooklyn, New York 11233
Gloria McCleod	330 Dumont Avenue Brooklyn, New York 11212
Joseph Castro	227 Treestop Circle Manusct, New York 10954
Michael Levin	210 East 86th Street New York, New York 10028
Alan Roth	2050 East 36th Street Brooklyn, New York 11234

FOURTEENTH: The duration of the Corporation shall be for a period expiring on September 23, 1995.

IN WITNESS WHEREOF, I, the undersigned, have executed and signed this certificate this 7th day of October, 1994, and affirm that the statements herein are true under the penalties of perjury.


Michael Levin, Incorporator
210 East 86th Street
New York, New York 10028



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

October 24, 1994

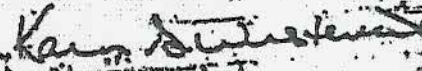
Jeffrey C. Thrope, Esq.
Kalkines, Arky, Zall & Barnstein
Attorneys at Law
1875 Broadway
New York, NY 10019-5809

Re: Certificate of Incorporation of Urban Strategies/Brookdale Family Care
Center, Inc.

Dear Mr. Thrope:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of September, 1994, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Urban Strategies/Brookdale Family Care Center, Inc., dated October 7, 1994, for a one year limited life, expiring on September 23, 1995.

Sincerely,


Karen S. Westervelt
Executive Secretary

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PH-32

CERTIFICATE OF INCORPORATION

PH-32

OF
URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTERS, INC.

(Under Section 402 of the Not-for-Profit Corporation Law

KALKENES, ARKY, ZALL & BERNSTEIN

1675 Broadway
New York, New York 10019
Attn: Jeffrey C. Thrope, Esq.
Tel. (212) 541-9090

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STATE OF NEW YORK
DEPARTMENT OF STATE

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STATE OF NEW YORK
DEPARTMENT OF STATE

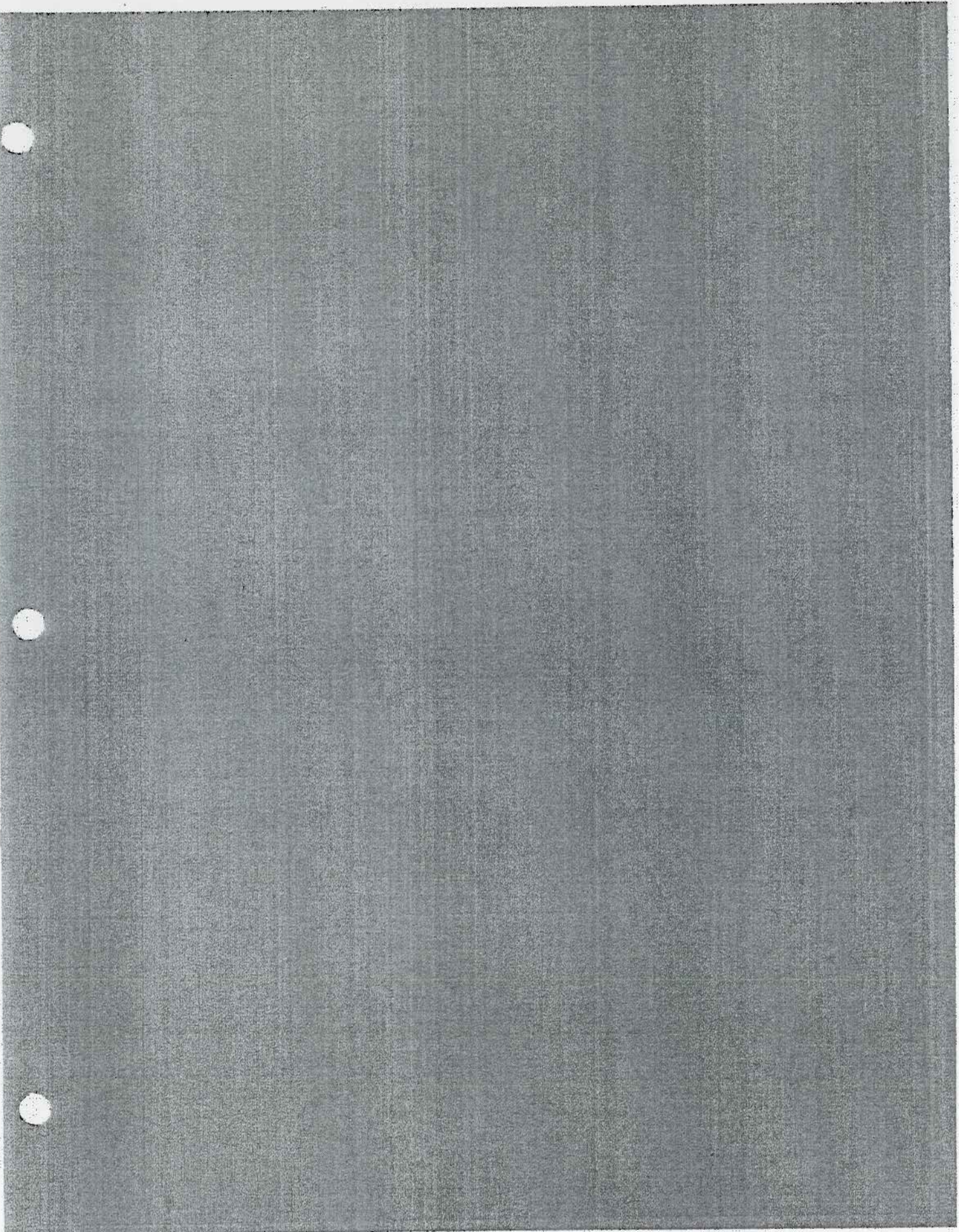
I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on August 17, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State



9505020005

DC-08

DC-08

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

~~URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.~~

(Under Section 803 of the Not-for-Profit Corporation Law)

We, the undersigned, being the President and Secretary of
Urban Strategies/Brookdale Family Care Center, Inc., do hereby
certify:

1. The name of the corporation is Urban Strategies/
Brookdale Family Care Center, Inc. (the "Corporation").

2. The certificate of incorporation of the Corporation was
filed by the Department of State on the 28th day of October
1999. 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 of the Not-for-Profit
Corporation Law and is a Type B corporation under section 301 of
said law.

4. Paragraph FOURTEENTH of the certificate of incorporation
of the Corporation, which sets forth the duration of the
Corporation, is hereby amended to read as follows:

FOURTEENTH: The duration of the Corporation shall be perpetual.

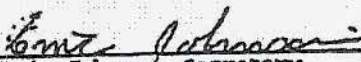
5. This amendment to the certificate of incorporation of the Corporation was authorized by the vote of a majority of the directors of each of the two members of the Corporation, i.e., Linroc Community Service Corporation and Urban Strategies, Inc.

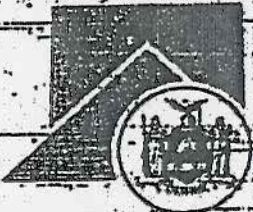
6. The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon her as agent of the Corporation is:

Urban Strategies/Brookdale Family Care Center, Inc.
c/o Linroc Community Service Corporation
Linden Boulevard at Brookdale Plaza
Brooklyn, New York 11212

IN WITNESS WHEREOF, the undersigned have executed this certificate and affirm that the statements made herein are true under the penalties of perjury.


Michael Levin, President 12/18/94
Date


Eric Johnson, Secretary 12/18/94
Date



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

April 26, 1995

Jeffrey C. Thrope, Esq.
Kalkines, Arky, Zall & Bernstein
1675 Broadway
New York, NY 10019-5820

Re: Certificate of Amendment of the Certificate of Incorporation
of Urban Strategies/Brookdale Family Care Center, Inc.

Dear Mr. Thrope:

AFTER INQUIRY and INVESTIGATION and in accordance with
action taken at a meeting of the Public Health Council held on
the 23rd day of September, 1994, I hereby certify that the Public
Health Council consents to the filing of the Certificate of
Amendment to the Certificate of Incorporation of Urban
Strategies/Brookdale Family Care Center, Inc., dated December 8,
1994.

Sincerely,

Karen S. Westervelt
Executive Secretary

95050200052

CERTIFICATE OF
INCORPORATION

URBAN STRATEGIES/BROOKDALE FAMILY CARE CENTER, INC.

FILED

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MAY 25 PM '95

BILLED

Filed By: Kalkines, Arky, Zall & Bernstein
1675 Broadway
New York

NY 10019-5820

STATE OF NEW YORK
DEPARTMENT OF STATE
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STATE OF NEW YORK
DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on August 17, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Amendment of the Certificate of Incorporation of Urban Strategies/Brookdale Family Care Center, Inc., dated September 22, 2015.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council
FROM: Richard Zahnleuter, Deputy General Counsel
DATE: August 28, 2015
SUBJECT: Proposed Dissolution of River Hospital Foundation, Inc.

River Hospital Foundation, Inc. ("Foundation") requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

The Public Health Council approved Foundation pursuant to Public Health Law §2801-a (6) to solicit contributions for the benefit of River Hospital in Jefferson County in March 2003. River Hospital has determined that expenses would decrease if River Hospital conducted its own development efforts and dissolved Foundation. Pursuant to Foundation's Plan of Dissolution, if approved by the Supreme Court, Foundation's remaining assets will be transferred to River Hospital.

Attached are a copy of the proposed Certificate of Dissolution, a letter from Foundation's attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution and Distribution of Assets, and a proposed Verified Petition seeking the Supreme Court's approval of St. Foundation's Certificate of Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

Attachments



CENTOLELLA
LYNN D'ELIA
& TEMES LLC

100 Madison Street
Tower I, Suite 190
Syracuse, New York 13202
Tel: (315) 476-1011
Fax: (315) 476-1133
www.CentolellaLaw.com

January 14, 2015

Sandra Jensen, Acting Director
Bureau of House Counsel
NYS Department of Health
Corning Tower, 24th Floor
Empire State Plaza
Albany, New York 12237-0031

Re: River Hospital Foundation, Inc.

Dear Ms. Jensen:

We are counsel for River Hospital, Inc. (the "Hospital") and the River Hospital Foundation, Inc. (the "Foundation"), both located in Jefferson County. At the time of its formation, the Foundation was approved by the Public Health Council ("PHC"), a copy of the letter approving the formation of the Foundation is attached. Accordingly, we respectfully request the Public Health and Health Planning Council ("PHHPC") approve of the dissolution of the Foundation.

To that end, I have enclosed the operative documents required under 10 N.Y.C.R.R. 650.1 for the review and approval of the proposed Plan of Dissolution of the Foundation (the "Plan"): (i) the proposed certificate of dissolution, (ii) the proposed plan of dissolution setting forth the distribution of the Foundation's assets, and (iii) the petition proposed to be submitted to the court in support of the application for judicial approval of the proposed Plan and distribution of assets.

The proposed dissolution will not impact the availability of any health services. As more fully detailed in the Plan and the Petition, the Foundation will deliver all assets to the Hospital and the Hospital will assume responsibility for fundraising efforts in the future. The transition is intended to, among other things, efficiently align the Hospital and its needs with its donors and reduce administrative expenses.

Please contact me if you have any questions or concerns.

Thank you for your time and consideration.

Respectfully,

CENTOLELLA LYNN D'ELIA & TEMES LLC


David C. Temes



DCT/sas
Enclosures

cc: Jason J. Centolella, Esq.

CERTIFICATE OF DISSOLUTION

OF

RIVER HOSPITAL FOUNDATION, INC.

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is River Hospital Foundation, Inc.

SECOND: The certificate of incorporation was filed with the Department of State on April 3, 2003.

THIRD: The name and address of each officer and director of the corporation is:

Raymond Smith, Director & Chairman, 41410 Kehoe Tract Road, Clayton, NY 13624

Kathleen Morris-Kortz, 1st Vice Chair, 10 Bolton Avenue, Alexandria Bay, NY 13607

Susan Rapant, Vice Chair, 19627 Collins Landing E., Alexandria Bay, NY 13607

Lynn Brown, Secretary & RH Board Liaison, 27960 County Route 193, Theresa, NY 13691

Kenneth VanHatten, Treasurer, P.O. Box 336, Theresa, NY 13607

Patricia Wagoner, Director, 47052 Dingman Point Rd, Alexandria Bay, NY 13607

Steven Yelle, Director, 36627 Reese Rd., Clayton, NY 13624

Jay Stewart, Director, P.O. Box 266, LeRoy, NY 14482

FOURTH: The corporation is a charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law § 1002, the corporation holds no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: The dissolution was authorized by unanimous written consent of all of the directors of the corporation. The corporation has no members.

EIGHTH: Prior to the delivery of the Certificate of Dissolution to the Department of State for filing, the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the order is attached.

Jason J. Centolella, Authorized Person

CERTIFICATE OF DISSOLUTION

OF

RIVER HOSPITAL FOUNDATION, INC.

Under Section 1003 of the Not-for-Profit Corporation Law

**Filed By: Centolella Lynn D'Elia & Temes LLC
100 Madison Street, Suite 1905
Syracuse, NY 13202**

PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS

OF

RIVER HOSPITAL FOUNDATION, INC.

The Board of Directors (the "Board") of River Hospital Foundation, Inc. (the "Foundation"), having worked with a consultant hired by its constituent organization, River Hospital, Inc. (the "Hospital"), to review the current fundraising operations and advise the Hospital and the Board on best practices, and the Board having considered the recommendations of the consultant and advisability of voluntarily dissolving the Foundation, and it being the opinion of the Board that dissolution is advisable and in the best interests of the Foundation and its constituent organization, the Hospital, and the Board having adopted, by Unanimous Written Consent, a plan for a voluntary dissolution of the Foundation, does hereby resolve that the Foundation be dissolved in accordance with the following plan:

1. There being no members of the Foundation, no vote of membership is required to approve this dissolution, thus action of the Board is sufficient.
2. Approval of the dissolution of the Foundation shall be obtained from the Public Health Council, and shall be attached as Exhibit "A".
3. The Foundation has assets. Attached hereto as Exhibit "B" are financial statements 2011, 2012, 2013 and September 30, 2014 detailing the assets of the Foundation and their fair market values.
4. The Foundation is required to use its assets in support of the activities of Hospital. The Hospital qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.
5. Accordingly, in connection with this dissolution, the assets held by the Foundation, subject to any unpaid liabilities of the Foundation, shall be distributed solely to the Hospital.
6. The Hospital is exempt from taxation pursuant to federal and state laws, and shall use the funds to continue to support the activities of the Hospital or where such gift was made to the Foundation with a specific donor restriction ("Donor Restriction"), such gift shall be used solely in accordance with such donor restriction.

7. Funds held by the Foundation for the "Friends of River Hospital" volunteer organization (the "Friends"), of approximately \$6,868.53 shall be transferred to the Hospital to be held in a separate account for the benefit of the Friends and subject to any restrictions and purposes the Friends deem proper.

8. Funds held by the Foundation to support scholarships and other programs to pay for educational opportunities shall be transferred to the Hospital to be used solely for the purpose of providing financial support for educational opportunities in the manner the Hospital deems proper, including the creation of an Employee Assistance Program under section 127 of the Internal Revenue Code.

9. The Foundation has donated a total of \$65,364.50 to the Northern New York Community Foundation, Inc. to hold and administer for the benefit of the Hospital. Such funds shall be unaffected by this Plan and shall continue to be held and administered by the Northern New York Community Foundation, Inc. solely for the benefit of the Hospital.

10. All funds transferred pursuant to this Plan and not subject to any Donor Restriction or other specific restriction stated herein shall be held by the Hospital and used to support the Hospital.

11. Upon approval of this Plan by the Court, the Foundation will release the Hospital from any and all claims the Foundation has against the Hospital, including, but not limited to, any obligation under any promissory note.

12. Attached hereto as Exhibit "C" are the Hospital's Certificate of Incorporation and all amendments thereto.

13. Attached hereto as Exhibit "D" are the 2010, 2011 and 2012 Return of Organization Exempt from Income Tax (the "Form 990") filed by the Hospital with the Internal Revenue Service.

14. Attached hereto as Exhibit "E" is the Internal Revenue Service letter of determination that the Hospital is exempt from taxation.

15. Attached hereto as Exhibit "F" is a sworn affidavit from Ben Moore, III, Chief Executive Officer and President of the Hospital, stating the purposes of the Hospital and that it is currently exempt from federal income taxation and verifying that all assets transferred from the Foundation will be used to support the activities of the Hospital or any successor hospital located in Alexandria Bay, New York.

16. Attached hereto as Exhibit "G" is a schedule containing the current liabilities of the Foundation, all which shall be paid prior to dissolution.

17. Attached hereto as Exhibit "H" is a schedule of contracts that the Foundation will assign to Hospital. The Hospital will assume any and all rights and obligations under these contracts and may use funds transferred from the Foundation to pay expenses associated with such contracts.

18. The Foundation estimates it will incur expenses not to exceed \$20,000 in connection with this dissolution process, including any accounting and legal fees. All final distributions will be reflected in the Foundation's final financial report.

19. The Foundation shall carry out this Plan within two hundred seventy (270) days after the date that an Order Approving this Plan of Dissolution and Distribution of Assets is signed by the Court.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF JEFFERSON**

In the Matter of the Application of

River Hospital Foundation, Inc.

For Approval of Plan of Dissolution and
Distribution of Assets pursuant to
Section 1002 of the Not-for-Profit
Corporation Law

VERIFIED PETITION

Index No.: _____

RJI No.: _____

Petitioner, River Hospital Foundation, Inc. (the "Foundation") by and through Centolella Lynn D'Elia & Temes LLC, its counsel, as and for its Verified Petition herein respectfully alleges:

1. The Foundation, whose principal office is located in the county of Jefferson, was incorporated pursuant to New York's Not-for-Profit Corporation Law on April 3, 2003. A copy of the Certificate of Incorporation and any amendments thereto are attached as Exhibit "A".

Background

2. The Foundation was founded to solicit donations and provide financial support to River Hospital, Inc. (the "Hospital") in Alexandria Bay, New York.

3. The Hospital retained a consultant with the Foundation's consent to review the development activities of the Foundation and the Hospital and to advise them on the best practices for its continuing efforts to provide financial support for the operations at the Hospital.

4. The consultant recommended the Hospital assume primary responsibility for fund development and that the Foundation be dissolved and the assets contributed to the Hospital. The consultant advised that this structure will decrease expenses and avoid duplication of development efforts while ensuring the needs of the Hospital are being addressed through the ongoing development and fundraising activities.

5. Upon review and consideration of the consultant's report and recommendations, the Board of Directors (the "Board") of the Foundation, in consultation with the Hospital, determined the Foundation should be dissolved and responsibility for development should rest with the Hospital.

6. In connection with the dissolution of the Foundation, the Foundation will turn over all assets to the Hospital to support operations at the Hospital. The assets will be held by the Hospital subject to donor restrictions and restrictions imposed by the Foundation.

7. The names, titles and addresses of the current directors of the Foundation are as follows:

Raymond Smith, Director & Chairman, 41410 Kehoe Tract Road, Clayton, NY 13624

Kathleen Morris-Kortz, 1st Vice Chair, 10 Bolton Avenue, Alexandria Bay, NY 13607

Susan Rapant, Vice Chair, 19627 Collins Landing E., Alexandria Bay, NY 13607

Lynn Brown, Secretary & RH Board Liaison, 27960 County Route 193, Theresa, NY 13691

Kenneth VanHatten, Treasurer, P.O. Box 336, Theresa, NY 13607

Patricia Wagoner, 47052 Dingman Point Rd, Alexandria Bay, NY 13607

Steven Yelle, 36627 Reese Rd., Clayton, NY 13624

Jay Stewart, P.O. Box 266, LeRoy, NY 14482

The Plan of Dissolution

8. A true and accurate copy of the Plan of Dissolution approved by the Board on December 18, 2014 is attached hereto as Exhibit "B" (the "Plan").

9. Approval of the dissolution of the Foundation has been obtained from the Public Health Council and is attached to the Plan as Exhibit "A".

10. The Foundation has assets. Attached to the Plan as Exhibit "B" are financial statements detailing the current assets of the Foundation and their fair market values.

11. The Foundation is required to use its assets in support of the activities of the Hospital. The Hospital qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

12. Accordingly, in connection with the dissolution of the Foundation, the assets held by the Foundation, subject to any unpaid liabilities of the Foundation, shall be distributed solely to the Hospital in accordance with the Plan and subject to restriction imposed by donors at the time the gift was given to the Foundation or subject to restrictions imposed by the Foundation in connection with the Plan. The restrictions on funds is discussed more fully below.

13. The Hospital is exempt from taxation pursuant to federal and state laws, and shall use the funds to continue to support the activities of the Hospital or for a specific purpose as required by the relevant gift instrument, if any.

14. Attached to the Plan as Exhibit "C" is the Hospital's Certificate of Incorporation and all amendments thereto.

15. Attached to the Plan as Exhibit "D" are the financial statements prepared by the Hospital for the last three years and interim financial statements detailing the assets as of September 30, 2014.

16. Attached to the Plan as Exhibit "E" is the Internal Revenue Service letter of determination that the Hospital is exempt from taxation.

17. Attached to the Plan as Exhibit "F" is a sworn affidavit from Ben Moore, III, Chief Executive Officer and President of the Hospital, stating the purposes of the Hospital and that it is currently exempt from federal income taxation and verifying that all assets transferred from the Foundation will be used to support the activities of the Hospital or any successor hospital located in Alexandria Bay, New York.

18. Attached to the Plan as Exhibit "G" is a schedule of the current liabilities of the Foundation.

19. Attached to the Plan as Exhibit "H" is a schedule of contracts that the Foundation will assign to the Hospital. The Hospital will assume any and all rights and obligations under these contracts.

The Transfer of Funds

20. Certain funds were given to the Foundation subject to donor restrictions at the time such funds were given to the Foundation (the "Donor Restricted Funds"). The Donor Restricted Funds are being transferred to the Hospital subject to the restrictions imposed by the donors.

21. The Foundation is also holding funds, in the amount of approximately \$6,868.53, for the benefit of the "Friends of River Hospital" volunteer organization (the "Friends"). Pursuant to the Plan, these funds shall be transferred to the Hospital to be held in a separate account for the benefit of the Friends and subject to any restrictions and purposes the Friends deem proper (the "Friends Funds").

22. The Foundation has historically funded certain educational opportunities for employees of the Hospital. To ensure funds remain available for this purpose, the Foundation will designate an as yet determined amount to be held for the purpose of supporting scholarships and other programs to pay for educational opportunities for employees of the Hospital (the "Scholarship Funds"). The Foundation understands the Hospital intends to use these funds to fund an Education Assistance Plan under section 127 of the Internal Revenue Code.

23. The remaining funds shall be contributed to the Hospital to support operations and may be appropriated and used as the Hospital deems proper.

24. As of the date of the Plan, the Foundation is owed \$107,691 from the Hospital. In connection with the Plan and the transfer of assets, and in furtherance of its mission, the Foundation is forgiving any amounts due to the Foundation from the Hospital.

Assignment of Contracts

25. The Foundation has certain contracts that it believes should be assigned to and assumed by the Hospital. The Hospital has agreed to assume these obligations. Upon approval of the Plan by the Court, the Foundation will take the steps necessary to assign such contracts to the Hospital.

Consent of Attorney General

26. The Foundation has reviewed the Plan with the New York Attorney General's (the "AG") office and obtained a letter indicating the AG's office consents to the Plan and the distribution of assets set forth therein. A copy of the AG's letter is attached hereto as Exhibit "C".

Expenses and Dissolution

27. The Foundation estimates it will incur expenses not to exceed \$20,000 in connection with this dissolution process, including any accounting and legal fees. All final distributions will be reflected in the Foundation's final financial report.

28. The Foundation shall carry out this Plan within two hundred seventy (270) days after the date that an Order Approving this Plan of Dissolution and Distribution of Assets is signed by this Court.

29. No previous application for approval of the Plan has been made.

WHEREFORE, Petitioner requests that the Court grant an Order Approving the Plan of Dissolution and Distribution of Assets of River Hospital Foundation, Inc., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

Dated: _____

CENTOLELLA LYNN D'ELIA & TEMES LLC

David Temes, Esq.
Jason Centolella, Esq.
Attorneys for Petitioner
Office and P.O. Address
100 Madison Street, Suite 1905
Syracuse, New York 13202
Telephone: (315) 766-2119

STATE OF NEW YORK)
COUNTY OF JEFFERSON) ss.:

_____, being duly sworn, deposes and says that I am
the _____ of River Hospital Foundation, Inc., petitioner in the above-entitled
action, have read the foregoing Petition and know the contents thereof, that the same is true to
the knowledge of deponent, except for the matters therein stated to be alleged upon information
and belief, and as to those matters, I believe them to be true. This verification is made by
deponent because the above party is a corporation and he/she is an officer thereof.

Sworn to before me this
___ day of _____, 2015.

Notary Public

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 8th day of October, 2015, approves the filing of the Certificate of Dissolution of River Hospital Foundation, Inc., dated as attached.