

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

**COMMITTEE DAY**

**AGENDA**

*January 28, 2016*  
*10:00 a.m.*

*90 Church Street 4<sup>th</sup> Floor, Room 4A & 4B, New York City*

**I. COMMITTEE ON HEALTH PLANNING**

John Ruge, M.D., Chair

Residential Health Care Facility Bed Need Methodology

**II. COMMITTEE ON PUBLIC HEALTH**

Jo Ivey Boufford, M.D., Chair

A. Presentation and Adoption of Report on Prevention of Maternal Mortality in New York State **Exhibit #1**

B. Prevention Agenda Update

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

Peter Robinson, Chair

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

Acute Care Services – Construction

**Exhibit # 2**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	152240 C	Southside Hospital (Suffolk County)

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

Acute Care Services- Establish/Construct

**Exhibit # 3**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	152202 E	St. Peter's Health Partners (Albany County)
2.	152323 E	Alice Hyde Medical Center (Franklin County)

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 151019 B	Liberty Endo, LLC d/b/a Liberty Endoscopy Center (New York County)
2. 151227 E	SurgiCare of Manhattan (New York County)
3. 152219 B	Comprehensive Care ASC, LLC (New York County)

**Dialysis Services - Establish/Construct**

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 151338 B	Doral Dialysis, LLC d/b/a Doral Dialysis Center (Kings County)
2. 152110 B	Hempstead Park Operating, LLC d/b/a Hempstead Park Dialysis Center (Nassau County)

**Residential Health Care Facilities - Establish/Construct**

**Exhibit # 6**

<u>Number</u>	<u>Applicant/Facility</u>
1. 142144 E	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing & Rehabilitation (Bronx County)
2. 142146 E	Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation (Nassau County)
3. 151089 E	Port Chester Operating, LLC d/b/a Port Chester Nursing & Rehab Centre (Westchester County)
4. 151307 E	Yertle Operations, LLC d/b/a Fishkill Center for Rehabilitation and Nursing (Dutchess County)
5. 151252 E	Old Military Road Operating Company, LLC d/b/a Elderwood of Uihlein at Lake Placid (Essex County)

6. 151321 E Sapphire Nursing at Wappingers, LLC  
(Dutchess County)
7. 151327 E Goshen Operations, LLC  
d/b/a Sapphire Nursing and Rehab at Goshen  
(Orange County)
8. 152005 E Newburgh Operations, LLC  
Sapphire Nursing at Meadow Hill  
(Orange County)
9. 152049 E Terrace Acquisition II, LLC  
d/b/a Fordham Nursing & Rehabilitation Center  
(Bronx County)
10. 152072 E Dewitt Rehabilitation and Nursing Center Inc.  
(New York County)
11. 152128 B Harlem Center for Nursing and Rehabilitation, LLC  
(New York County)
12. 152167 E SBNH Acquisition, LLC  
d/b/a St. Barnabas Rehabilitation & Continuing Care Center  
(Bronx County)
13. 152177 E TCPRNC, LLC  
d/b/a The Plaza Rehab and Nursing Center  
(Bronx County)
14. 152218 E Sheepshead Nursing & Rehabilitation Center  
(Kings County)
15. 152363 E HealthAlliance Senior Living Corp.  
d/b/a Woodland Pond at New Paltz  
(Ulster County)

**C. Home Health Agency Licensures**

**Exhibit # 7**

**New LHCSA**

<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
152137 E	County of Orange (Orange County)
152298 E	Saratoga County (Saratoga County)

**Changes of Ownership**

<u>Number</u>	<u>Applicant/Facility</u>
2250 L	Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)
2375 L	Blue Line Agency, LLC (Kings, New York, Queens, Richmond, Bronx and Westchester Counties)
2512 L	Evergreen Homecare Service of NY Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)
2540 L	Aquinas LLC d/b/a Senior Helpers (New York, Queens, Bronx, Richmond, Kings, and Westchester Counties)
2628 L	Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare (Allegany, Monroe, Cattaraugus, Niagara, Chautauqua, Orleans, Erie, Wyoming and Genesee Counties)
152019 E	Serenity Health & Wellness, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)
152224 E	Health Acquisition Corp. d/b/a Allen Health Care Services (Dutchess, Nassau, Orange, Queens, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties)

**D. Certificates**

**Exhibit # 8**

**Restated Certificate of Incorporation**

Applicant

1. East Hill Family Medical, Inc.
2. Help/PSI Services Corp.
3. Mount Sinai Ambulatory Ventures, Inc.

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

### Applicant

1. Beth Israel Ambulatory Care Services Corp.
2. Beth Israel Medical Center
3. The Greater Hudson Valley Family Health Center, Inc.
4. Samaritan Daytop Village, Inc.

## **Certificate of Dissolution**

### Applicant

1. Gouverneur Nursing Home Company, Inc.
2. Jewish Home Lifecare, Receivership Corporation
3. W.K. Diagnostic and Treatment Center, Inc.

# **Prevention of Maternal Mortality in New York State:**

**Proceedings of the New York State Public Health and Health Planning Council's  
Public Health Committee Meeting Series  
and Recommendations for Action**

**January 2016**

**Members of the Public Health Committee  
of the New York State Public Health and Health Planning Council**

CHAIR – Jo Ivey Boufford, M.D.

VICE CHAIR – Anderson Torres, Ph.D.

Lawrence Brown, Jr., M.D., M.P.H., F.A.S.M.

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Theodore Strange, M.D.

Patsy Yang, Dr.P.H.

**Prevention of Maternal Mortality in New York State:  
Public Health Committee Meeting Series and Recommendations for Action  
January 2016**

**I. Background and Introduction:**

The *Prevention Agenda 2013-18* is New York State's health improvement plan developed by the New York State Public Health and Health Planning Council (PHHPC) at the request of the New York State Department of Health (NYSDOH), in partnership with more than 140 organizations across the state. The *Prevention Agenda* is the blueprint for state and local action to improve the health of New Yorkers in five priority areas and to reduce health disparities for racial, ethnic, disability, socioeconomic and other groups.

In addition to its oversight role for the *Prevention Agenda*, the Public Health Committee, under the leadership of chairperson Dr. Jo Ivey Boufford, identified Maternal Mortality as a specific health issue from the *Prevention Agenda* for special attention in an effort to “move the needle” on that condition in the State.

**II. The Problem:**

In 2012 and 2013, the Committee requested a series of presentations from Dr. Marilyn Kacica, Medical Director of the Department’s Division of Family Health, to provide an overview of maternal mortality data in New York State including a comparison to global and national rates, trends over time and disparities, and to learn more about current work to assess and address maternal mortality in the state. Key data highlights presented included:

- The United States ranks behind 40 nations in maternal death, and within the U.S. New York ranks 47 out of 50 states.
- NYS Maternal mortality rates peaked at 29.2 per 100,000 live births in 2008 and have decreased to 17.9 per 100,000 live births in 2013.
- There are significant racial and geographical disparities in NYS:
  - The Black to White mortality ratio peaked in 2006 at 6.3 to 1, decreased to 4.9 in 2009 and continued to decrease to 3.3 to 1 in 2013. However, in 2013, the rate in New York City alone was 5.7, much higher compared to the rest of the State (1.9).



### III. Opportunities for Change:

Based on the information and discussions at these initial meetings, described in detail in the appendices to this report, and the ongoing work of several key organizations (including NYSDOH, the New York City Department of Health and Mental Hygiene, the Healthcare Association of New York State, the Greater New York Hospital Association, and the NYS chapter of the American Congress of Obstetricians and Gynecologists (ACOG) on inpatient hospital management, the Committee initially decided to focus on the “pre-hospital” antecedents of maternal mortality with special attention to prevention. In subsequent meetings, the group examined opportunities in New York State’s health care reform initiatives and better alignment for existing efforts across stakeholders. These are discussed in the following pages.

#### A. Pre-Hospital Opportunities in Clinical Practice

The Committee identified three specific cross-systems strategies from the *Prevention Agenda* for its attention:

- Integrate preconception and interconception care into routine outpatient care for all women of reproductive age.
- Assess and address pregnancy planning and prevention of unintended pregnancy among women in general and especially those with serious chronic conditions and risk factors
- Institute systems and protocols for early identification and management of high-risk pregnancies.

The committee convened a series of special meetings with invited discussants to further explore these strategies and identify recommended action steps and use its convening authority to bring attention to this important issue.

In March 2014, the Public Health Committee convened a special meeting focused on the strategy of **integrating preconception and interconception care into routine outpatient care for all women of reproductive age** as a universal/ population-based prevention approach. Staff from the NYSDOH Division of Family Health gave a brief presentation on national and state work on preconception health and health care, including recommendations from the CDC-led Select Panel on Preconception Care and the subsequent action plan of the National Initiative on Preconception Health and Health Care to guide the implementation of the CDC panel’s recommendations.

The Committee then welcomed three clinician panelists, invited to reflect on this approach from a “real world” practice perspective. Each panelist addressed a set of three questions:

- 1) How do providers who care for women of reproductive age currently incorporate preconception health care in routine outpatient practice?
- 2) What challenges or barriers exist to making this approach part of routine care?
- 3) What would support further integration of these practices in routine care?

Panelists described several innovative approaches they are using in their respective practices, especially emphasizing how to take advantage of “every” contact that women of reproductive age make with the health care system:

- At the Mid-Hudson Family Medicine clinic in Kingston, Residency Director Dr. Ephraim Back estimates that more than 70% of women patients have made some contact with his practice in the past year, for themselves or their family members. He is leading a project, as part of a collaborative network of 16 Family Medicine residency programs, which incorporates evidence-based interconception care (focusing on four specific elements of care) for women during their baby’s well child visits for the first two years of life.
- At the Institute for Family Health Harlem Family Medicine site, Dr. Lucia McLendon’s practice incorporates assessment of desire for pregnancy, with tailored same-day contraceptive services, into all visits with women of reproductive age.
- At Montefiore Medical Center/ Albert Einstein College of Medicine Department of Maternal Fetal Medicine, Dr. Ashlesha Dayal, a high-risk Obstetrician and Director of Labor & Delivery, developed a comprehensive program to target enhanced preconception/ interconception care to women at high risk for preterm delivery or other poor pregnancy outcomes. This program includes training for both primary care and specialty providers on screening and referral for high risk patients, as well as training for community health workers to expand preconception health education and outreach to the community.

Panelists also identified a number of challenges and barriers to routine integration of preconception and interconception care. Common themes included:

- women not seeking routine well care for themselves;
- inadequate time within a visit;
- provider knowledge/ comfort level, especially for pediatricians during children’s health care visits;
- lack of additional reimbursement for counseling;
- lack of health insurance (including waiting periods for benefits to begin after enrollment; post-partum gaps in coverage); and,
- increasing prevalence and complexity of chronic disease among women of reproductive age.

Panelists and committee members discussed a number of opportunities for advancing attention to risk factors for maternal mortality in this area, including:

- capitalizing on “missed opportunities”, including well child visits and all acute care visits, to ask women basic questions to assess their desire for pregnancy, and, if appropriate, initiate contraception in real time as part of routine care;
- enhanced reimbursement for clinicians;
- expanded use of available guidelines and toolkits for clinicians to support integration of key preconception screening within routine visits;

- incorporating protocols and referral linkages to facilitate more in-depth reproductive health counseling for women for whom medical risks are identified;
- developing more population oriented approaches to educating young people through linkages with schools, community based organizations and trained community health workers, reaching into communities; and,
- policy changes to address gaps in health insurance coverage and reduce or eliminate co-pays for preventive care.

### **B. Pre-hospital Opportunities to Prevent Maternal Mortality in NYS Health Care Reform**

The Committee identified the opportunity to leverage larger health systems reform efforts to ensure that preconception and interconception care are addressed for women of reproductive age. Key opportunities include: Medicaid Health Home; Affordable Care Act (ACA) and New York State of Health (state's health insurance exchange); Delivery System Reform Incentive Payment (DSRIP); and, Advanced Primary Care (APC) /State Health Innovation Plan (SHIP).

For the September 2014 meeting, NYS Department of Health staff leading three key health care reform initiatives were invited to share information about their work and to participate in a discussion of potential opportunities to incorporate one or more of the three selected key Maternal Mortality prevention strategies within those initiatives.

1. Dr. Foster Gesten, Medical Director for the NYSDOH Office of Quality & Patient Safety, presented an overview of the state's work to support **risk-based prenatal & postpartum care for women enrolled in the state's Medicaid program.**

- In collaboration with NYSDOH Division of Family Health and the Island Peer Review Organization (IPRO), Medicaid Prenatal Care standards were updated and unified in 2009-10. Since then, a series of analyses have been conducted including a 2011 baseline evaluation, and a statewide practice self-evaluation/reporting tool was launched in 2013.

Current work is focused on key opportunities for improvement activities, which were identified based on evaluation findings. While data indicate many potential areas for improvement efforts, several key elements of care have been identified for focused improvement including: assessment, treatment, and referral for depression and domestic violence; influenza vaccination, ; obesity and gestational weight gain, ; tobacco use screening and counseling, and prevention of recurrent preterm births focusing on use of 17-OH progesterone. Highlights of the follow-up discussion on potential areas of action included:

- The potential for adding assessment of future pregnancy plans and pregnancy prevention to the quality improvement plan. It was noted that this is currently embedded within the self-assessment reviews as an element of prenatal care standards.
- The extent to which reimbursement for counseling by non-clinicians might help improve preventive practices.
- A recommendation to add family planning providers as key partners for improvement activities.

- The value of Electronic Health Records (EHRs) that include algorithms and prompts to improve documentation of guideline-concordant care without the burden of additional documentation.
- The need to better assess the impact of loss of insurance coverage for women who lose their Medicaid eligibility postpartum.
- Potential strategies for promoting the use of 17-OH progesterone for women with prior preterm births.
- The potential for use of incentives to increase adherence to postpartum visits.

2. Hope Plavin, from the NYSDOH Office of Quality & Patient Safety, presented an overview of the **State Health Innovation Plan (SHIP)/ State Innovation Model (SIM)**; the state's application for federal funding was pending at the time of this meeting. The overarching goals of SHIP/SIM are to improve health, improve care and utilize health care resources more effectively. Funding requested in the state's recent SHIP grant application would support regionally-based primary care practice transformation, a transition to value-based primary care payment models, and performance improvement and capacity expansion in primary care including community-clinical linkages and an enhanced focus on prevention. Next steps include the establishment of workgroups and creation of a health policy agenda for 2015 and beyond, pending feedback on the state's submitted application.

3. Lana Earle, Deputy Director for the Division of Program Development and Management in the NYSDOH Office of Health Insurance Programs, presented an overview of the Medicaid (MA) **Health Home** care management program and led a discussion on its potential for improving health outcomes among women of reproductive age.

- Health Home (HH) is an optional Medicaid State Plan benefit authorized under ACA to provide comprehensive, integrated care management and coordination for Medicaid enrollees with chronic conditions which was implemented in NYS beginning January 2012. It is targeted to the highest-need/highest-cost MA members who have two or more chronic conditions or one single qualifying condition of HIV/AIDS or Serious Mental Illness and who meet "appropriateness" criteria for an intensive level of care management. HH is closely aligned with the state's Delivery System Reform Incentive Program (DSRIP).
- Over the January 2012 – August 2104 period, 55% of the HH members enrolled in NYS were women, and 35% were women aged 11-50 years. Approximately 9.5% of women enrolled in HH had a live birth during that period. Informal discussions with HH lead organizations suggest that they are incorporating a variety of approaches to address the needs of women of reproductive age within their comprehensive care plans, including the use of preventive and specialty health care, assessment of pregnancy plans and linkage to family planning services, and linkage to prenatal services for women who become pregnant.

Highlights of follow-up discussion on potential areas of action included:

- The value of providing training for HH care managers on maternal risk factors and family planning, including simple assessment questions and interventions that could be readily

incorporated with care management interactions. It was noted that there is an established system in place for providing such training and this can be pursued in collaboration with NYSDOH public health and external subject matter experts.

- The extent to which a previous adverse pregnancy outcome could be considered a “chronic condition” for purposes of establishing HH eligibility. This would not be consistent with CMS defined criteria.
- Interest in learning more about the ~10% of women who gave birth while enrolled in Health Home.
- How to better connect clinical providers with the resources that are available for their high risk patients, including HH as well as managed care plan high risk OB case managers and community home visiting services.
- The role of HH in supporting women identified with serious mental illness, including depression, during pregnancy or after delivery.

At the conclusion of the meeting, Committee members identified several follow-up requests (*follow up information noted*), including:

- Obtaining information on gaps in eligibility and enrollment in health insurance that may be impeding coverage for family planning and/or adequate perinatal care

*Based on further inquiry with the New York State of Health and Medicaid, the specific scenario described could not be validated, as coverage for Medicaid begins immediately as of the date of application, while coverage for commercial plans begins between 2-6 weeks from the date of application. With the launching of the New York State of Health, many previous gaps in coverage are improving. Furthermore, effective January 1, 2016 in New York State, pregnancy is classified as a qualifying event triggering a special enrollment period for women using New York State of Health to access coverage. This allows pregnant women, who are not Medicaid eligible, to enroll in commercial health plans outside of the open enrollment period.*

- Looking more closely at the subset of Health Home enrollees who have given birth to assess maternal risk factors and connection to services. Data on outcomes for women using health homes, including data on women with disabilities, and the costs of providing these services could be useful in the development of training for managers of health homes on women’s health.

*An updated analysis of Health Home data demonstrated that among women ages 11-50 years enrolled in Health Homes from the launch of the initiative in January, 2012 through May, 2015, about 4,900 gave birth. Staff in Division of Family Health are requesting additional data to get more information on these women and their diagnoses and the cost of their care.*

- Pursuing training of Health Home care managers on maternal health and family planning topics/tools

*Staff from the Division of Family Health and the Office of Health Insurance Programs will work together to develop a training for care managers on reproductive life planning and care management of high risk pregnant women in Health Homes in 2016.*

### **C. Recent Updates and Next Steps**

At the July 2015 Public Health Committee meeting, Dr. Rachel de Long, Director of the Division of Family Health, updated the Committee on work that is underway to use health care reform opportunities to support improvements in women's health. The discussion focused on ways to integrate pregnancy planning and, if pregnancy is not desired, tailored contraceptive counseling into routine care for women of reproductive age.

Dr. de Long explained that the goals for the emerging APC model within the state's SHIP provide an opportunity to talk about advancing higher quality, better integrated and coordinated primary care for women, including the concepts of pregnancy intention and planning and prevention. There are several aspects of the SHIP/APC work that could support the goal for improved health for women.

- Ensuring that women's health is included in the development of standards for primary care transformation, including standards for patient-centered care, population health and care management.
- Making sure that the practice transformation infrastructure that will be supported with the grant includes technical support to strengthen the quality of primary care services delivered to women.
- Including women's health in the quality measures being selected to define and drive areas of care that need attention. *Dr. deLong noted that the current draft set of measures does not include measures specifically linked to women's health, with the exception of one measure on chlamydia screening. There is no quality measure that assesses the percent of women of reproductive age for whom pregnancy intention has been assessed and tailored contraceptive counseling provided. However, the current set of proposed measures does include several measures addressing areas of chronic disease such as controlling high blood pressure, weight management and counseling, and management of diabetes that are relevant to the goal of reducing maternal mortality.*

Dr. de Long noted that staff from the Division of Family Health are engaging in discussion with NYSDOH colleagues, including participation in the DSRIP, SHIP/SIM workgroups, to promote continued attention to the importance of addressing women's health through these elements. A key challenge identified in the process is that while there is general agreement about the fundamental importance of reproductive health as part of comprehensive patient-centered care, including recommendations from ACOG and the American Academy of Family Physicians, the US

Preventive Services Task Force (USPSTF), which is charged to assess the evidence for approval of reimbursement decisions under the ACA, has not reviewed or issued recommendations specific to assessment of pregnancy intention or contraceptive counseling. As a consequence, there is no rigorous nationally established evidence-based standard or nationally endorsed quality measure comparable to standards and measures for other specific practices, such as tobacco assessment and counseling.

Discussion focused on the fact that New York State should not miss the opportunity to use initiatives to advance primary care to strengthen care for women to be a leader in this area by adding to the research base to demonstrate that these practices can be effective and addressing this gap with the USPSTF.

### **Next Steps**

Office of Public Health staff will continue to engage in planning and implementation groups to support the integration of women's health needs and practices within DSRIP, SHIP/APC and Health Home, while also continuing to lead public health surveillance activities to review cases of maternal death and mobilize prevention activities to address relevant factors identified as well as address the disparities noted.

As a further outgrowth of the Committee's role in drawing attention to this issue, the NYSDOH has convened a group of partner organizations that include the Healthcare Association of New York State (HANYS), the Greater New York Hospital Association (GNYHA), American Congress of Obstetricians and Gynecologists (ACOG) District II, the New York Academy of Medicine (NYAM), the New York City Department of Health and Mental Hygiene (NYCDOHMH) and clinician experts to improve information-sharing and coordination of strategies to address maternal mortality. These partners met in November 2015 to review shared goals and current initiatives, identify gaps and initiate steps to launch a more strategic and coordinated approach to this important problem. At the November meeting and a follow-up conference call in December 2015, participants voiced a shared commitment to formalizing a working partnership and pursuing joint initiatives to raise awareness and improve both community prevention and clinical strategies to support maternal health. A second in-person meeting, held January 13, 2016, began the formalization of the partnership and focused on an initial collaborative project on preconception/interconception health which will be further developed. The Public Health Committee will be kept informed about progress of this promising new partnership.

# Appendix

## Defining the Problem of Maternal Mortality: September 2012 – January 2013

In September 2012 the Committee invited Dr. Marilyn Kacica, Medical Director for the Department of Health Division of Family Health, to present on the issue of maternal mortality in New York.

Key highlights of data presented include:

- The United States ranks behind 40 nations in maternal death rates, despite spending more on care per birth than any other nation.
- New York ranks 47th out of the 50 states for maternal mortality rates. In 2005-07, New York's maternal mortality rate was 14.7 per 100,000 live births, compared to 11.1 deaths per 100,000 live births (2005-2007 national data) nationally.
- There are notable geographic differences in maternal mortality rates within the state: 30 deaths per 100,000 live births for New York City, compared to 18.9 deaths per 100,000 live births for rest of state (2010 data).
- There are striking racial disparities in maternal mortality rates within the state: 15 deaths per 100,000 live births for White women, 58.2 deaths per 100,000 live births for Black women and 15.3 per 100,000 live births for women of other races.

Dr. Kacica also discussed steps the Department is taking to address the issue of maternal mortality, using the three priority action steps defined by the New York Academy of Medicine in its report on maternal mortality:

1) ***Improve reporting, case review and data system*** – the state's case ascertainment and review process has transitioned to a comprehensive statewide reporting process that identifies cases through multiple data systems including New York Patient Occurrence Reporting and Tracking System (NYPORTS), birth certificates, death certificates and hospital discharge data. Once cases are identified, charts are requested and reviewed using a comprehensive review tool and abstraction form. Aggregate results are presented to a state-convened Maternal Mortality Expert Review committee for discussion.

2) ***Prevention and risk reduction before and during pregnancy*** – several key prevention and clinical quality improvement initiatives to reduce preterm deliveries and Cesarean section rates and increase the quality of prenatal care services, including: New York State Perinatal Quality Collaborative (NYSPQC), Medicaid policy changes including adoption of statewide prenatal care standards and reimbursement for non-medically indicated elective deliveries, and a pilot project (pursuant to Medicaid Redesign Team recommendations) to utilize health information technology to assess risks and coordinate service delivery for pregnant women.

3) ***Hospital based screening and intervention*** – the role of the state's Regional Perinatal Centers was highlighted, along with several initiatives to develop and disseminate clinical practice guidelines in partnership with other professional organizations.



In January 2013, Dr. Kacica was again invited to join the committee for a follow-up presentation and discussion. Additional data were presented to highlight demographic and medical risk factors for maternal mortality identified through New York's data analysis to date. She also highlighted strategies to address maternal mortality from the state's Prevention Agenda for different Health Impact Pyramid levels and sectors.

### **Refining a Prevention Focus: November 2013 – January 2014**

In November 2013, the Committee was joined by staff from the Department of Health Division of Family Health, who presented information on related issues of maternal mortality, preconception health and unintended pregnancy. The purpose of the discussion was for Committee members to gain a better understanding of these issues and to link past discussions of maternal mortality to the Prevention Agenda as a framework for helping the committee identify specific issues on which it might take action.

Dr. Rachel de Long, Director of the Division of Family Health, and Kristine Mesler, Director of the Bureau of Maternal and Child Health within the Division, gave a presentation to help frame these discussions. Dr. de Long recapped key data from previous meetings that highlight the significant burden and dramatic racial and ethnic disparities in maternal mortality nationally and in New York State, based upon which maternal mortality was selected as one of the goals for the Prevention Agenda. She noted that data from the ongoing review of maternal deaths in NYS illustrate the significant contribution of pre-existing chronic health problems and risk factors, both medical and psycho-social, while also noting that national studies suggest that racial disparities in maternal death rates are not fully explained by differences in these underlying conditions. This highlights the need to focus on multiple and interrelated factors including preconception and interconception health status of women, as well as improving the quality and equity of health care provided to women during pregnancy and delivery and across the life course. Within the framework of the Prevention Agenda, she related the goal of reducing maternal mortality to other intersecting goals and priorities including prevention of unintended pregnancy, prevention and management of chronic disease, promoting preconception and interconception health and health care, and addressing mental health and substance abuse.

Ms. Mesler then presented information about unintended pregnancy nationally and in New York State. The most recently available data indicate that over 50% of pregnancies, and over 25% of live births, in NYS are unintended. Like other population health measures, there are notable racial, ethnic and economic disparities in these rates. Published literature demonstrates associations between unintended pregnancy and other risk factors or adverse birth outcomes including delayed or inadequate prenatal care, use of tobacco and alcohol during pregnancy, preterm birth and lower rates of breastfeeding. Focus groups conducted across the state with adolescent and young adult men and women identified several relevant factors including "reactive" (rather than preventive)

approaches to use of health care, the role of media in influencing health behaviors, significant unfavorable misconceptions about the effectiveness and reliability of contraceptive methods and the positive influence of stable relationships and employment on planning pregnancies. Finally, she reviewed major public health initiatives and investments to prevent unintended pregnancy, including:

- clinical family planning services supported through grants and Medicaid reimbursement;
- community-based adolescent pregnancy prevention programs that incorporate evidence-based sexual health education and social/environmental supports to help teens build life skills and transition to adulthood;
- community health collaboratives to support preconception, pregnant and interconception women and infants through community health worker services as well as organizational and community-level systems-building activities.

Finally, Dr. de Long returned to the Prevention Agenda to identify relevant strategies that have the potential to link the actionable issues identified, including maternal mortality, prevention of unintended pregnancy and health promotion across the reproductive life course. Six strategies from the Prevention Agenda were identified as potential approaches the Committee could help advance (listed roughly in order from most comprehensive/universal to more targeted):

1. Address the cross-cutting social determinants of health, including housing, education, racism, poverty and violence.
2. Provide comprehensive, evidence-based health education, including sexual health education for youth in all schools.
3. Promote norms of wellness through effective social marketing across the lifespan,
4. Integrate preconception and interconception care into routine primary and specialty health care for women of reproductive age,
5. Implement strategies to support pregnancy planning and family planning to reduce unintended pregnancy among women with chronic conditions or other specific known risk factors.
6. Focus on women who have experienced an adverse pregnancy outcome—e.g., preterm birth, low birth weight - to ensure that they are engaged in interconception care.

Following these presentations, the Committee considered the issues and identified several opportunities for further discussion or action. Dr. Boufford emphasized the overarching goal of bringing further and more sustained attention to the issue of maternal mortality, and identifying actionable issues to focus that attention. Additional specific suggestions from the Committee included:

- Putting a team around those people who are at highest risks, using models from chronic illness, community care coordination. Work being done under Medicare to reduce utilization and costs and improve outcome, i.e. the Triple Aim, should be pursued with the maternal population.

- As a specific approach to care coordination for high-risk individuals, we should look at how the Medicaid Health Home program addresses preconception and pregnancy-related care. Women on Medicaid with two or more chronic medical conditions should be enrolled in health home, and we need to make sure that good prenatal care, family planning and effective contraception is part of an expected outcome and expected service delivery in the health-home program. The committee could engage the Health Home team in a discussion about this issue.
- Working in the primary care setting with doctors to have them ask the simple question of “do you want to be pregnant in the next year, - which provokes either “are you using contraception to prevent pregnancy” or “how can we get you healthy” - to focus on use of preventive health services and health promotion behaviors, and make sure that women get prenatal care early when they do become pregnant.

At its January 2014 meeting, the Committee revisited and built further upon the November discussion. Previously-defined interests were further articulated within a life-course continuum approach to addressing maternal mortality by addressing: prevention of unintended pregnancy and planning of desired pregnancies; promoting women’s health prior to pregnancy (preconception) and between pregnancies (interconception), include wellness/preventive health as well as management of risk factors and chronic disease; and, ensuring optimal care during pregnancy, with special attention to identification and management of high-risk pregnancies. The set of six Prevention Agenda strategies identified at the previous meeting was further refined to focus on three strategies as focal points for further committee attention:

1. Integrate preconception and interconception care into routine primary and specialty care for women of reproductive age, to include:
  - Screening and follow up for risk factors
  - Management of chronic medical conditions
  - Use of contraception to plan pregnancies
2. Assess and address pregnancy planning, including use of highly effective contraception, among women with severe chronic conditions or who have experienced a previous adverse pregnancy outcome.
3. Implement comprehensive and coordinated systems and protocols for early identification and management of high-risk pregnancies.

The Committee confirmed its interest in convening a series of conversations with key partners and stakeholders to further inform these issues. Specific initiatives and individuals were identified as potential invitees for these discussions. Dr. Boufford and Dr. de Long committed to arranging the first of these conversations and invited Committee members to contribute additional comments in the interim.

Members of the Public Health Committee



**Project # 152240-C  
Southside Hospital**

**Program: Hospital  
Purpose: Construction**

**County: Suffolk  
Acknowledged: October 29, 2015**

**Executive Summary**

**Description**

Southside Hospital, a 321-bed, not-for-profit, acute care hospital located at 301 East Main St., Bay Shore (Suffolk County), requests approval to renovate space to create a new 17-bed pre-op and recovery suite with an outpatient intake area and expand the existing cardiac catheterization lab. The applicant will renovate 6,920 square feet on the third floor of the Gulden Building to create the new 17-bed pre-op and recovery suite. The project will also renovate 5,880 square feet in the Brackett Building to expand the cardiac catheterization lab service. The end-result of the Brackett Building renovation will be a three-room cardiac catheterization suite and a new standalone two-room EP suite.

Southside Hospital is a member of The North Shore-Long Island Jewish Health System, Inc. (NS-LIJHS), an integrated healthcare delivery network serving the residents of the greater New York Metropolitan Area. NS-LIJHS is the ultimate sole corporate member of the entities within the System.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

This new configuration will allow for optimal patient flow and efficiency, as well as enhance the Hospital's ability to handle emergency patients.

**Program Summary**

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

**Financial Summary**

Total project cost of \$21,485,915 will be met via equity of \$2,148,391 and a DASNY loan of \$19,337,324 at an interest rate of 6.50% for 30 years. The operating budget is as follows:

Revenues:	\$24,438,900
Expenses:	<u>18,979,800</u>
Excess of Revenues over Expenses:	\$5,459,100

## 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 Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-02, for review and approval. [DAS]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. This project is approved to be initially funded with North Shore- Long Island Jewish Hospital (NS-LIJHS) equity with the prospect that the project will be 90% percent financed as part of a future NS-LIJHS group tax exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% percent interest rate and a 30-year term. Financing is conditioned upon the Department having the opportunity to review the final financing proposal in advance to ensure that it meets approval standards. [BFA]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]
4. Construction must start on or before April 1, 2016 and construction must be completed by April 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

**February 11, 2016**

# Need Analysis

## Project Description

Southside Hospital (SSH) is a 321-bed tertiary hospital, located at 301 East Main St Bay Shore, NY 11706 Suffolk County. The main service area is the southwest region of Suffolk County. In 2011, Southside Hospital successfully implemented the first new cardiac surgery program on Long Island in more than 30 years.

Southside Hospital seeks approval to add 17-bed pre-op and recovery suite with an outpatient intake area and expand the capacity of its existing cardiac catheterization/EPS program by renovating the current pre-op and recovery suite space in the Bracket Building to create a two-room electrophysiology suite that will be adjacent to, but programmatically distinct from, the existing cardiac catheterization/EPS suite. The existing suite, comprised of 2 cardiac catheterization labs and 1 EPS room, will be converted into a 3-lab catheterization suite. The end-result of the proposed renovation will be a 3-room cardiac catheterization suite and a new standalone 2-room EPS suite. The proposed expansion space in the Gulden Building is currently a pediatric nursing unit that is being relocated under a separate CON.

## Background

<b>Table 1: Southside Beds</b>	
Coma Recovery	5
Coronary Care	10
Intensive Care	16
Maternity	29
Medical / Surgical	194
Neonatal Continuing Care	5
Neonatal Intermediate Care	6
Pediatric	16
Physical Medicine and Rehabilitation	24
Traumatic Brain Injury	16
<b>Total</b>	<b>321</b>

Source: HFIS

<b>Table 2: Hospital Occupancy through 2014 Southside Hospital</b>									
Bed Category	Current Beds	Discharges				Occupancy			
		2011	2012	2013	2014	2011	2012	2013	2014
Med/Surg	265	13,107	13,279	13,411	13,615	70.5%	73.4%	76.4%	78.4%
Pediatric	16	404	388	382	285	13.2%	13.0%	13.1%	9.6%
Obstetric	29	2,600	2,674	2,788	2,821	68.0%	69.2%	71.4%	72.6%
General Psychiatric	0	650	744	744	529	0.0%	0.0%	0.0%	0.0%
Chemical Dependence	0	95	96	125	101	0.0%	0.0%	0.0%	0.0%
High-Risk Neonates	11	143	155	138	163	30.9%	28.2%	28.4%	28.3%
<b>Total</b>	<b>321</b>	<b>16,999</b>	<b>17,336</b>	<b>17,588</b>	<b>17,514</b>	<b>70.7%</b>	<b>73.6%</b>	<b>76.8%</b>	<b>78.9%</b>

Source: SPARCS

## Conclusion

This new configuration will allow for optimal patient flow and efficiency, as well as enhance the Hospital's ability to handle emergency patients.

## Recommendation

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

## Program Analysis

### Project Proposal

Southside Hospital (SSH), a 321-bed tertiary hospital, located at 301 East Main Street in Bay Shore, NY (Suffolk County), seeks approval to renovate the third floor of its Gulden Building to create a new 17-bed pre-op and recovery suite with an outpatient intake area. The hospital also seeks approval to expand the capacity of its existing cardiac catheterization/electrophysiology program by renovating space in the Bracket Building to create a two-room electrophysiology suite. The end-result of the proposed renovation will be a 3-room cardiac catheterization suite and a new standalone 2-room EPS suite. This new configuration will allow for optimal patient flow and efficiency, as well as enhance the Hospital's ability to handle emergency patients.

Southside Hospital is a member of The North Shore-Long Island Jewish Health System, Inc., an integrated healthcare delivery network serving the residents of the greater New York Metropolitan Area. North Shore-Long Island Jewish Health System, Inc. (NS-LIJHS) is the ultimate sole corporate member of the entities within the Health System.

Staffing will increase by 10.0 FTEs in the first year after completion 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 and Financing

Total project cost for renovations and the acquisition of moveable equipment is estimated at \$21,485,915 broken down as follows:

Renovation and Demolition	\$9,600,000
Asbestos Abatement or Removal	150,000
Design Contingency	768,000
Construction Contingency	864,000
Planning Consultant Fees	192,000
Architect/Engineering Fees	768,000
Construction Manager Fees	384,000
Other Fees (Consultant)	268,000
Moveable Equipment	7,051,295
Telecommunications	275,000
Financing Costs	1,026,105
CON Fee	2,000
Additional Processing Fee	<u>117,515</u>
Total Project Cost	\$21,485,915

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



The applicant's financing plan appears as follows:

Equity	\$2,148,591
DASNY Loan (6.5% interest, 30-year term)	19,337,324

The Hospital plans to initially fund total project cost with NS-LIJHS equity. During construction, the project will be financed with interim financing through a bank line of credit. Citibank has submitted a letter of interest. This approach allows NS-LIJHS to incur the interest expense only on actual funds drawn down from the interim financing. The project will be financed as part of a future NS-LIJHS tax-exempt bond financing through the Dormitory Authority. The bond issue is expected to include a 6.5% interest rate and a 30-year term. The Department will have the opportunity to review the final financing proposal in advance and work with the facility staff to ensure that it meets approval standards.

#### Operating Budget

The applicant has submitted a first and third year incremental budget, in 2015 dollars, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Total Revenues	\$23,535,300	\$24,438,900
Expenses:		
Operating	\$15,951,300	\$16,555,800
Capital	<u>2,952,600</u>	<u>2,917,900</u>
Total Expenses	\$18,903,900	\$19,473,700
Excess of Revenues over Expenses	\$4,631,400	\$4,965,200
Utilization:		
Discharges	472	479
Visits	555	597

Inpatient utilization by payor source for years one and three is anticipated as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	11.01%	11.06%
Medicare Fee For Service	39.19%	39.24%
Medicare Managed Care	18.64%	18.58%
Commercial Managed Care	29.44%	29.44%
Private Pay	<u>1.72%</u>	<u>1.68%</u>
Total	100.00 %	100.00 %

Outpatient utilization by payor source for years one and three is anticipated as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	10.99%	11.06%
Medicare Fee For Service	39.28%	39.20%
Medicare Managed Care	18.56%	18.59%
Commercial Managed Care	29.55%	29.48%
Private Pay	<u>1.62%</u>	<u>1.67%</u>
Total	100.00 %	100.00 %

Expense and utilization assumptions are based on the historical experience of the hospital.

#### Capability and Feasibility

Project costs of \$21,485,915 will be provided through \$2,148,391 of accumulated funds and a \$19,337,324 DASNY Bond Financing at stated terms. BFA Attachment A is the 2013 and 2014 certified financial statements of North Shore Long Island Jewish Health System, Inc., which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of \$4,631,000 and \$4,965,200 during the first and third years, respectively. Revenues reflect current reimbursement methodologies. The budget appears reasonable.

As shown on BFA Attachment A, the entity had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the entity achieved an average operating revenues over expenses of \$85,735,000 from 2013 through 2014.

#### Conclusion

Subject to the noted condition, 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-2013 and 2014 certified financial statements of The North Shore-Long Island Jewish Health System, Inc.



**Project # 152202-E  
St Peter's Health Partners**

**Program: Hospital  
Purpose: Establishment**

**County: Albany  
Acknowledged: October 8, 2015**

**Executive Summary**

**Description**

St. Peter's Health Partners (SPHP) requests approval for Hawthorne Ridge, Inc., an independent senior living community with enriched housing/assisted living located at 30 Community Way, East Greenbush (Rensselaer County), to join the St. Peter's Hospital of the City of Albany Obligated Group. Hawthorne Ridge, Inc. is an affiliate of Eddy Senior Living and a division of SPHP, a not-for-profit health care system. While Hawthorn Ridge is not a health care facility itself its entry into the obligated group containing Article 28 facilities must be approved in order to gain authorization necessary to cross-collateralize participants' debt. Under CON #122271, SPHP was established as the active parent and co-operator of all licensed health care facilities operated by St. Peters Health Care Services, Northeast Health, and Seton Health Systems, Inc., and was authorized with each of the SPHP Article 28 hospitals and the Capital Region Geriatric Center, Inc. to join the St. Peter's Hospital of City of Albany Obligated Group. BFA Attachment A shows the Organizational Chart of St. Peters Health Partners.

On January 1, 2008, in furtherance of financing debt St. Peter's Hospital (SPH) entered into a Master Trust Indenture (MTI) as sole member of the St. Peter's Hospital of the City of Albany Obligated Group. As agent and attorney-in-fact for the Obligated Group, SPH is authorized to execute Supplemental Indentures to admit new entities to the Obligated Group. Public Health and Health Planning Council approval has subsequently authorized Supplemental Indentures to add the following members: St. Peter's Health Partners, Memorial Hospital

(Albany), Samaritan Hospital of Troy, Seton Health System, Inc., Sunnyview Hospital and Rehabilitation Center, and Capital Region Geriatric Center, Inc.

There is no new financing or refinancing proposed through this application.

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 applicant's character and competence or standing in the community.

Financial Summary  
There are no project costs associated with this application and no budgets.

As a result of being admitted to the Obligated Group, Hawthorne Ridge, Inc. will be jointly and severally liable for payment of all obligations under the MTI, and will be required to pledge their gross revenues to secure Obligations. The Obligated Group currently has no outstanding debt.

Our review determined that both the proposed new member and the Obligated Group are currently in strong financial positions. As of June 30, 2015, Hawthorne Ridge Inc. has

maintained positive working capital, net assets and had net income from operations of \$622,000. St. Peter's Health Partners has also maintained positive working capital, net assets and had net income from operations of \$31,809,000 as of June 30, 2015. As of September 2014, Moody's rated St. Peter's Hospital with an A3 rating and Standard and Poor's rated St. Peter's Hospital with an A+ rating as of April 2014. The stable outlook mirrors the stable outlook on Catholic Health East Trinity with the opinion that St. Peter's Health Partners shows continuing leverage on market strength.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval is contingent upon:**

1. Submission of a photocopy of the amended bylaws of Hawthorne Ridge, Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's updated and amended management agreement, by and between Hawthorne Ridge, Inc., acceptable to the Department. [CSL]
3. Submission of an updated and amended Administrative Services Agreement between St. Peter's Health Partners and St. Peter's Health Partners Affiliates, acceptable to the Department. [CSL]
4. Submission of an updated and amended Business Associate Agreement between St. Peter's Health Partners and St. Peter's Health Partner Affiliates, acceptable to the Department. [CSL]
5. Submission of a photocopy of the amended bylaws of St. Peters Health Partners, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Prior to executing a Supplemental Master Trust Indenture (MTI), the applicant must submit the draft Supplemental MTI agreement to the Department for review and approval. [BFA]

Council Action Date

**February 11, 2016**

## Program Analysis

### Project Proposal

St. Peter's Health Partners, an Article 28 network, seeks approval for Hawthorne Ridge, Inc., an independent senior living community with enriched housing/assisted living located at 30 Community Way, in East Greenbush (Rensselaer County), to enter into the St. Peter's Hospital of the City of Albany Obligated Group. Hawthorne Ridge, Inc. is an affiliate of Eddy Senior Living and a Division of St. Peter's Health Partners (SPHP), a not-for-profit health care system. While Hawthorne is not a health care facility itself, SPHP is established as the active parent and co-operator of 12 Article 28 facilities, and is therefore an "established Article 28 network" as defined by section 401.1(j) of 10 NYCRR.

LTC (Eddy), Inc. is a not-for-profit Corporate Law Member of Hawthorne Ridge, Inc. St. Peter's Health Partners is a not-for-profit Corporate Law member of Northeast Health, which is a not-for-profit Corporate Law member of LTC (Eddy), Inc. In effect, St. Peter's Health Partners is the corporate great-grandparent of Hawthorne Ridge, Inc.

### Character and Competence

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted for Board Members of St. Peter's Health Partners 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,

*Within the ten year look-back period, Dr. Thorn disclosed she has one open malpractice case and Dr. Slavin disclosed one open and one settled 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.

*The Board Members disclosed that four St. Peter's Health Partners affiliates (as well as other Capital Region hospitals) were named as defendants in a 2006 Class Action alleging antitrust violations relating to nurse wages. Those lawsuits were settled in 2009-2011.*

*On August 16, 2010, a Stipulation and Order and a \$2,000 fine was issued to Our Lady of Mercy Life Center for issues related to Quality of Care discovered during a survey of June 1, 2009.*

*On August 17, 2010, Eddy Visiting Nurse Association settled a Department enforcement action relating to care planning by payment of a \$3,500 fine.*

*St. Peter's Hospital (SPH) was one of hundreds of hospitals investigated in a nationwide U.S. Department of Justice investigation of claims for implantable cardioverter defibrillator (ICD) procedures. SPH settled that matter in August 2015*

### 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

### Financial Analysis

There are no project costs associated with this application and no budgets. As a result of being part of the Obligate Group, each member is jointly and severally liable for payments of all obligations under the MTI, and pledges their gross revenues to serve the obligations. The purpose of our analysis was to determine the impact of this proposed new Obligated Group member on other Obligated Group members licensed as Article 28 providers including: St. Peter's Hospital (Albany), St. Peter's Health Partners, Memorial Hospital (Albany), Samaritan Hospital (Troy), Seton Health System, Inc., Sunnyview Hospital and Rehabilitation Center, and Capital Region Geriatric Center, Inc.

Our review consisted of evaluating the financial performance of the proposed new member as well as the Obligated Group itself. Our review determined that both the new member and the Obligated Group are currently in strong financial positions. Hawthorne Ridge, Inc.'s financial statements indicate that the facility has maintained positive working capital, net assets and a net profit from operations of \$622,000 as of June 30, 2015. St. Peter's Health Partners has maintained positive working capital, net assets and a net profit from operations of \$31,809,000 for the same period. As of September 2014, Moody's rated St. Peter's Hospital with an A3 rating and Standard and Poor's has rated St. Peter's Hospital with an A+ rating as of April 2014. The stable outlook mirrors the stable outlook on Catholic Health East Trinity with the opinion that St. Peter's Health Partners shows continuing leverage on market strength.

### Capability and Feasibility

There are no project costs and no budgets associated with this application. As of September 2014, Moody's rated St. Peter's Hospital with an A3 rating and as of April 2014, Standard and Poor's rated St. Peter's Hospital with an A+ rating. The stable outlook mirrors the stable outlook on Catholic Health East Trinity with the opinion that St. Peter's Health Partners shows continuing leverage on market strength.

BFA Attachment C, the 2015 financial summary of Hawthorne Ridge Inc., indicates that the facility has maintained positive working capital, net assets and had a net income from operations of \$622,000 for the period ending June 30, 2015.

BFA Attachment B is the 2014-2015 Financial Summary for St. Peter's Health Partners, which indicates that the entity has maintained positive working capital, net assets and had a net income from operations of \$31,809,000 for the year ending June 30, 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	Organizational Chart- St. Peter's Health Partners
BFA Attachment B	Financial Summary for St. Peter's Health Partners, 2014-2015
BFA Attachment C	Financial Summary for Hawthorne Ridge Inc., 2015



**Project # 152323-E  
Alice Hyde Medical Center**

**Program:** Hospital  
**Purpose:** Establishment

**County:** Franklin  
**Acknowledged:** November 30, 2015

**Executive Summary**

**Description**

The University of Vermont Health Network (UVM Health Network, formerly known as Fletcher Allen Partners) and Community Providers, Inc. (CPI) seek approval to become the active parents of Alice Hyde Medical Center (AHMC), a 64 bed acute care hospital located at 133 Park Street, Malone (Franklin County). There will be no change in services or the number or type of beds as a result of the proposed change in governance structure. AHMC will remain a separate not-for-profit corporation certified under Article 28 of the New York Public Health Law, maintaining a separate operating certificate.

On October 7, 2015, UVM Health Network, CPI and AHMC entered into a Membership Agreement to further the development of an integrated regional health care system to improve quality, increase efficiencies, and lower costs of health care delivery in northern New York and Vermont. AHMC will amend and restate its Certificate of Incorporation and bylaws to name CPI as its sole member and to grant both UVM Health Network and CPI operator powers. BFA Attachment A provides the organizational chart of UVM Health Network and CPI before and after the requested change.

As active parent, UVM Health Network and CPI will have the power and authority to make decisions for its affiliates, as stated in its certificate of incorporation and bylaws, and the active parent powers as described in 10 NYCRR 405.1(c), including:

- appointment or dismissal of hospital management level employees and medical staff, except the election or removal of corporate officers by the members of a not-for-profit corporation;
- approval of hospital operating and capital budgets;
- adoption or approval of hospital operating policies and procedures;
- approval of certificate of need applications filed by or on behalf of the hospital;
- approval of hospital debt necessary to finance the cost of compliance with operational or physical plant standards required by law;
- approval of hospital contracts for management or for clinical services; and
- approval of settlements of administrative proceedings or litigation to which the hospital is party, except approval by the members of a not-for-profit corporation of settlements of litigation that exceeds insurance coverage or any applicable self-insurance fund.



The composition of the Board of AHMC will not change on the effective date of the transaction and powers of the Board will also be unchanged, subject only to the Reserved Powers of CPI and UVM Health Network.

UVM Health Network and CPI's exercise of powers will allow the following for AHMC providers:

- Formulate consistent corporate policies and procedures across the system;
- Ensure a consistent approach to regulatory compliance, standards of care, and medical staff credentialing;
- Organize the network providers into an efficient and accessible continuum of care responsive to community needs;
- Collaborate in areas designed to conserve resources, such as joint purchasing;
- Facilitate clinical integration and the use of best practices;
- Share resources; and
- Reflect common mission, philosophy, values and purposes.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
There will be no change in beds or 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 or budgets associated with the project.

## 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 fully executed Amended and Restated Articles of Incorporation of the University of Vermont Health Network Inc., acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's updated and amended Amended and Restated Bylaws of the University of Vermont Health Network, Inc. (formally Fletcher Allen Partners, Inc.), acceptable to the Department. [CSL]
3. Submission of a photocopy of the updated and amended Bylaws of Community Providers, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of a fully executed Amended and Restated Certificate of Incorporation of Alice Hyde Medical Center, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed and amended bylaws of the Alice Hyde Medical Center, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**February 11, 2016**

## Need Analysis

### Background

The University of Vermont Health Network (UVM Health Network) and Community Providers, Inc. (CPI) are submitting this Establishment-Only Certificate of Need (CON) Application to seek approval to become the active parents/co-operators of Alice Hyde Medical Center. The purpose of the proposal is to strengthen health care delivery regionally and in Franklin County.

### Recommendation

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

## Program Analysis

### Character and Competence

The composition of the Board of AHMC will not change on the effective date of the transaction and powers of the Board will also be unchanged, subject only to the Reserved Powers of UVM Health Network and CPI. UVM Health Network is the sole member of CPI. UVM Health Network has no corporate member.

Staff from the Division of Certification and Surveillance reviewed the disclosure information submitted for all of the members of both the University of Vermont Health Network, Inc. and Community Providers, Inc. (27 individuals in total) 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. Black disclosed one settled malpractice claim.*

*Mr. Perkins disclosed that he received a DWI in 2007 for which he pleaded guilty and paid a fine.*

*Ms. Stickney disclosed that the State of Vermont fined Wake Robin Corporation \$5,000 for a violation of the Certificate of Need process during her tenure as President/CEO. Specifically, approval was obtained from the Vermont licensing body for nursing homes to undergo a \$300,000 conversion of three assisted living rooms to skilled nursing rooms, however, the facility did not obtain proper Certificate of Need approval. There were no other regulatory or legal issues with the project. [Ms. Stickney was not the licensed nursing home administrator for Wake Robin.]*

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 November 2011, Fletcher Allen and the NYS Office of Medicaid Inspector General (OMIG) entered into a Stipulation of Settlement in regard to an audit report by OMIG with respect to billings for ambulatory surgery services. The stipulation required Fletcher Allen to pay \$510,973 with no admission of liability.*

CVPH Skilled Nursing Facility (SNF)

- *In a Stipulation and Order (S&O) dated in June 2009, the facility was fined \$10,000 based on findings from an investigation where a resident eloped from the facility, fell and sustained injury.*
- *In a Stipulation and Order dated June 21, 2010, the facility was fined \$6,000 based on findings from a survey completed on August 20, 2008. Deficient practice was cited in the areas of: Quality Assessment and Assurance, Organization and Administration, and Quality of Care – Accidents.*
- *In a Stipulation and Order dated March 12, 2012, the facility was fined \$22,000 based on findings from a survey completed on February 3, 2011. Deficient practice was cited in the areas of: Quality of Care – Medication Errors, Physician Visits, and Drug Regime Review.*

Champlain Valley Physicians Hospital Medical Center

- *The Department issued a Stipulation and Order dated March 7, 2012 and fined CVPH \$28,000 based on an investigation into the death of a patient who had been admitted for knee surgery. When emergency care became necessary for this patient, there was a delay in resuscitation and a misplaced breathing tube.*
- *The Department issued a Stipulation and Order effective July 16, 2014, and fined CVPH \$40,000 based on deficiencies found during inspections completed on July 23, 2013 and December 30, 2013. Deficient practices were found in the following areas: Governing Body (Compliance with Laws and Care of Patients); Administration (Records and Reports); Medical Staff (Accountability); Nursing Services (Delivery of Services); Quality Assurance (QA and Program Activities); Surgical Services; Anesthesia Services (Operation and Delivery); Outpatient Services; and Patient Rights.*

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

Recommendation

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

## Financial Analysis

### Capability and Feasibility

There are no issues of capability or feasibility, as there are no project costs or budgets associated with this application.

The applicant stated that upon Public Health and Health Planning Council approval of this application, UVM Health Network and CPI will obtain consent for the proposed changes from necessary lenders, insurers and trustees. There will be no change in the daily operations of the health care facility, although the facility is expected to experience cost benefits from the active parent designation.

BFA Attachment B is AHMC's 2014 audited financial summary and internal financials as of October 31, 2015. As shown, the hospital experienced negative working capital, positive net assets and a net loss from operations of \$466,059 in 2014 due to increased expenses in accounts payable and accrued expenses as a result of the cost of constructing the new nursing home. Alice Hyde Medical Center has shown positive working capital, positive net assets and a net income from operations of \$2,024,302 as of October 31, 2015.

BFA Attachment C is the 2014 certified and current internal 2015 financial summaries for UVM Health Network, which has shown positive working capital, positive net assets and a net income from operations.

BFA Attachment D is the current internal 2015 financial summary for CPI which has shown positive working capital, positive net assets and a net income from operations.

Designation as an active parent is expected to enhance UVM Health Network and CPI facilities and contribute to a greater marketing presence for the Network and its providers. 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.**

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## Attachments

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- BFA Attachment A Current & Proposed Organizational Chart
- BFA Attachment B Financial Summary, Alice Hyde Medical Center - 2014 audited, internals as of October 31, 2015
- BFA Attachment C Financial Summary, UVM Health Network, internal 2015 financials and certified 2014 financials
- BFA Attachment D Financial Summary, CPI, internal 2015 financials



**Project # 151019-B**  
**Liberty Endo, LLC d/b/a Liberty Endoscopy Center**

**Program:** Diagnostic and Treatment Center      **County:** New York  
**Purpose:** Establishment and Construction      **Acknowledged:** January 15, 2015

**Executive Summary**

**Description**

Liberty Endo, LLC d/b/a Liberty Endoscopy Center (Liberty Endo), an existing New York limited liability company, requests approval to establish and construct an Article 28 freestanding ambulatory surgery center (FASC) to be certified as a single-specialty FASC in the discipline of gastroenterology. The applicant will lease 9,618 square feet on the fourth floor of an existing building located at 156 William Street, New York (New York County). The site will include three procedure rooms, a pre-operating area with four pre-op bays, eight recovery bays, along with the requisite support areas.

As proposed, Liberty Endo will have 19 members comprised of

- 18 individual board-certified gastroenterologists with 90% total ownership, and
- Beth Israel Ambulatory Care Services Corporation (BIACSC) with 10% ownership.

BFA Attachment B provides an organizational chart listing the names and ownership percentages of the respective members.

The 18 individual physician members are members of Manhattan Endoscopy Center, LLC, an existing Article 28 FASC located in New York County. They currently perform surgical procedures at Manhattan Endoscopy Center and will be investing members only in Liberty Endo. Liberty Endo's projected first year procedures will be cases transferred from the private office-based practices of seven non-member board-certified gastroenterologists. The practicing physicians are committed to utilizing the FASC

to perform procedures currently being done in their private practices, which are located in the same community that the applicant will serve. The applicant indicates that none of the projected procedures will come from any local hospital.

The sole passive member of BIACSC is BIMC Holding Corp. (BIMC). BIMC is a not-for-profit corporation which has no members, but whose Board of Trustees consists of officers of Mount Sinai Beth Israel Medical Center (MSBI). The applicant states that MSBI will not take an active role in the operations of the proposed FASC. BIACSC is also the operator of Beth Israel Ambulatory Surgi-Center and is a member of Digestive Diseases Diagnostic & Treatment Center.

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

**Need Summary**  
The procedures to be performed at Liberty Endoscopy Center are presently being performed in private physician offices. The number of projected procedures is 3,100 in Year 1 with Medicaid at 3.0% 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

Total project costs of \$4,341,851 will be met through members' equity of \$868,370, with the remaining \$3,473,481 balance being financed over five years through JP Morgan Chase Bank at 5% interest.

The operating budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,196,375	\$3,260,278
Expenses	<u>\$2,717,643</u>	<u>\$2,759,742</u>
Gain/(Loss)	\$ 478,732	\$500,536

## 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:
  - 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 Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed Business Associate Agreement, acceptable to the Department. [HSP]
7. Submission of an executed loan commitment 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 a lease agreement, acceptable to the department. [CSL]
10. Submission of a fully executed Administrative Services Agreement that is acceptable to the Department. [CSL]
11. Submission of a fully executed Operating Agreement for the applicant that is acceptable to the Department. [CSL]
12. Submission of a fully executed Articles of Organization for the applicant that is acceptable to the Department. [CSL]



**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. 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. Corridor walls separating Article 28 facility from public egress corridors are to match fire-resistance/protection proposed for tenant (occupancy) separation from adjacent tenant sharing the building floor. Revision will be reflected in 100% construction documents. [AER]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and the Department's granting approval for the start of construction. [AER]
8. Construction must start on or before May 1, 2016 and construction must be completed by September 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

**February 11, 2016**

## Need Analysis

### Project Description

Liberty Endo, LLC d/b/a Liberty Endoscopy Center, an existing New York limited liability company, is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty gastroenterology surgery services at 123 William Street, New York, 10038, New York County.

### Analysis

The service area consists of New York County. New York County has a total of seven freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in New York County for 2013 & 2014.

ASC Type	Name	Total Patients 2013	Total Patients 2014
Single	Carnegie Hill Endo, LLC	10,695	11,426
Multi	Center for Specialty Care	4,174	3,885
Single	East Side Endoscopy	9,183	9,284
Multi	Fifth Avenue Surgery Center	1,665	1,544
Multi	Gramercy Park Digestive Disease	8,666	9,343
Multi	Gramercy Surgery Center, Inc.	2,550	2,667
Single	Kips Bay Endoscopy Center LLC	9,241	9,084
Single	Manhattan Endoscopy Ctr., LLC	12,014	12,656
Multi	Manhattan Surgery Center ( Opened April 1, 2013)	900	2,502
Single	Mid- Manhattan Surgi-Center	4,312	2,984
Multi	Midtown Surgery Center, LLC	3,114	3,161
Single	Retinal Ambulatory Surgery Ctr.	1,862	1,984
Multi	Surgicare of Manhattan, LLC	3,648	3,666
Single	West Side GI	12,516	12,549
Single	Yorkville Endoscopy Center (Opened Feb 22, 2013)	9,140	10,685
Total		93,680	97,420

(Source: SPARCS-2015)

For New York County, the total number of patient visits was 93,680 in 2013 and 97,420 in 2014. This represents a 4% year-to-year increase in the number of patients served by ambulatory surgery centers in New York County. For the single gastroenterology specialty ASC's, the number of patient visits was 62,789 in 2013 and 65,684 in 2014. This represents a 4.6% year-to-year increase in the number of patients served by gastroenterology specialty ASC's in New York County.

The population of New York County in 2010 was 1,585,873, with 615,731 individuals (38.8%) who are 45 and over - the primary population group utilizing Gastroenterology services. Per the Cornell Program on Applied Demographics (PAD) projection data, the 45 and over population group is estimated to grow to 660,206 by 2025 and represent 40.9% of the projected population of 1,615,772.

The number of projected procedures is 3,100 in Year 1 and 3,163 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Liberty Endoscopy Center for Years 1 and 3.

Projections	Year 1	Year 1	Year 3	Year 3
Commercial Ins	2,728	88.0%	2,783	88.0%
Medicare	186	6.0%	190	6.0%
Medicaid	93	3.0%	95	3.0%
Private Pay	31	1.0%	32	1.0%
Charity Care	62	2.0%	63	2.0%
Total	3,100	100.0%	3,163	100.0%

To serve the underinsured population, the center provided the following information to DOH. The center intends to obtain contracts with the following Medicaid Managed Care plans: Healthfirst, Fidelis, and Amerigroup. The center is planning to enter into partnerships with several organizations that can refer qualified uninsured patients to the center. The center's owners have pre-existing relationships with the following organizations: Settlement Health (an FQHC), Gouverneur Health (an FQHC), and The Bowery Mission. The center's owners have also reached out to the following organizations to develop relationships for referrals: Beth Israel Medical Group, Mount Sinai Comprehensive Health program, and two free health clinics operated by NYU. 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 additional office-based surgical procedures into an Article 28 ambulatory surgery center serving the communities of New York County. This center will expand access to gastroenterology services delivered in a regulated setting for the communities of New York County.

**Recommendation**

**From a need perspective, contingent approval is recommended for a limited period of five (5) years.**

**Program Analysis**

**Project Proposal**

Liberty Endo, LLC d/b/a Liberty Endoscopy Center seeks approval to establish and construct a single-specialty ambulatory surgery center (ASC) specializing in gastroenterological procedures at 123 William Street, New York (New York County).

<b>Proposed Operator</b>	Liberty Endo, LLC
<b>Doing Business As</b>	Liberty Endoscopy Center
<b>Site Address</b>	123 William Street, New York (New York County)
<b>Surgical Specialties</b>	Single Specialty: Endoscopy
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	3 (Class A)
<b>Hours of Operation</b>	Monday through Friday from 7:00 a.m. to 5:00 p.m. (Weekend and/or evening procedures will be available, if needed, to accommodate patient scheduling issues.)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	13.0 FTEs / 13.0 FTEs
<b>Medical Director(s)</b>	Peter Kim, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by Mount Sinai - Beth Israel 3.9 miles / 15 minutes
<b>On-call service</b>	24/7 service to immediately refer the patient to the Center's on-call physician.

## Character and Competence

The members of the LLC are:

<b>Name</b>	<b>Percentage</b>
<b>Individual Physician Members</b>	<b>90%</b>
Peter Baiocco, MD	4.812%
Jennifer Bonheur, MD	4.812%
Anthony Borcich, MD	4.812%
Alexander Chun, MD	4.812%
Julia Foont, MD	4.812%
Albert Harary, MD	4.812%
Makoto Iwahara, MD	4.812%
Peter Kim, MD	8.200%
Michael Krumholt, MD	4.812%
Carl McDougall, MD	4.812%
Yasmin Metz, MD	4.812%
Eric Morgenstern, MD	4.812%
Paulo Pacheco, MD	4.812%
David Robbins, MD	4.812%
Mylan Satchi, MD	4.812%
Jonathan Warman, MD	4.812%
Ivan Weisberg, MD	4.812%
Juauf Zlatanic, MD	4.812%
<b>Beth Israel Ambulatory Care Services Corp. (BIACSC)</b>	<b>10%</b>
Donald Scanlon	
Jeremy Boal, MD	
Adam Henick	

Holding a 90% membership interest in the center are 18 physicians, all of whom are practicing surgeons/board-certified gastroenterologists, with a 4.12% interest each with the exception of the Medical Director, Dr. Kim, who holds an 8.20% interest. Beth Israel Ambulatory Care Services Corp. is a not-for-profit corporation whose sole passive member is BIMC Holding Corporation. BIMC Holding Corp. is a not-for-profit corporation that has no members but whose Board of Trustees consists of the officers of Mount Sinai Beth Israel.

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. Baiocco, Harary, Krumholt and Satchi disclosed one pending malpractice case. Drs. Iwahara and Pacheco disclosed one settled malpractice case. Dr. Warman disclosed two open malpractice cases and one settled 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.

### 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. In addition, efforts will be made to recruit Chinese-speaking physicians to practice at the Center. The Center may also consider advertising in local Chinese-language newspapers about charitable services available at the Center. 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. The Center would also consider entering into an integrated system of care, such as the Mount Sinai Health Network, which is comprised of hundreds of clinical and academic relationships throughout the greater New York metropolitan area.

### Conclusion

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

### Recommendation

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

## Financial Analysis

### Lease Rental Agreement

The applicant has submitted an executed lease for the proposed site, the terms of which are summarized below:

Date:	October 16, 2015
Premises:	9,618 gross square feet located at 156 Williams Street, New York, NY 10038
Landlord:	156 William Street Owner, LLC
Lessee:	Liberty Endo, LLC
Term:	15 years, base rent at \$566,350 in year one (\$58.88 per sq. ft.) and increased yearly based upon terms. Renewal option (2) with 5-year terms
Provisions:	Utilities, Maintenance, Insurance and Taxes

The applicant has provided an affidavit stating that the lease is an arm's length arrangement. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

### Administrative Service Agreement

The applicant has submitted an executed administrative services agreement, the terms of which are summarized below:

Date:	September 28, 2015
Facility:	Liberty Endo, LLC
Contractor:	Gotham Administrative Services, LLC
Services Provided:	Provide non-clinical, non-professional administrative services to support the Board of Managers to achieve established objectives across operational, financial and network/strategic disciplines as agree upon and approved by the applicant.
Term:	1 year – automatically renew for one (1) year
Fee:	Annual Fee \$125,000 (1/12 to be paid monthly = \$10,416.67) Fee will increase by 1.5% per year after the first year

The administrative services provider, Gotham Administrative Services, LLC, is solely owned by Peter Kim, M.D., a member of the applicant. Liberty Endo, LLC retains ultimate control in all of the final decisions associated with the services.

#### Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment is estimated at \$4,341,851, broken down as follows:

Renovation & Demolition	\$1,802,819
Design Contingency	180,282
Construction Contingency	180,282
Architect/Engineering Fees	180,282
Construction Manager Fees	156,000
Other Fees	207,480
Movable Equipment	1,501,883
Financing Costs	34,730
Interim Interest Expense	72,354
CON Application Fee	2,000
CON Processing Fee	<u>23,739</u>
Total Project Cost	\$4,341,851

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

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$868,370
Bank Loan (5% interest, 5-year term)	<u>3,473,481</u>
Total	\$4,341,851

JP Morgan Chase Bank has provided a letter of interest.

BFA Attachments A and C are, respectively, the members' net worth summaries and Beth Israel Ambulatory Care Services Corporation's certified and internal financial statement dated December 31, 2014 and September 30, 2015, respectively, which show sufficient resources to meet the equity requirement.

#### Operating Budget

The applicant has submitted first and third years operating budgets, in 2015 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,196,375	\$3,260,278
Expenses:		
Operating	\$1,487,613	\$1,565,474
Capital	<u>1,230,030</u>	<u>1,194,268</u>
Total Expenses	\$2,717,643	\$2,759,742
Net Income or (Loss)	<u>\$478,732</u>	<u>\$500,536</u>
Utilization (procedures)	3,100	3,162
Cost Per Procedure	\$876.66	\$872.78

Utilization projections are based the experience of the participating providers along with their estimate of the number cases that can be transferred from their private office-based practices.

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

Medicaid Managed Care	3.0%
Medicare Fee-For-Service	5.0%
Medicare Managed Care	1.0%
Commercial Fee-For-Service	80.0%
Commercial Managed Care	8.0%
Private Pay	1.0%
Charity	<u>2.0%</u>
Total	100.0%

Expense assumptions are based upon the experience of the participating providers and members who operate other similar FASCs. The breakeven point is approximately 85% of the projected volume or 2,636 and 2,677 procedures in the first and third years, respectively.

#### Capability and Feasibility

Total project costs of \$4,341,851 will be satisfied as follows: \$868,370 in proposed members' equity, plus a \$3,473,481 loan financed through JP Morgan Chase Bank at the above stated terms.

Working capital requirements are estimated at \$459,957, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from JP Morgan Chase Bank to finance \$200,000 of the working capital with a one-year payback period at an estimated 4% interest rate. The remaining \$259,957 in working capital will be provided from the members financial resources. Review of BFA Attachments A and C, applicant's personal net worth statements and Beth Israel Ambulatory Care Services Corp certified and internal financial statement dated December 31, 2014 and September 30, 2015, shows sufficient liquid resources to meet the total equity requirement. BFA Attachment D is Liberty Endo's pro-forma balance sheet that shows operations will start off with \$1,128,327 in equity. Liberty Endo projects an operating surplus of \$478,732 and \$500,536 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected rates and private payers are based on members experience in the region. The applicant's budgets appear to be reasonable.

#### 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:** NYU Langone Medical Center --- **No Response**  
550 First Avenue  
New York, NY 10016

**Facility:** Bellevue Hospital Center --- **No Response**  
First Avenue at 27<sup>th</sup> Street  
New York, NY 10016

**Facility:** Beth Israel Medical Center --- **No Response**  
Petrie Division  
First Avenue at 16<sup>th</sup> Street  
New York, NY 10003

**Facility:** New York Presbyterian Hospital—  
New York Weill Cornell Medical Center --- **No Response**  
525 East 68<sup>th</sup> Street  
New York, NY 10032

Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that all of the 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 New York 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 New York County, a jurisdiction of 1.9 million people.

**Staff Recruitment and Retention:** The applicant states that, initially, recruitment will be of selected staff currently employed by the member physicians in their office-based practice, particularly the nursing and technical staff. Staff will also be recruited through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. The applicant also expects that nurses and technicians currently employed by hospitals who choose to augment their income will be able to find supplemental employment at the proposed ASC because of the flexible work schedule, without cutting back on or abandoning their hospital employment.

**Office-Based Cases:** The applicant states that all of the projected gastrointestinal surgical procedures for the proposed ASC are currently performed in the private, office-based practices of the applicant physicians. None of the projected procedures are performed in any hospital.

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

BPNR Attachment A	Map
BFA Attachment A	Personal Net Worth Statements of Proposed Members of Liberty Endo, LLC
BFA Attachment B	Organizational Chart
BFA Attachment C	Beth Israel Ambulatory Care Services Corp, Certified and Internal Financial Summaries for December 31, 2014 and September 31, 2015
BFA Attachment D	Pro Forma Balance Sheet of Liberty Endo, LLC





**Project # 151227-E  
SurgiCare of Manhattan**

**Program:** Diagnostic and Treatment Center    **County:** New York  
**Purpose:** Establishment    **Acknowledged:** May 19, 2015

**Executive Summary**

**Description**

SurgiCare of Manhattan, LLC d/b/a SurgiCare of Manhattan, an existing proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 800 Second Avenue, 7th Floor, New York, requests approval for a two-year extension of their limited life status. The D&TC is certified as a multi-specialty freestanding ambulatory surgery center (FASC) and provides orthopedic and pain management services utilizing six operating rooms and twelve recovery bays. The facility was approved by the Public Health Council with a five-year limited life beginning operation effective May 18, 2010. The FASC's limited life expired on May 18, 2015. SurgiCare of Manhattan requested an extension of their operating certification prior to their limited life expiration date.

Based on CON 071052, Surgicare of Manhattan projected 10,123 procedures with Medicaid at 1% and charity care at 3% for Year 3. According to their annual reports, they performed 8,650 procedures in Year 3 (2013) with actual charity care at 0.40% and Medicaid at 0%.

Surgicare of Manhattan projects 3,808 patient visits in the next year (equating to roughly 8,700 procedures), with 2% Medicaid and 2% 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.

**OPCHSM Recommendation**

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

**Financial Summary**

There are no project costs associated with this application.

**Need Summary**

Required submission of data by the applicant, as a contingency of CON 071052, has been completed.

**Budget:**

Revenues	\$21,264,968
Expenses	<u>12,187,776</u>
Net Income	\$9,077,192

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a signed agreement with an outside independent entity 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 certification from the applicant indicating that none of the company's legal and corporate documents have changed since the company's last CON project approval (project no. 071052-E), 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

**November 19, 2015 – EPRC recommended Contingent Approval of a One-Year extension to the operating certificate.**

**December 10, 2015 – PHHPC recommended Deferral of the project until the following meeting cycle.**

**February 11, 2016**

## Need Analysis

### Project Description

Surgicare of Manhattan, 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. It is located at 800 Second Avenue, New York, 10017, in New York County. The center provides orthopedic and pain management surgery services, and has six operating rooms.

### Analysis

The primary service area is New York County. The table below provides projections and utilization for Year 3 (2013) of the original CON 071052.

<b>Procedures</b>	<b>Projected Year 3 (2013)</b>	<b>Actual Year 3 (2013)</b>
Total	10,123	8,650

The table below provides projections under CON 071052 and actual utilization for 2013, as well as actual 2014 and Year 1, after approval, projections.

	<b>Projected Year 3 (2013) 071052</b>	<b>Actual Year 3 (2013)</b>	<b>Actual 2014</b>	<b>Projections Years 1 151227</b>
Medicare FFS/MC	12.0%	14.1%	14.1%	14.1%
Medicaid FFS/MC	1.0%	0.0%	0.0%	2.0%
Commercial	83.0%	83.5%	83.5%	79.8%
Private Pay/Other	1.0%	2.0%	.9%	2.1%
Charity Care	3.0%	0.4%	1.5%	2.0%
Total	100%	100%	100%	100%

Source: Applicant's annual report

Since the passage of the Affordable Care Act (ACA), access to healthcare coverage has improved in New York State, with fewer people needing traditional charity care. Through February 2015, the number of uninsured individuals in New York County has dropped from 222,000 before passage of the ACA to approximately 52,700 after passage (a 76% drop). Approximately 70% of these newly insured people are enrolled in Medicaid.

Per the original CON 071052, the combined Medicaid and charity care projected utilization was to be 4%. The Center has been experiencing difficulty in meeting this projection. The applicant indicated that this was due to improved healthcare coverage options in New York County, resulting in fewer uninsured individuals. The center realized a high percentage of bad debt attributable to patients covered by insurance with high co-pays and deductibles. The center re-evaluated the number of self-pay individuals for 2014 and determined that 45 cases could be labeled charity care, increasing the amount of charity care provided in 2014 to 1.5%.

In recognition of the need for the center to improve its charity care, it has developed a detailed action plan. The Center has appointed a full-time staff member to facilitate the provision of charity care by engaging in meaningful outreach. The center plans to leverage North Shore-LIJ's robust charity program and will work closely with Lenox Hill Hospital to refer underinsured patients to the center.

The applicant has submitted documentation confirming that contracts have been negotiated with two Medicaid Managed Care plans: Healthfirst and Wellcare. The applicant has also submitted documentation confirming submission of the outstanding 2011-2013 AHFC cost reports to DOH.

It is reasonable to expect that under its proposed action plan for reaching uninsured individuals, and with its connection to the NorthShore-LIJ organization, Surgicare of Manhattan will be able to achieve its proposed level of Medicaid and charity care within the two-year extension of limited life.

Surgicare of Manhattan is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

#### Conclusion

The proposed project will continue providing ambulatory surgery services to the communities of New York County.

#### Recommendation

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

## Program Analysis

#### Program Proposal

SurgiCare of Manhattan, LLC d/b/a SurgiCare of Manhattan, an existing Article 28 multi-specialty Diagnostic and Treatment Center located at 800 Second Avenue, 7<sup>th</sup> Floor, New York (New York County), is requesting permission for a two year extension of their five-year conditional, limited life approval (initially granted via CON #071052-E).

The Center, accredited by The Joint Commission Ambulatory Health Care Accreditation Program, provides surgical services in orthopedics and pain management utilizing six (6) operating rooms. At the present time, there are no proposals to add any services, expand or renovate the facility or change anything about the Center. Staffing is expected to remain at 26.0 FTEs and Christopher Riegler, 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 an operating budget, in 2015 dollars, for the current year of operation and for Year One and Year Three subsequent to approval, as shown below:

	<u>Current Year (Actual 2014)</u>	<u>Year One &amp; Year Three</u>
Revenues:		
Operating	\$21,569,570	\$21,264,968
Non-Operating	<u>0</u>	<u>0</u>
Total Revenues	\$21,569,570	\$21,264,968
Expenses:		
Operating	\$10,279,246	\$10,279,246
Capital	<u>1,908,530</u>	<u>1,908,530</u>
Total Expenses	\$12,187,776	\$12,187,776
Net Income	\$9,381,794	\$9,077,192
Utilization (Procedures)	3,808	3,808
Cost Per Procedure	\$3,200.57	\$3,200.57

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

Payor Source:	<u>Current Year (Actual 2014)</u>		<u>Projected Year One &amp; Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid Fee For Service	1	.03%	77	2.02%
Commercial Fee For Service	3,179	83.47%	3,039	79.80%
Medicare Fee For Service	535	14.05%	535	14.05%
Private Pay	36	.95%	81	2.13%
Charity Care	<u>57</u>	<u>1.50%</u>	<u>76</u>	<u>2.00%</u>
Total	3,808	100.00%	3,808	100.00%

### Capability and Feasibility

There are no project costs associated with this application.

The submitted budgets indicate a net income of \$9,077,192 and \$9,077,192 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is the 2013 and 2014 certified financial statements of SurgiCare of Manhattan, LLC. 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 achieved an average net income of \$8,646,291 from 2013 through 2014.

BFA Attachment B is the internal financial statements of Surgicare of Manhattan, LLC for April 30, 2015 and May 31, 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 of \$2,307,099 through May 31, 2015.

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

Recommendation

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

## Attachments

- BFA Attachment A Financial Summary - 2013 and 2014 certified financial statements of Surgicare of Manhattan, LLC
- BFA Attachment B Financial Summary - April 30, 2015 through May 31, 2015 internal financial statements of Surgicare of Manhattan, LLC



Project # 152219-B

Comprehensive Care ASC, LLC

**Program:** Diagnostic and Treatment Center      **County:** New York  
**Purpose:** Establishment and Construction      **Acknowledged:** October 19, 2015

## Executive Summary

### Description

This project amends and supersedes CON 141300, which was approved by the Public Health and Health Planning Council (PHHPC) in October 2014, due to a change in the ownership as approved. Per this amended application, Comprehensive Care ASC, LLC, a New York State limited liability corporation, request approval to establish and construct an Article 28 diagnostic and treatment center to be certified as a multi-specialty, freestanding ambulatory surgery center (FASC) specializing in orthopedic surgery and pain management services. The FASC will be located in leased space at 200 West 13th Street, Suite 400, New York (New York County), and will have four operating rooms and two procedure rooms. Comprehensive Care ASC, LLC's primary service area will be New York County. This application has been developed with the cooperation and support of Lenox Hill Hospital and North Shore-LIJ Health System.

The 100% member of Comprehensive Care ASC, LLC is North Shore-LIJ Ventures CCC, LLC, a New York State not-for-profit corporation solely owned by North Shore University Hospital. A certificate of amendment was filed on October 7, 2015 with the Secretary of the State of New York to change the name, Comprehensive Care ASC, LLC, to Greenwich Village Ambulatory Surgery Center, LLC upon PHHPC approval of this application.

Greenwich Village Ambulatory Surgery Center, LLC will enter into a consulting and administrative services agreement with Surgical

Care Affiliates, LLC (SCA), whereby SCA will provide development, consulting, and administrative services to the proposed Center, including but not limited to: budgeting, credentialing, billing, and physician scheduling. SCA is a national provider of consulting and administrative services to ambulatory surgery centers.

### OPCHSM Recommendation

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

### Need Summary

3,125 procedures are projected in Year 1. The proposed project will improve access to ambulatory surgery services for the communities of New York County.

### Program Summary

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

## Financial Summary

Project costs of \$24,998,962 will be met with \$4,678,107 in cash, a \$9,620,855 bank loan and a leasehold improvements to be provided by the landlord in the amount of \$10,700,000. The operating budget is as follows:

Revenues:	\$19,699,291
Expenses:	<u>13,947,552</u>
Gain:	\$5,751,739



## 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 NYSE-CON upon mailing. [PMU]
2. 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)
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 Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of a loan commitment for project costs, acceptable to the Department of Health. (BFA)
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
8. Submission of a photocopy of the fully executed Operating Agreement of the Greenwich Village Operating Center, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of the fully executed Operating Agreement of North Shore LIJ Ventures CCC, 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 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. The applicant shall complete construction by March 15, 2017. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. (AER)

Council Action Date

**February 11, 2016**

## Need Analysis

### Project Description

Comprehensive Care ASC, LLC proposes to establish and construct an Article 28 diagnostic and treatment center to provide multi-specialty ambulatory surgery services specializing in orthopedic, spinal and interventional pain management services. It will have four operating rooms and two procedure rooms. The proposed location is 200 West 13<sup>th</sup> Street, Suite 400, New York, 10011, in New York County.

### Background and Analysis

The primary service area is New York County. New York County currently has a total of 15 freestanding ambulatory surgery centers: 7 multi-specialty ASCs and 8 single specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in New York County for 2013 and 2014.

ASC Type	Facility	Patients 2013	Patients 2014
Single	Carnegie Hill Endo, LLC	10,695	11,426
Multi	Center for Specialty Care	4,174	3,885
Single	East Side Endoscopy	9,183	9,284
Multi	Fifth Avenue Surgery Center	1,665	1,544
Multi	Gramercy Park Digestive Disease Center	8,666	9,343
Multi	Gramercy Surgery Center, Inc.	2,550	2,667
Single	Kips Bay Endoscopy Center LLC	9,241	9,084
Single	Manhattan Endoscopy Center, LLC	12,014	12,656
Multi	Manhattan Surgery Center (Opened 4/1/13)	900	2,502
Single	Mid-Manhattan Surgi-Center	4,312	2,984
Multi	Midtown Surgery Center, LLC	3,114	3,161
Single	Retinal Ambulatory Surgery Center	1,862	1,984
Multi	Surgicare of Manhattan, LLC	3,648	3,666
Single	West Side GI	12,516	12,549
Single	Yorkville Endoscopy Center (opened 2/22/13)	9,140	10,685
	<b>Total</b>	<b>93,680</b>	<b>97,420</b>

Source-SPARCS 2015

As shown above, there was a 4% year-to-year increase in the number of patients served by ambulatory surgery centers in New York County. The multi-specialty ASCs provided the following types of procedures: ear, nose and throat (ENT), gastroenterology, podiatry, plastic, ophthalmology and orthopedic. These multi-specialty ASCs had 24,717 patient visits in 2013 and 26,768 in 2014. This represents an 8.3% year-to-year increase.

The population of New York County in 2010 was 1,585,873, with 615,731 individuals (38.8%) who are 45 and over - the primary population group utilizing ambulatory surgery services. Per the Cornell Program on Applied Demographics (PAD) projection data, the 45 and over population group is estimated to grow to 660,206 by 2025 and represent 40.9% of the projected population of 1,615,772.

3,125 procedures are projected in Year 1 and 6,350 in Year 3. These projections are based on the participating physicians' current case load. Of the eight physicians who have pledged to perform surgeries at the ASC, six currently perform their ambulatory surgery cases at North Shore-LIJ Health System hospital. The table below shows the projected payor source utilizations for Year 1 and Year 3.

<b>Projections</b>	<b>Year 1</b>	<b>Year 1</b>	<b>Year 3</b>	<b>Year 3</b>
Commercial INS	2,016	64.5%	4,098	64.5%
Medicare	359	11.5%	729	11.5%
Medicaid	91	2.9%	184	2.9%
Private Pay	46	1.5%	94	1.5%
Charity Care	62	2.0%	126	2.0%
Other	551	17.6%	1,119	17.6%
<b>Total</b>	<b>3,125</b>	<b>100.0%</b>	<b>6,350</b>	<b>100.0%</b>

The applicant indicated that as a to-be-established ASC, the center is not yet in a position to execute and negotiate contracts or letters of intent with Medicaid Managed Care plans. The center intends to contract with the HealthFirst and Emblem Medicaid Managed Care plans once operational. The center will follow the guidelines in North Shore-LIJ's robust charity program to serve the underinsured patients in the service area. 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 for the communities of New York County.

#### Recommendation

**From a need perspective, contingent approval is recommended for a limited life of five years.**

## Program Analysis

#### Program Description

Comprehensive Care ASC, LLC seeks approval to establish and construct an Article 28 diagnostic and treatment center that will be certified as a multi-specialty ambulatory surgery center (ASC). Upon approval, Comprehensive Care ASC, LLC intends on amending its Articles of Organization to change its name to Greenwich Village Ambulatory Surgery Center, LLC.

<b>Proposed Operator</b>	Comprehensive Care ASC, LLC
<b>Site Address</b>	200 West 13 <sup>th</sup> Street, Suite 400, New York, NY
<b>Surgical Specialties</b>	Multi-Specialty, to include: Orthopedics Pain Management
<b>Operating Rooms</b>	4 - Class C Operating Rooms (2 additional Class C ORs will be constructed but not equipped at this time)
<b>Procedure Rooms</b>	2 – Class A Procedure Rooms
<b>Hours of Operation</b>	Monday through Friday from 6:00 am to 6:00 pm (Will consider expanding hours as demand increases.)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	21.50 FTEs / 30.00 FTEs
<b>Medical Director(s)</b>	Nicholas Sgaglione, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by Lenox Hill Hospital 4.1 miles/15 minutes away
<b>On-call service</b>	Upon discharge, patients will be provided instructions on how to contact their surgeon and the Center will have an after-hours phone message as well.

## Character and Competence

Comprehensive Care ASC, LLCs sole member is North Shore-LIJ Ventures CCC, LLC. The sole passive member of NSLIJ Ventures CCC, LLC is North Shore-LIJ Health System. A full Character and Competence Review was conducted on all voting members of the NSLIJ Board. Disclosures were made as part of project CON #151217 which was approved by PHHPC in August 2015. The Managers of Comprehensive Care ASC (listed below) are all officers of NSLIJ.

<u>Name</u>	<u>Membership</u>
North Shore LIJ Ventures CCC, LLC	100.00%

*Managers:*

Dennis Dowling  
Laurence A. Kraemer  
John McGovern  
Mark Jarrett, MD  
Joseph Moscola

In keeping with past practice, disclosure information was submitted and reviewed for the Medical Director, Nicholas Sgaglione, M.D. Dr. Sgaglione has over 30 years of experience. He is Board-certified in Orthopedic Surgery and is the Chair of the Department of Orthopedic Surgery at North Shore University Hospital – Long Island Jewish Medical 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.

*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 regulator fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.*

*Mr. Richard Horowitz disclosed that he is affiliated with a non-profit organization and has been named as a defendant (among 41 members of a Board of Trustees) in a pending lawsuit an individual filed alleging employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with the organization.*

*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.*

*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.*

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 October 16, 2006, the Department issued a Stipulation and Order (S&O) and \$14,000 fine to Southside Hospital 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.*

*On December 8, 2006, the Department issued a S&O and \$12,000 fine to Forest Hills Hospital 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.*

*On December 11, 2008, the Department issued a Stipulation and Order and \$18,000 fine to North Shore University Hospital – Manhasset following a complaint investigation into the post-operative care rendered to an elderly patient. Subsequent to surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed and sustained a dislocated femur and developed renal failure. Follow-up care was delayed or inadequately administered.*

*On July 8, 2010, the Department issued a Stipulation and Order and \$42,000 fine to Syosset Hospital following a complaint investigation related to the care a child having an adenotonsillectomy received. It was determined that the patient was improperly cleared for surgery and, that 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.*

### **Integration with Community Resources**

The Center is committed to providing charity care for persons without the ability to pay and a uniformly-administered system of reduced fees or financial assistance will be implemented for those who are uninsured or do not have access to the financial resources to pay for medical care.

The Center is committed to exploring implementation of an electronic medical record (EMR) system that best suits the aim of providing rapid and accurate exchange of patient information between the Center and utilizing physicians. In the interim, the Center will utilize a paper medical record what will be scanned into a virtual medical record. The Center will consider joining a regional health information (RHIO) or qualified health information exchange (HIE) for data exchange.

### **Recommendation**

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

Recommendation

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

## Financial Analysis

### Administrative Services Agreement

Comprehensive Care ASC, LLC, which will change its name to Greenwich Village Ambulatory Surgery Center, LLC after PHHPC approval, will enter into an Administrative Services Agreement with Surgical Care Affiliates, LLC. The consultant will provide certain professional business and administrative services to the ambulatory surgery center relating to the operation of the facility. The applicant has submitted an executed agreement, which is summarized below:

Date:	October 8, 2015
Facility:	Greenwich Village Ambulatory Surgery Center, LLC
Contractor:	Surgical Care Affiliates, LLC
Administrative Term:	3 Years, with option to renew for additional terms of 2-year periods.
Compensation:	\$500,000 per annum (\$41,666.67/month) for administrative services and can never exceed \$800,000 per annum. Billing and collection services are \$45-\$60 per claim based on the complexity of client's case mix.
Contractor's Duties:	Financial Management Services, Strategic Planning and Development, Policies and Procedures, Contracting Services, Personnel, Supplies, Utilities/Waste Management, Operating Licenses and Banking, Billing and Collection Services.

While Surgical Care Affiliates, LLC will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services.

### Lease Rental Agreement

The applicant will lease approximately 30,897 square feet of space on the fourth floor, Suite 400 of 200 West 13<sup>th</sup> Street, New York, NY, under the terms of the executed lease agreement summarized below:

Date:	December 5, 2014
Landlord:	Lenox Hill Hospital
Tenant:	Greenwich Village Ambulatory Surgery Center, LLC
Term:	10 Years with an annual increase of 3% each year and a 5-year renewal option.
Rental:	The annual base rent is \$1,853,820 (\$60 per sq. ft.) plus supplemental rent of \$1,457,956 per annum based on the amortized cost at 6.5% interest of Landlord's leasehold improvements over 10 years.
Provisions:	Maintenance, insurance and taxes.

The applicant has indicated that the lease will be an arm's length lease arrangement, and has submitted letters from real estate brokers attesting to the reasonableness of the base per square foot rental.

BFA Attachment C shows the amortization of the leasehold improvements to be performed by the Landlord and added as supplemental rent.



### Total Project Cost and Financing

Total project costs for new construction and the acquisition of movable equipment are estimated at \$24,998,962, broken down as follows:

New Construction	\$ 17,330,612
Design Contingency	567,708
Construction Contingency	283,854
Planning Consultant Fees	170,312
Architect/Engineering Fees	454,167
Construction Manager Fees	283,854
Other Fees (Consulting)	224,332
Movable Equipment	5,159,600
Telecommunications	385,792
Application Fee	2,000
Additional Processing Fee	<u>136,731</u>
Total Project Cost	<u>\$24,998,962</u>

Project costs are based on a construction start date of March 15, 2016, and a 12-month construction period.

The applicant's financing plan appears as follows:

Equity	\$4,678,107
Bank Loan at prime (3.50% as of 12/30/2015) over 7 years	\$9,620,855
Leasehold Improvements to be provided by the Landlord	\$10,700,000

A letter of interest has been submitted by VNB New York, LLC for both the equipment and construction loan.

### Operating Budget

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues:				
Commercial Managed Care	\$3,632.43	\$7,322,978	\$3,633.07	\$14,881,052
Medicare Fee-For-Service	\$1,426.70	512,185	\$1,425.77	1,040,812
Medicaid Managed Care	\$995.12	90,556	\$1,000.10	184,019
Self-Pay	\$3,570.30	167,804	\$3,589.43	340,996
Other *	\$2,910.03	<u>1,600,514</u>	\$2,909.13	<u>3,252,412</u>
Total Revenues		\$9,694,037		\$19,699,291
Expenses:				
Operating	\$1,758.03	\$5,493,841	\$1,335.47	\$8,480,250
Interest	\$369.53	1,154,778	\$148.33	941,900
Depreciation & Rent	<u>\$1,437.84</u>	<u>4,493,259</u>	<u>\$712.66</u>	<u>4,525,402</u>
Total Expenses	\$3,565.40	\$11,141,878	\$2,196.46	\$13,947,552
Net Income (Loss)		<u>\$(1,447,841)</u>		<u>\$5,751,739</u>
Utilization (procedures)		3,125		6,350
Cost Per Procedure		\$3,565.40		\$2,196.46

Utilization by Payor for the first and third years is as follows:

	<u>First and Third Years</u>
Commercial Managed Care	64.5%
Medicare Fee-For-Service	11.5%
Medicaid Managed Care	2.9%
Self-Pay	1.5%
Other *	17.6%
Charity Care	2.0%

\* Other Payor: Workmen's Comp and No Fault

Revenue, expense and utilization assumptions are based on the historical experience of similar Ambulatory Surgery Centers administered by SCA.

The applicant indicated that they are committed to serving all persons in need of care without regard to ability to pay or source of payment, and admissions for surgery will be based solely on medical need. The facility intends to contract with two Medicaid managed care plans, HealthFirst and Emblem Health, and self-pay patients will be offered discounted rates, as applicable, consistent with North Shore-LIJ's Financial Aid Program.

#### Capability and Feasibility

Project cost will be satisfied by a loan from VNB New York, LLC, for \$9,620,855 at the above stated terms, leasehold improvements to be provided by the landlord in the amount of \$10,700,000 and the remaining \$4,678,107 from proposed member's equity. The leasehold improvements will be paid back to the landlord through the operating lease over ten years at 6.5% interest.

Working capital requirements are estimated at \$2,324,592 based on two months of third year expenses, and will be provided through equity of the proposed member. BFA Attachment B is the pro-forma balance sheet of Greenwich Village Ambulatory Surgery Center, LLC as of the first day of operation, which indicates positive member's equity position of \$5,717,664.

The submitted budget indicates a net loss of \$1,447,841 the first year, and a net income of \$5,751,739 the third year of operation. The budget appears reasonable.

BFA Attachment A, Financial Summary of North Shore-LIJ Health System and North Shore University Hospital, shows that the entities have maintained positive working capital, net assets and net income from operations for the period shown.

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 of North Shore-LIJ Health System, Inc./North Shore University Hospital- 2014 and as of September 30, 2015
BFA Attachment B	Pro-forma Balance Sheet
BFA Attachment C	Amortization of Leasehold Improvements



**Project # 151338-B**  
**Doral Dialysis, LLC d/b/a Doral Dialysis Center**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** July 3, 2015

**Executive Summary**

**Description**

Doral Dialysis, LLC d/b/a Doral Dialysis Center (the Center), an existing New York limited liability company, requests approval to establish and construct a 24-station Article 28 end-stage renal dialysis (ESRD) center. The Center will provide chronic renal dialysis services primarily to the residents of Central Brooklyn, which is comprised of the neighborhoods of Bedford-Stuyvesant, Crown Heights, Prospect Heights and Brownsville. The Center will be located in 8,000 square feet of leased space (lower level/first floor) at 1797 Pitkin Avenue, Brooklyn (Kings County). Doral Realty Holdings, LLC, whose members are David Lipschitz and Rachel Lipschitz, owns the currently vacant building. The realty company will finance the construction cost and assign the value of the leasehold improvements to Doral Dialysis, LLC via the Additional Rent clause of the lease agreement to cover debt service and other annual operating charges related to the Center.

The proposed members of Doral Dialysis, LLC and their ownership interests are David Lipschitz at 85% and Morton Kleiner, MD at 15%. Dr. Kleiner, a Board Certified Nephrologist, will serve as the Center's Medical Director.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

Currently, there is a need for 189 stations in Kings County to treat the residents needing dialysis services in the area. The addition of twenty-four net-new stations will increase service availability to residents in Kings County.

**Program Summary**

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

**Financial Summary**

Total project costs of \$2,640,932 will be met with proposed members' equity of \$264,093 and a loan for \$2,376,839 for a 20-year term at a fixed interest rate to be established as of the date the Debenture is sold. The applicant currently estimates the fixed rate to be 5.5%. A letter of approval from New York Business Development Corporation to Doral Realty Holdings, LLC for a loan under the U.S. Small Business Administration 504 Loan Program has been provided.

**Budget:**

	<u>Year Three</u>
Revenues	\$6,383,661
Expenses	<u>4,879,219</u>
Net Income	\$1,504,442

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSE-CON upon mailing. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
4. Submission of an executed Consultative Agreement, acceptable to the Department. [HSP]
5. Submission of an executed loan commitment, acceptable to the Department of Health. (BFA)
6. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
7. Submission of an executed consulting agreement, acceptable to the Department of Health. (BFA)
8. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. (AER)
9. Submission of a photocopy of an executed and completed facility lease agreement between Doral Realty Holdings, LLC and Doral Dialysis, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, 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 operating agreement, which is acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's executed consulting services agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The 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. The applicant shall complete construction by August 15, 2016. In accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. (AER)

Council Action Date

**February 11, 2016**

# Need Analysis

## Project Description

Doral Dialysis, LLC d/b/a Doral Dialysis Center seeks approval to certify a new 24-station dialysis diagnostic and treatment center located at 1797 Pitkin Avenue, Brooklyn, 11212, in Kings County.

## Analysis

The primary service area for the proposed facility is Kings County, which had a population estimate of 2,621,793 for 2014. The percentage of the population aged 65 and over was 12.0 %. The nonwhite population percentage was 50.5 %. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Kings County and New York State are listed below.

	<b>Kings County</b>	<b>State Average</b>
Ages 65 and Over	12.0%	14.4%
Nonwhite	50.5%	29.1%

Source: U.S. Census 2015

## Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 644 free standing chronic dialysis stations operating in Kings County and 244 in pipeline for a total of 888 stations.
- Based upon DOH methodology, the 644 existing free standing stations in Kings County could treat a total of 2,898 patients annually. Including the additional pipeline stations, the county could treat a total of 3,996 patients annually.

Projected Need

		Actual		Projected	
		2014	2015	2019	
<b>Kings County</b>					
Need projected 5 years out from most current IPRO data available for <b>Patients Treated in County</b>		<b>Total Patients Treated in County</b>	<b>Total County Residents in Treatment</b>	<b>Total Patients Treated in County<sup>1</sup></b>	<b>Total County Residents in Treatment<sup>1</sup></b>
		4,318	4,846	5,006	5,455
<b>Free-Standing Dialysis Stations</b>		<b>2014</b>	<b>2015</b>	<b>2019</b>	
A	Stations Required to Treat <sup>2</sup>	960	1,077	1,113	1,213
B	Existing Stations	644	644	644	644
C	Stations In Pipeline	244	244	244	244
D	Stations Requested this CON	24	24	24	24
E	w/Approval of This CON (B+C+D)	912	912	912	912
F	Unmet Need With Approval (A-E)	48	165	201	301

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

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

The data in the first row, "Stations Required to Treat," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2015.

Conclusion

Kings County serves a population of 2,621,793 with a total of 888 stations, including pipeline stations. There continues to be a need for dialysis stations in Kings County. Approval of these twenty-four stations will help improve access to dialysis services in the area.

Recommendation

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

**Program Analysis**

Project Proposal

Doral Dialysis, LLC d/b/a Doral Dialysis Center seeks approval to establish and construct a new 24-station chronic renal dialysis center to be located at 1797 Pitkin Avenue in Brooklyn (Kings County).

<b>Proposed Operator</b>	Doral Dialysis, LLC
<b>Doing Business As</b>	Doral Dialysis Center
<b>Site Address</b>	1797 Pitkin Avenue in Brooklyn (Kings County)
<b>Stations</b>	24
<b>Hours of Operation</b>	Upon full operation, the Center will operate at least 12 hours per day, six days per week, with additional hours added as needed based on demand.
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	14.5 FTEs / 32.1 FTEs
<b>Medical Director(s)</b>	Morton Kleiner, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Brooklyn Hospital Center 4.7 mi / 20 minutes

## Character and Competence

The members of Doral Dialysis, LLC are:

<u>Name</u>	<u>Percentage</u>
David Lipschitz	85%
Morton Kleiner, MD	15%

Mr. Lipschitz has over 20 years of experience in the health care field. He spent 17 years in the long-term care field that culminated with a position as the Administrator of a 380-bed nursing home, and, in August 2012, he established a home care agency which has provided service for over 2,000 patients to date.

The proposed Medical Director, Morton Kleiner, MD, is a New York State licensed physician with over 40 years of experience. He is a board-certified Internist with sub certification in Nephrology with a long and established career serving the renal population. Dr. Kleiner has worked in a variety of positions, to include serving as Medical Director for several dialysis programs.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

## Conclusion

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

## Recommendation

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

## Financial Analysis

### Consulting and Administrative Services Agreement

The applicant submitted a draft consulting and administrative services agreement, the terms of which are summarized below:

Consultant:	KMK Consultants, LLC
Facility:	Doral Dialysis, LLC
Services Provided:	Assist the Operator in developing annual budgets; assist with preparation of financial and management reports; develop staffing schedules; maintain policy & procedure manual; assist in vendor contract negotiations; assist in recruiting clinical service providers; assist with development/implementation of utilization review and quality assurance activities; advise on Management Information System requirements; prepare and submit bills for patient services; provide advice on planning activities and new business development; develop and implement information systems and protocols; develop and implement medical records and information systems; provide regulatory compliance advice; and provide in-service training for staff.
Term:	3-year term with option to renew for 2-years.
Fee:	\$120,000 per year (\$10,000 per month)

Although KMK Consultants, LLC will be performing the above services, the Facility Operator retains ultimate control in all of the final decisions associated with the services.

### Lease Rental Agreement

The applicant submitted a draft lease rental agreement for the site they will occupy, as summarized below:

Premises:	8,000 square feet at 1797 Pitkin Avenue, Brooklyn NY
Landlord:	Doral Realty LLC
Lessee:	Doral Dialysis, LLC
Term:	7 years
Rental:	\$304,000 annual base rent (\$38.00 per sq. ft.)
Additional Rent:	Annual debt service for capital improvements related to the Center's establishment
Other Additional Rent Provisions:	Center's Percentage of Annual Operating Charges based on sq. ft. including: gas, electricity, water, sewer, insurance premiums, building personnel costs, repairs and maintenance, administration fees, and taxes.

The lease is a non-arm's length agreement. The applicant submitted an affidavit attesting that there is a relationship between landlord and tenant in that the entities have common ownership. Letters from two NYS licensed realtors who compared multiple comparable sites has been provided attesting to the reasonableness of the per square foot rental.



### Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of fixed and movable equipment, is estimated at \$2,640,932, broken down as follows:

Renovation & Demolition	\$1,490,086
Design Contingency	123,406
Construction Contingency	123,406
Architect/Engineering Fees	119,207
Other Fees	75,000
Movable Equipment	579,453
Financing Costs	75,317
Interim Interest Expense	38,622
Application Fee	2,000
Processing Fee	14,435
Total Project Cost	\$2,640,932

Project costs are based on a construction start date of April 15, 2016, and a six-month construction period.

The applicant's financing plan is as follows:

Equity (from proposed members)	\$264,093
Loan (Fixed interest estimated at 5.5%, 20-year term)	<u>\$2,376,839</u>
Total	\$2,640,932

The New York Business Development Corporation has provided a letter of approval for a loan to Doral Realty Holdings, LLC under the U.S. Small Business Administration 504 Loan Program at the stated terms. Doral Dialysis, LLC will pay for the capital improvements related to establishing the ESRD Center through additional rent charges to cover debt service.

### Operating Budget

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

	Year One		Year Three	
	Per Visit	Total	Per Visit	Total
Revenues:				
Medicare	\$280.02	\$1,677,312	\$285.63	\$5,133,078
Medicaid	\$289.62	\$216,927	\$289.75	\$650,782
Commercial	\$324.91	\$243,360	\$325.06	\$730,080
Bad Debt		<u>(\$42,752)</u>		<u>(\$130,279)</u>
Total Revenues		\$2,094,847		\$6,383,661
Expenses:				
Operating		\$1,771,333		\$4,155,481
Capital		<u>\$723,536</u>		<u>\$723,738</u>
Total Expenses		\$2,494,869		\$4,879,219
Net Income		<u>(\$400,022)</u>		<u>\$1,504,442</u>
Utilization (Treatments)		7,488		22,463
Percent Occupancy		25.0%		75.0%
Cost Per Treatment		\$333.18		\$217.21

The first year loss is due to start-up as the Center will only be open three days per week until patient census grows. Once fully operational, the Center will be operate six days per week. The applicant stated that any initial operating losses will be covered by the members.

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicare	5,990	80%	17,971	80%
Medicaid	749	10%	2,246	10%
Commercial	<u>749</u>	<u>10%</u>	<u>2,246</u>	<u>10%</u>
Total	7,488	100%	22,463	100%

Breakeven utilization is projected at 8,918 treatments for year one (30%) and 17,170 treatments for year three (57%).

Expense and utilization projections are based on the experience of KMK Consultants, LLC, which manages six NYS ESRD centers, and the proposed members of Doral Dialysis, LLC, who have other health care service and administration experience.

#### Capability and Feasibility

Project costs of \$2,624,497 will be met with members' equity of \$264,093 and a loan for \$2,376,839 from New York Business Development Corporation at a fixed interest rate, estimated at 5.5%, with a 20-year term.

Working capital requirements are estimated at \$813,203 based on two months of year three expenses. The proposed members will provide the full amount in equity.

BFA Attachment A is the net worth statement of the members of Doral Dialysis, LLC, which shows sufficient liquid resources to cover all equity requirements for this CON. BFA Attachment B is the pro forma balance sheet of Doral Dialysis Center as of the first day, which indicates the operations will begin with positive members' equity of \$1,077,296.

The submitted budget projects a net profit (loss) of (\$400,002) and \$1,504,442 during the first and third years, respectively. Medicare and Medicaid reflect prevailing reimbursement methodologies. All other revenues assume current reimbursement methodologies. The Year One loss is due to the Center not being fully operational and is expected for the first year. The proposed members will provide additional funding, if necessary, to cover any operating losses. The budget appears reasonable.

#### Recommendation

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

Attachments
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- BFA Attachment A      Proposed Members' Net Worth Statement - Doral Dialysis, LLC
- BFA Attachment B      Pro-Forma Balance Sheet of Doral Dialysis, LLC



**Project # 152110-B**  
**Hempstead Park Operating, LLC**  
**d/b/a Hempstead Park Dialysis Center**

**Program:** Diagnostic and Treatment Center    **County:** Nassau  
**Purpose:** Establishment and Construction    **Acknowledged:** August 28, 2015

**Executive Summary**

**Description**

Hempstead Park Operating, LLC d/b/a Hempstead Dialysis Center (Hempstead), a New York limited liability company, requests approval to establish and construct a 12-station Article 28 end-stage renal dialysis (ESRD) center. The facility will occupy approximately 4,880 square feet of designated space on the first floor of Hempstead Park Nursing Home, a 251-bed Article 28 residential health care facility located at 800 Front Street, Hempstead (Nassau County).

The sole member of Hempstead Park Operating, LLC is Michael Melnicke, who also has 90% ownership interest in Sunshine Care Corp. d/b/a Hempstead Park Nursing Home. Morton Kleiner, MD, a Board Certified Nephrologist, will serve as Medical Director.

Sunshine Care Corp. (Sunshine) will enter into a License Agreement with Hempstead Park Operating, LLC, whereby Sunshine will license the ground floor space to Hempstead.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There is an unmet need of 15 stations based on patients treated in Nassau County. Approval of this project would reduce the unmet need to three stations. Demand for dialysis services in Nassau County is driven in part by residents of neighboring counties. Both Queens and Suffolk counties are underserved by dialysis services,

with a net deficit of 158 stations. Furthermore, the percentage of the Nassau County population which is 65 and over is 16.4%, 1.7% higher than the Statewide percentage of 14.7%. This percentage is projected to increase to 17.3% in 2020. The 65 and over demographic uses dialysis services at a much higher rate than the general population.

**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 \$2,482,066 will be met with \$248,207 in members' equity and a bank loan for \$2,233,859 at 6% interest for a ten-year term and ten-year amortization period. Sterling National Bank has provided a letter of interest. The operating budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,170,340	\$3,511,018
Expenses	<u>\$1,579,495</u>	<u>\$2,927,085</u>
Net Income	(\$409,155)	\$583,933

## 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 License Agreement, acceptable to the Department of Health. [BFA]
3. Submission of the current executed lease agreement between Sunshine Care Corp. and the property owner, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
5. Submission of an executed operations loan commitment, acceptable to the Department. [BFA]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of an executed Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
9. Submission of the executed restated Articles of Organization of Hempstead Park Operating LLC., acceptable to the Department. (CSL)
10. Submission of a photocopy of the Certificate of Incorporation and By-laws of Sunshine Care Corp., acceptable to the Department. (CSL)
11. Submission of a photocopy of the Medical Directors Agreement between Hempstead Operating LLC and Dr. Morton Kleiner, acceptable to the Department. (CSL)
12. Submission of a photocopy of the fully executed copy of the consulting agreement between Hempstead Operating LLC and Geripro Dialysis Consultants LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of a specimen sample of Hempstead Park Operating LLC membership certificates, acceptable to the Department. (CSL)

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from 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 April 1, 2016 and construction must be completed by October 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]

Council Action Date

**February 11, 2016**

## Need Analysis

### Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 331 free standing chronic dialysis stations operating in Nassau County and 73 in pipeline for a total of 404 stations.
- Based upon DOH methodology, the 331 existing free standing stations in Nassau County could treat a total of 1,489 patients annually. Including the additional pipeline stations, the county could treat a total of 1,818 patients annually.

### Projected Need

		Actual		Projected	
		2014	2015	2019	
<b>Nassau County Residents</b>					
Need projected 5 years out from most current IPRO data available for <b>Patients Treated in County</b>		<b>Total Patients Treated in County</b>	<b>Total County Residents in Treatment</b>	<b>Total Patients Treated in County<sup>1</sup></b>	<b>Total County Residents in Treatment<sup>1</sup></b>
		1,882	1,642	2,182	1,849
<b>Free-Standing Dialysis Stations</b>		<b>2014</b>	<b>2015</b>	<b>2019</b>	
A	Stations Required to Treat <sup>2</sup>	419	365	485	411
B	Existing Stations	331	331	331	331
C	Stations In Pipeline	73	73	73	73
D	Stations Requested this CON	12	12	12	12
E	w/Approval of This CON (B+C+D)	416	416	416	416
F	Unmet Need With Approval (A-E)	3	-51	69	-5

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

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

The data in Row A, "Stations Required to Treat," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS) and does not include Hospital based stations. "Unmet Need" is derived by subtracting needed stations from existing stations. Patient and resident data are from IPRO ESRD network.

Estimates for need are provided for 2019 because it is expected that this facility will be fully utilized by that time. A three percent annual increase in demand is appropriate for these calculations based on the aging population of the county and the overall population growth rate.

### Analysis

The primary service area for the proposed facility is Nassau County, which had a population estimate of 1,358,627 for 2014, a 1.4% increase since 2010. The percentage of the population aged 65 and over was 16.4%. The nonwhite population percentage was 23.3%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Nassau County and New York State are listed below.

	Nassau County	State Average
Ages 65 and Over:	16.4%	14.7%
Nonwhite:	25.9%	29.6%

Source: U.S. Census 2015

The chart of projected need indicates there is no need for additional dialysis stations for Nassau County residents. However, when neighboring counties show unmet need, dialysis need calculations are based on the number of patients treated in the county. This is the case for Nassau County, as both Suffolk and Queens Counties have significant unmet need for dialysis stations. Queens County treated 3,777 residents with 525 existing stations and 210 pipeline stations for a total of 735 approved stations in 2014. This calculates to an unmet need of 105 stations. Likewise, Suffolk County treated 1,771 residents with 276 existing stations and 65 pipeline stations, for a total of 311 approved stations. This calculates to an unmet need of 53 stations. With residents of neighboring counties underserved by 158 stations, approval for additional dialysis stations in Nassau County is warranted.

Additional factors included the fact that the population of the county is relatively elderly, and the percentage of residents of the county who are 65 years and older is expected to increase. According to projections from the Cornell Project on Applied Demographics, the percent of persons aged 65 and older will increase from 16.1% in 2015 to 17.3% in 2020, and will be as high as 20.1% in 2035. The Census estimate for the current percentage of persons over 65 is even higher, at 16.4%. This demographic uses End Stage Renal Dialysis services at a higher rate than the general population. Furthermore, the diabetes-related inpatient PQIs for Hempstead, the community in which the proposed facility will be located, are significantly higher than both the state and county average. Patients with diabetes are at a much higher risk of requiring chronic dialysis services. A summary is provided below.

Area	Rate Per 100,000				
	2009	2010	2011	2012	2013
<b>Hempstead</b>	441.65	463.21	485.76	575.74	430.54
<b>Nassau County</b>	206.51	199.88	206.57	182.60	190.53
<b>Statewide</b>	201.19	195.03	200.09	199.21	191.45

Source: Health Data NY

### Conclusion

Nassau County serves a population of 1,358,627 with a total of 404 approved dialysis stations, including those in pipeline. While this is sufficient capacity to treat the residents of the County, both neighboring counties have underserved populations that utilize dialysis services in Nassau County. The addition of these 12 dialysis stations will ensure access for patients in surrounding counties, and provide for future demand caused by an aging resident population.

### Recommendation

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

## Program Analysis

### Project Proposal

Hempstead Park Operating, LLC d/b/a Hempstead Park Dialysis Center seeks approval to establish and construct a twelve station end stage renal dialysis center to be located in a designated space on the first floor of Hempstead Park Nursing Home, located at 800 Front Street, Hempstead, (Nassau County).

<b>Proposed Operator</b>	Hempstead Park Operating, LLC
<b>Doing Business As</b>	Hempstead Park Dialysis Center
<b>Site Address</b>	800 Front Street, Hempstead, NY 11550 (Nassau County)
<b>Approved Services</b>	Chronic Renal Dialysis (12 Stations)
<b>Shifts/Hours/Schedule</b>	Will operate at least 12 hours per day, 6 days per week, with additional hours as indicated by demand.
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	10.0 FTEs / 20.3 FTEs
<b>Medical Director(s)</b>	Morton Kleiner, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Franklin General Hospital 5.76 miles / 10 minutes

### Character and Competence

The sole member of the LLC is Michael Melnicke.

Mr. Melnicke is an experienced health care administrator. He has been a licensed Nursing Home Administrator for the past 35 years and a nursing home owner for over 25 years. He is the Department-appointed receiver of three nursing homes (Park Nursing Home, Rockaway Care Center and Canton Park).

Disclosure information was similarly submitted and reviewed for the proposed Medical Director, Morton Kleiner, MD. He is board-certified in Internal Medicine and Nephrology and has more than 40 years of experience in the care and treatment of dialysis patients.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and a disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database.

Additionally, the staff from the Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Mr. Melnicke holds majority membership interest in the following nursing homes which have been subject to enforcement action:

- *The Department issued a Stipulation and Order (S&O) and \$6,000 fine on June 8, 2009 to Park Nursing Home for surveillance findings on May 14, 2008 related to Quality of Care, Physician and Pharmacy Services.*
- *The Department issued a Stipulation and Order and \$2,000 fine on April 18, 2007 to Regency Extended Care Center for surveillance findings on November 17, 2005 related to Quality of Care.*
- *The Department issued a Stipulation and Order and \$8,000 fine on December 16, 2011 to Hempstead Park Nursing Home for multiple deficiencies found during survey on September 28, 2010. Specific violations were related to Mistreatment/Neglect Policies and Procedures, Investigating/Reporting Allegations, Medically Related Social Services, and Administration. A*

second S&O was issued to the facility on January 6, 2012 with a \$10,000 fine for issues related to Quality of Care.

**Conclusion**

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

**Recommendation**

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

**Financial Analysis**

**Total Project Cost and Financing**

The total project cost for renovations, movable equipment, and fees is estimated at \$2,482,066, broken down as follows:

Renovation & Demolition	\$1,306,250
Design Contingency	\$130,625
Construction Contingency	\$130,625
Fixed Equipment	\$224,675
Architect/Engineering Fees	\$122,474
Other Fees	\$75,000
Moveable Equipment	\$366,377
Financing Costs	\$70,681
Interim Interest Expense	\$39,793
Application Fee	\$2,000
Additional Fee	<u>\$13,566</u>
Total Project Cost with Fees	\$2,482,066

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

Financing for this project will be as follows:

Members' Equity	\$248,207
Bank loan (6% interest, 10-year term, 10-year amortization)	<u>\$2,233,859</u>
Total	\$2,482,066

Sterling National Bank has provided a letter of interest for the loan financing.

**License Agreement**

The applicant has submitted a draft License Agreement for the site to be occupied, summarized below:

Premises:	Approximately 4,880 square feet for the operation of an Article 28 ESRD center on the 1 <sup>st</sup> floor of the premises located at 800 Front Street, Hempstead, NY
Licensor:	Sunshine Care Corp.
Licensee:	Hempstead Park Operating, LLC
Term:	10 years, the licensed space will be available 7 days per week from 12:00 AM to 11:59 PM and is subject and subordinate to Sunshine Care Corp.'s lease for the Premises (the lease expiration date is not presently known).
Licensee's Obligations:	License Fee payable in advance on the first day of each month; must provide a certificate of insurance demonstrating coverage for worker's compensation and disability coverage for its employees; hold harmless and indemnify licensor against all injury loss, claims, or damages connected to conducting its business.



Additional Provisions:	Space shall be used only for conduct of an End-Stage Renal Disease Center; the agreement may not be transferred or conveyed without written consent of licensor; license is subordinate to the licensor's lease and all other mortgages, liens and other encumbrances
License Fee:	\$73,200 per annum (\$6,100/month, \$15.00/sq. ft. ), increasing 3% per year

The proposed license agreement is a non-arm's length transaction. The applicant has submitted an affidavit attesting that there is a relation between the managers/members of Hempstead Park Operating, LLC and Sunshine Care Corp. d/b/a Hempstead Park Nursing Home in that the entities have a pre-existing business relationship in other nursing home transactions and common ownership interests. The license agreement is subject and subordinate to the lease agreement between Sunshine Care Corp. and the real property owner. For site control, approval is contingent upon submission of the executed lease agreement for Department review.

#### Consulting Agreement

The applicant has submitted a draft consulting agreement for administrative and management services, which is summarized below:

Consultant:	Geripro Dialysis Consultants, LLC
Facility:	Hempstead Park Operating, LLC d/b/a Hempstead Park Dialysis Center
Serviced Provided:	Development of revenue and expense assumptions; certificate of need application assistance; assistance establishing corporate entity for dialysis center; prepare and coordinate responses to requests from regulatory agencies; attendance at Public Health Council meetings and hearings; recommendations regarding architects, water treatment, space and functional needs for the facility; coordination and site visits with contractors; development of site safety plans; assistance with Medicare intermediary enrollment and recruiting, interviewing, hiring and developing staff; coordinating billing and collections; revision of manuals and creation of clinical log forms; quality assurance, patient charts and financial audits; ongoing updates of Quality Assurance Performance Improvement Program and attendance at meetings; budgeting and staff education.
Term:	Five Years with option to renew for two years
Fee:	\$10,000 per month

While Geripro Dialysis Consultants, LLC will provide the services referenced above, the Facility retains ultimate control and authority in all of the final decisions associated with the services. The applicant does not have ownership interest in the consulting entity, however acknowledges a pre-existing business relationship with the consultant entity and familial relationship with the sole member thereof, Miles Davis.

#### Operating Budget

The applicant has submitted an operating budget for Years One and Three, as summarized below:

	<u>Per Visit</u>	<u>Year One</u>	<u>Per Visit</u>	<u>Year Three</u>
<u>Revenues</u>				
Commercial	\$375.40	\$140,400	\$375.07	\$421,200
Medicare	\$315.02	\$943,488	\$314.99	\$2,830,464
Medicaid	\$295.02	\$110,336	\$294.75	\$331,007
Bad Debt		<u>(\$23,884)</u>		<u>(\$71,653)</u>
Total Revenue		\$1,170,340		\$3,511,018
<u>Expenses</u>				
Operating	\$310.57	\$1,162,448	\$223.93	\$2,515,144
Capital	<u>\$111.42</u>	<u>\$417,047</u>	<u>\$36.68</u>	<u>\$411,941</u>
Total Expense	\$421.99	\$1,579,495	\$260.61	\$2,927,085
Net Income		(\$409,155)		\$583,933
Total Visits		3,743		11,232

Utilization by payor is projected as follows:

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial	374	10%	1,123	10%
Medicare	2,995	80%	8,986	80%
Medicaid	374	10%	1,123	10%
Total	3,743	100%	11,232	100%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on reimbursement rate data developed in consultation with the above referenced consultants based on historical data from similar dialysis providers located in nursing homes and freestanding centers of similar size.
- Expense assumptions are based on the operator's experience, in consultation with the contracted consultants.
- The applicant projected utilization using one shift per day for the first calendar year due to anticipated ramp-up. The utilization assumptions are based on other nursing home based dialysis projects the applicant has undertaken.

The budget appears reasonable.

#### Capability and Feasibility

The total project cost for the facility construction and equipment is \$2,482,066. Hempstead Park Operating, LLC will meet the project cost with \$248,207 in member's equity and a self-amortizing bank loan for \$2,233,859 at 6% interest for a ten-year term. BFA Attachment A, the Net Worth Summary for the proposed member of Hempstead Park Operating, LLC, reveals sufficient liquid resources for the equity contribution. Sterling National Bank has provided a letter of interest at the stated terms.

Working capital requirements are estimated at \$487,848, based upon two months of Year Three expenses. The working capital requirement will be met with a \$243,947 loan at 5% interest for a three-year term, and \$243,947 in member's equity. Sterling National Bank provided a letter of interest at the stated terms. In recognition of projected losses in Year One, Michael Melnicke has submitted an affidavit to provide needed working capital resources in the event that operations result in a negative working capital position.

BFA Attachment B is a Pro Forma Balance Sheet for Hempstead Dialysis Center, which shows that the operations will start with \$492,153 in member equity.

#### Recommendation

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

## Attachments

BFA Attachment A    Net Worth Summary, Hempstead Park Operating, LLC  
BFA Attachment B    Pro Forma Balance Sheet, Hempstead Dialysis Center



**Project # 142144-E**  
**Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at  
Riverdale Center for Nursing & Rehabilitation**

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

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

**Executive Summary**

**Description**

Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation (Hudson Pointe), a New York limited liability company, requests approval to be established as the new operator of Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, a 167-bed, proprietary residential health care facility (RHCF) located at 3220 Henry Hudson Parkway, Bronx (Bronx County). As part of this application, the certified bed capacity will be reduced by eight beds, bringing the total certified bed count to 159. There will be no change in services provided.

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

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

<u>Current Operator</u>	
Riverdale Center for Nursing and Rehabilitation, LLC	
<u>Members</u>	<u>%</u>
Susan Ostreicher	99%
Susan Ostreicher, LLC	1%

<u>Proposed Operator</u>	
Hudson Pointe Acquisition, LLC	
<u>Members</u>	<u>%</u>
Leopold Friedman	50%
Sheya Landa	25%
Gabrielle Philipson	25%

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

OPCHSM Recommendation  
Contingent Approval

**Need Summary**  
Approval will maintain an existing resource while contributing to right-sizing the long term care system in the Nassau-Suffolk planning region.

**Program Summary**  
No negative information has been received concerning the character and competence of the proposed applicants identified as new members.

## Financial Summary

Hudson Pointe Acquisition, LLC will acquire the RHC operating assets for \$1,000,000, funded by \$200,000 in members' equity and a loan for \$800,000 at 6% interest for a 30-year term.

RCNR Realty Acquisition, LLC, will acquire the real property for \$19,875,000, funded by \$3,975,000 in members' equity and a loan for \$15,900,000 at 6% interest rate for a 30-year term.

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

Revenues	\$18,988,465
Expenses	<u>18,878,233</u>
Gain	\$110,232

## 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 loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
5. Submission of 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]
6. 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]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. 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]
8. Submission and programmatic review of plans showing the 8 beds to be decertified and the nursing units to be affected. [LTC]
9. Submission of a photocopy the applicant's fully executed operating agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed lease agreement and purchase agreement for real property, acceptable to the Department. [CSL]
12. Submission of a photocopy of the purchase and sales agreement between RCNR Realty, LLC and RCNR Realty Acquisition, LLC, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.  
[PMU]

Council Action Date

**February 11, 2016**

# Need Analysis

## Project Description

Hudson Pointe Acquisition, LLC, doing business as Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, seeks approval to become the established operator of Hudson Pointe at Riverdale Center for Nursing and Rehabilitation (Hudson Pointe), a 167-bed Article 28 residential health care facility (RHCF), located 3220 Henry Hudson Parkway, Bronx, 10463, in Bronx County. Upon approval, the certified bed capacity will be reduced by eight, to 159 RHCF beds.

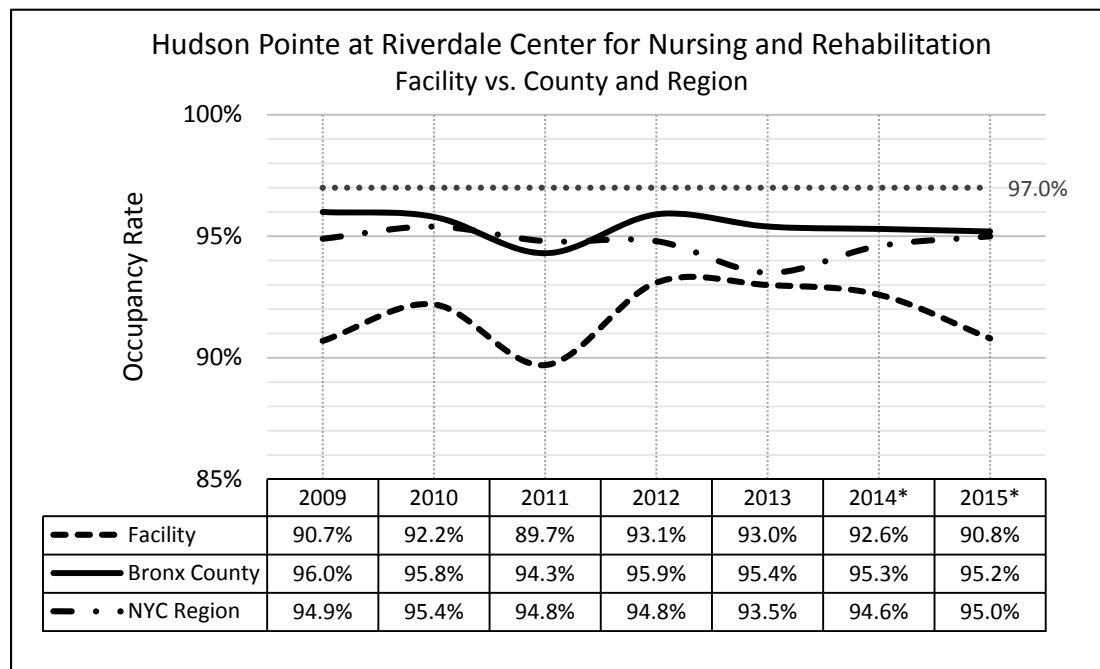
## Analysis

There is currently a need for 8,824 beds in the New York City Region as indicated in the following table:

### RHCF Need – Nassau-Suffolk Region

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	42,151
<b>Beds Under Construction</b>	96
<b>Total Resources</b>	42,247
<b>Unmet Need</b>	8,824

The overall occupancy for the New York City Region was 93.5% for 2013 as indicated in the following chart:



\*unaudited; based on weekly census

Hudson Pointe's occupancy was 89.7% in 2011, 93.1% in 2012, and 93.0% in 2013. Current occupancy, as of October 28, 2015 was 92.8%, with 12 vacant beds. According to the applicant, the facility experienced low occupancy as a result of being an existing small facility relative to other facilities in the planning area, combined with an increase in short term rehabilitative stays requiring a need for flexibility for the pairing of roommates.

The applicant intends to increase occupancy in the following ways:

- Decertify 8 beds;
- Keep in line with the Department's goals of providing long-term care in the most integrated setting as possible through:
  - Implementation of Institutional Special Needs Plan (I-SNP) services;
  - Development of new and enhancement of existing care programs, including its Wound Care Program and Short-Term Rehabilitation Services; and
  - Partnerships with hospitals, managed care plans and other long-term providers;
- Transform the care model to ensure residents served by the facility are those truly in need of level of care being provided at the RHCF; and
- Collaborate with the local area hospitals to ensure prompt discharge of hospital patients appropriate for RHCF care and implement state of the art programs to both reduce and avoid re-hospitalization, both at a significant cost saving to the Department.

#### Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department. An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Hudson Pointe's Medicaid admissions of 27.8% in 2012 and 26.1% in 2013 did not exceed the Bronx County 75% rates of 37.5% in 2012 and 29.8% in 2013. Therefore, as a contingency to the approval, the applicant will be required address the shortfall.

#### Conclusion

Approval is being recommended to preserve an existing resource for the residents of Bronx County.

#### Recommendation

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



## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	Same
Address	3220 Henry Hudson Parkway Bronx, NY 10463	Same
RHCF Capacity	167	159
ADHC Program Capacity	N/A	Same
Type of Operator	LLC	LLC
Class of Operator	Proprietary	Proprietary
Operator	Riverdale Center for Nursing and Rehabilitation, LLC	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation  Members: *Leopold Friedman      50.0% Sheya Landa              25.0% *Gabrielle Philipson    25.0%  *Managing members

### Character and Competence

#### **Facilities Reviewed**

##### Nursing Homes

Brooklyn Gardens Nursing & Rehab	09/2014 to present
Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
Hendon Gardens Nursing and Rehabilitation Center	11/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	02/2015 to present

##### Licensed Home Care Services Agency (LHCSA)

Ultimate Care, Inc.	02/2010 to present
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#### **Individual Background Review**

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

Peninsula Center for Extended Care & Rehabilitation (rec/op)	01/2013 to present
DeWitt Rehabilitation and Nursing Center	07/2015 to present
Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Ultimate Care, Inc. (LHCSA)	02/2010 to present
The Citadel Rehabilitation and Nursing Center	02/2015 to present

Mr. Friedman has pending ownership in the following facilities, which have been approved by PHHPC but have not transferred title as of this writing:

151108	Long Beach Nursing and Rehabilitation Center
151308	Brooklyn Gardens Dialysis Center (D&TC)
141210	Cassena Care Dialysis at Peninsula (D&TC)

**Shaya Landa** is a student and a licensed emergency medical technician in good standing. Ms. Landa discloses the following health care facility interest:

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
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**Gabrielle Philipson** is a student. Ms. Philipson reports the following health facility interests.

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
The Citadel Rehab and Nursing Center at Kingsbridge	08/2015 to present

#### Character and Competence Analysis

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

A review of operations for Brooklyn Gardens Nursing & Rehab, Cypress Garden Center for Nursing and Rehabilitation, DeWitt Rehabilitation and Nursing Center, Hendon Gardens Nursing and Rehabilitation Center, Peninsula Center for Extended Care and Rehabilitation, and the Citadel Rehab and Nursing Center at Kingsbridge for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the operations for Ultimate Care, Inc., for the period 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 are proposed in this application. This application proposes a reduction of eight RHCF beds. The applicant must provide plans showing the specific rooms to be decertified as a contingency to this project.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. Sentosa Healthcare, LLC, whose members are directly related to the principles of this application, has common ownership with the real estate entity which will purchase the property. These members have also submitted affidavits stating that they will provide equity to the proposed operator, Hudson Pointe Acquisition, LLC. However the applicants have responded that there will be no consulting and administrative services agreements with Sentosa or any other entity contemplated for the facility after the transfer of ownership.

The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

#### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the RHCF operating interests, which will become effectuated upon PHHPC approval. The terms are summarized below:

Date:	August 21, 2014
Seller:	Riverdale Center for Nursing and Rehabilitation, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation
Purchaser:	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation
Assets Transferred:	All rights, title and interest in the business assets lien free. The assets include: tangible assets used in the business; seller's deposits; permitted records; all insurance claims and rights in connection with purchased assets; agreements to provide services equipment and real estate leases; intellectual property not included in excluded assets; books and records relating to operation of the business; seller's Medicare and Medicaid provider numbers; resident funds held in trust; goodwill and going concern value and any rights to refunds, settlements and retroactive adjustments any time in connection with the Medicare and Medicaid provider numbers.
Excluded Assets:	Cash and cash equivalents; pre-closing accounts receivables; refunds and settlements prior to closing, any websites and e-mail addresses; records not applicable to the operations; refunds; right to receive or expectancy of seller any charitable gift, grant, bequest or legacy.
Assumed Liabilities:	Those occurring after the Closing date.
Purchase Price:	\$1,000,000
Payment:	\$75,000 escrow deposit (paid at the time of signing) \$925,000 due at closing.

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

Equity - Hudson Pointe Acquisition, LLC Members	\$200,000
Loan - 30 years, 6%	<u>\$800,000</u>
Total	\$1,000,000

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

BFA Attachment A is the net worth summaries for the proposed members of Hudson Pointe Acquisition, LLC, which reveals sufficient resources to meet the equity requirements. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Bent Philipson has provided a statement guaranteeing Gabrielle Philipson's equity contributions. As additional support, proposed realty members Bent Philipson (on behalf of Philipson Family Limited Liability Company) and Benjamin Landa have provided affidavits stating they are willing to contribute equity to the operating entity, to the extent required, in the event there is a need for these resources in support of this CON.

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. There are no outstanding Medicaid Assessment liabilities as of November 24, 2015.

Purchase and Sale Agreement for the Real Property

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

Date:	August 21, 2014
Seller Realty:	RCNR Realty, LLC
Purchaser Realty:	RCNR Realty Acquisition, LLC
Asset Transferred Realty:	All rights, title and interest in the real property including: the land, buildings, structures and improvements, fixtures, easements and appurtenances known by the address 3220 Henry Hudson Parkway, Bronx, New York 10463 and further identified as Parcel I (Block 5790 Lot 1) and Parcel II (Block 5790 Lot 5).
Purchase Price:	\$19,875,000
Payment of Purchase Price:	\$ 1,490,625 escrow deposit (paid at the time of signing) \$ 496,875 additional deposit \$17,887,500 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - RCNR Realty Acquisitions, LLC Members	\$3,975,000
Loan - 30 years, 6%	\$15,900,000
Total	\$19,875,000

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

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

Lease Agreement

A draft lease has been submitted to lease the real property. The terms are summarized below:

Premises:	167-bed RHCF located at 3220 Henry Hudson Parkway, Bronx
Owner/Landlord:	RCNR Realty Acquisition LLC
Lessee:	Hudson Pointe Acquisition LLC
Term:	30 years
Rent:	Annual rent equal to the sum of the Lessor's debt service on the real property mortgage (assessed at \$1,143,942 for year one) plus \$1,500,000. Year one rent = \$2,643,942 (or \$220,328.50 per month)
Provisions:	Triple Net

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

## Operating Budget

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

	<u>Per Diem</u>	<u>Current Year (167 Beds)</u>	<u>Per Diem</u>	<u>Year One (159 Beds)</u>
<b>Revenues:</b>				
Medicaid-FFS	\$260.27	\$11,622,259	\$272.18	\$10,318,753
Medicaid-MC		0	\$272.20	1,540,112
Medicare-FFS	\$493.22	2,430,090	\$649.96	2,942,375
Medicare-MC	\$192.86	357,175	\$649.82	1,103,390
Commercial	\$418.22	1,401,461	\$475.03	2,687,746
Private Pay	\$319.55	<u>335,523</u>	\$349.90	<u>396,089</u>
<b>Total Revenues</b>		<b>\$16,146,508</b>		<b>\$18,988,465</b>
<b>Expenses:</b>				
Operating	\$299.38	\$16,715,814	280.08	\$15,848,278
Capital	<u>18.28</u>	<u>1,020,868</u>	<u>53.55</u>	<u>3,029,955</u>
<b>Total Expenses</b>	<b>\$317.66</b>	<b>\$17,736,682</b>	<b>333.63</b>	<b>\$18,878,233</b>
<b>Net Income</b>		<b><u>(1,590,174)</u></b>		<b><u>\$110,232</u></b>
<b>Patient Days</b>		<b>55,834</b>		<b>56,584</b>
<b>Occupancy</b>		<b>91.6%</b>		<b>97.5%</b>

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

- The current year reflects the facility's 2014 RHCF-4 cost report information.
- Based on 167-beds, average utilization from 2011-2014 was 91.92%. Comparing historical occupancy using the proposed 159-beds, the 2011-2014 average utilization would be 96.55%. As of December 16, 2015, occupancy was 93.4% per the Division of Nursing Homes and ICF/IID Surveillance report.
- Medicaid revenues are projected based on the facility's current 2015 Medicaid FFS rate.
- Medicare revenues are based on the average daily rate experienced by the facility during 2015.
- Private pay and commercial rates are projected based on similar facilities in the same geographical area.
- Expenses are projected to increase by \$1,141,551 in the first year, primarily due to a \$1,923,942 rent increase partially offset by a \$1,060,000 reduction in management and related fees.
- Utilization by payor source is as follows:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid-FFS	80%	67%	53%
Medicaid-MC	0%	10%	20%
Medicare-FFS	9%	8%	6%
Medicare-MC	3%	3%	8%
Commercial	6%	10%	11%
Private	2%	2%	2%
- Breakeven utilization is projected at 96.9% and 92.2% for the first and third years, respectively.

## Capability and Feasibility

Hudson Pointe Acquisition, LLC will acquire the RHCF operating interests for \$1,000,000, funded by \$200,000 in members' equity plus an \$800,000 loan at the above stated terms. Concurrently, RCNR Realty Acquisitions, LLC will purchase the real property for \$19,875,000, funded by \$3,975,000 in members' equity and a \$15,900,000 loan at the above stated terms. Greystone Funding Corporation has provided letters of interest for both the operations and the real property loans. There are no project costs associated with this application.

The working capital requirement is estimated at \$3,146,372 based on two months of first year expenses. Funding will be as follows: \$1,573,186 from the members' equity with the remaining \$1,573,186 satisfied through a five-year loan at 6% interest rate. Greystone Funding Corporation has provided a letter of interest. Review of BFA Attachments A and B, proposed members' net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As stated previously, liquid resources may not be available in proportion to the proposed ownership interest in the operating and realty entities. Bent Philipson has provided a statement guaranteeing Gabrielle Philipson's equity contributions in the operating entity. Proposed realty members Bent Philipson (on behalf of Philipson Family Limited Liability Company) and Benjamin Landa have provided affidavits stating they are willing to contribute resources to the operating entity to the extent required, as well as any needed equity to the realty entity disproportionate to their membership interest in RCNR Realty Acquisition, LLC.

The submitted budget projects net income of \$110,232 and \$1,408,549 in the first year and third years, respectively. Revenues are expected to increase by approximately \$2,841,957 concurrent with a 1.3% increase in overall utilization along with maintaining the current Medicare rate and bringing the commercial and private pay rates closer to the regional averages. As previously stated, expenses are projected to increase by \$1,141,551 in year one. The budget was determined taking into consideration the proposed new owners' experience in operating similar-sized facilities. BFA Attachment D is Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation's pro forma balance sheet, which shows the entity will start with \$1,773,186 in equity. Equity includes \$800,000 in goodwill which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill was eliminated, then the total net assets would become a positive \$973,186. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment E, financial summary of Riverdale Center for Nursing and Rehabilitation, indicates that the facility has maintained positive working capital, negative equity position and generated an average annual operating loss of \$43,576 for the 2013-2014 period shown, and a net operating loss of \$387,783 as of August 31, 2015. BFA Attachment G, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net income, positive working capital and positive net assets. Peninsula Nursing and Rehabilitation Center's working capital position turned positive in 2015 on \$1,785,655 operating net income.

#### Conclusion

Based on the preceding, the applicant has demonstrated the capability to precede in a financially feasible manner.

#### Recommendation

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

## Attachments

BFA Attachment A	Hudson Pointe Acquisition, LLC members' net worth summaries
BFA Attachment B	RCNR Realty Acquisition, LLC members' net worth summaries
BFA Attachment C	Current and Proposed Ownership of Real Property
BFA Attachment D	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation pro forma balance sheet
BFA Attachment E	Financial Summary, Riverdale Center for Nursing and Rehabilitation, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation.
BFA Attachment F	2014 Certified Financial Statement for Riverdale Center for Nursing and Rehabilitation, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing and Rehabilitation.
BFA Attachment G	Proposed members' ownership interest and Financial Summaries of Affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Report



**Project # 142146-E**  
**Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation**

**Program:** RHCF  
**Purpose:** Establishment

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

**Executive Summary**

**Description**

Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation (Cold Spring), a New York limited liability company, requests approval to be established as the new operator of Cold Spring Hills Center for Nursing and Rehabilitation, a 606-bed, proprietary, Article 28 residential health care facility (RHCF) located at 378 Syosset-Woodbury Road, Woodbury (Nassau County). The facility has 582 RHCF beds and 24 certified Ventilator Dependent beds. The facility also operates an on-site, 50-slot adult day health care program. As part of this application, the certified bed capacity will be reduced by 18 RHCFs beds, bringing the total certified bed count to 588. Simultaneously, a separate realty entity, Cold Spring Realty Acquisition, LLC, will acquire the facility's real property. There will be no change in services provided.

On August 21, 2014, UPR Care Corporation, the current operator, entered into an Asset Purchase Agreement with Cold Spring Acquisition, LLC for the sale and acquisition of the operating interests of the RHCF, to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. Concurrently, Cold Spring Hills Realty, Co., the current real property owner, entered into a Contract of Sale with Cold Spring Realty Acquisition, LLC for the sale and acquisition of the real property interest. There is a relationship between Cold Spring Acquisition, LLC and Cold Spring Realty Acquisition, LLC in that the entities have several

members in common. The applicant will lease the premises from Cold Spring Realty Acquisition, LLC.

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

<u>Current Operator</u>	
UPR Care Corporation	
<u>Members:</u>	<u>%</u>
Susan Ostreicher	33.51%
Kenneth Zitter	11.50%
20 members (% from .50% to 6%)	54.99%

<u>Proposed Operator</u>	
Cold Spring Acquisition, LLC	
<u>Members:</u>	<u>%</u>
Joel Leifer (Manager)	25.0%
Avi Philipson (Manager)	25.0%
Esther Farkovitz	25.0%
Rochel David	12.5%
Leah (Leaya) Friedman	12.5%

With the exception of Joel Leifer, the applicant members have ownership interest in various New York State RHCFs. BFA Attachment G provides the ownership interest and financial summaries of the proposed members' affiliated RHCFs.

OPCHSM Recommendation  
Contingent Approval



Need Summary

The decertification of 18 beds supports the Department's goal of right-sizing the Long Term Care System.

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.

Financial Summary

Cold Spring Acquisition, LLC will acquire the RHC operating assets for \$8,000,000, funded by \$1,600,000 in members' equity and a loan for \$6,400,000 at 6% interest for a 30-year term. Cold Spring Realty Acquisition, LLC, will acquire the real property for \$67,750,000, funded by \$13,550,000 in members' equity and a loan for \$54,200,000 at 6% interest rate for a 30-year term. There are no project costs associated with this application. The operating budget is as follows:

Revenues:	\$88,471,754
Expenses:	<u>86,871,624</u>
Gain:	\$1,600,130

## 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 programmatic review of plans showing the 18 beds to be decertified and the nursing units to be affected. [LTC]
5. Submission of an executed loan commitment for the purchase of the operations, acceptable to the Department of Health. (BFA)
6. Submission of an executed working capital loan commitment, acceptable to the Department. (BFA)
7. Submission of an executed real property loan commitment, acceptable to the Department. (BFA)
8. Submission of an executed building lease, acceptable to the Department of Health. (BFA)
9. Submission of the signed and dated Certificate of Amendment of the Articles of Organization of Cold Spring Acquisition, LLC, acceptable to the Department. [CSL]
10. Submission of an executed Operating Agreement of Cold Spring Acquisition, LLC, acceptable to the Department. [CSL]
11. Submission of a signed Certificate of Assumed Name of Cold Spring Acquisition, LLC, acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of UPR Care Corp., acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's Asset Purchase Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.  
[PMU]

Council Action Date

**February 11, 2016**

# Need Analysis

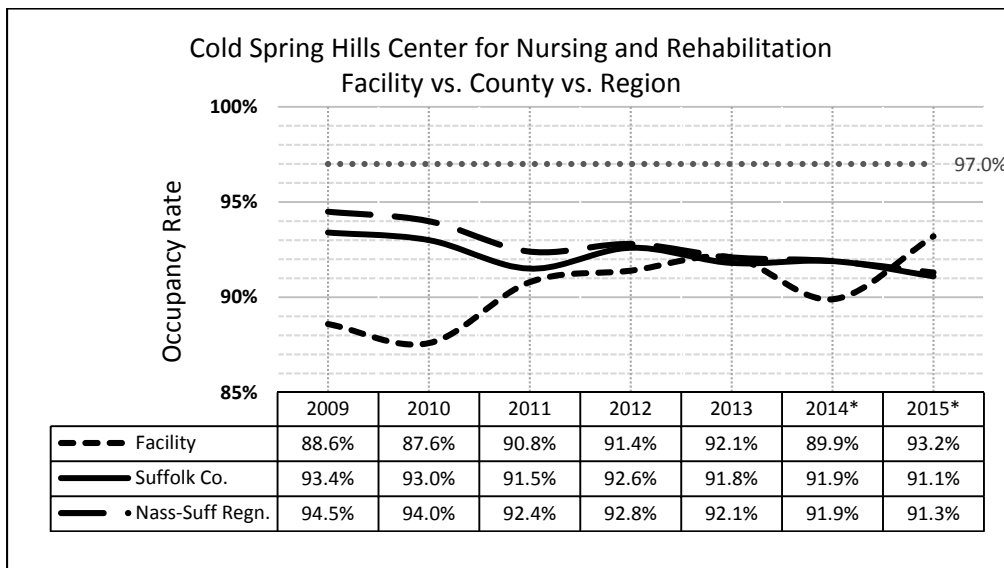
## Analysis

There is currently a need for 1,724 beds in the Nassau-Suffolk Region as indicated in the following table:

### RHCF Need – Nassau-Suffolk Region

<b>2016 Projected Need</b>	16,962
<b>Current Beds</b>	15,352
<b>Beds Under Construction</b>	-455
<b>Total Resources</b>	14,897
<b>Unmet Need</b>	2,065

The overall occupancy for Nassau County was 91.8% for 2013 as indicated in the following chart:



\*unaudited; facility reported data

Current occupancy, as of November 11, 2015, was 91.6%, with 51 vacant RHCF beds. According to the applicant, the facility experienced low occupancy as a result of an increase in short term rehabilitative stays and the need for flexibility in pairing roommates.

The applicant intends to increase occupancy in the following ways:

- Decertify 18 beds;
- Keeping in line with the Department's goals of providing long-term care in the most integrated setting as possible through:
  - Implementation of Institutional Special Needs Plan (I-SNP) services;
  - Development of new and enhancement of existing care programs, including its Wound Care Program and Short-Term Rehabilitation Services; and
  - Partnership with hospitals, managed care plans and other long-term providers;
- Transform the care model to ensure residents served by the facility are truly in need of the level of care being provided at the RHCF; and
- Collaborate with the local area hospitals to ensure prompt discharge of hospital patients appropriate for RHCF care and implement state of the art programs to both reduce and avoid re-hospitalization, both at a significant cost savings to the Department.

## Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Cold Spring's Medicaid admissions of 12.9% in 2012 and 10.6% in 2013 did not exceed the Nassau County 75% rates of 14.0% in 2012 and 7.3% in 2013 and will be required to satisfy the contingencies as noted below.

## Conclusion

Approval is being recommended to preserve resources for the residents of Nassau County, while moving towards right-sizing the Long Term Care System in the region.

## Recommendation

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

# Program Analysis

## Facility Information

	Existing	Proposed
Facility Name	Cold Spring Hills Center for Nursing and Rehabilitation	Cold Spring Hills Center for Nursing and Rehabilitation
Address	378 Syosset-Woodbury Road Woodbury, NY 11797	Same
RHCF Capacity	606	588
ADHC Program Capacity	50	Same
Type of Operator	Business Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	UPR Care Corporation	Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation  Members: * Joel Leifer 25.0% Esther Farkovitz 25.0% * Avi Philipson 25.0% Rochelle David 12.5% Leah (Leaya) Friedman 12.5%  * Managing Member

## Character and Competence Review

### Facilities Reviewed

#### Nursing Homes:

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	04/2005 to present
Park Avenue Extended Care Facility	04/2005 to present
South Shore Rehab and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	02/2015 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
Throgs Neck Extended Care Facility	04/2005 to present
Townhouse Center for Rehabilitation & Nursing	04/2005 to present
White Plains Center for Nursing	07/2011 to present

### Individual Background Review

**Joel Leifer** lists his current employment as Administrative Director for Atrium Center for Rehabilitation since 2010, and Staten Island Care Center since 2002. Mr. Leifer discloses no ownership interests in health facilities.

**Esther Farkovitz** is currently unemployed. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovitz lives overseas. Ms. Farkovitz discloses the following ownership interests in health facilities:

Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadell Rehab and Nursing Center at Kingsbridge	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing	07/2011 to present

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

Seagate Rehabilitation and Health Care Center	12/2014 to present
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**Rochel David** is employed in human resources at Confidence Management Systems, a housekeeping services company, located in Linden, New Jersey. Ms. David discloses the following health care facility ownership interest.

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
Little Neck Care Center	04/2014 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present

**Leah (Leaya) Friedman** is employed in human resources at Confidence Management Systems, a housekeeping services company, located in Linden, New Jersey. Ms. Friedman discloses the following health care facility ownership interest.

Cypress Garden Center for Nursing and Rehabilitation	01/2015 to present
Little Neck Care Center	04/2014 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present

## Character and Competence Analysis

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

A review of operations for Cypress Garden Center for Nursing and Rehabilitation, Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation & Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Nursing Center, Seagate Rehabilitation and Nursing Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Seagate Rehabilitation and Health Care Center, Throgs Neck Extended Care Facility, Townhouse Center for Rehabilitation and Nursing, White Plains Center for Nursing for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

#### Project Review

No changes in the program are proposed in this application. This application proposes a reduction of eighteen RHCF beds. The applicant has not provided plans showing the specific rooms to be decertified which results in the addition of a contingency to this project.

Cold Spring Hills CHHA and LTHHCP are not included in the proposed sale of Cold Spring Hills Nursing Home. At present, UPR Care Corporation operates both the Cold Spring Hills CHHA and LTHHCP. The offices for both of these home care agencies are located inside the nursing home.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations.

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

The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

#### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the RHCf operating interest, which will become effectuated upon PHHPC approval. The terms are summarized below:

Date:	August 21, 2014
Seller:	UPR Care Corp. d/b/a Cold Spring Hills Center for Nursing and Rehabilitation
Purchaser:	Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation
Assets Transferred:	All rights, title and interest in the business assets lien free. The assets include: tangible assets used in the business, permitted records, applicable warranties, contracts and agreements including managed care and third party reimbursement contracts, intellectual property rights and trademarks, books and records relating to business operations, assignable licenses and permits including Medicare and Medicaid provider numbers, resident trust funds, and goodwill and going concern value.
Excluded Assets:	Cash and cash equivalents, pre-closing accounts receivables; refunds and settlements prior to closing, any websites and e-mail addresses; records not applicable to the operations; refunds; charitable gift, grant, bequest or legacy.
Assumed Liabilities:	Those occurring after the Closing date.
Purchase Price:	\$8,000,000
Payment:	\$600,000 escrow deposit (paid at the time of signing) \$7,400,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - Cold Spring Acquisition, LLC Members	\$1,600,000
Loan - 30 years, 6%	<u>6,400,000</u>
Total	\$8,000,000

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

BFA Attachment A is the net worth summaries for the proposed members of Cold Spring Acquisition, LLC, which reveals sufficient resources to meet the equity requirements. Liquid resources may not be available in proportion to the proposed ownership interest. Bent Philipson has provided a statement guaranteeing Avi Philipson's equity contributions. As additional support, proposed realty members Bent Philipson (on behalf of Philipson Family Limited Liability Company) and Benjamin Landa have provided affidavits stating they are willing to contribute equity to the operating entity, to the extent required, in the event there is a need for these resources in support of this CON.

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. There are no outstanding Medicaid Assessment liabilities as of November 24, 2015.



Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed agreement to purchase the RHCF's real property. The terms are summarized below:

Date:	August 21, 2014
Seller Realty:	Cold Spring Hills Realty, Co., LLC
Purchaser Realty:	Cold Spring Realty Acquisition, LLC
Asset Transferred Realty:	All rights, title and interest in the real property including: the land, buildings, structures and improvements, fixtures, easements and appurtenances known by the address 378 Syosset-Woodbury Road, Woodbury, New York 10463 and further identified as Section: 14 Block: 0 lot: 741.
Purchase Price:	\$67,750,000
Payment of Purchase Price:	\$ 5,081,250 escrow deposit (paid at the time of signing) \$62,668,750 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity - Cold Spring Realty Acquisition, LLC Members	\$13,550,000
Loan - 30 years, 6%	<u>54,200,000</u>
Total	\$67,750,000

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

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

Lease Agreement

A draft lease has been submitted to lease the real property. The terms are summarized below:

Premises:	606-bed RHCF located at 378 Syosset-Woodbury Road, Woodbury,
Owner/Landlord:	Cold Spring Realty Acquisition, LLC
Lessee:	Cold Spring Acquisition, LLC
Term:	30 years
Rent:	Annual rent equal to the sum of the Lessor's debt service on the real property mortgage (assessed at \$3,899,477 for year one) plus \$4,000,000. Year one rent = \$7,899,477r or \$658,290 per month
Provisions:	Triple Net

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

Operating Budget

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

	Current Year (2014)			Year One		
	Pt. Days	Per Diem	Total	Pt. Days	Per Diem	Total
Revenues (RHCF Bed)			(582 Beds)			(564 Beds)
Medicaid-FFS	143,803	\$300	\$43,099,885	129,795	\$315	\$40,885,340
Medicaid-MC	0	0	0	13,978	\$315	4,403,037
Medicare-FFS	22,574	\$636	14,349,929	19,968	\$675	13,478,684
Medicare-MC	8,760	\$477	4,180,277	7,388	\$675	4,987,113
Private Pay	6,004	\$618	3,707,356	6,390	\$625	3,993,684
Insurance/Other	<u>9,938</u>	<u>\$403</u>	<u>4,008,392</u>	<u>22,165</u>	<u>\$400</u>	<u>8,865,977</u>
Sub-Total RHCF	191,079		\$69,345,839	199,684		\$76,613,835
Revenues (Vent Bed)			(24 Beds)			(24 Beds)
Medicaid-FFS	7,570	\$741	\$5,607,514	6,570	\$761	\$4,999,204
Medicaid-MC	0		0	920	\$761	699,889
Medicare-FFS	395	\$874	345,176	350	\$901	315,328
Medicare-MC	0		0	175	\$901	157,664
Private Pay	61	\$914	55,763	131	\$903	118,248
Other	<u>733</u>	<u>\$762</u>	<u>558,684</u>	<u>613</u>	<u>\$900</u>	<u>551,826</u>
Sub-Total Ventilator	8,759		\$6,567,137	8,759		\$6,842,159
ADHC Program	<u>Visits</u>	<u>Per Visit</u>	<u>Total</u>	<u>Visits</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid	24,099	\$181	\$4,369,314	27,387	\$181	\$4,965,602
Private/Other	243	\$181	44,134	277	\$181	50,158
Sub-Total ADHCP	24,342		\$4,413,448	27,664		\$5,015,760
Total Revenues			\$80,326,424			\$88,471,754
Expenses:						
Operating		\$364	\$81,580,597		\$318	\$74,545,826
Capital		<u>\$30</u>	<u>6,785,775</u>		<u>\$52</u>	<u>12,325,798</u>
Total Expenses:		\$394	\$88,366,372		\$370	\$86,871,624
Net Income (Loss)			<u>(\$8,039,948)</u>			<u>\$1,600,130</u>
	<u>Utilization</u>	<u>%</u>		<u>Utilization</u>	<u>%</u>	
RHFC	191,079	89.95%		199,684	97.00%	
Vent	8,759	99.99%		8,759	99.99%	
ADCHP	24,342	83.59%		27,664	95.00%	

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

- The current year reflects the facility's 2014 RHCF-4 cost report information.
- Based on 582 RHCF beds, average utilization from 2011-2014 was 90.9%. Comparing historical occupancy using the proposed 564 beds, the 2011-2014 average utilization would be 93.87%.
- Based on 24 ventilator beds, average utilization from 2011-2014 was 97.15%.
- Medicaid revenues for the RHCF and ventilator units are based on the facility's current 2015 Medicaid FFS and MC rates.
- Medicare revenues for the RHCF and ventilator units are based on the average daily rate experienced by the facility during 2015.
- Private pay and commercial rates for the RHCF and ventilator units are based on historical and 2015 experience.

- Expenses are projected to decrease by \$1,494,748 in the first year, primarily due to \$5,983,717 reduction in consulting and management fees and other direct expenses relating to the bed reduction, which was offset by a \$4,944,942 rent increase.

- Utilization by payor source is anticipated as follows:

	<u>RHCF</u>		<u>Ventilator</u>		<u>ADHCP</u>	
	<u>Current</u>	<u>Year One</u>	<u>Current</u>	<u>Year One</u>	<u>Current</u>	<u>Year One</u>
Medicaid	75.27%	72.0%	86.42%	85.5%	99%	99%
Medicare	16.39%	13.7%	4.51%	6.0%		
Private	3.14%	3.2%	.70%	1.5%		
All Other	5.20%	11.1%	8.37%	7.0%	1%	1%

- Breakeven utilization is projected at 90.3% and 89.6% for the first and third years, respectively.

### Capability and Feasibility

Cold Spring Acquisition, LLC will acquire the RHCF operating assets for \$8,000,000, funded by \$1,600,000 in members' equity plus \$6,400,000 loan at the above stated terms. Concurrently, Cold Spring Realty Acquisition, LLC, will purchase the real property for \$67,750,000, funded by \$13,550,000 in members' equity and a \$54,200,000 loan at the above stated terms. There are no project costs associated with this application.

The working capital requirement is estimated as \$14,478,604 based on two months of first year expenses. Funding will be as follows: \$7,239,302 from the members' equity with the remaining \$7,239,302 satisfied through a five-year loan at 6% interest rate. Greystone Funding Corporation has provided a letter of interest. Review of BFA Attachments A and B, proposed members' net worth summaries for the operator and real property owner, respectively, reveals sufficient resources to meet equity requirements. As stated previously, liquid resources may not be available in proportion to the proposed ownership interest in the operating and realty entities. Bent Philipson has provided a statement guaranteeing Gabrielle Philipson's equity contributions in the operating entity. Proposed realty members Bent Philipson (on behalf of Philipson Family Limited Liability Company) and Benjamin Landa have provided affidavits stating they are willing to contribute resources to the operating entity to the extent required, as well as any needed equity to the realty entity disproportionate to their membership interest in RCNR Realty Acquisition, LLC.

The submitted budget projects net income of \$1,600,130 and \$6,660,694 in the first year and third years, respectively. Revenues are expected to increase in the first year by approximately \$8,145,330 concurrent with a 4.7% increase in overall utilization along with maintaining the 2015 reimbursement rates. As previously stated, expenses are projected to decrease by \$1,494,748 in Year One. The budget was determined taking into consideration the proposed new owners' experience in operating various RHCF facilities. BFA Attachment D is Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation pro forma balance sheet, which shows the entity will start with \$8,839,302 in equity. Equity includes \$6,923,180 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. Eliminating goodwill, the total net assets are a positive \$1,916,122. 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 Attachments E and F are the financial summary and the 2014 certified financial statements for UPR Care Corp. d/b/a Cold Spring Hills Center for Nursing and Rehabilitation, respectively, which indicate the facility has an average negative working capital position, which improved in 2015 to a negative \$3,178,348. The facility maintained an average positive equity position of \$33,250,595 and generated an average annual operating profit of \$1,647,643 for the period shown (2013 through August 31, 2015).

BFA Attachments G, financial summary of the proposed members affiliated RHCFS, shows the facilities have maintained positive net income from operations for the periods shown with the exception of the following:

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Current 2015 is showing Operating Net Income.
- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 Operating Net Income.

A financial summary for Highland View Care Center is not included as membership was only recently established.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

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

## Attachments

BFA Attachment A	Cold Spring Acquisition, LLC members' net worth summaries
BFA Attachment B	Cold Spring Realty Acquisition, LLC members' net worth summaries
BFA Attachment C	Proposed Ownership of Real Property
BFA Attachment D	Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation pro forma balance sheet
BFA Attachment E	Financial Summary, UPR Care Corp. d/b/a Cold Spring Hills Center for Nursing and Rehabilitation,
BFA Attachment F	2014 Certified Financial Statement for UPR Care Corp. d/b/a Cold Spring Hills Center for Nursing and Rehabilitation
BFA Attachment G	Proposed members' ownership interest and Financial Summaries of Affiliated Nursing Homes
LTC Attachment A	Quality Measures and Inspection Report



Project # 151089-E  
Port Chester Operating, LLC d/b/a  
Port Chester Nursing & Rehab Centre

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

**County:** Westchester  
**Acknowledged:** March 9, 2015

**Executive Summary**

**Description**

Port Chester Operating, LLC d/b/a Port Chester Nursing & Rehab Centre, a New York limited liability company, requests approval to be established as the new operator of Port Chester Nursing & Rehab Centre, a 160-bed Article 28 residential health care facility (RHCF) located at 1000 High Street, Port Chester (Westchester County), New York. There will be no change in services provided.

On November 25, 2014, RWB Corporation, the current operator of the skilled nursing facility, entered into an Asset Purchase Agreement with Port Chester Operating, LLC for the sale and acquisition of the operating interests of the RHCF, to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. Concurrently, PIP Realty, LLC, the current real property owner, entered into a Real Estate Purchase Agreement with Port Chester Realty LLC for the sale and acquisition of the real property interest of the nursing facility. There is a relationship between Port Chester Operating, LLC and Port Chester Realty LLC in that the entities have common members. The applicant will lease the facility from Port Chester Realty LLC.

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

<u>Current Operator</u> RWB Corporation	
<u>Members</u>	<u>%</u>
Wayne Benach	97.45%

Michele Benach	2.55%
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<u>Proposed Operator</u> Port Chester Operating, LLC d/b/a Port Chester Nursing & Rehab Centre	
<u>Members</u>	<u>%</u>
Devorah Friedman (Manager)	44.0%
Sharon Einhorn (Manager)	44.0%
Yossie Zucker	2.0%
Steven Sax	2.0%
Akiva Rudner	2.0%
Eli Schwartz	5.0%
Solomon Reichberg	1.0%

**OPCHSM Recommendation**  
Contingent Approval

**Need Summary**

There will be no changes to beds or services as a result of this project. Port Chester Nursing & Rehab Centre's occupancy was 95.1% in 2011, 94.9% in 2012, 97.6% in 2013 and 92.5% in 2014. Current occupancy as of December 9, 2015, is 96.9%.

**Program Summary**

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

\$2,400,000 at 8% interest for a four-year term and 15-year amortization period, and a \$12,800,000 loan at 5% interest for a ten-year term and 20-year amortization period.

#### Financial Summary

Port Chester Operating LLC will acquire the RHCf operations for \$6,400,000. The acquisition price will be met with \$1,280,000 in members' equity and a \$5,120,000 loan at 5% interest for a ten-year term and 20-year amortization period. Port Chester Realty LLC will purchase the real property for \$16,000,000. The acquisition price will be met with \$800,000 in members' equity, a promissory note for

There are no project costs associated with this proposal. The operating budget is as follows:

	<u>Year One</u>
Revenues	\$17,842,030
Expenses	<u>\$17,624,162</u>
Gain/(Loss)	\$217,870

## 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 loan commitment for the purchase of the operations of the RHCF, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]
5. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a 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]
8. 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]
9. Submission of a signed and dated Restated Articles of Organization of Port Chester Operating LLC, acceptable to the Department. [CSL]
10. Submission of an executed amendment to the Operating Agreement of Port Chester Operating LLC, acceptable to the Department. [CSL]
11. Submission of a signed Certificate of Assumed Name of Port Chester Operating LLC, acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of R.W.B. Corporation, 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

**February 11, 2016**



# Need Analysis

## Project Description

Port Chester Operating, LLC, doing business as Port Chester Nursing & Rehab Centre, seeks approval to become the established operator of Port Chester Nursing & Rehab Centre, an existing 160-bed Article 28 residential health care facility (RHCF), located at 1000 High Street, Port Chester, 10573 in Westchester County.

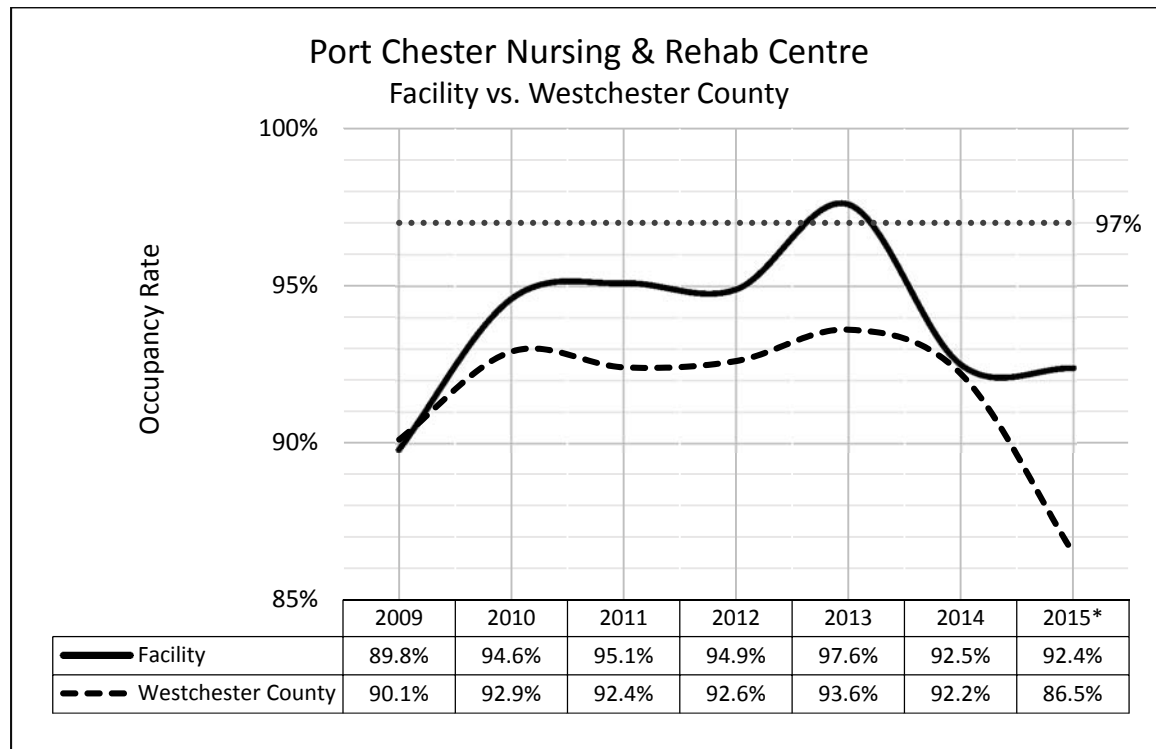
## Analysis

There is currently a need for 192 beds in Westchester County as indicated in the following table:

### RHCF Need – Westchester County

<b>2016 Projected Need</b>	6,716
<b>Current Beds</b>	6,372
<b>Beds Under Construction</b>	152
<b>Total Resources</b>	6,524
<b>Unmet Need</b>	192

The overall occupancy for Westchester County is 93.6% for 2013 as indicated in the following chart:



\*Facility occupancy is calculated from audited occupancy reports and resident days billed for the 1/1/15 – 12/13/15 period; Westchester County occupancy is calculated from unaudited, facility reported data.

Occupancy at the facility increased since 2009 and reached the Department's planning optimum in 2013. According to the applicant, the facility experienced a decline in occupancy in 2014 - 2015 due to over 25% of the patient population consisting of sub-acute rehab patients and the need to show flexibility to meet the unpredictable needs of that patient population. Current occupancy as of December 9, 2015, is 96.9%. Current CMI is 1.28 for all residents in the facility and 1.24 for the Medicaid-only residents.

There are three RHCs in Westchester County within a five mile radius of Port Chester. Of these facilities, Port Chester is the primary provider of RHC services to the Medicaid population as indicated in the following table:

Surrounding Facilities	Distance/Time	2013 Medicaid Admissions
Port Chester	0.0	51.2%
The Osborn	2.6 mi/5 mins	0.0%
King Street Home Inc.	2.9 mi/8 mins	0.0%
The New Jewish Home, Sarah Neuman	5.9 mi/9 mins	11.0%

According to the applicant, Port Chester is the only NYS RHC to which Greenwich Hospital (5 miles/18 minutes away in Connecticut) is able to send their NYS Medicaid patients.

King Street Home Inc., an RHC located 2.9 miles/8 minutes away from Port Chester, mainly provides services to a sub-acute rehab population and therefore has lower levels of occupancy, with 2015 year to date utilization of 59.0%. Excluding King Street Home, occupancy of RHCs within a five mile radius of Port Chester is currently 96.2%, as shown in the following table:

Surrounding Facilities	Distance/Time	RHC Beds	2013	2014	2015	Most Recent	Date
Port Chester	0.0	160	97.6%	92.5%	92.4%	96.9%	12/9/15
The Osborn	2.6 mi/5 mins	84	94.9%	92.7%	96.6%	97.6%	12/9/15
The New Jewish Home, Sarah Neuman	5.9 mi/9 mins	300	98.4%	97.7%	97.5%	95.7%	12/16/15
<b>Total</b>		<b>544</b>	<b>97.6%</b>	<b>95.4%</b>	<b>95.9%</b>	<b>96.2%</b>	

The proposed operators intend to use their past experience to increase and maintain occupancy by:

- Developing partnerships with local hospitals to implement programs to reduce avoidable hospitalizations due to heart disease, diabetes and asthma;
- Meeting with local physicians to identify and address the needs of the community, including orthopedic sub-acute short term rehab; and
- Creating an internal team of Medicare, HMO and Medicaid reimbursement experts that will work with the Montefiore Hudson Valley Collaborative PPS.

#### 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.

Port Chester Nursing & Rehab Centre's Medicaid admissions of 43.0% and 51.2% in 2012 and 2013, respectively, exceeded Westchester County's 75% rates of 21.1% and 21.5% in 2012 and 2013, respectively.

#### Conclusion

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

Recommendation

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

<b>Program Analysis</b>
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Facility Information

	Existing	Proposed
Facility Name	Port Chester Nursing & Rehab Centre	Port Chester Nursing & Rehab Centre
Address	1000 High Street Port Chester, NY. 10573	Same
RHCF Capacity	160	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	RWB Corporation	Port Chester Operating LLC  Members: *Devorah Friedman      44.0% *Sharon Einhorn        44.0% Eli Schwartz            5.0% Yossie Zucker            2.0% Akiva Rudner            2.0% Steven Sax                2.0% Solomon Reichberg      1.0%  *Managing Member

Character and Competence - Background

**Facilities Reviewed**

Nursing Homes

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
Crown Center for Nursing and Rehabilitation	01/2015 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

**Individual Background Review**

**Devorah Friedman** holds a New York State speech language pathologist license and is considered to be in good standing. She is currently employed as the owner/operator of Bellhaven Center for Rehabilitation and Nursing. Ms. Friedman discloses the following ownership interests in health facilities:

Sans Souci Rehabilitation & Nursing Center	10/2009 to present
Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present

Cortlandt Healthcare	03/2014 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

**Sharon Einhorn** discloses no employment history over the last 10 years. Ms. Einhorn discloses the following ownership interests in health facilities:

Dumont Center for Rehabilitation	08/2010 to present
Bellhaven Center for Rehabilitation and Nursing Center	03/2010 to present
Ramapo Manor Center for Rehabilitation & Nursing	07/2012 to present
St. James Rehabilitation & Healthcare Center	08/2012 to present
The Grand Pavilion for Rehabilitation at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
The Phoenix Rehabilitation and Nursing Center	01/2015 to present

**Eliezer Schwartz** is a sales executive at Qualmed Supplies, a janitorial supply company in Linden, New Jersey. Previously he was a sales representative for Superior Laundry, a commercial laundry service located in Brooklyn, New York. Mr. Schwartz discloses the following health facility ownership interest:

Cortlandt Healthcare	03/2014 to present
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**Yossie Zucker** is a New York State certified public accountant with license currently inactive. Mr. Zucker is the owner and president of CareRite Services LLC, a financial consulting firm for nursing homes located in Lakewood, New Jersey. Mr. Zucker discloses the following ownership interests in health facilities:

Ramapo Manor Center for Rehabilitation and Nursing	07/2012 to present
St. James Rehabilitation and Healthcare Center	08/2012 to present
The Grand Pavilion for Rehab and Nursing at Rockville Center	08/2012 to present
The Riverside	08/2013 to present
Cortlandt Healthcare	03/2014 to present
Crown Center for Nursing and Rehabilitation	01/2015 to present

**Akiva Rudner** holds a New York State nursing home administrator's license and is considered to be in good standing. He currently serves as Chief Operating Officer at CareRite LLC, a nursing home consulting service. Mr. Rudner discloses the following ownership interests in health facilities:

St. James Rehabilitation & Healthcare Center	08/2012 to present
Crown Center for Nursing and Rehabilitation	01/2015 to present

**Steven Sax** has been the Director of Clinical Reimbursement and Development at CareRite Services, LLC since July 2012. Previously, Mr. Sax was the assistant administrator to the Sans Souci Rehabilitation and Nursing Center in Yonkers, New York. Steven Sax discloses the following ownership interest in health facilities:

St. James Rehabilitation and Healthcare Center	08/2012 to present
Cortlandt Healthcare	03/2014 to present

**Solomon Reichberg** is the Director of Marketing at Five Star Staffing Services, Inc., a health care staffing company located in Brooklyn, New York. Previously, he was a sales representative at Approved Storage and Waste Hauling, Inc., a medical waste hauler based out of Mount Vernon, New York. Mr. Reichberg discloses no ownership interest in health facilities.

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Sans Souci Nursing Home for the period reveals that the facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on February 11, 2011. Deficiencies were found under 10 NYCRR 415.12(j): Quality of Care – Hydration.

A review of operations for the Sans Souci Rehabilitation and Nursing Center for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Dumont Center for Rehabilitation and Nursing Care for the period reveals that the facility was fined \$18,000 pursuant to a Stipulation and Order for surveillance findings on April 13, 2015. Deficiencies were found under 10 NYCRR 415.3(e)(1)(ii) Resident Rights: Advance Directives, 415.5(g) Quality of Life: Social Service, 415.12 Quality of Care: Highest Practical Potential, 415.26 Administration: 490 Administration, and 415.15(a) Administration: Medical Director.

➤ A federal CMP of \$45,070 was issued for the Immediate Jeopardy on 4/13/15 and is pending appeal.

A review of operations for Dumont Center for Rehabilitation and Nursing Care for the period results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of Bellhaven Center for Rehabilitation and Nursing, Ramapo Manor Center for Rehabilitation & Nursing, St. James Rehabilitation and Healthcare Center, The Grand Pavilion for Rehabilitation at Rockville Center, The Riverside, Cortlandt Healthcare, Crown Center for Nursing and Rehabilitation, and The Phoenix Rehabilitation and Nursing Center reveals that a substantially consistent high level of care has been provided since there were no enforcements for the time period reviewed.

#### Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

#### Recommendation

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

## Financial Analysis

#### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement to acquire the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON application. The terms of the agreement are summarized below:

Date:	November 25, 2014
Seller:	RWB Corporation
Purchaser:	Port Chester Operating LLC
Assets Transferred:	The business and operation of the facility; inventory and supplies; assignable contracts; resident assets and funds held in trust; name "Port Chester Nursing & Rehabilitation"; security deposits and prepayments held by seller; menus, policies and procedures manual and computer software; telephone numbers; financial books and records; resident/patient records; employee and payroll records; goodwill; Medicare and Medicaid provider agreements; licenses and permits held owned; leasehold improvements, furniture, fixtures, equipment, real estate taxes and retroactive rate increases and all other assets relating to the facility, if not excluded.
Excluded Assets:	All cash deposits, cash equivalents, marketable securities and accrued interest and dividends thereon, other than resident prepayments and security deposits; personal items; and accounts receivable relating to services rendered prior to the Closing Date.

Assumed Liabilities:	Employee Benefits, subject to adjustment
Purchase Price:	\$6,400,000
Payment of Purchase Price:	\$320,000 paid/held in escrow; and \$6,080,000 due at closing.

The purchase price for the operations is proposed to be satisfied as follows:

Equity (Port Chester Operating, LLC Members)	\$1,280,000
Loan (5% interest, 10-year term, 20-year amortization)	<u>\$5,120,000</u>
Total	\$6,400,000

Hudson Valley Bank has provided a letter of interest at the stated terms.

BFA Attachment A is a summary of the net worth of the applicant members of Port Chester Operating, LLC, which indicates sufficient resources to meet the equity requirement overall. Liquid resources may not be available in proportion to the members' proposed ownership interest. Devorah Friedman and Sharon Einhorn have each provided an affidavit stating that they are willing to contribute resources disproportionate to their membership interest in the operating entity to fund the equity requirement. Affidavits were submitted by all applicant members attesting to fund the balloon payment on the operating loan if acceptable refinancing is not available when the loan becomes due.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no current outstanding Medicaid liabilities.

#### Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed agreement to acquire the real property. The agreement will become effectuated upon PHHPC approval of this CON application. The terms of the agreement are summarized below:

Date:	November 25, 2014
Seller/Realty:	PIP Realty, LLC
Purchaser Realty:	Port Chester Realty LLC
Realty:	1000 High Street, Port Chester, New York 10573
Purchase Price:	\$16,000,000
Payment of Purchase Price:	\$800,000 paid/held in escrow; \$12,800,000 due at closing; \$2,400,000 promissory note delivered and executed at closing.

The purchase price for the RHCF realty is proposed to be satisfied as follows:

Equity (Port Chester Realty LLC Members)	\$800,000
Promissory Note (8% interest, 4-year term, 15-year amortization)	\$2,400,000
Loan (5% interest, 10-year term, 20-year amortization)	<u>\$12,800,000</u>
Total	\$16,000,000

Hudson Valley Bank has provided a letter of interest for the loan financing at the stated terms. Affidavits were submitted by all proposed realty members attesting to fund the balloon payment on the realty loan if acceptable refinancing is not available when the loan becomes due. Also, affidavits were submitted by proposed realty members Neil Einhorn and Mark Friedman attesting to fund the balloon payment on the promissory note if acceptable refinancing terms are not available when the promissory note becomes due.

## Lease Agreement

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

Premises:	160-bed RHCf located at 1000 High Street, Port Chester, New York 10573
Owner/Landlord:	Port Chester Realty LLC
Lessee:	Port Chester Operating LLC
Term:	35 years
Rent:	\$1,800,000 per annum (\$150,000 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between the landlord and the operating entity.

## Operating Budget

The applicant has submitted the current year (2014) and their operating budget for the first and third years after the change in ownership, in 2016 dollars, summarized as follows:

	<u>Current Year (2014)</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:						
Commercial	\$415.91	\$1,036,438	\$373.93	\$1,820,662	\$373.97	\$2,151,052
Medicare	\$746.51	\$4,540,281	\$675.02	\$5,805,889	\$700.04	\$7,650,692
Medicaid	\$217.64	\$9,213,495	\$217.69	\$8,929,734	\$217.69	\$8,139,560
Private Pay	\$421.31	<u>\$1,306,076</u>	\$469.08	<u>\$1,285,745</u>	\$469.07	<u>\$1,618,760</u>
Total Revenues		\$16,096,290		\$17,842,030		\$19,560,064
Expenses:						
Operating	\$291.89	\$15,764,588	\$265.49	\$15,194,100	\$266.38	\$15,322,792
Capital	<u>\$15.64</u>	<u>\$844,443</u>	<u>\$42.46</u>	<u>\$2,430,062</u>	<u>\$41.67</u>	<u>\$2,396,853</u>
Total Expenses	\$307.53	\$16,609,031	\$307.95	\$17,624,162	\$308.04	\$17,719,645
Net Income		(\$512,741)		\$217,870		\$1,840,419
RHCf Patient Days		54,008		57,231		57,523
Utilization		92.48%		98.00%		98.50%

The projected budget appears reasonable based on the following:

- The current year reflects the facility's actual 2014 RHCf-4 cost report and payor information.
- Revenues reflect current rates of payment by payor. The Medicaid rates are based on the facility's current Medicaid pricing rate. Medicare, Private Pay and Commercial rates are based on the current operator's rates of payment for the respective payors.
- Expense assumptions are based on current operations, with increased capital cost to incorporate the lease payments and debt service on the purchase price.
- The applicant indicated occupancy averaged 96.2%, including reserved beds for hospitalizations, during the month of September 2015, and was at 100% as of September 30, 2015.
- Utilization by payer source for the first year and third year is projected as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicare	15.03%	19.00%
Medicaid	71.67%	65.00%
Private Pay / Other	13.30%	16.00%

- The applicant projects private pay utilization will remain stable.
- Over the course of 2014, commercial utilizations grew from 0.19% to 7.58% of patient days, while Medicaid fee-for-service utilizations dropped from 75.25% to 66.27% of patient days. The applicant expects these trends to continue.
- Growth in Medicare utilization was projected based on historical and ongoing trends.
- Breakeven utilization is projected at 96.80% in year one (56,533 patient days) and 89.23% in the year three (52,112 patient days).

## Capability and Feasibility

There are no project costs associated with this application. Port Chester Operating LLC has agreed to acquire the RHCF's operations for \$6,400,000. The acquisition price will be met with members' equity of \$1,280,000 and a bank loan of \$5,120,000 at the above stated terms. Hudson Valley Bank has provided a letter of interest. Port Chester Realty LLC, the applicant's landlord, is purchasing the real property for \$16,000,000. The acquisition price will be met with \$800,000 in members' equity, \$2,400,000 from a promissory note, and a \$12,800,000 loan at the above stated terms.

The working capital requirement is estimated at \$2,937,360 based on two months of first year expenses. The applicant will provide \$1,468,680 in members' equity and will finance the remaining \$1,468,680 via a working capital loan at 6% for a three-year term. Hudson Valley Bank has provided a letter of interest. Review of the operating members net worth statements (BFA Attachment A) shows there are sufficient assets overall to meet the equity requirement, but liquid resources may not be available in proportion to the members proposed ownership interest. Yossie Zucker, Devorah Friedman and Steven Sax have provided affidavits stating they will contribute personal resources disproportionate to their ownership interest. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$2,748,680. Assets include \$4,797,489 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. If goodwill is eliminated, the total members' equity would become a negative \$2,048,809.

The submitted budget projects a net profit of \$217,870 and \$1,840,419 for Years One and Three, respectively. The applicant projects a 2% increase in expenses in the first three years after establishment, but expects a \$720,573 reduction in Other Direct Expenses to be achieved by centralizing financial and back-office functions and eliminating various administrative and consulting fees that exist for the current operations. The applicant's first year utilization projections by payor are based on the existing nursing home's January 2014 through November 2014 utilization experience. The budget appears reasonable.

The applicant states that their business model includes flexibility to transition to a Value Based Payment System prior to the end of the three-year transition window. For the current CON project, their revenue assumptions are based on the historical rate data of the facility, as they believe these rates will be held for a period of time going forward. The applicant intends to continue negotiations with the Montefiore Hudson Valley Collaborative (MHVC) and seek Managed Care Organization (MCO) coordination with affiliated parties. As a result of the facility's involvement in the MHVC PPS, the applicant anticipates an expanded relationship with the staff of the other PPS participants and closer monitoring of the residents, implementation of a special needs program with Medicare and active participation with MVHC to achieve DSRIP goals.

Transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, MCOs negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment C, financial summary of Port Chester Nursing and Rehab Centre, indicates that the facility has had averaged positive working capital, a positive equity position and generated an operating surplus for 2013-2014 and a year-to-date operating surplus of \$157,034 as of September 30, 2015.

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 positive income from operations for the periods shown, with the exception of The Grand Pavilion for Rehab & Nursing at Rockville which incurred a slight loss in 2014, shows positive net income for the first nine months of 2015.



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

Recommendation

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

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## Attachments

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BFA Attachment A	Net Worth of Port Chester Operating, LLC Proposed Members
BFA Attachment B	Pro Forma Balance Sheet Port Chester
BFA Attachment C	Financial Summary, RWB Corporation 2012-2014
BFA Attachment D	Ownership interest, proposed members' affiliated Nursing Homes
BFA Attachment E	Financial Summary, proposed members' affiliated Nursing Homes
LTC Attachment A	Quality Measures and Inspection Report



Project # 151307-E
Yertle Operations, LLC d/b/a Fishkill Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Dutchess
Acknowledged: June 23, 2015

Executive Summary

Description

Yertle Operations, LLC, a New York limited liability company, requests approval to be established as the new operator of Elant at Fishkill, a 160-bed Article 28 residential health care facility (RHCF) located at 22 Robert R. Kasin Way, Beacon (Dutchess County). A separate entity, 22 Robert Kasin Way Real Estate, LLC, will acquire the real property. Upon approval of this application, the facility will be named Fishkill Center for Rehabilitation and Nursing. There will be no change in services.

On December 1, 2014, Elant at Fishkill, Inc., the current operator, entered into an Asset Purchase Agreement (APA) with Yertle Operations, LLC, whereby Yertle Operations, LLC agreed to purchase the RHCF operations of Elant at Fishkill and Elant at Wappingers Falls upon approval by the Public Health and Health Planning Council (PHHPC). Elant at Wappingers Falls is a 62-bed RHCF located at 37 Mesier Avenue, Wappingers Falls. The APA provides that the purchase price for the assets is \$1 plus the assumption of certain liabilities.

Concurrently, Elant at Fishkill, Inc., the real property owner of the two nursing facilities, and 22 Robert Kasin Way Real Estate, LLC entered into a Contract of Sale for the purchase of the real estate associated with the two facilities for \$1. Upon PHHPC approval, 22 Robert Kasin Way Real Estate, LLC will lease the Beacon premises to Yertle Operations, LLC for a term of 30 years. There is a relationship between 22 Robert Kasin Way Real Estate, LLC and Yertle

Operations, LLC in that the entities have common ownership.

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

Table with 2 columns: Member/Active Parent, %
Current Operator: Elant at Fishkill, Inc.
Elant Inc. 100%

Table with 2 columns: Members, %
Proposed Operator: Yertle Operations, LLC
Richard Platschek (Managing Member) 33.34%
Ester Farkovits 33.33%
Machla Abramczyk 20.00%
Robert Schuck 13.33%

BFA Attachment B presents an Organization Chart of the facility after the requested change.

Concurrently under review are CON 151327 (Elant at Goshen), CON 151321 (Elant at Wappingers Falls) and CON 152005 (Elant at Meadow Hill), in which the same proposed members are seeking approval to purchase three other Elant RHCF operations.

OPCHSM Recommendation
Contingent Approval

### Need Summary

There will be no changes to the certified bed capacity as a result of this project. Elant at Fishkill's occupancy was 96.2% in 2011, 94.6% in 2012, 95.5% in 2013 and 95.1% in 2014. Current occupancy as of December 10, 2015 is 95.0%.

### Program Summary

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with a related party entity, Sapphire HC Management Care, LLC. No other administrative services or consulting agreements are proposed in this application. No negative information has been received concerning the character and competence of the proposed applicants. All related health care facilities are in substantial compliance with all rules and regulations. The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

### Financial Summary

There are no project costs associated with this proposal. The purchase price for the assets is \$1 and the assumption by Yertle Operations, LLC of certain liabilities from December 1, 2014 to pre-closing, amounting to \$4,710,988. The operating budget is as follows:

Revenues	\$18,514,529
Expenses	<u>17,631,505</u>
Gain	\$883,024

## 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 lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed assignment and assumption agreement for the operations, acceptable to the Department of Health. [BFA]
4. Submission of an executed assignment and assumption agreement for the realty, acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. 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]
8. Submission of a plan, acceptable to the Department, for the disposition of the Long Term Home Health Care Program (LTHHCP) and Foster Family Care Program. The plan must demonstrate that the handling of the programs adheres to statutory requirements and results in a safe and orderly transition of any program participants. [LTC]
9. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
10. Submission of a photocopy of a sample Unit Certificate (See Schedule 14B, Section IV). [CSL]
11. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]

12. Submission of a copy of the Lease Agreement that is fully signed by all the parties thereto (See Schedule 3A, General Instructions). [CSL]
13. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**February 11, 2016**

# Need Analysis

## Project Description

Yertle Operations, LLC seeks approval to become the established operator of Elant at Fishkill, an existing 160-bed Article 28 residential health care facility (RHCF), located at 22 Robert R. Kasin Way, Beacon, 12508, in Dutchess County. Upon approval of this application, Elant at Goshen will be renamed Fishkill Center for Rehabilitation and Nursing.

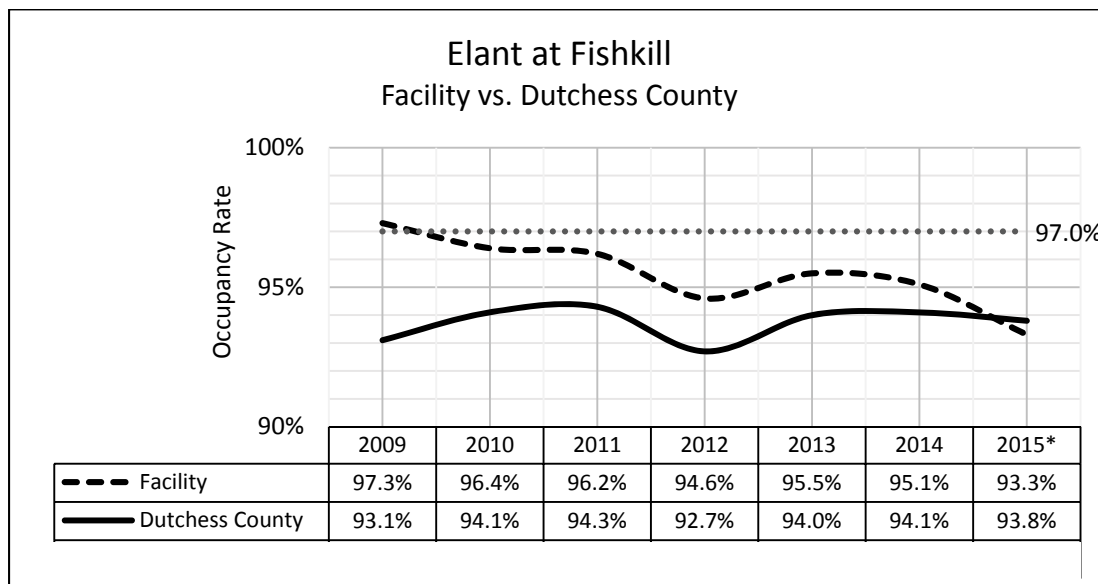
## Analysis

There is currently a surplus of 23 beds in Dutchess County as indicated in the following table:

### RHCF Need – Dutchess County

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

The overall occupancy for Dutchess County is 94.0% for 2013 as indicated in the following chart:



\*unaudited; facility reported data

Current occupancy as of December 10, 2015 is 95.0%. The applicant plans to add programs and services that will allow the facility to serve more medically complex individuals. The programs and services to be implemented target those residents with chronic obstructive pulmonary disease (COPD), vascular insufficiencies, dementia (vascular and behavioral), and psycho-geriatric conditions. The applicant also plans to work closely with local health care providers, hospitals, and the community in an effort to prevent readmissions and discharge patients at an earlier time as well as publicize the new ownership of the facility.

## Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage

of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Elant at Fishkill's Medicaid admissions of 29.6% in 2012 and 29.8% in 2013 exceeded the Dutchess County 75% rates of 18.9% in 2012 and 19.5% in 2013.

**Conclusion**

Approval of this application will result in maintaining a necessary Medicaid and community resource.

**Recommendation**

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

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

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Elant at Fishkill, Inc.	Fishkill Center for Rehabilitation and Nursing
Address	22 Robert R. Kasin Way Beacon, NY 12508	Same
RHCF Capacity	160	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Elant at Fishkill, Inc.  <u>Active Parent/Co-operator</u> Elant, Inc	Yertle Operations, LLC  Richard Platschek*      33.34% Esther Farkovits        33.33% Machla Abramczyk      20.00% Robert Schuck            13.33%  *Managing member

**Character and Competence - Background**

**Facilities Reviewed**

Nursing Homes

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	12/2005 to present
Ridge View Manor LLC	10/2012 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present

Townhouse Extended Care Facility	07/2004 to present
Williamsville Suburban LLC	10/2012 to present
White Plains Center for Nursing	07/2011 to present

<u>Home Care Agencies</u>	
Floral Home Care LLC	01/2012 to present

**Individual Background Review**

Current facility ownership shares are noted in brackets.

**Richard (Aryeh) Platschek** lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard (Aryeh) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC [4.5%]	10/2012 to present
Ridge View Manor LLC [4.5%]	10/2012 to present
Sheridan Manor LLC [4.5%]	10/2012 to present
South Shore Rehabilitation and Nursing Center [5%]	04/2014 to present

**Esther Farkovitz** is currently unemployed and lives out of the country. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovits discloses the following ownership interests in health facilities:

Little Neck Care Center [50%]	04/2011 to present
South Shore Rehabilitation and Nursing Center [45%]	04/2014 to present
Nassau Extended Care Facility [7%]	07/2004 to present
Park Avenue Extended Care Facility [7%]	07/2004 to present
The Citadel Rehab and Nursing Center at Kingsbridge [25%]	11/2015 to present
Throgs Neck Extended Care Facility [7%]	07/2004 to present
Townhouse Extended Care Center [7%]	07/2004 to present
Seagate Rehabilitation and Health Care Center [10%]	12/2014 to present
White Plains Center for Nursing [12%]	07/2011 to present

**Machla Abramczyk** lists her employment as Floral Home Care, LLC where she has been employed as a Quality Assurance Manager since January 2012. Ms. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC [63%]	01/2002 to present
Floral Home Care LLC [1%]	01/2012 to present

**Robert Schuck** is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center [25%]	04/2014 to present
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Character and Competence - Analysis

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

A review of operations for Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation and Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Health Care Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, Williamsville Suburban LLC, White Plains Center for Nursing, The Citadel Rehab and Nursing Center at Kingsbridge, and Floral Home Care LLC results in a conclusion of substantially consistent high level of care since there were no enforcements.



A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

#### Project Review

This application is proposing to establish Yertle Operations, LLC as the new operator of Elant at Fishkill. The facility will be renamed Fishkill Center for Rehabilitation and Nursing as a result of this transaction. Yertle Operations, LLC is comprised of Richard Platschek (33.34%); Esther Farkovits (33.33%); Machla Abramczyk (20.00%); and Robert Schuck (13.33%). Richard Platschek will be the managing member of the facility.

The applicant acknowledges a relationship with the proposed purchaser of the real property, 22 Robert Kasin Way Real Estate, LLC. It should be noted that while one of the members of 22 Robert Kasin Way Real Estate, LLC is CEO of Sentosa Care, LLC, the applicant has asserted that the operating group will not enter into a contractual relationship with Sentosa Care, LLC for the provision of services to the facility.

The applicant has proposed to make no significant changes to staffing levels for RHCF operations and will attempt to retain key positions at the facility such as the Administrator of Record, Director of Nursing, Assistant Director of Nursing, Medical Director, Staff Physician, Nurse Practitioner, and Corporate Director of Rehabilitation. During the initial transition period the ownership group will designate a member to provide specific attention and oversight to the facility to ensure that the level and quality of care is maintained. Elant at Fishkill currently operates a Long Term Home Health Care Program (LTHHCP) and a Foster Family Care Program. These two programs are excluded from the purchase agreement and the staffing pattern proposed in the application reflects that the facility will not be operating the programs. It was not clear from the application what will become of the programs upon closing and a contingency has been added for submission of a plan, acceptable to the Department, for the disposition of the two programs.

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party. Sapphire HC Management Care, LLC is owned by Richard (Aryeh) Platschek and his wife Golda Platschek. No other administrative services or consulting agreements are proposed in this application.

#### Conclusion

The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

#### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement (APA) for the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	December 1, 2014
Purchaser:	Yertle Operations, LLC
Seller:	Elant at Fishkill, Inc.
Purchased Assets:	All assets used in the operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$1 and the assumption of all current liabilities of the seller which will be offset by the assumed assets prior to pre-closing, as of September 30, 2015, the current assets are \$5,608,451 and liabilities amount to \$4,710,988.
Payment of Purchase Price:	Cash at closing for \$1.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, there are no outstanding Medicaid overpayment liabilities.

### Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed real estate Purchase and Sale Agreement (PSA) related to the purchase of the RHCF's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	December 1, 2014
Seller:	Elant at Fishkill, Inc.
Buyer:	22 Robert Kasiin Way Real Estate, LLC
Purchase Price:	\$1 and the refinancing of the bonds payable of \$16,524,685 as September 30, 2015.
Property Purchased:	Premises located at 22 Robert R. Kasin Way, Beacon, NY.

Under the APA, the purchaser agreed to assume the liabilities pursuant to section 3.1 and set forth on schedule 3.1. The assumed liabilities between the operation and the realty are indicated on BFA Attachment F. Under the PSA, in relation to the sale of the real property and pursuant to section 2.1, the transaction is conditioned upon the assumption of the assumed liabilities as set forth in the APA, which include the assumption of any mortgages and any other liabilities associate with the PSA transaction.

A loan letter of interest has been submitted by the applicant from Greystone to refinance the mortgage up to \$19,000,000 at 5.5% over 30 years. Also, proposed member of the realty, Benjamin Landa, has submitted an affidavit to contribute personal resources disproportionate to his membership interest if such equity is needed. BFA Attachment B is the net worth statement of Benjamin Landa showing sufficient equity.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement summarized as follows:

Service Provider:	Sapphire HC Management Care, LLC
Service Purchaser:	Yertle Operations, LLC
Services Provided:	The billing, collection and management of Accounts Receivable; no less than weekly Medicaid billing; no less than monthly Commercial and Medicare billing; Payroll and Accounts Payable processing; providing data for financial reporting and any internal or external auditing; and cooperation with Federal and State reporting and regulatory requirements.
Exclusions:	The service purchaser will retain control of books and records, day-to-day operations, responsibility for regulatory compliance and the disposition of assets; the service provider will incur no liability on behalf of the facility, will not hire or fire employees and will not enforce policy regarding the operation of the facility.
Term:	One year with unlimited one year renewals, unless notice of termination is provided at least 30 days prior to the end of any renewal term.
Compensation:	\$131,400 per year or \$2.25 per bed per day (\$10,950 per month)

Richard Platschek, one of the members of Yertle Operations, LLC, and his wife Golda Platschek own Sapphire HC Management Care, LLC. The entity will provide the above noted accounting services. Facility staff will perform all other administrative services. Sapphire HC Management Care, LLC will also provide accounting services to the other RHCFS being concurrently reviewed under CON 151327 (Elant at Goshen), CON 151321 (Elant at Wappingers Falls) and CON 152005 (Elant at Meadow Hill).

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	A 160-bed RHCf located at 22 Robert Kasin Way, Beacon, New York 12508
Landlord:	22 Robert Kasin Way Real Estate, LLC
Tenant:	Yertle Operations, LLC
Terms:	30 years commencing on execution of the lease with a 10-year option to renew.
Rental:	\$2,177,795 annual base rent with a 3% increase each year thereafter.
Provisions:	Tenant responsible for real estate taxes, general liability insurance, utilities & maintenance.

The long-term liability as of September 30, 2015 is \$16,524,685 and represents tax-exempt bonds which cannot be assumed by a proprietary entity. Therefore, they will be paid off and financed through the realty entity. Proposed member of the realty, Benjamin Landa, has submitted an affidavit attesting to his willingness to contribute personal resources disproportionate to his ownership interest. The amortized bonds are factored into the lease payments.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Operating Budget

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

	<u>Per Diem</u>	<u>Current Year</u> <u>(2014)</u>	<u>Per</u> <u>Diem</u>	<u>Year One</u>	<u>Per</u> <u>Diem</u>	<u>Year Three</u>
Revenues:						
Medicaid	\$207.27	\$7,858,148	\$205.47	\$7,782,160	\$199.26	\$7,546,892
Medicare	\$487.51	5,618,015	\$647.51	7,522,788	\$647.12	7,593,308
Commercial	\$639.63	765,200	\$499.94	865,403	\$499.94	865,403
Private Pay	\$580.18	2,870,279	\$457.67	2,344,178	\$486.95	2,494,179
Total Revenues		\$17,111,442		\$18,514,529		\$18,499,782

Expenses:						
Operating	\$282.86	\$15,721,647	\$273.30	\$15,398,872	\$271.28	\$15,316,985
Capital	30.66	1,704,302	39.62	2,232,633	39.57	2,234,290
Total Expenses	\$313.52	\$17,425,949	\$312.92	\$17,631,505	\$310.85	\$17,551,275
Net Income		<u>(\$314,507)</u>		<u>\$883,024</u>		<u>\$948,507</u>
Total Patient Days		55,581		56,345		56,462

The following is noted with respect to the submitted budget:

- The budget represents only the RHCf operations, as the LTHHCP and Adult Foster Care Program are not part of this application.
- For budget Years One and Three, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate.
- All Current Year rates, including Medicare, reflect the actual rates identified in the facility's 2014 Cost Report. The Year One and Year Three Medicare rates represent the actual Medicare rate experienced by the facility during 2015, held constant. The Commercial and Private Pay rates in Years One and Three represent an overall average of the actual rates experienced by the facility in 2015 from these payer sources. Commercial and Private pay rates typically range from \$350 to \$750 per diem. The applicant is using an average of these rates in the interest of producing a conservative and financially realistic forecast for Year One and Year Three.
- Overall utilization is 96.5% and 96.7% for year one and Year Three, respectively, while utilization by payor source is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid	67.2%	67.0%
Medicare	20.6%	20.8%
Private/Other	12.2%	12.2%

- Breakeven utilization is 91.88% and 91.72% for the first and third years, respectively.

#### Capability and Feasibility

There are no project costs associated with this application. The purchase price for the assets is \$1 and the assumption by Yertle Operations, LLC of certain liabilities from December 1, 2014 to pre-closing amounting to \$4,710,988.

The working capital requirement of \$2,938,584, based on two months of first year expenses, will be satisfied from existing facility funds and proposed members' equity. Cash plus accounts receivables of \$4,235,773, minus accounts payable and accrued expenses of \$2,194,652 as of September 30, 2015, is \$2,041,121 with the remaining \$897,463 from proposed members' equity. Proposed member Machla Abramczyk has submitted an affidavit attesting to her willingness to contribute personal resources disproportionate to her ownership interest. BFA Attachment A, net worth of the proposed members of Yertle Operations, LLC, and BFA Attachment D, financial summary of Elant at Fishkill, reveal sufficient resources exist for stated levels of equity. BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$897,463. It is noted that assets include \$309,401 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. With goodwill eliminated, the members' equity is \$588,062.

The submitted budget indicates that net income of \$883,024 and \$948,507 will be generated for the first year and third years, respectively. BFA Attachment G is the budget sensitivity analysis based on current utilization of the facility as of September 30, 2015, which shows the budgeted revenues would increase by \$261,151 resulting in a net profit in year one of \$1,144,175. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three

years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, financial summary of Elant at Fishkill, indicates that the facility maintained positive working capital, positive equity position and generated an average annual net loss of \$352,716 for the 2013-2014 period shown, and a net operating loss of \$139,732 as of September 30, 2015. The operating loss is due to the write-off of accounts receivable, increasing the facility's bad debt expenses for those periods. Management has made an effort since 2014 to correct their admission practices by obtaining secondary insurance coverage on long-term residents, thus decreasing the bad debt expense.

BFA Attachments E, financial summary of the proposed members affiliated RHCs, shows the facilities have maintained positive net income from operations for the periods shown with the exception of the following:

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Current 2015 is showing Operating Net Income.
- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- Williamsville Suburban, Ridgeview Manor and Sheridan Manor all show Operating Net Losses for certain years due to servicing of a high debt level. The facilities are in the process of being sold. Ridgeview Manor and Sheridan Manor have been approved through PHHPC and should be finalized shortly with the bankruptcy attorney. Williamsville Suburban is currently under review. The debt will be satisfied upon transfer of ownership.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 Operating Net Income.

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

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

## Attachments

BFA Attachment A	Yertle Operations, LLC, Proposed Members Net Worth
BFA Attachment B	Net Worth Statement for Benjamin Landa
BFA Attachment C	Organizational Chart
BFA Attachment D	Financial Summary, Elant at Fishkill, Inc.
BFA Attachment E	Affiliated Residential Health Care Facilities
BFA Attachment F	Pro Forma Balance Sheet
BFA Attachment G	Budget Sensitivity Analysis
LTC Attachment A	Quality Measures and Inspection Report





**Project # 151252-E**  
**185 Old Military Road Operating Company, LLC**  
**d/b/a Elderwood of Uihlein at Lake Placid**

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

**County:** Essex  
**Acknowledged:** June 2, 2015

**Executive Summary**

**Description**

185 Old Military Road Operating Company, LLC d/b/a Elderwood of Uihlein at Lake Placid, a New York limited liability company, requests approval to be established as the new operator of Uihlein Living Center, a 156-bed Article 28 residential health care facility (RHCF) located at 185 Old Military Road, Lake Placid (Essex County). A separate entity, 185 Old Military Road, LLC, will acquire lease rights to the real property. There will be no change in services.

On April 13, 2015, Post Acute Partners Acquisition, LLC (Post Acute Partners) entered into an Asset Purchase Agreement (APA) with Adirondack Medical Center (AMC), the current RHCF operator, to acquire the operating interests and certain property assets (furniture and equipment) of Uihlein Living Center for \$600,000, upon Public Health and Planning Council approval. As part of the APA, Post Acute Partners also entered into a Ground Lease with AMC to secure site control of the facility. Post Acute Partners will assign its rights and title to the operating interests and the purchased/leased real property assets to 185 Old Military Road Operating Company, LLC and 185 Old Military Road, LLC, respectively. 185 Old Military Road, LLC will lease the premises to 185 Old Military Road Operating Company, LLC. There is a relationship between the proposed operating and realty LLCs in that the entities have common membership.

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

<u>Current Operator</u>	
Adirondack Medical Center	100%

<u>Proposed Operator</u>	
185 Old Military Road Operating Company, LLC	
<u>Members</u>	<u>%</u>
185 Old Military Road Operating Holdco, LLC	100%
Warren Cole	50%
Jeffery Rubin	50%

BFA Attachment B is an Organizational Chart of the facility after the requested change.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no changes to beds or services at this facility. Uihlein Living Center's occupancy was 75.8% in 2011, 74.5% in 2012, 50.0% in 2013 and 45.9% in 2014. The facility has been staffed for a reduced capacity of 80 beds since 2013 due to financial losses.

**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 applicant will enter into an administrative services agreement with

Elderwood Administrative Services, LLC which has common ownership with the proposed operating LLC. 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

Post Acute Partners agreed to acquire the RHCF's operations and certain property assets (furniture and equipment) for \$600,000. The purchase price will be met with members' equity. Post Acute Partners will assign its rights and title

to the RHCF's operations and real property to 185 Old Military Road Operating Company, LLC and 185 Old Military Road, LLC, respectively, for \$10. There are no project costs associated with this proposal.

The operating budget is:

Revenues	\$13,420,717
Expenses	<u>12,665,231</u>
Gain/(Loss)	\$755,486



## 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 Assignment of Rights, acceptable to the Department of Health. [BFA]
2. Submission of an executed Health Care Center Facility Lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed Ground Lease, acceptable to the Department of Health. [BFA]
4. Submission of executed Administrative Services Agreement, acceptable to the Department of Health. [BFA]
5. Submission of a final financing package for mandated capital expenditures, acceptable to the Department of Health. [BFA]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a 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]
8. 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]
9. Submission of all consulting and services agreements between the applicant and Elderwood Administrative Services, LLC, or any other entity. [LTC]
10. Submission and Department approval of a plan to restore nursing units at the facility that have been taken out of service by the current operator. The plan will describe the necessary increase in staffing and any cosmetic renovations that are needed in the units. [LTC]
11. Submission of a photocopy of an executed and completed facility lease agreement between 185 Old Military Road, LLC and 185 Old Military Road Operating Company, LLC, acceptable to the Department. [CSL]

12. Submission of a photocopy of the executed membership interest transfer and any additional transfer documents, which are acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's executed proposed amended and restated operating agreement, which is acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's executed proposed restated articles of organization, which is acceptable to the Department. [CSL]
16. Submission of a photocopy of the applicant's executed administrative services agreement, which is acceptable to the Department. [CSL]
17. Submission of a completed Schedule 15 and any pertinent documents, 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]

Council Action Date

**February 11, 2016**

## Need Analysis

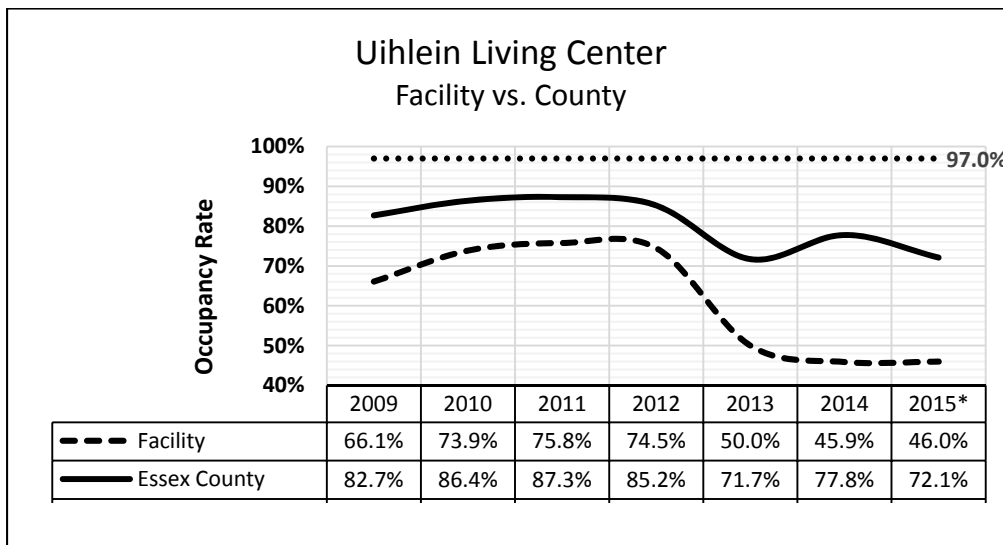
### Analysis

There is currently a need for 28 beds in Essex County as indicated in the table below:

#### RHCF Need – Essex County

<b>2016 Projected Need</b>	368
<b>Current Beds</b>	340
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	340
<b>Unmet Need</b>	28

The overall occupancy for Essex County is 71.7% in 2013 as indicated in the following chart:



*\*unaudited; facility reported data*

Uihlein Living Center's (Uihlein) occupancy was 75.8% in 2011, 74.5% in 2012, 50.0% in 2013 and 45.9% in 2014. To mitigate financial losses, the facility restricted admissions to short-term residents from January, 2012 to August, 2013. During 2013, the current operator's Board of Directors decided to downsize the facility to 80 beds to accommodate plans for space renovation and to move hospital services to the facility, which resulted in the discharge of 38 residents. Later in 2013, the Board decided against moving hospital operations to the facility and considered plans for closure of Uihlein. The facility's 2013 and 2014 cost reports indicate only 80 of the 156 certified beds were staffed. The reduced number of staffed beds, admission restrictions and closure plans have considerably impacted the facility's occupancy rate.

There are only three RHCFs in Essex County, including Uihlein. The next closest RHCF to Uihlein is Essex Center for Rehab and Healthcare, which is 25.4 miles and a 34 minute drive from the facility. The other RHCF in the County, Heritage Commons Residential Health Care, is 62.6 miles and one hour and 13 minutes away. Mercy Living Center, a 60-bed RHCF in Franklin County, is 30.4 miles and a 40 minute drive from Uihlein. Occupancy at Mercy Living Center is 96.7% as of January 13, 2016.

Essex County's occupancy rates are indicated in the following table:

Essex County Facilities	Distance/Time	RHCF Beds	2013	2014	2015	Most Recent	Date
<i>Uihlein Living Center</i>	0.0	156	50.0%	45.9%	46.0%	46.2%	1/13/16
Essex Center for Rehab	25.4mi/34 mins	100	89.8%	94.6%	93.9%	97.0%	1/6/16
Heritage Commons	62.6mi/1hr 13 mins	84	90.6%	90.1%	94.8%	90.5%	1/6/16
<b>Essex County</b>		<b>340</b>	<b>71.7%</b>	<b>77.8%</b>	<b>72.1%</b>	<b>72.1%</b>	

Through the applicant's affiliated organization, Post Acute Partners, the proposed operators plan to put in place programs that meet the needs of the Eastern Adirondack community related to their experience providing ventilator and respiratory services, cardiac, stroke and diabetic care programs and behavioral management for the cognitively impaired. The applicant has the goal of addressing the long term care needs of the region to allow residents to access services closer to their families while also providing sub-acute care for residents discharged from out-of-state acute care facilities. To increase occupancy at the facility the proposed operators will:

- Implement the Smarts Express Care program to reduce emergency and hospital admissions by providing testing and treatment for conditions that include pneumonia, weakness, chronic heart failure and COPD. Through the program, residents receive personalized occupational and physical therapy to facilitate and expedite their return to the community;
- Implement programs for residents with bariatric, wound care, cardio-pulmonary and diabetic conditions and various forms of dementia to assist local hospitals participating in DSRIP initiatives to prevent readmissions and more quickly discharge patients;
- Continue to develop relationships with Lake Placid Orthopedics to provide a seamless transition from surgery to post-acute rehabilitation to home;
- Work closely with Adirondack Medical Center, which is proposing a new state-of-the-art inpatient and ambulatory surgical suite on its Saranac Lake campus (CON No. 152093), to create capacity for treating patients who would otherwise leave the region for care. Adirondack Health has also submitted an administrative CON (No. 152092) for approval to relocate all existing services from its Lake Placid hospital campus to the Uihlein Campus in a newly constructed building as part of larger, more integrated strategy for the campus to improve value and quality and serve as a source of referrals to the RHCF;
- Preserve the history of the facility by maintaining a relationship with the Sisters of Mercy who reside in the Uihlein building and continuing the on-campus Chapel, also in the building, and a vital part of the Lake Placid community;
- Establish a dedicated administrative unit whose coordinator will directly report to the facility administrator to conduct outreach and marketing;
- Contract with the managed care plans that cover the facility's catchment area to ensure options for residents required to enroll in managed care; and
- Invest in physical plant improvements in the first three years of ownership to create an attractive, friendly and home-like environment.

#### 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.

Uihlein's Medicaid admissions for 2012 was 35.1% and exceeded the Essex County 75% rate of 26.4%. Uihlein's Medicaid admissions for 2013 was 33.1% , which was below the Essex County 75% rate of 34.4%; the facility will be required to follow the contingency plan as noted.

**Conclusion**

Approval of this application will result in providing a much needed resource for residents in the community.

**Recommendation**

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

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

	Existing	Proposed
Facility Name	Uihlein Living Center	Elderwood of Uihlein at Lake Placid
Address	185 Old Military Road Lake Placid, NY 12946	Same
RHCF Capacity	156	Same
ADHC Program	N/A	N/A
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Adirondack Medical Center	185 Old Military Road Operating Company, LLC  <u>Sole Member</u> 185 Old Military Road Operating Holdco, LLC Warren Cole                    50.00% Jeffrey Rubin                    50.00%

**Character and Competence - Background**

**Facilities Reviewed**

NYS Nursing Homes

Elderwood at Hamburg	07/2013 to present
Elderwood at Liverpool	07/2013 to present
Elderwood at Amherst	07/2013 to present
Elderwood at Grand Island	07/2013 to present
Elderwood at Lancaster	07/2013 to present
Elderwood at Cheektowaga	07/2013 to present
Elderwood at Williamsville	07/2013 to present
Elderwood at Waverly	07/2013 to present
Elderwood at Wheatfield	07/2013 to present

NYS Adult Home/Enriched Housing Program

Elderwood Village at Williamsville	07/2013 to present
Elderwood Assisted Living at Wheatfield	07/2013 to present
Elderwood Assisted Living at West Seneca	07/2013 to present
Elderwood Assisted Living at Cheektowaga	07/2013 to present
Elderwood Assisted Living at Hamburg	07/2013 to present
Elderwood Assisted Living at Waverly	07/2013 to present

<u>NYS Licensed Home Care Agency</u>		
Elderwood Assisted Living at West Seneca		07/2013 to present
Elderwood Assisted Living at Cheektowaga		07/2013 to present
Elderwood Assisted Living at Hamburg		07/2013 to present
Elderwood Assisted Living at Waverly		07/2013 to present
Woodmark Pharmacy of New York, LLC		07/2013 to present

Alabama

Laurelton Rehabilitation and Nursing Center	SNF	10/2006-5/2008
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California

Care Alternatives of California	HOS	07/2005-10/2009
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Connecticut

Danbury Health Care Center	SNF	07/2005-10/2009
Darien Health Care Center	SNF	07/2005-2007
Golden Hill Health Care Center	SNF	07/2005-10/2009
Long Ridge of Stamford	SNF	07/2005-10/2009
Newington Health Care Center	SNF	07/2005-10/2009
River Glen Health Care Center	SNF	07/2005-10/2009
The Highlands Health Care Center	SNF	07/2005-10/2009
West River Health Care Center	SNF	07/2005-10/2009
Westport Health Care Center	SNF	07/2005-10/2009
Wethersfield Health Care Center	SNF	07/2005-10/2009
Partners Pharmacy of Connecticut	RX	07/2005-10/2009

Kansas

Care Alternatives of Kansas	HOS	07/2005-10/2009
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Maryland

Montgomery Village Health Care Center	SNF	07/2005-10/2009
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Massachusetts

Brookline Health Care Center	SNF	07/2005-10/2009
Calvin Coolidge Nursing & Rehab Center	SNF	07/2005-10/2009
Cedar Hill Health Care Center	SNF	07/2005-10/2009
Concord Health Care Center	SNF	07/2005-10/2009
Essex Park Rehabilitation & Nursing Center	SNF	07/2005-10/2009
Holyoke Health Care Center	SNF	07/2005-10/2009
Lexington Health Care Center	SNF	07/2005-10/2009
Lowell Health Care Center	SNF	07/2005-10/2009
Milbury Health Care Center	SNF	07/2005-10/2009
New Bedford Health Care Center	SNF	07/2005-10/2009
Newton Health Care Center	SNF	07/2005-10/2009
Peabody Glen Health Care Center	SNF	07/2005-10/2009
Redstone Health Care Center	SNF	07/2005-10/2009
Weymouth Health Care Center	SNF	07/2005-10/2009
Wilmington Health Care Center	SNF	07/2005-10/2009
Care Alternatives of Massachusetts	HOS	07/2005-10/2009
Partners Pharmacy of Massachusetts	SNF	07/2005-10/2009
Woodmark Pharmacy of Massachusetts	RX	06/2013 to present

Michigan

Grand Blanc Rehabilitation & Nursing Center	SNF	10/2006-10/2009
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Missouri

Care Alternatives of Missouri	HOS	07/2005-10/2009
Cliffview at Riverside Rehab & Nursing Center	SNF	10/2006-05/2008
Partners Pharmacy of Missouri	RX	07/2005-10/2009

New Jersey

Bergen Care Home Health	HHA	2007-10/2009
Bergen Care Personal Touch	HHA	2007-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Care One at Dunroven	SNF	07/2005-10/2009
Care One at East Brunswick	SNF	07/2005-10/2009
Care One at Evesham	SNF	07/2005-10/2009
Care One at Evesham Assisted Living	ALF	10/2007-10/2009
Care One at Ewing	SNF	07/2005-10/2009
Care One at Hamilton	SNF	07/2005-10/2009
Care One at Holmdel	SNF	07/2005-10/2009
Care One at Jackson	SNF	07/2005-10/2009
Care One at King James	SNF	07/2005-10/2009
Care One at Livingston	SNF	09/2005-10/2009
Care One at Livingston	ALF	09/2005-10/2009
Care One at Madison Avenue	SNF	07/2005-10/2009
Care One at Moorestown	SNF	07/2005-10/2009
Care One at Moorestown	ALF	07/2005-10/2009
Care One at Morris	SNF	07/2005-10/2009
Care One at Morris Assisted Living	ALF	07/2005-10/2009
Care One at Pine Rest	SNF	07/2005-10/2009
Care One at Raritan Bay MC	LTA	07/2005-10/2009
Care One Harmony Village at Moorestown	SNF	07/2005-10/2009
Care One at Teaneck	SNF	04/2007-10/2009
Care One at The Cupola	SNF	07/2005-10/2009
Care One at The Highlands	SNF	07/2005-10/2009
Care One at Valley	SNF	07/2005-10/2009
Care One at Wall	SNF	07/2005-10/2009
Care One at Wayne	SNF/ALF	07/2005-10/2009
Care One at Wellington	SNF	07/2005-10/2009
Ordell Health Care Center	SNF	07/2005-10/2009
Somerset Valley Rehabilitation and Nursing	SNF	10/2006-10/2009
South Jersey Health Care Center	SNF	07/2005-10/2009
Woodcrest Health Care Center	SNF	07/2005-10/2009
Care Alternatives of New Jersey	HOS	07/2005-10/2009
Partners Pharmacy of New Jersey	RX	07/2005-10/2009

North Carolina

Blue Ridge Health Care Center	SNF	07/2005-10/2009
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Ohio

Bellbrook Health Care Center	SNF	07/2005-10/2009
The Rehabilitation & Nursing Center at Elm Creek	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Firelands	SNF	10/2006-10/2009
The Rehabilitation & Nursing Center at Spring Creek	SNF	10/2006-10/2009

Pennsylvania

Presque Isle Rehabilitation and Nursing Center	SNF	10/2006-10/2009
The Rehab and Nursing Center at Greater Pittsburgh	SNF	10/2006-10/2009
Pediatric Specialty Care at Point Pleasant	ICF	02/2011 to present
Pediatric Specialty Care at Doyleston	SNF	02/2011 to present
Pediatric Specialty Care at Quakertown	ICF	02/2011 to present
Pediatric Specialty Care at Lancaster	ICF	02/2011 to present

Pediatric Specialty Care at Hopewell	ICF	02/2011 to present
Pediatric Specialty Care at Philadelphia	ICF	02/2011 to present
Senior Living at Lancaster	HOM	02/2011 to present
Care Alternatives of Pennsylvania	HOS	07/2005-10/2009

Puerto Rico

Medicare Y Mucho Mas	Medicare Advantage Plan	07/2005-11/2009
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Rhode Island

Chestnut Terrace Rehabilitation and Nursing	SNF	02/2014 to present
Scallop Shell Nursing and Rehabilitation Center	SNF	12/2010 to present

Virginia

Colonial Heights Health Care Center	SNF	07/2005-10/2009
Glenburnie Rehabilitation	SNF	07/2005-10/2009
Hopewell Health Care Center	SNF	07/2005-10/2009

**Key**

ACU	acute care/hospital	ICF	intermediate care facility/group home
ALF	assisted living facility	IRF	intermediate rehab facility
HHA	home health agency	LTA	long term acute care hospital
HOM	homecare	RX	pharmacy
HOS	hospice	SNF	skilled nursing facility/nursing home

The principals of 185 Old Military Road Operating Company, LLC have also received Public Health and Health Planning Council contingent approval on August 6, 2015 to operate Mcauley Manor at Mercycare. This ownership interest was not included in the Character and Competence – Background because the transaction has not been finalized.

**Individual Background Review**

**Warren Cole** is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, LLC Mr. Cole was involved with Care Ventures, Inc., an investment firm which acquires operational and real estate interests in nursing homes and provides financing to health care facilities throughout the United States. Mr. Cole has had extensive health facility ownership interests, which are listed above.

**Jeffrey Rubin** is a member and co-founder of Post Acute Partners, LLC, which owns, operates and develops healthcare facilities across the United States, including skilled nursing facilities, assisted living facilities, pediatric specialty care hospitals, home health agencies and institutional pharmacies. Prior to founding Post Acute Partners, Dr. Rubin served as Executive Vice President Business Development for Care One Management, LLC/Healthbridge Management, LLC from 2000-2009. Previous to his involvement with Care One, Dr. Rubin served as President of Millennium Healthcare, Inc. which was the precursor to Care One. Dr. Rubin was formerly a practicing dentist, with his license currently inactive. Dr. Rubin has had extensive health facility ownership interests, which are listed above.

In the ten year period preceding the formation of Post Acute Partners early in 2010 both Dr. Rubin and Mr. Cole held minority ownership interests, and in some circumstances also held management positions, in a group of affiliated, privately held companies which owned and operated various health care facilities and/or services in several states. Upon their separation from the companies in late 2009, they relinquished their management positions, and since that time they've had no authority or ability to direct, influence or otherwise affect the operations of the companies' holdings.

A review of the facilities that Mr. Cole and Dr. Rubin held and relinquished prior to the formation of Post Acute Care Partners was undertaken at their time of acquisition of Elderwood Senior Care, and revealed no issues of character and competence.



### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for Elderwood at Hamburg, Elderwood at Liverpool, Elderwood at Amherst, Elderwood at Grand Island, Elderwood at Lancaster, Elderwood at Cheektowaga, Elderwood at Williamsville, Elderwood at Waverly, Elderwood at Wheatfield, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Elderwood Village at Williamsville, Elderwood Assisted Living at Wheatfield, Elderwood Assisted Living at West Seneca, Elderwood Assisted Living at Cheektowaga, Elderwood Assisted Living at Hamburg, and Elderwood Assisted Living at Waverly for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations Elderwood Assisted Living at West Seneca, Elderwood Assisted Living at Cheektowaga, Elderwood Assisted Living at Hamburg, and Elderwood Assisted Living at Waverly (LCHSAs) for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

Review of the current out of state facilities for which Mr. Cole and Dr. Rubin hold current ownership interests is notified below.

A review of Chestnut Terrace Rehabilitation and Nursing, and Scallop Shell Nursing and Rehabilitation of Rhode Island for the periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements. This information was obtained from a Rhode Island State Official, as well as the Medicare.gov Nursing Home Compare website.

A review of Woodmark Pharmacy of Massachusetts for the period indicated above reveals that there were no issues with licensing and certification, as provided by the State of Massachusetts.

The applicants have submitted an affidavit regarding the six pediatric intermediate care facilities in which they attest to the provision of a substantially consistent high level of care.

On or about August 16, 2013 an affiliate of the applicant (Niagara Advantage Health Plan, LLC) submitted an application to NYSDOH to establish a Managed Long Term Care Plan. This application is currently pending in the Department.

### Project Review

No changes in the program or physical environment are proposed in this application. The applicant will enter into an administrative services agreement with Elderwood Administrative Services, LLC. Elderwood Administrative is 100% owned by Post Acute Partners Management, LLC, which is jointly owned by Warren Cole and Jeffrey Rubin.

### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the operating interests of the RHCF, to be effectuated upon PHHPC approval of this application. The terms of the agreement are summarized below:

Date:	April 13, 2015
Seller:	Adirondack Medical Center
Purchaser:	Post Acute Partners Acquisition, LLC
Asset Transferred:	All right, title and interest in: supplies, inventory, consumables and other medical goods; furniture, furnishings, equipment, computers, machinery; tangible personal property; books, records, documents, surveys, reports, related to Real Property; all assumed contracts; transferrable licenses; right to trademarks, trade names and variations thereof, specifically including the name Uihlein.
Excluded Assets:	Seller's cash and equivalents and securities; replacement and tax escrow; prepaid expenses; accounts receivable; rights, royalties and privileges relating to Kate Smith associated with the song "God Bless America"; tax returns; assets related to the sleep center, now or formerly located at the facility; and assets, funds and gift with respect to federal state or local vital access grants.
Assumed Liabilities:	Assumed contracts and Admission Agreements as they relate to periods after the Effective Time.
Purchase Price:	\$600,000
Payment of the Purchase Price:	\$60,000 Deposit; \$540,000 at the Closing

The purchase price for the operations is proposed to be satisfied with members' equity. The applicant states that the allocation of the purchase price will not be finalized until Closing. BFA Attachment A is the net worth summaries for the proposed members of Post Acute Partners, which shows sufficient liquid assets to meet equity requirements.

In association with the APA, Post Acute Partners agrees to spend an amount not less than \$4,500,000 for construction, rehabilitation or renovations, at the Purchaser's discretion, with no less than \$2,000,000 coming on or before the first anniversary date. The proposed operator is responsible for the capital expenditures. The applicant believes they have the capability to secure and service the debt to meet the obligation.

The applicant notes that Post Acute Partners is acquiring only the furniture and equipment associated with the operations and not the building or property. As prescribed by the APA, pursuant to the Ground Lease, AMC will lease its interest in the land, buildings, structures and easement rights to alleys and strips adjoining the real property to Post Acute Partners.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently there are no outstanding Medicaid liabilities.

### Assignment of Rights

The applicant has submitted a proposed Assignment of Rights for the assignment of the assets associated with the APA, as shown below:

Assignor:	Post Acute Partners Acquisition, LLC
Assignee-Operating Assets:	185 Old Military Road Operating Company, LLC
Operating Assets Transferred:	Assets as defined by the Asset Purchase Agreement
Assignee-Leasehold Interest:	185 Old Military Road, LLC
Leasehold Assets Transferred:	Land, Buildings and Structures as defined by the Ground Lease
Considerations:	\$10

### Health Care Facility Lease Agreement

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

Premises:	All of the landlord's right, title and interest in and to the real property and facility at 185 Old Military Road, Lake Placid, New York 12946
Landlord:	185 Old Military Road, LLC
Lessee:	185 Old Military Road Operating Company, LLC
Term:	10 years with four 5-year renewal options
Rent:	An amount not less than the amounts necessary to cover any debt service of the landlord, its affiliates, or parent, and related to the property.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an original affidavit attesting to the relationship between the landlord and the operating entity.

It is noted that the Health Care Facility Lease Agreement is governed by the above referenced Ground Lease between Post Acute Partners and AMC.

### Administrative Services Agreement

The applicant has submitted a draft Administrative Service Agreement, summarized as follows:

Provider:	Elderwood Administrative Services, LLC
Company:	185 Old Military Road Operating Company, LLC d/b/a Elderwood of Uihlein at Lake Placid
Services Provided:	All functions related to: Accounts Receivable, Billing, Accounts Payable, Payroll (excluding responsibility, obligation or liability); and budgets; financial reporting; regulatory reports; bookkeeping; human resources; information technology; insurance and risk management; and corporate compliance.
Term:	From Effective Date until December 31, 2016, with automatic 1-year renewals.
Fee:	\$25,000 per month with periodic adjustments based on a consideration of the fees, the scope of operations, the changes in the purchasing power of money, the services being performed, the size of nonprofessional workforce and the expenses of the provider, reflecting the fair market value.

The sole member of the administrative services provider entity is Post Acute Partners Management, LLC, whose members are Warren Cole and Jeffrey Rubin.

## Operating Budget

The applicant has provided the current year, and first and third year operating budgets subsequent to the change in ownership, in 2015 dollars, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<b>Revenues</b>						
Commercial FFS	\$313.92	\$158,845	\$386.56	\$561,677	\$426.06	\$1,821,425
Medicare FFS	\$356.62	\$895,818	\$444.50	\$1,605,545	\$474.17	\$2,413,505
Medicaid FFS	\$178.22	\$3,651,484	\$188.39	\$4,504,118	\$195.56	\$5,454,900
Private Pay	\$308.89	\$798,780	\$396.16	\$1,582,647	\$436.77	\$3,044,289
All Other		<u>\$919,820</u>		<u>\$504,474</u>		<u>\$686,598</u>
Total Revenues		\$6,424,747		\$8,758,461		\$13,420,717
<b>Expenses</b>						
Operating	\$322.94	\$8,426,547	\$303.06	\$9,991,435	\$274.64	\$12,146,911
Capital	<u>\$8.99</u>	<u>\$234,649</u>	<u>\$5.65</u>	<u>\$186,224</u>	<u>\$11.72</u>	<u>\$518,320</u>
Total Expenses	\$331.93	\$8,661,196	\$308.71	\$10,177,659	\$286.36	\$12,665,231
Net Income		<u>(\$2,236,449)</u>		<u>(\$1,419,198)</u>		<u>\$755,486</u>
Patient Days		26,093		32,969		44,229
Occupancy		45.8%		57.9%		77.7%

The following is noted with respect to the submitted budget:

- The Current Year represents the facility's 2014 experience. Due to low occupancy, the facility was staffed for 80 beds rather than the full 156 certified beds.
- The Medicare rates for Years One and Three are based on the facility's average 2014 rate experience. Commercial rates in Year One are based on actual first quarter 2015 commercial insurance per diems. A 5% increase each year thereafter is projected based on plans to negotiate with commercial insurance carriers for improved rates.
- Utilization increases are projected beginning in Year Two driven primarily by the renovation and reopening of a currently certified, but unstaffed 48-bed unit, accompanied by cosmetic renovations throughout the facility and increased marketing efforts.
- Capital costs are projected to increase in Year Three based on additional depreciation expense related to the anticipated new capital investments.
- All Other revenue includes: Medicare Part B; reimbursement from the Sisters of Mercy who have a convent and Chapel on the premises, for staff, utilities and other services; administrative fee charged to Mercy Living Center (AMC's other RHCF operation) for processing their payroll; CNA training reimbursement; and rental income.
- Additional working capital needs resulting from any negative cash flow balance will be funded by the members.
- Overall utilization is 57.9% and 77.7% in Years One and Three, respectively, while utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	2.0%	4.4%	9.7%
Medicare FFS	9.6%	11.0%	11.5%
Medicaid FFS	78.5%	72.5%	63.1%
Private Pay	9.9%	12.1%	15.7%

- Breakeven utilization is estimated at 67.3% (38,311 patient days) and 73.3% (41,739 patient days) in Year One and Year Three, respectively.

## Capability and Feasibility

There are no project costs associated with this application. Post Acute Partners has agreed to acquire the rights to the RHCF's real property and operating interests for \$600,000. The acquisition price will be met with \$600,000 in members' equity. Post Acute Partners will assign its rights to the operating interest of the RHCF to 185 Old Military Road Operating Company, LLC and will transfer the leasehold rights to the property to 185 Old Military Road, LLC for a total of \$10.

The working capital requirement of \$2,110,872 is based on two months of third year expenses, as the facility shows a loss in the first year. Working capital will be met with \$1,270,872 in members' equity and an \$840,000 loan at LIBOR plus 2.75% for a five-year term. Capital Funding, LLC has provided a letter of interest for the working capital loan. Review of the operating members' net worth (BFA Attachment A) shows sufficient assets overall to meet equity requirements.

BFA Attachment C is 185 Old Military Road Operating Company, LLC's pro forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,870,872.

The current operator is staffing only 80 of the 156 certified beds. The applicant plans to upgrade the physical plant and eventually staff the full complement of certified beds. A schedule of expenditures has not been established and the related funding is not provided. The applicant anticipates that the general renovations and cosmetic improvements will lead to reopening of a 48-bed unit and drive increases in utilization.

The budget projects a \$1,419,198 loss in Year One and net income of \$755,486 in Year Three. This represents an increase of \$2,333,714 and \$6,995,970 in Year One and Year Three, respectively, over the Current Year's revenue. The budget projects 69.5% utilization growth, driven primarily by the above referenced renovation, the reopening of the unstaffed 48-bed unit and additional cosmetic renovations. The applicant intends to increase marketing efforts and implement a program to provide treatment for a variety of conditions including pneumonia, chronic heart failure and COPD. The applicant projects additional expenses of \$1,516,463 and \$4,004,035 in Year One and Year Three, respectively, based on increases in salaries and wages needed to accommodate the increase in utilization, but partially offset by utility savings and reduced employee benefits already agreed upon by the employee's union.

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, the 2012-2014 financial summary of Uilhein Living Center, indicates that the facility had a net asset deficit, generated an annual operating deficit and maintained a positive working capital position for 2013-2014.

BFA Attachment E, financial summary of affiliated RHCFs, shows the facilities maintained positive net income from operations for 2014 with the exception of 2850 Grand Island Boulevard Operating Company, LLC d/b/a Elderwood at Grand Island whose operating loss the applicant attributes to its involvement in a union campaign that impacted census and expenses. It is noted that the proposed operators established membership in the affiliated facilities as of July 28, 2013.

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.**

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## Attachments

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BFA Attachment A	Net worth summary, members of Post Acute Partners Acquisition, LLC
BFA Attachment B	Organizational Chart
BFA Attachment C	Pro Forma Balance Sheet, 185 Old Military Road Operating Company, LLC
BFA Attachment D	Financial Summary, Uihlein Living Center
BFA Attachment E	Financial Summary, affiliated nursing home facilities
LTC Attachment A	Quality Measures and Inspection Report



Project # 151321-E
Sapphire Nursing at Wappingers, LLC

Program: Residential Health Care Facility
Purpose: Establishment

County: Dutchess
Acknowledged: June 29, 2015

Executive Summary

Description

Sapphire Nursing at Wappingers, LLC (previously known as Dutchess Center for Rehabilitation and Nursing, LLC), a New York limited liability company, requests approval to be established as the new operator of Elant at Wappingers Falls, a 62-bed Article 28 residential health care facility (RHCF) located at 37 Mesier Avenue, Wappingers Falls (Dutchess County). A separate entity, 37 Mesier Avenue Real Estate, LLC, will acquire the real property. There will be no change in services.

On December 1, 2014, Elant at Fishkill, Inc., the current operator of Elant at Wappingers Falls, entered into an Asset Purchase Agreement (APA) with Yertle Operations, LLC, whereby Yertle Operations, LLC agreed to purchase the operations of Elant at Fishkill and Elant at Wappingers Falls upon approval by the Public Health and Health Planning Council (PHHPC). Elant at Fishkill is a 160-bed Article 28 RHCF located at 22 Robert R. Kasin Way, Beacon (Dutchess County), New York. The APA provides that the purchase price for the assets is one dollar (\$1) plus the assumption of certain liabilities by Yertle Operations, LLC. Yertle Operations, LLC and the applicant will enter into an Assignment and Assumption Agreement whereby Yertle Operations, LLC will assign its rights and obligations relating to the Wappingers Falls facility to the applicant.

Concurrently, Elant at Fishkill, Inc., the real property owner of the two nursing facilities, and 22 Robert Kasin Way Real Estate, LLC entered into a Contract of Sale for the purchase of the

real estate associated with the two facilities for \$1. Upon PHHPC approval, 22 Robert Kasin Way Real Estate, LLC will enter into an Assignment and Assumption Agreement with 37 Mesier Avenue Real Estate, LLC, whereby 22 Robert Kasin Way Real Estate, LLC will assign its rights and obligations relating to the Wappingers Falls facility to 37 Mesier Avenue Real Estate, LLC. Upon PHHPC approval, 37 Mesier Avenue Real Estate, LLC will lease the premises to the applicant for a term of 30 years. There is a relationship between 37 Mesier Avenue Real Estate, LLC and Sapphire Nursing at Wappingers, LLC in that the entities have common ownership.

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

Table with 2 columns: Entity, Percentage. Row 1: Current Operator Elant at Fishkill, Inc. d/b/a Elant at Wappingers Falls. Row 2: Member/Active Parent Elant, Inc. 100%

Table with 2 columns: Member, Percentage. Row 1: Proposed Operator Sapphire Nursing at Wappingers, LLC. Row 2: Members Richard Platschek (Manager) 33.34%. Row 3: Esther Farkovits 33.33%. Row 4: Machla Abramczyk 20.00%. Row 5: Robert Schuck 13.33%

BFA Attachment C presents an Organization Chart of the facility and the real property ownership after the requested change.

Concurrently under review are CON 151327 (Elant at Goshen), CON 151307 (Elant at Fishkill) and CON 152005 (Elant at Meadow Hill), in which the same proposed members are seeking approval to purchase three other Elant RHC operations.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will be no changes to the certified bed capacity as a result of this project. Elant at Wappingers Falls' occupancy was 92.7% in 2011, 91.2% in 2012, and 93.1% in 2013. Current occupancy, as of December 23, 2015 is 91.9%, with 5 vacant beds.

Program Summary

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with a related party entity, Sapphire HC Management Care, LLC. No other administrative services or consulting agreements are proposed in this application. No negative information has been

received concerning the character and competence of the proposed applicants. All related health care facilities are in substantial compliance with all rules and regulations. The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

Financial Summary

There are no project costs associated with this proposal. The purchase price for the assets is \$1 plus the assumption by Yertle Operations, LLC of certain liabilities from December 1, 2014 to pre-closing, amounting to \$754,047. The operating budget is as follows:

Revenues	\$6,281,766
Expenses	<u>6,271,009</u>
Net Income	\$ 10,757



## 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 lease agreement, acceptable to the Department of Health. [BFA]
2. Submission of an executed assignment and assumption agreement for the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed assignment and assumption agreement for the realty, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
5. 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]
6. 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 nursing 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]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. 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]
8. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
9. Submission of a photocopy of a sample Unit Certificate (See Schedule 14B, Section IV). [CSL]
10. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]
11. Submission of a photocopy of the Lease Agreement that is fully signed by all the parties thereto (See Schedule 3A, General Instructions). [CSL]
12. Submission of a photocopy of the Assignment and Assumption Agreement Yertle Operations to Applicant signed by all of the parties thereto (See Schedule 3A, General Instructions). [CSL]

13. Submission of a photocopy of the Assignment and Assumption Agreement 22 Robert Kasin Way Real Estate, LLC to 37 Mesier Avenue Real Estate, LLC signed by all of the parties thereto (See Schedule 3A, General Instructions). [CSL]
14. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
15. Submission of a photocopy of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**February 11, 2016**

## Need Analysis

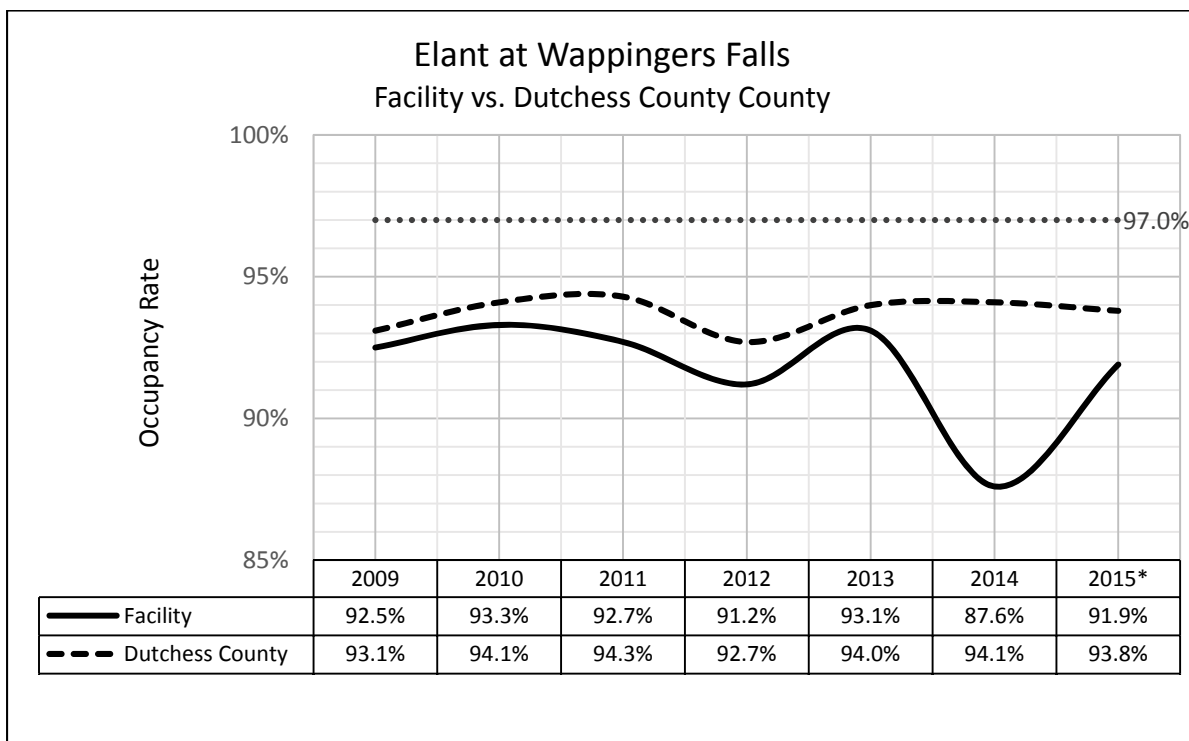
### Analysis

There is currently a surplus of 23 beds in Dutchess County as indicated in the following table:

#### RHCF Need – Dutchess County

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

The overall occupancy for Dutchess County is 94.0% for 2013 as indicated in the following chart:



\*unaudited; facility reported data

Elant at Wappingers Falls' occupancy was 92.7% in 2011, 91.2% in 2012, 93.1% in 2013 and 87.6% in 2014. The decline in occupancy between 2013 and 2014 is attributed to room renovations which required one or more resident rooms to be closed for a period of time.

According to the applicant, the existing facility is in need of interior renovation and reconfiguration which will be addressed upon approval of this application. The applicant also plans to add programs and services which would allow the facility to serve more medically complex individuals with chronic obstructive pulmonary disease (COPD), vascular insufficiencies, dementia, and psycho-geriatric conditions. It is anticipated that implementation of these programs and services, along with the renovations to the facility, will increase occupancy to 96.8% in the first year and 97.5% by the third year.

### 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.

Elant at Wappingers Falls' Medicaid admissions of 53.7% in 2012 and 46.6% in 2013 exceeded the Dutchess County 75% rates of 18.9% in 2012 and 19.5% in 2013.

**Conclusion**

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

**Recommendation**

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

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

	Existing	Proposed								
Facility Name	Elant at Wappingers Falls	Sapphire Nursing at Wappingers								
Address	37 Mesier Avenue Wappingers Falls, New York 12590	Same								
RHCF Capacity	62	Same								
ADHC Program Capacity	None	Same								
Type of Operator	Corporation	Limited Liability Company								
Class of Operator	Not for Profit	Proprietary								
Operator	Elant at Fishkill, Inc	Sapphire Nursing at Wappingers, LLC								
	<u>Active Parent/Co-operator:</u> Elant, Inc	<table style="width: 100%; border: none;"> <tr> <td style="padding-left: 20px;">Richard Platschek*</td> <td style="text-align: right;">33.34%</td> </tr> <tr> <td style="padding-left: 20px;">Esther Farkovits</td> <td style="text-align: right;">33.33%</td> </tr> <tr> <td style="padding-left: 20px;">Machla Abramczyk</td> <td style="text-align: right;">20.00%</td> </tr> <tr> <td style="padding-left: 20px;">Robert Schuck</td> <td style="text-align: right;">13.33%</td> </tr> </table>	Richard Platschek*	33.34%	Esther Farkovits	33.33%	Machla Abramczyk	20.00%	Robert Schuck	13.33%
Richard Platschek*	33.34%									
Esther Farkovits	33.33%									
Machla Abramczyk	20.00%									
Robert Schuck	13.33%									
		*Managing Member								

**Character and Competence - Background**

**Facilities Reviewed**

Nursing Homes

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	12/2005 to present
Ridge View Manor LLC	10/2012 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Facility	07/2004 to present

Williamsville Suburban LLC  
White Plains Center for Nursing

10/2012 to present  
07/2011 to present

Home Care Agencies  
Floral Home Care LLC

01/2012 to present

### **Individual Background Review**

Current ownership shares are noted in brackets.

**Richard (Aryeh) Platschek** lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard (Aryeh) Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC [4.5%]	10/2012 to present
Ridge View Manor LLC [4.5%]	10/2012 to present
Sheridan Manor LLC [4.5%]	10/2012 to present
South Shore Rehabilitation and Nursing Center [5%]	04/2014 to present

**Esther Farkovitz** is currently unemployed and lives out of the country. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovits discloses the following ownership interests in health facilities:

Little Neck Care Center [50%]	04/2011 to present
South Shore Rehabilitation and Nursing Center [45%]	04/2014 to present
Nassau Extended Care Facility [7%]	07/2004 to present
Park Avenue Extended Care Facility [7%]	07/2004 to present
The Citadel Rehab and Nursing Center at Kingsbridge [25%]	11/2015 to present
Throgs Neck Extended Care Facility [7%]	07/2004 to present
Townhouse Extended Care Center [7%]	07/2004 to present
Seagate Rehabilitation and Health Care Center [10%]	12/2014 to present
White Plains Center for Nursing [12%]	07/2011 to present

**Machla Abramczyk** lists her employment as Floral Home Care, LLC where she has been employed as a Quality Assurance Manager since January 2012. Ms. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC [63%]	01/2002 to present
Floral Home Care LLC [1%]	01/2012 to present

**Robert Schuck** is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center [25%]	04/2014 to present
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### Character and Competence - Analysis

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

A review of operations for Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation and Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Health Care Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, Williamsville Suburban LLC, White Plains Center for Nursing, The Citadel Rehab and Nursing Center at Kingsbridge, and Floral Home Care, LLC results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR

415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

#### Project Review

This application is proposing to establish Sapphire Nursing at Wappingers, LLC (originally named Dutchess Center for Rehabilitation and Nursing, LLC) as the new operator of Elant at Wappingers Falls. Sapphire Nursing at Wappingers, LLC is comprised of Richard Platschek (33.34%); Esther Farkovits (33.33%); Machla Abramczyk (20.00%); and Robert Schuck (13.33%). Richard Platschek will be the managing member of the facility. The current operator, Elant at Fishkill, entered into an asset purchase agreement with Yertle Operations, LLC. Yertle Operations, LLC will enter into an Assignment and Assumption Agreement whereby Yertle Operations, LLC will assign its rights and obligations relating to Elant at Wappingers Falls to the applicant. It should be noted that Yertle Operations, LLC and Sapphire Nursing at Wappingers, LLC have identical membership.

The applicant acknowledges a relationship with the proposed purchaser of the real property 22 Robert Kasin Way Real Estate, LLC. It should be noted that while one of the members of 22 Robert Kasin Way Real Estate, LLC is CEO of Sentosa Care, LLC, the applicant has asserted that the operating group will not enter into a contractual relationship with Sentosa Care, LLC for the provision of services to the facility.

The applicant has proposed to make no significant changes to staffing levels for RHCF operations and will attempt to retain key positions at the facility such as the Administrator of Record, Director of Nursing, Assistant Director of Nursing, Medical Director, Staff Physician, Nurse Practitioner, and Corporate Director of Rehabilitation. During the initial transition period the ownership group will designate a member to provide specific attention and oversight to the facility to ensure that the level and quality of care is maintained.

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party. Sapphire HC Management Care, LLC is owned by Richard (Aryeh) Platschek and his wife Golda Platschek. No other administrative services or consulting agreements are proposed in this application.

#### Conclusion

The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

#### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed Asset Purchase Agreement for the operating interests of the RHCf. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	December 1, 2014
Seller:	Elant At Fishkill, Inc.
Purchaser:	Yertle Operations, LLC
Acquired Assets:	All rights, title to and interest in all of the assets used in operation of the facility. All assets including furniture, fixtures equipment; vehicles; art works; computer hardware; machinery; tools; supplies and inventory; prepaid expenses; all intellectual property; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	All contracts other than assumed contracts, all nontransferable licenses, tax returns and records; all assets or seller's interest in the following entities: Glen Arden, Inc., Lifestyles Concepts, LLC, Elant Choice, Inc., Fishkill Foster Families, Fishkill Long Term Home Healthcare, Elant Foundation, Goshen Long Term Home Healthcare Program.
Assumption of Liabilities:	All liabilities of the seller incurred or arising and unpaid during pre-closing period.
Excluded Liabilities:	All non-assumable liabilities, All accounting and legal fees and all other costs and expenses incurred by seller in connection with the negotiation and execution of this contract, any liabilities arising from the ownership or use of the excluded assets, liability of seller that is not an assumed liability, all taxes prior to closing date, any liability of seller in excess of 500,000 in connections with any base year rate audit or any MDS audit, any liabilities of the seller not known at closing date.
Purchase Price:	\$1 and the assumption of certain liabilities associated with RHCf, which will be offset by the assumed assets prior to pre-closing. As of September 30, 2015, the current assets are 1,856,713 and liabilities are \$754,047.
Payment of Purchase Price:	Cash at Closing

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no current outstanding Medicaid liabilities.

### Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed real estate Purchase and Sale Agreement (PSA) related to the purchase of the RHCf's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	December 1, 2014
Seller:	Elant at Fishkill, Inc.
Buyer:	22 Robert Kasin Way Real Estate, LLC
Purchase Price:	\$1 and the refinancing of the bonds payable of \$1,859,495 as of September 30, 2015.
Assets Purchased:	Premises located at 37 Mesier Avenue, Wappingers Falls, NY (Dutchess Co. Tax Id# 135601-6158-18-359123-0000).

Under the APA, the purchaser agreed to assume the liabilities pursuant to section 3.1 and set forth on schedule 3.1. The assumed liabilities between the operation and the realty are indicated on BFA Attachment F. Under the PSA, in relation to the sale of the real property and pursuant to section 2.1, the transaction is conditioned upon the assumption of the assumed liabilities as set forth in the APA, which include the assumption of any mortgages and any other liabilities associate with the PSA transaction.

A loan letter of interest has been submitted by the applicant from Greystone to refinance the mortgage up to \$2,500,000 at 5.5% over 30 years. Also, proposed member of the realty, Benjamin Landa, has submitted an affidavit to contribute personal resources disproportionate to his membership interest if such equity is needed. BFA Attachment B is the net worth statement of Benjamin Landa showing sufficient equity.

#### Assignment and Assumption Agreements

The applicant submitted draft Assignment and Assumption Agreements for the operations and realty related to the Wappingers Falls facility, as summarized below:

#### Operations

Assignor:	Yertle Operations, LLC
Assignee:	Dutchess Center for Rehabilitation and Nursing, LLC (now known as Sapphire Nursing at Wappingers, LLC per NYS Department of State filing 6/16/15)
Rights Assigned:	All rights assigned under the Asset Purchase Agreement for the Wappingers Falls facility.

Yertle Operations, LLC will enter into an Assignment and Assumption Agreement whereby Yertle Operations, LLC will assign its rights and obligations relating to the Wappingers Falls facility to the applicant.

#### Realty

Assignor:	22 Robert Kasin Way Real Estate, LLC
Assignee:	37 Mesier Ave Real Estate, LLC
Rights Assigned:	All rights assigned under the Contract of Sale for the Wappingers Falls property.

22 Robert Kasin Way Real Estate, LLC, the Fishkill realty entity, will purchase both the Fishkill and Wappinger properties, and will assign the Wappinger property to 37 Mesier Avenue Real Estate, LLC, the Wappinger realty entity.

#### Lease Agreement

Facility occupancy is subject to a draft Lease Agreement, the terms of which are summarized below:

Premises:	A 62-bed RHCF located at 37 Mesier Avenue, Wappingers Falls, NY 12590
Landlord:	37 Mesier Avenue Real Estate, LLC
Tenant:	Dutchess Center for Rehabilitation and Nursing, LLC
Terms:	30 years commencing on execution of the lease with a 10-year option to renew
Rental:	\$131,525 annual base rent (\$10,960.42/month) with a 3% increase per year thereafter.
Provisions:	Tenant is responsible for taxes, utilities, maintenance, insurance, alterations

The long-term liability is \$1,859,495 as of September 30, 2015, and represents tax-exempt bonds which cannot be assumed by a proprietary entity. Therefore, they will be paid off and financed through the realty entity. Proposed member of the realty, Benjamin Landa, has submitted an affidavit attesting to his willingness to contribute personal resources disproportionate to his ownership interest. The amortized bonds are factored into the lease payments.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.



## Administrative Service Agreement

The applicant has provided a draft agreement for administrative services, which is summarized below:

Service Provider:	Sapphire HC Management Care, LLC
Service Purchaser:	Sapphire Nursing at Wappingers, LLC
Services Provided:	The billing, collection and management of Accounts Receivable; no less than weekly Medicaid billing; no less than monthly Commercial and Medicare billing; Payroll and Accounts Payable processing; providing data for financial reporting and any internal or external auditing; and cooperation with Federal and State reporting and regulatory requirements.
Exclusions:	The service purchaser will retain control of books and records, day-to-day operations, responsibility for regulatory compliance and the disposition of assets; the service provider will incur no liability on behalf of the facility, will not hire or fire employees and will not enforce policy regarding the operation of the facility.
Term:	One year with unlimited one year renewals, unless notice of termination is provided at least 30 days prior to the end of any renewal term.
Compensation:	\$50,918 per year or \$2.25 per bed per day (\$4,326 per month)

Richard Platschek, one of the members of Yertle Operations, LLC, and his wife Golda Platschek own Sapphire HC Management Care, LLC. The entity will provide the above noted accounting services. Facility staff will perform all other administrative services. Sapphire HC Management Care, LLC will also provided accounting services to the other RHCs being concurrently reviewed under CON 151327 (Elant at Goshen), CON 151307 (Elant at Fishkill) and CON 152005 (Elant at Meadow Hill).

## Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first and third years subsequent to the change of ownership. The budget is summarized below:

	<u>Current Year</u>					
	<u>Per Diem</u>	<u>(2014)</u>	<u>Per Diem</u>	<u>Year One</u>	<u>Per Diem</u>	<u>Year Three</u>
Revenue						
Medicaid FFS	\$207.50	\$3,111,018	\$207.85	\$3,364,294	\$215.98	\$3,492,419
Medicare FFS	\$613.15	\$1,843,745	\$633.67	\$2,121,528	\$662.37	\$2,283,836
Commercial FFS	\$434.74	\$289,100	\$473.50	\$332,400	\$468.99	\$339,081
Private Pay	\$566.12	\$651,601	\$336.65	\$563,544	\$333.26	\$574,871
All Other		\$27,990		(\$100,000)		(\$75,000)
Total Revenues		\$5,923,454		\$6,281,766		\$6,615,207
Expenses						
Operating	\$316.44	\$6,270,658	\$280.10	\$6,137,082	\$280.27	\$6,184,398
Capital	\$13.59	\$269,365	\$6.11	\$133,927	\$6.07	\$133,975
Total Expenses	\$330.04	\$6,540,023	\$289.55	\$6,271,009	\$289.55	\$6,318,373
Net Income		<u>(\$616,569)</u>		<u>\$10,757</u>		<u>\$296,834</u>
Patient Days		19,816		21,910		22,066

The following is noted with respect to the submitted budget:

- The current year reflects the current operator's 2014 RHC-4 cost report information.
- For budget Years One and Three, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate.
- The Current Year Medicare rate is the actual daily rate experienced by the facility during 2014 and the forecasted Year One Medicare rates represent the actual Medicare rates experienced by the facility during 2015.
- The Current Year commercial and private pay rates represent the average actual rates experienced by the facility for these payors during 2015. The Private Pay per diem rate is expected to be lower than the current year rate due to expected bad debt write-offs.

- Expenses will be reduced in Year One due to salary and benefit reductions related to reduced managerial staff. The reductions are held constant for Year Three. An increase in rent expense will be offset by an interest expense reduction.
- The current occupancy rate was 86.3% as of October 25, 2015, while utilization for 2014 was 88%. The decline is attributed to renovations that required one or more rooms to be closed for a period. The applicant expects to increase occupancy by upgrading and reconfiguring the physical plant and by adding programs and services to serve more medically complex individuals. The applicant also plans to work closely with local health care and social providers in an effort to publicize the new ownership of the facility. By implementing these programs and services, along with the renovations to the facility, it is anticipated that occupancy will increase to 97% by Year One.
- Utilization by payor for the first and third years after the change in ownership is summarized below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid-FFS	75.66%	73.87%	73.28%
Medicare-FFS	15.17%	15.28%	15.63%
Commercial-MC	3.36%	3.20%	3.28%
Private Pay	<u>5.81%</u>	<u>7.64%</u>	<u>7.81%</u>
Total	100.00%	100.00%	100.00%

- Breakeven utilization is projected at 96.6% for the first year.

### Capability and Feasibility

There are no project costs associated with this application. The purchase price for the assets is \$1 and the assumption by Sapphire Nursing at Wappingers, LLC of certain liabilities from December 1, 2014 to pre-closing, amounting to \$754,047.

The working capital requirement of \$1,045,168, based on two months of the first year's expenses plus current account payables and accrued expenses of \$762,966, will be met from \$1,209,296 in assumed account receivables, \$184,594 in assumed cash along with \$414,244 in members' equity. It is noted that liquid resources may not be available in proportion to the proposed ownership interest. Machla Abramczyk has provided an affidavit stating that she will contribute personal resources disproportionate to her membership interest. BFA Attachment A, proposed members' net worth, and BFA Attachment D, financial summary of Elant at Wappingers, reveal sufficient resources exist for stated levels of equity. BFA Attachment F is the Pro Forma Balance Sheet for the first day of operation, which shows the operation will start off with the members' equity of \$414,244.

The submitted budget indicates a net income of \$10,757 and \$296,834 during the first and third years, respectively. BFA Attachment G presents the budget sensitivity analysis based on current utilization as of October 30, 2015, which shows that budgeted revenues would increase by \$3,048, resulting in a net profit in Year One of \$13,805. Projected utilization by payor conforms to historical experience. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period. BFA Attachment D is the financial summary of Elant at Wappingers Falls. As shown, the facility has maintained negative working capital, negative equity position and generated an average annual operating loss of \$394,908 for the period and a net operating income of \$64,286 as of September 30, 2015. The applicant indicated the reason for the negative performance was due to a large amount of accounts receivable written off during this period. The management has implemented revised admission policy since 2013 to correct their admission practices by obtaining secondary insurance coverage on long-term residents to reduce uncollectible accounts.

BFA Attachments E, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net assets position, positive working capital position and positive income from operations for the periods shown with the exception of the following;

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Currently, the facilities are generating operating income in 2015.
- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- Williamsville Suburban, Ridgeview Manor and Sheridan Manor all show negative net assets position, negative working capital position and negative income from operation for the year 2013 and 2014 due to servicing of a high debt level. The facilities are in the process of being sold. Ridgeview Manor and Sheridan Manor have been approved through PHHPC and should be finalized shortly with the bankruptcy attorney. Williamsville Suburban is currently under review. The debt will be satisfied upon transfer of ownership.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 operating net income.

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	Proposed Members' Net Worth Summary
BFA Attachment B	Net Worth Statement for Benjamin Landa
BFA Attachment C	Organizational Chart and Pre and Post Ownership of Realty
BFA Attachment D	Financial Summary of Elant at Wappingers Falls & 2014 Certified Financial of Elant at Fishkill, Inc.
BFA Attachment E	Affiliated Residential Health Care Facilities and their Financial Summary
BFA Attachment F	Pro Forma Balance Sheet
BFA Attachment G	Budget Sensitivity Analysis
LTC Attachment A	Quality Measures and Inspection Report



Project # 151327-E
Goshen Operations, LLC d/b/a
Sapphire Nursing and Rehab at Goshen

Program: Residential Health Care Facility
Purpose: Establishment

County: Orange
Acknowledged: July 1, 2015

Executive Summary

Description

Goshen Operations, LLC d/b/a Sapphire Nursing and Rehab at Goshen, a New York limited liability company, requests approval to be established as the new operator of Elant at Goshen, Inc., a 120-bed Article 28 residential health care facility (RHCF) located at 46 Harriman Drive, Goshen (Orange County). The acquisition request includes the 40-slot adult day health care program (ADHCP) the RHCF operates at same location. A separate realty entity, 46 Harriman Drive Real Estate, LLC, will acquire the real property. There will be no change in services.

On December 1, 2014, Elant at Goshen, Inc., the current operator of the RHCF, entered into an Asset Purchase Agreement with Goshen Operations, LLC for the sale and acquisition of the RHCF operating interests for \$4,690,000 plus the assumption of certain liabilities, to be effectuated upon approval by the Public Health and Health Planning Council (PHHPC). Concurrently, Elant at Goshen, Inc., the current real property owner, entered into a Contract of Sale with 46 Harriman Drive Real Estate, LLC for the sale and acquisition of the real property for \$1. Upon PHHPC approval, 46 Harriman Drive Real Estate, LLC will lease the facility to the new operator for 30 years. There is a relationship between 46 Harriman Drive Real Estate, LLC (landlord) and Goshen Operations, LLC (operator) in that the entities have common members.

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

Table with 2 columns: Member/Active Parent, %
Current Operator: Elant at Goshen, Inc.
Elant, Inc. 100%

Table with 2 columns: Members, %
Proposed Operator: Goshen Operations, LLC
Richard Platschek (Manager) 33.34%
Esther Farkovits 33.33%
Machla Abramczyk 20.00%
Robert Schuck 13.33%

BFA Attachment C present an Organization Chart of the facility after the requested change.

Concurrently under review are CON 151307 (Elant at Fishkill), CON 151321 (Elant at Wappingers Falls) and CON 152005 (Elant at Meadow Hill), in which the same proposed members are seeking approval to purchase three other Elant RHCF operations.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds as a result of this project, however the new operator will rename the facility upon approval of this application. Elant at Goshen's occupancy was 95.4% in 2011, 95.7% in 2012, 95.8% in 2013 and 96.0% in 2014.

### Program Summary

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with a related party entity, Sapphire HC Management Care, LLC. No other administrative services or consulting agreements are proposed in this application. No negative information has been received concerning the character and competence of the proposed applicants. All related health care facilities are in substantial compliance with all rules and regulations. The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

### Financial Summary

There are no project costs associated with this proposal. The purchase price for the RHCF operations is \$4,690,000 plus the assumption by Goshen Operations, LLC of certain liabilities from December 1, 2014 to pre-closing, estimated at \$5,370,105 as of September 30, 2015. The acquisition price will be met with \$469,000 in members' equity and a self-amortizing loan for \$4,221,000 at 5.5% interest with a 30-year term. Greystone Bank has provided a letter of interest. 46 Harriman Drive Real Estate, LLC, the applicant's landlord, is purchasing the real property for \$1.

The operating budget for the first year following the change is as follows:

Revenues	\$18,045,784
Expenses	<u>17,641,908</u>
Gain/(Loss)	\$ 403,876

## 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 loan commitment for the purchase of the RHCF operations, acceptable to the Department of Health. [BFA]
2. Submission of an executed lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. 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]
6. 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]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. 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]
8. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
9. Submission of a photocopy of a sample Unit Certificate (See Schedule 14B, Section IV). [CSL]
10. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]
11. Submission of a copy of the Lease Agreement that is fully signed by all the parties thereto (See Schedule 3A, General Instructions). [CSL]
12. Submission of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
13. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.  
[PMU]

Council Action Date

**February 11, 2016**

# Need Analysis

## Project Description

Goshen Operations, LLC seeks approval to become the established operator of Elant at Goshen, an existing 120-bed Article 28 residential health care facility (RHCF), located at 46 Harriman Drive, Goshen, 10924, in Orange County. Upon approval of this application, Elant at Goshen will be renamed Sapphire Nursing and Rehab at Goshen. The acquisition includes the Adult Day Health Care Program operated by Elant at Goshen.

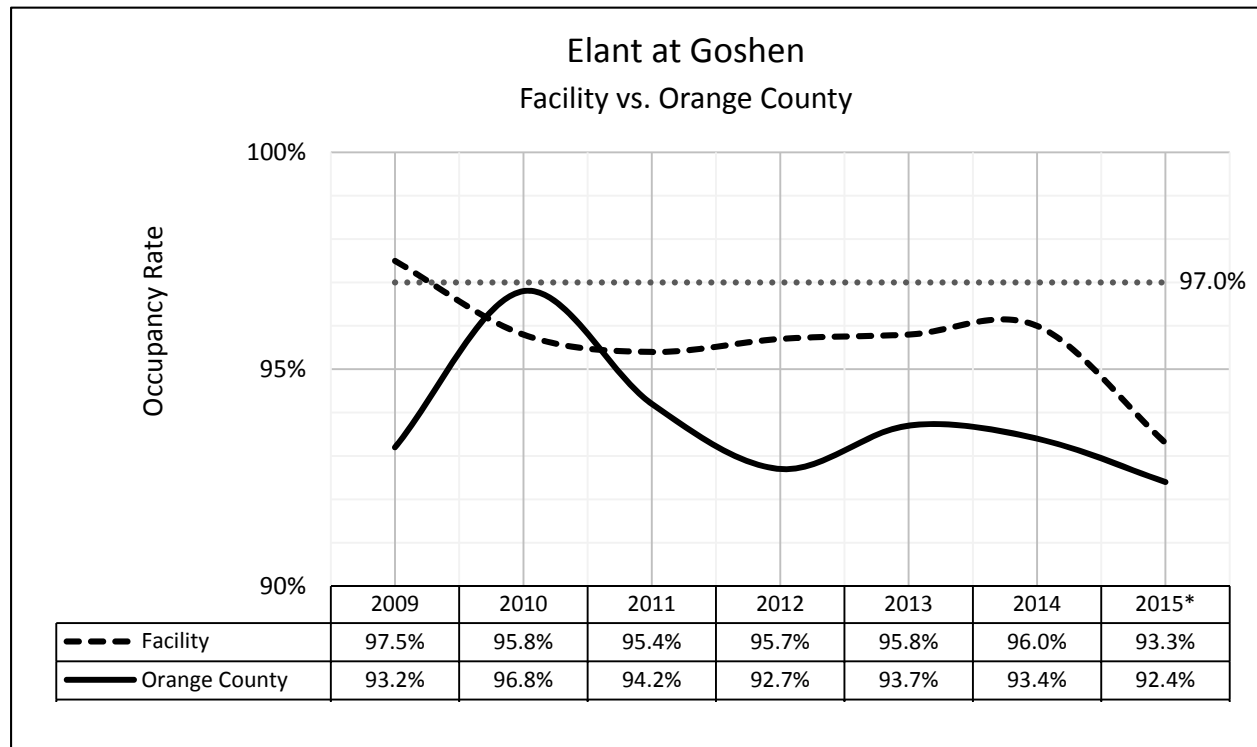
## Analysis

There is currently a need for 724 beds in Orange County as indicated in the following table:

### RHCF Need – Orange County

<b>2016 Projected Need</b>	2,122
<b>Current Beds</b>	1,398
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	1,398
<b>Unmet Need</b>	724

The overall occupancy for Orange County is 93.7% for 2013 as indicated in the following chart:



\*unaudited, facility reported data

Elant at Goshen's occupancy was 95.4% in 2011, 95.7% in 2012, 95.8% in 2013 and 96.0% in 2014. Current occupancy as of December 30, 2015 is 97.5%, with 3 vacant beds. This trend of high occupancy is expected to continue with the new operator.



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.

Elant at Goshen's Medicaid admissions of 26.3% exceeded the Orange County 75% rate of 23.6% in 2012. Elant at Goshen's Medicaid admissions of 25.6% did not meet the Orange County 75% rate of 28.3% in 2013, and the new operator will need to follow the contingencies as noted.

Conclusion

Approval of this application will result in maintaining a necessary community resource.

Recommendation

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

<b>Program Analysis</b>
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Facility Information

	<b>Existing</b>	<b>Proposed</b>
Facility Name	Elant at Goshen, Inc.	Sapphire Nursing and Rehab at Goshen
Address	46 Harriman Drive Goshen, NY 10924	Same
RHCF Capacity	120	Same
ADHC Program Capacity	40	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Elant at Goshen, Inc  <u>Active Parent/Co-operator</u> Elant, Inc	Goshen Operations, LLC  Richard Platschek *      33.34% Esther Farkovits        33.33% Machla Abramczyk      20.00% Robert Schuck            13.33%
		* Managing Member

Character and Competence - Background

**Facilities Reviewed**

Nursing Homes

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	12/2005 to present
Ridge View Manor LLC	10/2012 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present

Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Facility	07/2004 to present
Williamsville Suburban LLC	10/2012 to present
White Plains Center for Nursing	07/2011 to present
<u>Home Care Agencies</u>	
Floral Home Care LLC	01/2012 to present

### **Individual Background Review**

Current facility ownership shares are noted in brackets.

**Richard (Aryeh) Platschek** lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC [4.5%]	10/2012 to present
Ridge View Manor LLC [4.5%]	10/2012 to present
Sheridan Manor LLC [4.5%]	10/2012 to present
South Shore Rehabilitation and Nursing Center [5%]	04/2014 to present

**Esther Farkovitz** is currently unemployed and lives out of the country. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovitz discloses the following ownership interests in health facilities:

Little Neck Care Center [50%]	04/2011 to present
South Shore Rehabilitation and Nursing Center [45%]	04/2014 to present
Nassau Extended Care Facility [7%]	07/2004 to present
Park Avenue Extended Care Facility [7%]	07/2004 to present
The Citadel Rehab and Nursing Center at Kingsbridge [25%]	11/2015 to present
Throgs Neck Extended Care Facility [7%]	07/2004 to present
Townhouse Extended Care Center [7%]	07/2004 to present
Seagate Rehabilitation and Health Care Center [10%]	12/2014 to present
White Plains Center for Nursing [12%]	07/2011 to present

**Machla Abramczyk** lists her employment as Floral Home Care, LLC where she has been employed as a Quality Assurance Manager since January 2012. Ms. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC [63%]	01/2002 to present
Floral Home Care LLC [1%]	01/2012 to present

**Robert Schuck** is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center [25%]	04/2014 to present
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### Character and Competence - Analysis

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

A review of operations for Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation and Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Health Care Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, Williamsville Suburban LLC, White Plains Center for Nursing, The Citadel Rehab and Nursing Center at Kingsbridge, and Floral Home

Care, LLC results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

#### Project Review

This application is proposing to establish Goshen Operations, LLC as the new operator of Elant at Goshen. The facility will be renamed Sapphire Nursing and Rehab at Goshen as a result of this transaction. Goshen Operations, LLC is comprised of Richard Platschek (33.34%); Esther Farkovits (33.33%); Machla Abramczyk (20.00%); and Robert Schuck (13.33%). Richard Platschek will be the managing member of the facility.

The applicant acknowledges a relationship with the proposed purchaser of the real property, Harriman Drive Real Estate, LLC. It should be noted that while one of the members of Harriman Drive Real Estate, LLC is CEO of Sentosa Care, LLC, the applicant has asserted that the operating group will not enter into a contractual relationship with Sentosa Care, LLC for the provision of services to the facility.

The applicant has proposed to make no significant changes to staffing levels for RHCF operations and will attempt to retain key positions at the facility such as the Administrator of Record, Director of Nursing, Assistant Director of Nursing, Medical Director, Staff Physician, Nurse Practitioner, and Corporate Director of Rehabilitation. During the initial transition period the ownership group will designate a member to provide specific attention and oversight to the facility to ensure that the level and quality of care is maintained. Elant at Goshen previously operated a Long Term Home Health Care Program (LTHHCP) that was voluntarily closed in May of 2015. Any rights to this program are excluded from the purchase agreement and remaining positions related to this program will be eliminated. A separate application will be filed related to the purchase of the Adult Care Facility currently operated by Elant at Goshen.

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party. Sapphire HC Management Care, LLC is owned by Richard (Aryeh) Platschek and his wife Golda Platschek. No other administrative services or consulting agreements are proposed in this application.

#### Conclusion

The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

#### Recommendation

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

## Financial Analysis

### Asset Purchase Agreement

The applicant has submitted an executed Asset Purchase Agreement to acquire the operating interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON application. The terms of the agreement are summarized below:

Date:	December 1, 2014
Seller:	Elant at Goshen, Inc.
Purchaser:	Goshen Operations, LLC
Asset Transferred:	Tangible Personal Property; Intellectual Property; Assumed Contracts; Books and Records; Deposits; Licenses; Personnel Records; Warranties; Covenants; Provider Numbers; Insurance Proceeds; Cash, Accounts Receivable; Other Assets and Property held for use relating to or in connection with running the business; resident funds; goodwill; and refunds.
Excluded Assets:	Seller's Contracts, other than the Assumed; non-transferable licenses; organizational documents, corporate seal and tax records; real property; the name Elant; assets related to Glen Arden, Inc.; assets related to Lifestyles Concepts, LLC; assets related to Elant Choice, Inc.; assets related to Fishkill Foster Families; assets related to Elant Foundation; assets related to Fishkill Long Term Home Health Care Program; and assets related to Goshen Long Term Home Health Care Program.
Assumed Liabilities:	All liabilities of the Seller incurred or arising and unpaid during the pre-closing period and all obligations, costs and liabilities related to the Elant Inc. Defined Benefit Plan.
Purchase Price:	\$4,690,000 plus assumed liabilities estimated at \$5,370,105 as of 9/30/15 (which is classified between current liabilities of \$2,773,536 and non-current of \$2,596,565).
Payment of Purchase Price:	\$240,000 initial deposit on date of execution of the Agreement; \$2,100,000 additional deposit 60 days following execution of Agreement; \$2,350,000 balance due at Closing

BFA Attachment G provides some additional details on the assumed assets of \$4,632,826 and the assumed liabilities of \$5,370,105. The values were as of September 30, 2015, and are subject to change.

The purchase price for the operations is proposed to be satisfied as follows:

Equity from Members	\$469,000
Loan (30 years, 5.5% interest)	<u>4,221,000</u>
Total	<u>\$4,690,000</u>

Greystone has provided a letter of interest for the financing.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no outstanding Medicaid liabilities.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed Purchase and Sale Agreement (PSA) related to the purchase of the RHCF's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	December 1, 2014
Seller:	Elant at Goshen, Inc.
Buyer:	46 Harriman Drive Real Estate, LLC
Purchase Price:	\$1 and the assumption of Mortgages Payable estimated at \$12,881,354.
Premises:	Land, buildings, hereditaments, fixtures and equipment known as 46 Harriman Drive, Goshen, New York 10924.

Under the APA, the purchaser agreed to assume the liabilities pursuant to section 3.1 and set forth on schedule 3.1. The assumed liabilities between the operation and the realty are indicated on BFA Attachment F. Under the PSA, in relation to the sale of the real property and pursuant to section 2.1, the transaction is conditioned upon the assumption of the assumed liabilities as set forth in the APA, which include the assumption of any mortgages and any other liabilities associate with the PSA transaction.

A loan letter of interest has been submitted by the applicant from Greystone to refinance the mortgage up to \$13,000,000 at 5.5% over 30 years. In addition, proposed member of the realty, Benjamin Landa, has submitted an affidavit to contribute personal resources disproportionate to his membership interest if such equity is needed. BFA Attachment B is the net worth statement of Benjamin Landa showing sufficient equity.

Lease Agreement

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

Premises:	120-bed RHCF and 40-slot ADHCP located at 46 Harriman Drive, Goshen, New York 10924.
Owner/Landlord:	46 Harriman Drive Real Estate, LLC
Lessee:	Goshen Operations, LLC
Terms:	30 years, with a one (1) ten-year renewal option
Rent:	\$1,163,602 (\$96,967 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity.

Administrative Services Agreement

The applicant has submitted a draft agreement for administrative services, which is summarized below:

Service Provider:	Sapphire HC Management Care, LLC
Service Purchaser:	Goshen Operations, LLC
Services Provided:	The billing, collection and management of Accounts Receivable; no less than weekly Medicaid billing; no less than monthly Commercial and Medicare billing; Payroll and Accounts Payable processing; providing data for financial reporting and any internal or external auditing; and cooperation with Federal and State reporting and regulatory requirements.
Exclusions:	The service purchaser will retain control of books and records, day-to-day operations, responsibility for regulatory compliance and the disposition of assets; the service provider will incur no liability on behalf of the facility, will not hire or fire employees and will not enforce policy regarding the operation of the facility.

Term:	One year with unlimited one year renewals, unless notice of termination is provided at least 30 days prior to the end of any renewal term.
Compensation:	\$156,038 per year or \$2.25 per bed per day (\$13,003 per month)

Richard Platschek, one of the proposed members of Goshen Operations, LLC, and his wife Golda Platschek own Sapphire HC Management Care, LLC. The entity will provide the above noted accounting services. Facility staff will perform all other administrative services. Sapphire HC Management Care, LLC will also provide accounting services to the other RHCs, concurrently being reviewed under CON 151307 (Elant at Fishkill), CON 151321 (Elant at Wappingers Falls) and CON 152005 (Elant at Meadow Hill).

#### Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first and third years subsequent to the change in ownership, summarized as follows:

	<u>Per</u> <u>Diem</u>	<u>Current</u> <u>Year 2014</u>	<u>Per</u> <u>Diem</u>	<u>Year One</u>	<u>Per</u> <u>Diem</u>	<u>Year Three</u>
<b>Revenues:</b>						
Medicaid FFS	\$245.52	\$5,737,877	\$244.34	\$5,698,805	\$244.34	\$5,698,805
Medicare FFS	\$550.76	7,245,258	\$662.70	8,935,813	\$663.11	8,941,431
Commercial FFS	\$113.10	133,350	\$399.98	495,180	\$399.88	495,180
Private Pay	\$622.18	<u>2,710,216</u>	\$472.66	2,161,944	\$472.73	2,161,944
Subtotal		\$15,826,701		<u>(150,000)</u>		<u>(150,000)</u>
ADHCP	\$106.09	851,899		\$17,141,742		\$17,147,360
LTHHCP	\$91.66	<u>4,683,744</u>	\$112.58	<u>904,042</u>	\$114.85	<u>922,213</u>
Total Revenues		\$21,362,344		\$18,045,784		\$18,069,573
<b>Expenses:</b>						
Operating	\$188.79	\$19,103,464	\$324.26	\$16,423,531	\$327.21	\$16,573,088
Capital	<u>10.93</u>	<u>1,105,835</u>	<u>24.06</u>	<u>1,218,377</u>	<u>24.15</u>	<u>1,223,340</u>
Total Expenses	\$199.72	\$20,209,299	\$348.32	\$17,641,908	\$351.36	\$17,796,428
Net Income		<u>\$1,153,045</u>		<u>\$403,876</u>		<u>\$273,145</u>
RHCF Days/Util	42,060	96.03%	42,619	97.30%	42,619	97.30%
ADHCP Visits	8,030	77.21%	8,030	77.21%	8,030	77.21%
LTHHCP Visits	51,100	-----				

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 RHCF-4 cost report information.
- Average utilization for the RHCF years from 2011 through 2014 was 95.73%. As of December 16, 2015, occupancy was 98.3% per the Division of Nursing Homes and ICF/IID Surveillance report.
- The LTHHCP closed, thus no revenues are included in the first and third year budgets.
- For budget Years One and Three, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate. The current year Medicare rate is the actual daily rate experienced by the facility during 2014 and the forecasted year one Medicare rate is the actual daily rate experienced by the facility during 2015. The current year commercial and private pay rates represent the average actual rates experienced by the facility for these payers during 2015.
- As the LTHHCP and Adult Home are not part of this CON, related expenses of approximately \$3,201,214 were excluding from the first and third year budgets. Those reduction were partially offset by adding 3% to the majority of current year expenses, plus an increase in rent expense that was partially offset by an interest expense reduction. Salaries and fringe benefits were increased by 3% in Year One, but held constant in Year Three. No staff changes are expected.
- The expenses and revenues related to the on-site ADHCP are included in the projected budget and are based on the current operator's historical experience providing this outpatient service.

- Utilization by payor is as follows:

	<u>Current</u>		<u>Year One &amp; Three</u>	
	<u>RHCF</u>	<u>ADHCP</u>	<u>RHCF</u>	<u>ADHCP</u>
Medicaid	55.56%	47.04%	54.72%	47.04%
Medicare	31.28%	--	31.64%	--
Commercial	2.80%	--	2.91%	--
Private Pay	10.36%	52.96%	10.73%	52.96%

- Breakeven utilization is 95.12% and 95.83% for the first and third years, respectively.

### Capability and Feasibility

There are no project costs associated with this application. Goshen Operations, LLC will acquire the RHCFS operations for \$4,690,000 plus the assumption of certain liabilities, estimated at \$5,370,105 as of September 30, 2015. The acquisition price will be met with \$469,000 in members' equity and a \$4,221,000 loan at the above stated terms. Greystone has provided a letter of interest. 46 Harriman Drive Real Estate, LLC, the applicant's landlord, is purchasing the real property for \$1.

Working capital is estimated to be \$2,940,318, which is two months of Year One expenses plus assumed current liabilities of \$2,773,536. These obligations will be partially met by assuming the RHCF's \$1,468,310 in cash and \$2,655,133 in accounts receivables. The values were determined as of September 30, 2015, and are subject to change. The remaining \$1,590,411 in working capital will be met from \$795,206 in members' equity and a \$795,205 working capital loan. Greystone has provided a letter of interest for the working capital loan. Review of BFA Attachment A, the operating members' net worth statements, shows there are sufficient assets overall to meet the equity requirement, but liquid resources may not be available in proportion to the members proposed ownership interest. Machla Abramczyk has provided an affidavit stating she will contribute personal resources disproportionate to her ownership interest.

The submitted budget projects net income of \$403,876 and \$273,145 for Years One and Three, respectively. The budgeted revenues were expected to be the same for both years, while certain expenses were increased for inflation causing the third year surplus to drop. BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$1,264,208. Equity includes \$5,573,399 in goodwill, which is not a liquid resource nor is it recognized for Medicaid reimbursement. Eliminating goodwill, total net assets are a negative \$4,309,191. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, financial summary of Elant at Goshen, Inc., indicates that the facility has maintained positive working capital, negative equity position and generated an average annual operating surplus of \$619,365 for the 2013-2014 period shown, and a net operating loss of \$580,152 as of September 30, 2015. As of December 31, 2014, Elant at Goshen, Inc. had a \$5,228,427 net asset deficiency. The applicant states the following steps have been taken to address the facility's financial status: the defined benefit pension plan was frozen in 2011, resulting in reduced annual plan expenses; the mortgage was refinanced, saving \$494,000 in 2014; and the administrative charge from the parent was reduced, saving \$490,000 in 2014.

BFA Attachment E, financial summary of the proposed members affiliated RHCFS, shows the facilities have maintained positive net income from operations for the periods shown with the exception of the following:

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Current 2015 is showing Operating Net Income.

- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- Williamsville Suburban, Ridgeview Manor and Sheridan Manor all show Operating Net Losses for certain years as shown due to servicing of a high debt level. The facilities are in the process of being sold. Ridgeview Manor and Sheridan Manor have been approved through PHHPC and should be finalized shortly with the bankruptcy attorney. Williamsville Suburban is currently under review. The debt will be satisfied upon transfer of ownership.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 Operating Net Income.

Financial summaries for Seagate Rehabilitation and Nursing Center, The Pavilion at Queens for Rehab & Nursing, Flushing Manor Nursing Home, and Highland View Care Center are not included as membership was only recently established.

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

### Recommendation

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

<h2>Attachments</h2>
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BFA Attachment A	Goshen Operations, LLC, Proposed Members Net Worth
BFA Attachment B	Net Worth Statement for Benjamin Landa
BFA Attachment C	Organizational Chart
BFA Attachment D	Financial Summary, Elant at Goshen, Inc.
BFA Attachment E	Affiliated Residential Health Care Facilities
BFA Attachment F	Pro Forma Balance Sheet
BFA Attachment G	Estimated of Assumed Assets and Liabilities as of 9/30/15
LTC Attachment A	Quality Measures and and Inspection Report





Project # 152005-E
Newburgh Operations, LLC
d/b/a Sapphire Nursing at Meadow Hill

Program: Residential Health Care Facility
Purpose: Establishment

County: Orange
Acknowledged: July 3, 2015

Executive Summary

Description

Newburgh Operations, LLC d/b/a Sapphire Nursing at Meadow Hill, a New York limited liability company, requests approval to be established as the new operator of Elant at Meadow Hill, a 190-bed Article 28 residential health care facility (RHCF) located at 172 Meadow Hill Road, Newburgh (Orange County). The RHCF also operates a 20-slot adult day health care program (ADHCP) at the same location. There will be no change in services.

On December 1, 2014, the current operator of the RHCF, Elant at Newburgh, Inc., entered into an Asset Purchase Agreement (APA) with Newburgh Operations, LLC for the sale and acquisition of the operating interests of the RHCF and ADHCP, to be effectuated upon Public Health and Planning Council (PHHPC) approval. The APA provides that the purchase price for the assets is \$5,310,000 plus the assumption of certain liabilities by Newburgh Operations, LLC. Concurrently, Elant at Newburgh, Inc., the current real property owner, entered into a Contract of Sale with 172 Meadow Hill Road Real Estate, LLC for the sale and acquisition of the real property for \$1. Upon PHHPC approval, 172 Meadow Hill Road Real Estate, LLC will lease the facility to the new operator for 30 years. There is a relationship between Newburgh Operations, LLC and 172 Meadow Hill Road Real Estate, LLC in that these entities have a common member.

Current and proposed ownership are as follows:

Table with 2 columns: Member/Active Parent, %
Current Operator: Elant at Newburgh, Inc.
Elant, Inc. 100%

Table with 2 columns: Members, %
Proposed Operator: Newburgh Operations, LLC
Richard Platschek 33.34%
Esther Farkovits 33.33%
Machla Abramczyk 20.00%
Robert Schuck 13.33%

Concurrently under review are CON 151327 (Elant at Goshen), CON 151321 (Elant at Wappingers Falls) and CON 151307 (Elant at Fishkill), in which the same proposed members are seeking approval to purchase three other Elant RHCF operations.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds as a result of this project. Elant at Meadow Hill's occupancy was 95.1% in 2011, 96.8% in 2012, 97.1% in 2013 and 96.8% in 2014. Current occupancy, as of December 23, 2015 is 98.4% with 3 vacant beds. Occupancy at this facility has been strong and near the Department's planning optimum. This is expected to continue under the new operator.

### Program Summary

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with a related party entity, Sapphire HC Management Care, LLC. No other administrative services or consulting agreements are proposed in this application. 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 character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

### Financial Summary

There are no project costs associated with this proposal. The purchase price for the operating assets is \$5,310,000 and the assumption of certain liabilities estimated at \$3,079,593 as of September 30, 2015. The acquisition price will be met with \$531,000 in members' equity and a loan for \$4,779,000, self-amortizing with 5.5% interest and a 30-year term. Greystone Bank has provided a letter of interest. The operating budget is as follows:

Revenues	\$21,875,189
Expenses	<u>\$20,273,591</u>
Gain/(Loss)	\$1,601,598

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed operations loan commitment, 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 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]
6. 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]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. 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]
8. Submission of the proposed contract with Sapphire HC Management Care, LLC for accounting services. [LTC]
9. Submission of a copy of a sample Unit Certificate. [CSL]
10. Submission of a revised Schedule 14 that provides in Section IV that there are membership certificates. [CSL]
11. Submission of the applicant's amended Articles of Organization, acceptable to the Department. [CSL]
12. Submission of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.  
[PMU]

Council Action Date

**February 11, 2016**

## Need Analysis

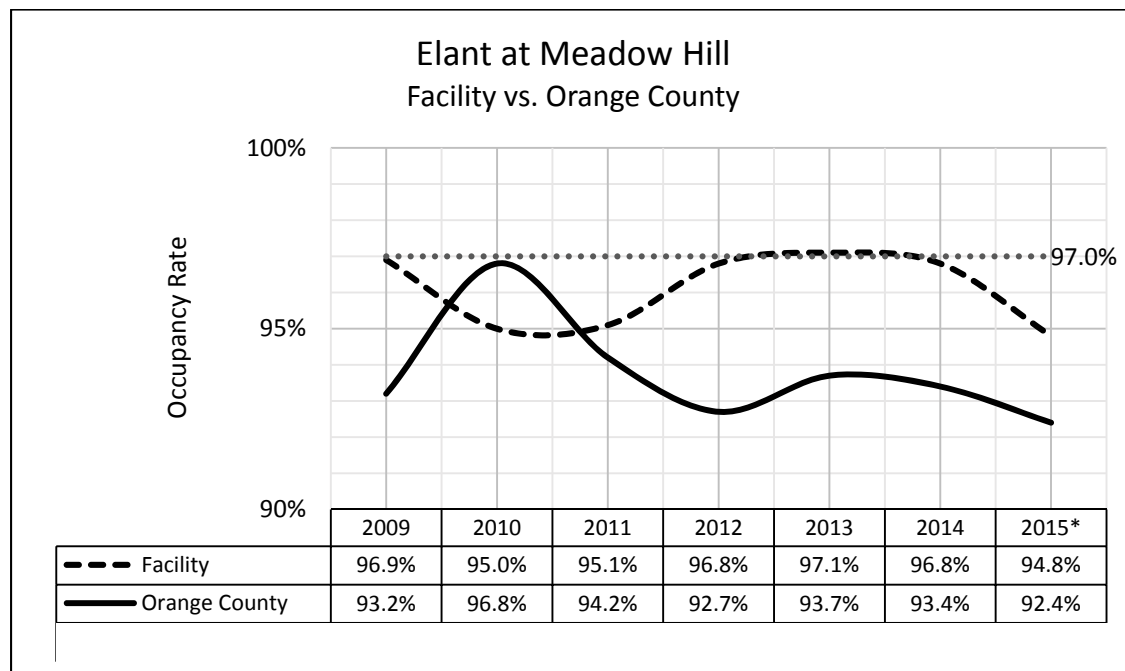
### Analysis

There is currently a need of 724 beds in Orange County as indicated in the following table:

#### RHCF Need – Orange County

<b>2016 Projected Need</b>	2,122
<b>Current Beds</b>	1,398
<b>Beds Under Construction</b>	0
<b>Total Resources</b>	1,398
<b>Unmet Need</b>	724

Elant at Meadow Hill's occupancy was 95.1% in 2011, 96.8% in 2012, 97.1% in 2013 and 96.8% in 2014. Current occupancy, as of December 23, 2015 is 98.4% with 3 vacant beds. Occupancy at this facility has been strong and near the Department's planning optimum. This is expected to continue under the new operator.



\*unaudited; facility reported data

### 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.

Elant at Meadow Hill's Medicaid admissions of 41.2% and 41.1%, in 2012 and 2013, respectively, exceeded the Orange County 75% rate of 23.6% and 28.3%, in 2012 and 2013, respectively.

Conclusion

Approval of this application will result in maintaining a necessary community resource for both the Medicaid population and the community at large.

Recommendation

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

<b>Program Analysis</b>
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Facility Information

	<b>Existing</b>	Proposed
Facility Name	Elant at Meadow Hill	Sapphire Nursing at Meadow Hill
Address	172 Meadow Hill Road Newburgh, New York 12550	Same
RHCF Capacity	190	Same
ADHC Program Capacity	20	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Not for Profit	Proprietary
Operator	Elant at Newburgh, Inc  <u>Active Parent/Co-operator</u> Elant, Inc	Newburgh Operations, LLC  Richard Platschek *      33.34% Esther Farkovits        33.33% Machla Abramczyk      20.00% Robert Schuck            13.33%  *Managing Member

Character and Competence - Background

**Facilities Reviewed**

Nursing Homes

Little Neck Nursing Home	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Park Gardens Rehabilitation and Nursing Center LLC	12/2005 to present
Ridge View Manor LLC	10/2012 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
Sheridan Manor LLC	10/2012 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge (formerly Kingsbridge Heights Rehabilitation and Care Center)	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Facility	07/2004 to present
Williamsville Suburban LLC	10/2012 to present
White Plains Center for Nursing	07/2011 to present

Home Care Agencies

Floral Home Care LLC	01/2012 to present
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### **Individual Background Review**

Current facility ownership interest is shown in brackets.

**Richard (Aryeh) Platschek** lists his occupation as sales at Stat Portable X-ray, a portable x-ray service located in Oakland Gardens, New York. He has been employed there since January 2007. Previously, Mr. Platschek was employed at Treetops Rehabilitation Care Center as a purchasing agent. Richard Platschek discloses the following ownership interests in health facilities:

Williamsville Suburban LLC [4.5%]	10/2012 to present
Ridge View Manor LLC [4.5%]	10/2012 to present
Sheridan Manor LLC [4.5%]	10/2012 to present
South Shore Rehabilitation and Nursing Center [5%]	04/2014 to present

**Esther Farkovitz** is currently unemployed and lives out of the country. She was previously a yoga instructor at the Lucille Roberts gym from February 2005 to October 2006. Ms. Farkovitz discloses the following ownership interests in health facilities:

Little Neck Care Center [50%]	04/2011 to present
South Shore Rehabilitation and Nursing Center [45%]	04/2014 to present
Nassau Extended Care Facility [7%]	07/2004 to present
Park Avenue Extended Care Facility [7%]	07/2004 to present
The Citadel Rehab and Nursing Center at Kingsbridge [25%]	11/2015 to present
Throgs Neck Extended Care Facility [7%]	07/2004 to present
Townhouse Extended Care Center [7%]	07/2004 to present
Seagate Rehabilitation and Health Care Center [10%]	12/2014 to present
White Plains Center for Nursing [12%]	07/2011 to present

**Machla Abramczyk** lists her employment as Floral Home Care, LLC where she has been employed as a Quality Assurance Manager since January 2012. Ms. Abramczyk discloses the following ownership interests in health facilities:

Park Gardens Rehabilitation and Nursing Center LLC [63%]	01/2002 to present
Floral Home Care LLC [1%]	01/2012 to present

**Robert Schuck** is a non-registered certified public accountant. He has been employed at Hempstead Park Nursing Home as the Chief Financial Officer for the last ten years. Mr. Schuck discloses the following ownership interest in health care facilities:

South Shore Rehabilitation and Nursing Center [25%]	04/2014 to present
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### Character and Competence - Analysis

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

A review of operations for Little Neck Nursing Home, Park Avenue Extended Care Facility, Park Gardens Rehabilitation and Nursing Center LLC, Ridge View Manor LLC, Seagate Rehabilitation and Health Care Center, Sheridan Manor LLC, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Extended Care Facility, Williamsville Suburban LLC, White Plains Center for Nursing, The Citadel Rehab and Nursing Center at Kingsbridge, and Floral Home Care, LLC results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Nassau Extended Care Facility for the period identified above revealed the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

#### Project Review

This application is proposing to establish Newburgh Operations, LLC as the new operator of Elant at Meadow Hill. The facility will be renamed Sapphire Nursing at Meadow Hill as a result of this transaction. Newburgh Operations, LLC is comprised of Richard Platschek (33.34%); Esther Farkovits (33.33%); Machla Abramczyk (20.00%); and Robert Schuck (13.33%). Richard Platschek will be the managing member of the facility.

The applicant acknowledges a relationship with the proposed purchaser of the real property, 172 Meadow Hill Road Real Estate, LLC. It should be noted that while one of the members of 172 Meadow Hill Road Real Estate, LLC is CEO of Sentosa Care, LLC, the applicant has asserted that the operating group will not enter into a contractual relationship with Sentosa Care, LLC for the provision of services to the facility.

The applicant has proposed to make no significant changes to staffing levels for RHCf operations and will attempt to retain key positions at the facility such as the Administrator of Record, Director of Nursing, Assistant Director of Nursing, Medical Director, Staff Physician, Nurse Practitioner, and Corporate Director of Rehabilitation. During the initial transition period the ownership group will designate a member to provide specific attention and oversight to the facility to ensure that the level and quality of care is maintained.

No changes in the program or physical environment are proposed in this application. The proposed operators intend to enter into a contract for accounting services with Sapphire HC Management Care, LLC, which is a related party. Sapphire HC Management Care, LLC is owned by Richard (Aryeh) Platschek and his wife Golda Platschek. No other administrative services or consulting agreements are proposed in this application.

#### Conclusion

The character and competence review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a (3).

#### Recommendation

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

## Financial Analysis

#### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the operating interests of the RHCf. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	December 1, 2014
Seller:	Elant at Newburgh, Inc.
Purchaser:	Newburgh Operations, LLC
Asset Transferred:	Tangible Personal Property; Intellectual Property; Assumed Contracts; Books and Records; Deposits; Licenses; Personnel Records; Warranties; Covenants; Provider Numbers; Insurance Proceeds; Cash; Accounts Receivable; Other Assets and Property held for use relating to or in connection with running the business; resident funds; goodwill; and refunds.



Excluded Assets:	Seller's Contracts, other than the Assumed; non-transferable licenses; organizational documents, corporate seal and tax records; real property; the name Elant; assets related to Glen Arden, Inc.; assets related to Lifestyles Concepts, LLC; assets related to Elant Choice, Inc.; assets related to Fishkill Foster Families; assets related to Elant Foundation; assets related to Fishkill Long-Term Home Healthcare; and assets related to Goshen Long-Term Home Healthcare Program.
Assumed Liabilities:	All liabilities of the Seller incurred or arising and unpaid during the pre-closing period and all obligations, costs and liabilities related to the Elant Inc. Defined Benefit Plan.
Purchase Price:	\$5,310,000 plus assumed liabilities estimated at \$3,079,595 as of 9/30/15
Payment of Purchase Price:	\$260,000 on the date of execution of Agreement; \$2,400,000 deposit 60 days following execution of Agreement; \$2,650,000 balance due at closing

The purchase price for the operations is proposed to be satisfied as follows:

Equity from Members	\$531,000
Loan (30 years, 5.5%)	<u>\$4,779,000</u>
Total	\$5,310,000

A letter of interest has been provided by Greystone.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no current outstanding Medicaid liabilities.

#### Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed Contract of Sale (COS) related to the purchase of the RHCF's real property. The agreement closes concurrent with the APA upon PHHPC approval of this CON. The terms are summarized below:

Date:	December 1, 2014
Seller:	Elant at Newburgh, Inc.
Buyer:	172 Meadow Hill Road Real Estate, LLC
Purchase Price:	\$1 and the assumption of Mortgages Payable estimated at \$8,802,827.
Premises:	Land, buildings, hereditaments, fixtures and equipment known as 172 Meadow Hill Road, Newburgh, New York 12550

Under the APA, the purchaser agreed to assume the liabilities pursuant to section 3.1 and set forth on schedule 3.1. The assumed liabilities between the operation and the realty are indicated in BFA Attachment F. Under the COS, in relation to the sale of the real property and pursuant to section 2.1, the transaction is conditioned upon the assumption of the assumed liabilities as set forth in the APA, which include the assumption of any mortgages and any other liabilities associate with the COS transaction.

A loan letter of interest has been submitted by the applicant from Greystone to refinance the mortgage up to \$9,500,000 at 5.5% over 30 years. Also, proposed member of the realty, Benjamin Landa, has submitted an affidavit to contribute personal resources disproportionate to his membership interest if such equity is needed. BFA Attachment B is the net worth statement of Benjamin Landa showing sufficient equity.

## Lease Agreement

Facility Operations are subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	190-bed RHC located at 172 Meadow Hill Road, Newburgh, New York with all buildings, structures, fixtures, equipment and other improvements.
Landlord:	172 Meadow Hill Road Real Estate, LLC
Tenant:	Newburgh Operations, LLC
Terms:	30 years commencing on execution of the lease with a ten year option to renew.
Rentals:	\$1,231,064 (\$102,589 per month) annual base rent with a 3% increase each year thereafter.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and tenant.

## Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Service Provider:	Sapphire HC Management Care, LLC
Service Purchaser:	Newburgh Operations, LLC
Services Provided:	The billing, collection and management of Accounts Receivable; no less than weekly Medicaid billing; no less than monthly Commercial and Medicare billing; Payroll and Accounts Payable processing; providing data for financial reporting and any internal or external auditing; and cooperation with Federal and State reporting and regulatory requirements.
Exclusions:	The service purchaser will retain control of books and records, day-to-day operations, responsibility for regulatory compliance and the disposition of assets; the service provider will incur no liability on behalf of the facility, will not hire or fire employees and will not enforce policy regarding the operation of the facility.
Term:	One year with unlimited one year renewals, unless notice of termination is provided at least 30 days prior.
Compensation:	\$156,038 per year or \$2.25 per bed per day (\$13,003 per month)

Richard Platschek, one of the proposed members of Newburgh Operations, LLC, and his wife Golda Platschek own Sapphire HC Management Care, LLC. The entity will provide the above noted accounting services. Facility staff will perform all other administrative services. Sapphire HC Management Care, LLC will also provide accounting services to the other RHCs being concurrently reviewed under CON 151327 (Elant at Goshen), CON 151321 (Elant at Wappingers Falls) and CON 151307 (Elant at Fishkill).

## Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first and third years subsequent to the change in ownership, summarized as follows:

	<u>Per Diem</u>	<u>Current Year (2014)</u>	<u>Per Diem</u>	<u>Year One</u>
Revenues:				
Commercial	\$501.84	\$617,768	\$400.00	\$588,800
Medicare	\$577.45	\$5,849,583	\$693.47	\$8,418,004
Medicaid	\$213.36	\$11,278,622	\$214.33	\$10,864,065
Private Pay	\$501.84	\$1,459,859	\$472.68	\$1,669,506
Other		\$35,710		\$0
Subtotal		\$19,205,832		\$21,540,375
ADHCP	\$72.03	\$315,503	\$76.44	\$334,814
Total Revenues		\$19,521,335		\$21,875,189

Expenses:				
Operating	\$251.72	\$18,000,944	\$262.95	\$18,987,624
Capital	<u>17.06</u>	<u>\$1,220,218</u>	<u>17.81</u>	<u>\$1,285,967</u>
Total Expenses	\$268.78	\$19,221,162	\$280.76	\$20,273,591
Net Income		<u>\$335,883</u>		<u>\$1,601,598</u>
Total Patient Days		67,132		67,831
ADHCP Visits		4,380		4,380

The following is noted with respect to the submitted budget:

- The budget represents the RHCF and ADHCP operations.
- For Year One, Medicaid revenues are based on the actual 2015 rate experience for the facility, plus an additional, one-time, 4% increase in overall rates that the applicant expects based on past experience at, what they believe are, comparable facilities.
- The applicant notes that the projected difference between the Current Year Medicare rate and the projected Year One rate includes an increase of 6.1% experienced in October 2014, a 5.8% increase experienced in October 2015 and an additional 1% for Year One, with the expectation of an additional Medicare rate increase in October 2016.
- The Current Year includes \$35,710 in Other Income related to the following: investment income, barbershop revenues, meals and contributions.
- Year One expenses were calculated by taking the Current Year (2014) and adding 3% per annum. The applicant does not anticipate any staffing increases.
- Utilization for Year One is based on the utilization experienced during October 2014, annualized and reduced by approximately 2%. It is noted that the facility occupancy was 97.4% as of December 9, 2015.
- Current Year (2014) utilization is 96.80% and the applicant projects Year One and Year Three occupancy at 97.81%.

	<u>Current Year</u>	<u>Year One</u>
Medicare	15.1%	17.9%
Medicaid	78.7%	74.7%
Private/Other	6.2%	7.4%

- Per internal financial documents, the current operator's year-to-date Medicare utilization was 17.67%, Medicaid utilization was 68.36% and Private/Other utilization was 13.97% as of September 30, 2015.
- The applicant projects RHCF breakeven utilization at 64,089 patient days (92%) for Year One.

#### Capability and Feasibility

There are no project costs associated with this application. Newburgh Operations, LLC will acquire the RHCFs operations for \$5,310,000 plus the assumption of certain liabilities estimated at \$3,079,593. The acquisition price will be met with \$531,000 in member's equity and a \$4,779,000 loan at the above stated terms. Greystone has provided a letter of interest. The applicant's landlord, 172 Meadow Hill Road Real Estate, LLC, is purchasing the real property for \$1.

Working capital is estimated to be \$5,867,521; equal to two months of Year One expenses plus assumed accounts payable of \$812,488 and assumed expenses payable \$1,676,101. These obligations will be partially met by assuming the RHCF's \$1,130,184 in cash and \$2,496,006 in accounts receivables. The remaining \$2,241,331 in working capital will be met from \$1,120,666 in members' equity and a \$1,120,666 working capital loan. Greystone has provided a letter of interest for the working capital loan. Review of BFA Attachment A, the operating members' net worth statements, shows there are sufficient assets overall to meet the equity requirement, but liquid resources may not be available in proportion to the members proposed ownership interest. Machla Abramczyk has provided an affidavit stating she will to contribute personal resources disproportionate to her ownership interest.

The submitted budget projects net income of \$1,601,598 for Year One. The budgeted revenues are expected to increase by \$2,318,144 over the current year based on an overall increase of 699 patient days and an increase in the percentage of Medicare and Commercial utilizations. BFA Attachment D shows that, as of September 30, 2015, the facility had an increase in the percentage of Medicare and Commercial utilizations greater than what the proposed operator has projected. Budgeted expenses are expected increase by \$1,052,429, with the majority of the increase based on increases in wages, benefits and utilities. The budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment D, financial summary of Elant at Meadow Hill, Inc., shows the facility had negative working capital, a negative equity position and generated an average annual operating loss of \$74,816 for 2013-2014, and an operating surplus of \$973,882 as of September 30, 2015. As of December 31, 2014, Elant at Meadow Hill had a \$4,789,066 net asset deficiency. While the facility has incurred losses for several years, the applicant states that the following has occurred, improving their financial status, as demonstrated by the \$335,793 operating gain in 2014: a reduction in their pension shortfall; mortgage refinancing from the previous 7% IDA loan to a 4.11% HUD loan as of the end of 2014; and a reduction in the Administrative cost charge from Elant Inc. from \$1,127,000 in 2013 to \$705,000 in 2014.

BFA Attachment E, financial summary of the proposed members affiliated RHCs, shows the facilities have maintained positive net income from operations for the periods shown with the exception of the following:

- Nassau Extended Care and Park Gardens Rehabilitation have Operating Net Losses due to lower utilization levels, which have since increased. Current 2015 is showing Operating Net Income.
- Throg's Neck Extended is showing an Operating Net Loss as of July 31, 2015, due to a Medicaid retroactive rate adjustment.
- Williamsville Suburban, Ridgeview Manor and Sheridan Manor all show Operating Net Losses for certain years as shown due to servicing of a high debt level. The facilities are in the process of being sold. Ridgeview Manor and Sheridan Manor have been approved through PHPC and should be finalized shortly with the bankruptcy attorney. Williamsville Suburban is currently under review. The debt will be satisfied upon transfer of ownership.
- South Shore Healthcare is showing Operating Net Losses in 2013 and 2014 due to low utilization, which has since increased. The facility is currently showing a 2015 Operating Net Income.

Financial summaries for Seagate Rehabilitation and Nursing Center, The Pavilion at Queens for Rehab & Nursing, Flushing Manor Nursing Home, and Highland View Care Center are not included as membership was only recently established.

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

## Recommendation

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

## Attachments

BFA Attachment A	Net Worth Statement, Newburgh Operations, LLC's Proposed Members
BFA Attachment B	Net Worth Statement, members of 172 Meadow Hill Road Real Estate, LLC
BFA Attachment C	Organizational Chart
BFA Attachment D	Financial Summary, Elant at Meadow Hill
BFA Attachment E	Affiliated Residential Health Care Facilities
BFA Attachment F	Pro Forma Balance Sheet
LTC Attachment A	Quality Measures Inspection Report



**Project # 152049-E**  
**Terrace Acquisition II, LLC d/b/a Fordham Nursing & Rehabilitation Center**

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

**County:** Bronx  
**Acknowledged:** July 28, 2015

**Executive Summary**

**Description**

Terrace Acquisition II, LLC d/b/a Fordham Nursing and Rehabilitation Center, a New York limited liability company, requests approval to be established as the operator of Terrace Health Care Center, a 240-bed Article 28 residential health care facility (RHCF) located at 2678 Kingsbridge Terrace, Bronx (Bronx County). There will be no change in services provided.

On June 1, 2015, Terrace Health Care Center, Inc. entered into an Asset Purchase Agreement (APA) with Terrace Acquisition II, LLC for the sale and acquisition of the operating interests of Terrace Health Care Center. Concurrently, Terrace Land Corp., the real property owner, entered into a Real Estate Purchase Agreement with Terrace Acquisition I, LLC for sale and acquisition of the real property of the facility. The applicant will lease the premises from Terrace Acquisition I, LLC. There is a relationship between Terrace Acquisition I, LLC and Terrace Acquisition II, LLC in that the entities have common membership. An affidavit has been received by the Department affirming the relationship.

The current and proposed ownership are as follows:

<u>Current Operator</u>	
Terrace Health Care Center, Inc.	
<u>Stockholders:</u>	
Lowell Feldman	91%
Soloman Rutenberg	9%
Total	100%

<u>Proposed Operator</u>	
Terrace Acquisition II, LLC	
<u>Members:</u>	<u>%</u>
Soloman Rutenberg (Manager)	32.25%
Pasquale DeBenedictis (Manager)	25.25%
Alex Solovey (Manager)	25.25%
Greg Seidner	9.25%
Michael Schrieber	5.00%
Total	100.00%

The applicant members have ownership interest in various New York State RHCFS. BFA Attachments D and E are the financial summaries and ownership interest percentages, respectively, of the proposed members' affiliated skilled nursing facilities.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no changes to beds or services as a result of this application. Terrace Health Care Center's occupancy was 97.6% in 2011, 98.5% in 2012, and 97.1% in 2013. Current occupancy as of August 12, 2015 is 99.6%, with one vacant bed.

### 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

Terrace Acquisition II, LLC will acquire the RHCf operations for \$8,500,000, which will be paid by an assumption of agreed upon liabilities and receivables. Terrace Acquisition I, LLC will purchase the real property for \$15,000,000 funded with \$500,000 cash and a note payable to Lowell Feldman (current property owner/seller) for \$14,500,000 at 5% interest for a 10-year term and 30-year amortization. Affidavits were submitted by all applicant members, excluding Mr. Schrieber, attesting to fund the balloon payment if acceptable refinancing is not available when the note payable becomes due.

Budget :	Revenues	\$21,462,600
	Expenses	<u>21,302,100</u>
	Net Income	\$160,500

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
2. Submission of a note payable, acceptable to the Department of Health. [BFA]
3. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
4. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
5. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
6. Submission of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
7. Submission of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
8. Submission of the applicants executed Asset Purchase Agreement including executed and complete copies of exhibits A, B and D, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's amended and executed lease agreement, acceptable to the Department. [CSL]



**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval.  
[PMU]

Council Action Date

**February 11, 2016**

# Need Analysis

## Project Description

Terrace Acquisition II, LLC d/b/a Fordham Nursing and Rehabilitation Center, seeks approval to become the established operator of Terrace Health Care Center, an existing 240-bed Article 28 residential health care facility (RHCF), located at 2678 Kingsbridge Terrace, Bronx, 10463, in Bronx County.

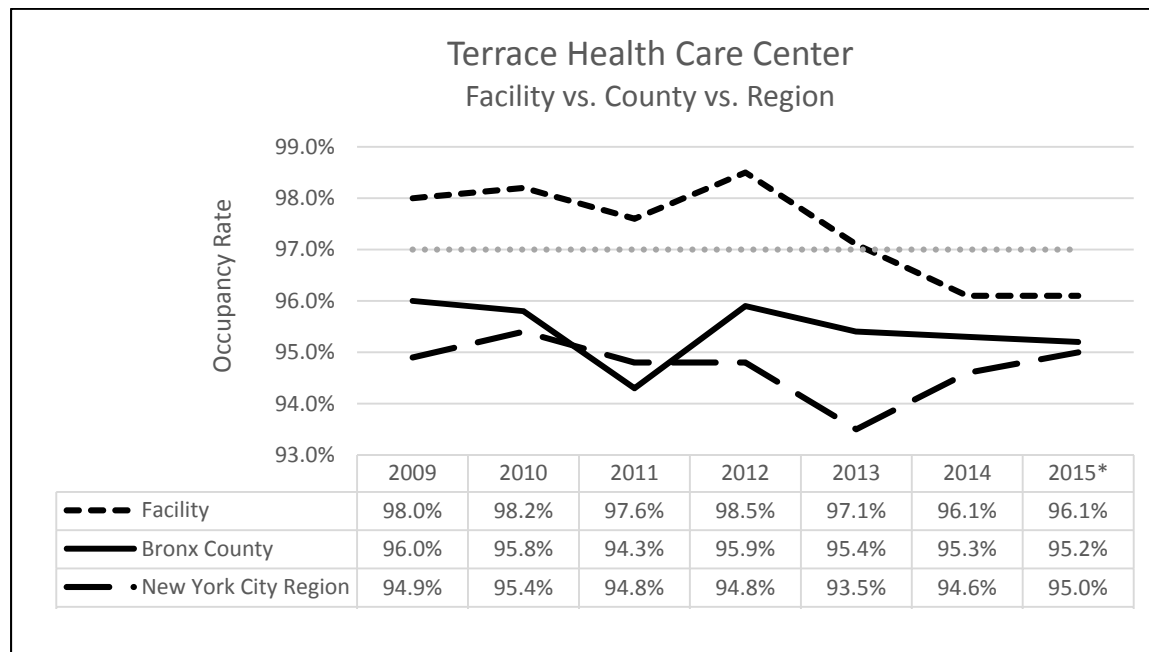
## Analysis

There is currently a need for an additional 8,357 beds in the New York City Region as indicated in the following table:

### RHCF Need – New York City Region

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	42,178
<b>Beds Under Construction</b>	536
<b>Total Resources</b>	42,714
<b>Unmet Need</b>	8,357

Terrace Health Care Center's occupancy was 97.6% in 2011, 98.5% in 2012, and 97.1% in 2013. Occupancy has been near or above the Department's planning optimum for the last six years, and this is expected to continue under the proposed operator.



\*unaudited; based on facility reporting

## 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.

Terrace Health Care Center's Medicaid admissions of 97.1% in 2012 and 96.9% in 2013 exceeded the Bronx County 75% rates of 35.8% in 2012 and 29.8% in 2013.

**Conclusion**

Approval of this application will result in maintaining a necessary resource for both the Medicaid population and the community it serves.

**Recommendation**

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

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

	Existing	Proposed
Facility Name	Terrace Health Care Center	Fordham Nursing and Rehabilitation Center
Address	2678 Kingsbridge Terrace Bronx NY 10463	Same
RHCF Capacity	240	240
ADHC Program Capacity	N/A	N/A
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Terrace Health Care Center, Inc.  <u>Shareholders:</u> Lowell Feldman            91% Soloman Rutenberg        9%	Terrace Acquisition II, LLC.  <u>Shareholders:</u> Pasquale DeBenedictis   25.25% Alex Solovey                25.25% Soloman Rutenberg        35.25% Gregg Seidner               9.25% Michael Schreiber         5.00%

**Character and Competence - Background**

Facilities Reviewed

Nursing Homes

Barnwell Nursing and Rehabilitation Center	10/2005 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	10/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	02/2013 to present
Sayville Nursing & Rehab Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Terrace Health Care Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present

Connecticut Nursing Home

Cassena Care at Norwalk	06/2013 to present
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Other Health Facilities

Mills Pond Dialysis Center, LLC (D&TC) 08/2015 to present

Individual Background Review

**Pasquale DeBenedictis** has been employed as the Director of Finance at the Carillon Nursing and Rehabilitation Center since 1997. Mr. DeBenedictis discloses ownership interests in the following health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. DeBenedictis has been approved by PHHPC to become an owner of the following facilities, which to date have not closed:

CON 131349 Sea-Crest Nursing and Rehabilitation  
CON 141205 Workmen's Circle Dialysis Center (D&TC)  
CON 141210 Cassena Care Dialysis at Peninsula (D&TC)

**Alex Solovey** has been a New York State licensed physical therapist since 1994 and is considered to be in good standing. He is the founder and CEO at Theradynamics Physical Therapy Rehabilitation P.C. since 1999. Mr. Solovey discloses ownership interests in the following health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. Solovey has been approved by PHHPC to become an owner of the following facilities, which to date have not closed:

CON 131349 Sea-Crest Nursing and Rehabilitation  
CON 141205 Workmen's Circle Dialysis Center (D&TC)  
CON 141210 Cassena Care Dialysis at Peninsula (D&TC)

**Michael Schreiber** holds an active New York Nursing Home Administrator's license, since 2006, and is considered to be in good standing. Mr. Schreiber has been employed as the Vice President of Strategic Planning at Cassena Care Consulting, located in Woodbury, New York, since 2013. He is also currently employed as the Assistant Executive Director at Shore View Nursing Home and as the Executive Director at Sea-Crest Health Care Center, and has been since 2004. Mr. Schreiber discloses ownership interests in the following residential health care facility:

Shore View Nursing and Rehabilitation Center	06/2014 to present
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**Soloman Rutenberg** is employed as the CEO at Workmen's Circle Multicare Center, a skilled nursing facility located in Bronx, New York, and has been since 2006. Mr. Rutenberg discloses the following nursing home ownership interests:

Mills Pond Nursing and Rehabilitation Center	05/2014 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Terrace Health Care Center, Inc.	06/2014 to present

**Gregg Seidner** is employed at Bronx Park Rehabilitation & Nursing Center in the payroll and billing department, and has worked there since 1998. Mr. Seidner discloses ownership interest in the following Connecticut nursing home:

Cassena Care at Norwalk	06/2013 to present
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#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Barnwell Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-15-001 issued January 12, 2014 for surveillance findings on March 13, 2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care : Accidents/Supervision.
  - A federal CMP of \$3,250 was paid for the Immediate Jeopardy on 3/13/12.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on February 1, 2013. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors; 10NYCRR 415.26 Administration; and 10NYCRR 415.27 Quality Assurance.
  - A federal CMP of \$5,000 was paid for the Immediate Jeopardy on 2/1/13.
- The facility was fined \$8,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on September 26, 2013. Deficiencies were found under 10NYCRR 415.4(b)(1)(2)(3) Free from Mistreatment Neglect and Misappropriation of Property; and 10NYCRR 415.12 Quality of Care Highest Practicable Potential.
  - A federal CMP of \$8,000 was paid for the Immediate Jeopardy on 9/26/13.

A review of operations of Barnwell Nursing and Rehabilitation Center indicates that the requirements for approval, as set forth in Public Health Law §2801-a (3), have been met.

A review of East Neck Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$6000 pursuant to Stipulation and Order NH-15-039 issued 11/20/15 for surveillance findings on March 21, 2014. Deficiencies were found under 10NYCRR 415.3 (e)(1)(ii) Resident Rights: Right to Accept/Refuse Treatment; Right to Formulate Advance Directives; 10NYCRR 415.26 Administration and 10NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of East Neck Nursing and Rehabilitation Center for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no repeat enforcements.

A review of operations for DeWitt Rehabilitation and Nursing Center, Mills Pond Nursing and Rehabilitation Center, Morningside Nursing and Rehabilitation Center, Peninsula Nursing and Rehabilitation Center, Sayville Nursing and Rehabilitation Center, Shore View Nursing and Rehabilitation Center, Terrace Health Care Center and Workmen's Circle Multicare Center, for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of a letter from the Department of Public Health in the State of Connecticut as well as an affidavit submitted by the applicant for Cassena Care at Norwalk in the State of Connecticut for the periods identified above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements. The facility is operating in compliance with state and federal laws and regulations.

A review of operations for Mills Pond Dialysis Center, LLC (D&TC) for the period 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. No administrative services or consulting agreements are proposed in this application.

**Conclusion**

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

**Recommendation**

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

<b>Financial Analysis</b>
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**Asset Purchase Agreement**

The Department has received an executed Asset Purchase Agreement, the terms of which are summarized as follows:

Effective Date:	June 1, 2015 (Effective date and date Soloman Rutenberg was hired as the Chief Operating Officer (COO))
Seller:	Terrace Health Care Center, Inc.
Buyer:	Terrace Acquisition II, LLC
Facility:	Terrace Health Care Center
Facility Location:	2678 Kingsbridge Terrace, Bronx NY 10463
Purchase Price:	Total Amount \$23,500,000 to be apportioned between Basic Assets and Real Estate (pursuant to separate real estate purchase agreement)
Asset Acquired:	All Seller's right, title and interest to assets in business and operations of the Facility at Closing; All Copies of financial books & records; all menus, policies & procedures manuals; All computers, computer software, all licenses and permits; All cash and cash equivalents as of the Effective Date.
Excluded Assets:	All Seller's right, title and interest, as of Closing Date, in personal property as set forth in Schedule 1.18.1; As of Effective date: All personal bank accounts, investments, marketable securities and accrued interest and dividends thereon in name of Seller. Any real estate tax refunds prior to effective date.
Assumption of Liabilities:	Ongoing obligations under Contracts and Equipment leases assumed by Buyer; Accounts Payables, Liabilities and Accrued Wages/Taxes as agreed to and effective at Closing.
Payment of Purchase Price:	At Closing Buyer shall execute a Note for value of purchase price less adjustment for any agreed upon assumed liabilities, receivables or any other agreed amounts up to a maximum of the total purchase price of \$23,500,000

Terrace Acquisition II, LLC will acquire the RHCF operations for \$8,500,000, which will be paid by an assumption of agreed upon liabilities and receivables. Terrace Acquisition I, LLC, an affiliate of the applicant, will purchase the real property for \$15,000,000 funded with \$500,000 cash and a note payable to Lowell Feldman (current property owner/seller) for \$14,500,000 at 5% interest for a 10-year term and 30-year amortization. Affidavits were submitted from all applicant members, excluding Mr. Schrieber, attesting to fund the balloon payment if acceptable refinancing is not available when the note payable becomes due.

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid liabilities.

#### Real Estate Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the nursing home premises, summarized below:

Date:	June 1, 2015
Premises:	The land, parking areas, fixtures, buildings and other improvements situated on the parcel of land located at 2678 Kingsbridge Terrace, Bronx, New York.
Seller:	Terrace Land Corp.
Purchaser:	Terrace Acquisition I, LLC
Purchase Price:	\$15,000,000, which is included in the Asset Purchase Agreement.

#### Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the nursing home site, summarized below:

Premises:	The premises located at 2678 Kingsbridge Terrace, Bronx, New York
Lessor:	Terrace Acquisition I, LLC
Lessee:	Terrace Acquisition II, LLC
Term:	35 years
Rental:	\$2,700,000 and commencing on the fifth anniversary of the Commencement Date, and every five years thereafter, the Base Rent shall increase to an amount equal to one hundred three percent (103%) of the Base Rent payable.
Provisions:	The lessee shall be responsible for utilities, insurance, maintenance and real estate taxes.

The lease agreement is a non-arm's length lease arrangement since there is common ownership. The applicant has submitted an affidavit attesting to the relationship between landlord and tenant.

#### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first year after the change in operator, summarized below:

	Current Year (2014)		Year One	
	Per Diem	Total	Per Diem	Total
Revenues:				
Medicaid FFS/MC	\$208.12	\$16,927,971	\$224.65	\$17,180,700
Medicare FFS/MC	\$741.74	582,263	\$643.30	2,733,400
Commercial FFS	\$208.43	433,198	\$364.74	619,300
Private Pay	\$0	0	\$364.06	929,200
Total Revenues		\$17,943,432		\$21,462,600

Expenses:				
Operating	\$213.14	\$17,944,843	\$215.71	\$18,329,400
Capital	<u>21.77</u>	<u>1,833,198</u>	<u>34.98</u>	<u>2,972,700</u>
Total Expenses	\$234.91	\$19,778,041	\$250.69	\$21,302,100
Net Income		<u>(\$1,834,609)</u>		<u>\$160,500</u>
Utilization: (Patient days)		84,194		84,973
Occupancy		96.11%		97.00%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current payment rates for the various payors. The applicant states that their business model includes flexibility to transition to a Value Based Payment System prior to the end of the three-year transition window. For the current CON project, revenue assumptions were based on the historical data of the facility, as they believe the rates will continue for a period of time going forward.
- The Medicaid case mix is expected to increase from 0.87 to 1.00 due to admitting higher acuity patients and increasing the facility's short-term and long-term rehabilitation programs.
- Expense assumptions are based on the historical experience of the facility.
- Utilization by payor source for the current year (2014) and first year is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid FFS/MC	96.60%	90.00%
Medicare FFS/MC	.94%	5.00%
Commercial FFS	2.46%	2.00%
Private Pay	0%	3.00%

- The applicant has projected an increase in patient days due to a new admissions strategy implemented by the buyers via the existing consulting services agreement. Medicare and Private Pay patient days are expected to increase due to the new admissions policies.
- Breakeven Occupancy in the first year is 96.25% or 84,315 patient days.

#### Capability and Feasibility

The purchase price of the operations is \$8,500,000 and will be paid by an assumption of agreed upon liabilities and receivables. Terrace Acquisition I, LLC, with related members to the operating ownership, will purchase the property for \$15,000,000 with payment of \$500,000 in cash and a note payable to Mr. Feldman, the current property owner/seller, for \$14,500,000 at 5% interest for a 10-year term and 30-year amortization period. All applicant members, excluding Mr. Schrieber, have submitted affidavits attesting to fund the balloon payment if acceptable refinancing is not available when the note payable becomes due.

Working capital requirements are estimated at \$3,550,350, which is equivalent to two months of first year expenses. The applicant will provide equity of \$2,342,850 from the proposed members' personal resources and the remaining \$1,207,500 will be provided via acquired accounts receivable. BFA Attachment A is the personal net worth statements of the proposed members of Terrace Acquisition II, LLC, which indicates the availability of sufficient funds to meet the equity contribution for the real estate portion and the working capital requirement. BFA Attachment C is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$3,981,500.

The submitted budget indicates a net income of \$160,500 during the first year after the change in operator. The budget appears reasonable.



BFA Attachment B is the financial summary of Terrace Health Care Center from 2012 through 2014. As shown, the facility had an average negative working capital position and an average negative net asset position from 2012 through 2014 because the facility owed \$3,250,000 in unpaid benefits and back wages for collective bargaining agreement mandated raises not implemented. These amounts are recorded as liabilities in the financials. The facility incurred average net losses of \$754,173 from 2012 through 2014. The applicant indicated that the reason for the losses is that the current operator undertook very little marketing and the patient population consisted primarily of Medicaid with little emphasis on Medicare. In addition, the current operator was not equipped to work with the managed care plans in an effort to secure a fee structure that was in the interest of the provider. The proposed operator has worked with the existing operator to modify the payor mix to include a Medicare population and has negotiated better payment rates with the managed long term care plans.

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 the financial summary for the members' affiliated RHCs which shows that all of the facilities had average positive working capital positions, average positive net asset positions and average net incomes for the period shown.

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

Recommendation

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

## Attachments

BFA Attachment A	Personal net worth statement of proposed members
BFA Attachment B	Financial summary- Terrace Health Care Center
BFA Attachment C	Pro forma balance sheet
BFA Attachment D	Financial summary- Affiliated nursing homes
BFA Attachment E	Proposed members ownership interests of other affiliated nursing homes.
LTC Attachment A	Quality Measures Inspection Report



**Project # 152072-E  
Dewitt Rehabilitation and Nursing Center Inc.**

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

**County:** New York  
**Acknowledged:** August 7, 2015

**Executive Summary**

**Description**

DeWitt Rehabilitation and Nursing Center, Inc. (the Company), a 499-bed Article 28 residential health care facility (RHCF) located at 211 East 79 Street, New York (New York County), requests approval to transfer 91% in the shares of the facility. The majority owner, Ms. Marilyn Lichtman, proposes to sell all her shares (91%) to three current and four new shareholders. This transfer will increase the current shareholders to a total in excess of 10% membership interest 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.

On May 26, 2015, a Stock Purchase Agreement (SPA) was executed for the sale and purchase of 9% of the shares of the Company, with sole shareholder Marilyn Lichtman selling 9% (18 shares) of her ownership interest to three new shareholders: Pasquale DeBenedictis, Alex Solovey, and Leopold Friedman, each purchasing 3% interest of the issued and outstanding shares of common stock of the Company (2 shares per 1% interest). This sale of 9% of the shares is referred to in the SPA as the "First Purchased Stock" transaction. The SPA also provides for a "Second Transaction" for the sale of the balance (91%) of the Company's shares. The real property for the facility was sold simultaneously on May 26, 2015, to 79<sup>th</sup> Street Acquisition, LLC and a new lease was executed on July 9, 2015.

The total purchase price of all shares of stock sold in the "First Purchased Stock" (9%) and the "Second Transaction" (91%) is \$2,500,000. On July 7, 2015, a Stockholders Agreement was

executed for the 9% stock sale with a cash payment of \$1,000,000. The balance of \$1,500,000 will be paid at the closing of the "Second Transaction." No financing is required as the total purchase price will be paid in cash. A total of 200 shares is being sold with a purchase price of \$12,500 for each share. BFA Attachment B presents the organizational change in shareholders, shares and cost.

**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

On July 7, 2015, a Stockholders Agreement was executed for two transactions of stock transfer totaling 200 shares (100%) of DeWitt Rehabilitation and Nursing Center, Inc. The total purchase amount for all 200 shares is \$2,500,000 (\$12,500 per share). There are two separate stock purchase transactions associated with the sale of all the stock. The first transaction of 9% of the stock was completed on July 7, 2015, with a cash payment of \$1,000,000. This application is for the second transaction of the 91% balance of shares with the balance of \$1,500,000 to be paid at closing. There is no financing required as the total purchase price is being paid in cash.

There are no project cost associated with this application, and the first year budget projects an operating gain.

Revenues:	\$63,769,000
Expenses:	<u>\$61,167,100</u>
Gain:	\$ 2,601,900

## 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 amended lease between 79<sup>th</sup> Street Acquisition Group, LLC and Dewitt Rehabilitation and Nursing Center, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's amended Stock Purchase Agreement, amending Section 5.7 of the applicant's Stock Purchase Agreement. [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

**February 11, 2016**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Dewitt Rehabilitation and Nursing Center, Inc.	Same
Address	211 East 79 Street, New York, NY 10021 (New York County)	Same
RHCF Capacity	499	499
ADHC Program Capacity	n/a	Same
Type of Operator	Corporation	Corporation
Class of Operator	Proprietary	Proprietary
Operator	Dewitt Rehabilitation and Nursing Center, Inc.	Dewitt Rehabilitation and Nursing Center, Inc.
	<b>Shareholders:</b> Marilyn Lichtman            91.00% Pasquale DeBenedictis    3.00% Alex Solovey                 3.00% Leopold Friedman           3.00%	<b>Shareholders</b> Pasquale DeBenedictis    34.50% Alex Solovey                 34.50% Leopold Friedman           10.50% Joseph F. Carillo II        10.50% Jimmy Solovey               4.25% Soloman Rutenberg         4.25% Michael Schreiber           1.50%

### Character and Competence - Background

#### **Facilities Reviewed**

##### Nursing Homes

Barnwell Nursing and Rehabilitation Center	10/2005 to present
Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
Carillon Nursing & Rehabilitation Center	10/2005 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Highland View Care Center	02/2015 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
Sayville Nursing & Rehab Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Terrace Health Care Center	06/2014 to present
The Citadel Rehabilitation and Nursing Center at Kingsbridge (f.k.a. Kingsbridge Heights Rehabilitation and Care Center)	02/2015 to present
Workmen's Circle Multicare Center	07/2013 to present

##### Connecticut Nursing Home

Cassena Care at Norwalk	06/2013 to present
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##### Other Health Facilities

Mills Pond Dialysis Center, LLC	(D&TC)	08/2015 to present
Carillon Dialysis Center	(D&TC)	01/2008 to present
Ultimate Care LLC	(LHCSA)	02/2010 to present

**Individual Background Review**

**Pasquale DeBenedictis** is currently employed as the Director of Finance at the Carillon Nursing and Rehabilitation Center, since 1997. Mr. DeBenedictis discloses ownership interests in the following health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen’s Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. DeBenedictis has pending ownership applications for the following facilities, which have been approved by NYS, but have not transferred title as of this writing:

131349	Sea-Crest Nursing and Rehabilitation
141205	Workmen’s Circle Dialysis Center (D&TC)
141210	Cassena Care Dialysis at Peninsula (D&TC)

**Alex Solovey** is a New York State licensed physical therapist, since 1994, considered to be in good standing. He is the founder and CEO of Theradynamics Physical Therapy Rehabilitation P.C. since 1999.

Mr. Solovey discloses ownership interests in the following residential health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Peninsula Nursing and Rehabilitation Center	08/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen’s Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (NH - CT)	06/2013 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. Solovey has pending ownership in the following facilities, which have been approved by PHHPC, but have not transferred title as of this writing:

131349	Sea-Crest Nursing and Rehabilitation
141205	Workmen’s Circle Dialysis Center (D&TC)
141210	Cassena Care Dialysis at Peninsula (D&TC)

**Joseph F. Carillo II** holds an active New York Nursing Home Administrator’s License in good standing. He is the Administrator at Carillon Nursing and Rehabilitation since 1986. He has disclosed ownership interest in the following health care facilities:

Carillon Nursing and Rehabilitation Center	01/1999 to present
Barnwell Nursing and Rehabilitation Center	10/2006 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Workmen’s Circle Multicare Center	07/2013 to present
Carillon Dialysis Center (D&TC)	01/2008 to present
Mills Pond Dialysis Center LLC (D&TC)	08/2015 to present

Mr. Carillo has pending ownership in the following facility, which has been approved by PHHPC, but has not transferred title as of this writing:

141205 Workmen's Circle Dialysis Center (D&TC)

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

Peninsula Center for Extended Care & Rehabilitation (rec/op)	01/2013 to present
DeWitt Rehabilitation and Nursing Center	07/2015 to present
Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Ultimate Care, Inc. (LHCSA)	02/2010 to present
The Citadel Rehabilitation and Nursing Center	02/2015 to present

Mr. Friedman has pending ownership in the following facilities, which have been approved by PHHPC, but have not transferred title as of this writing:

151108 Long Beach Nursing and Rehabilitation Center  
151308 Brooklyn Gardens Dialysis Center (D&TC)  
141210 Cassena Care Dialysis at Peninsula (D&TC)

**Michael Schreiber** holds an active New York Nursing Home Administrator's license, since 2006, and is considered to be in good standing. Mr. Schreiber is employed, since 2013, as the Vice President of Strategic Planning at Cassena Care Consulting located in Woodbury, New York. He is also currently employed as the Assistant Executive Director, since 2004, at Shore View Nursing Home and as the Executive Director at Sea-Crest Health Care Center, since 2004. Mr. Schreiber discloses ownership interests in the following residential health care facility:

Shore View Nursing and Rehabilitation Center 06/2014 to present

Mr. Schreiber has pending ownership in the following facility, which has been approved by NYS, but has not transferred title as of this writing:

131349 Sea-Crest Nursing and Rehabilitation

**Soloman Rutenberg** is employed, since 2006, as the CEO at Workmen's Circle Multicare Center, a skilled nursing facility located in Bronx, New York. Mr. Rutenberg discloses an ownership interest in the following health care facilities:

Mills Pond Nursing and Rehabilitation Center	05/2014 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present
Workmen's Circle Multicare Center	07/2013 to present
Morningside Nursing and Rehabilitation Center	07/2014 to present
Terrace Health Care Center, Inc.	06/2014 to present

Mr. Rutenberg has pending ownership in the following facilities, which have been approved by NYS, but have not transferred title as of this writing:

131349 Sea-Crest Nursing and Rehabilitation  
141205 Workmen's Circle Dialysis Center (D&TC)  
Morningside Acquisition III, LLC (ALP and LHCSA)

**Jimmy Solovey** discloses he is the senior vice-president of business development, since 2000, at Smart Linx Solutions in Edison, NJ. Mr. J. Solovey discloses no ownership interests in health care facilities.

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the applicants.

A review of Barnwell Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-15-001 issued January 12, 2014 for surveillance findings on March 13, 2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care : Accidents/Supervision.

- A federal CMP of \$3,250 was paid for the Immediate Jeopardy on 3/13/12.
- The facility was fined \$10,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on February 1, 2013. Deficiencies were found under 10NYCRR 415.12(m)(2) Quality of Care Significant Medication Errors; 10NYCRR 415.26 Administration; and 10NYCRR 415.27 Quality Assurance.
  - A federal CMP of \$5,000 was paid for the Immediate Jeopardy on 2/1/13.
- The facility was fined \$8,000 pursuant to Stipulation and Order NH-15-038 for surveillance findings on September 26, 2013. Deficiencies were found under 10NYCRR 415.4(b)(1)(2)(3) Free from Mistreatment Neglect and Misappropriation of Property; and 10NYCRR 415.12 Quality of Care Highest Practicable Potential.
  - A federal CMP of \$8,000 was paid for the Immediate Jeopardy on 9/26/13.

A review of operations of Barnwell Nursing and Rehabilitation Center indicates that the requirements for approval, as set forth in Public Health Law §2801-a (3), have been met.

A review of East Neck Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$6000 pursuant to Stipulation and Order NH-15-039 issued 11/20/15 for surveillance findings on March 21, 2014. Deficiencies were found under 10NYCRR 415.3 (e)(1)(ii) Resident Rights: Right to Accept/Refuse Treatment; Right to Formulate Advance Directives; 10NYCRR 415.26 Administration and 10NYCRR 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of East Neck Nursing and Rehabilitation Center for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no repeat enforcements.

A review of operations for Brooklyn Gardens Nursing & Rehabilitation Center, Carillon Nursing & Rehabilitation Center, Dewitt Nursing and Rehabilitation Center, Hendon Garden Nursing and Rehabilitation Center, Mills Pond Nursing and Rehabilitation Center, Morningside Nursing and Rehabilitation Center, Peninsula Nursing and Rehabilitation Center, Sayville Nursing and Rehabilitation Center, Shore View Nursing and Rehabilitation Center, Shore View Nursing and Rehabilitation Center, Terrace Health Care Center, The Citadel Rehabilitation and Nursing Center at Kingsbridge and Workmen's Circle Multicare Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

The applicant has submitted an affidavit which attests that there have been no enforcement actions for Cassena Care at Norwalk in the State of Connecticut for the periods identified above. A conclusion of substantially consistent high level of care can be made since there were no repeat enforcements. The facility is operating in compliance with state and federal laws and regulations.

A review of operations for Mills Pond Dialysis Center, LLC (D&TC) and Carillon Dialysis Center (D&TC) for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Ultimate Care LLC (LHCSA) for the periods identified earlier, 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. No administrative services or consulting agreements are proposed in this application.



## Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

## Recommendation

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

# Financial Analysis

## Stock Purchase Agreement

Each current and potential shareholder has submitted a separate Shareholder's Affidavit attesting to the share transactions, the number of total shares being issued, and the number of shares to be owned by that shareholder at the completion of the second transaction. An executed Stock Purchase Agreement has been received by the Department:

Date:	May 26, 2015
Seller:	Dewitt Rehabilitation and Nursing Center, Inc.'s Member Marilyn Lichtman, an individual
Buyer:	Pasquale DeBenedictis, Alex Solovey, Leopold Friedman
Purchase Price:	Total purchase price \$2,500,000
Stock Purchased:	Buyers will purchase 18 shares (9% interest) at "First Purchased Stock" and the balance of the stock (91% interest) at the "Second Transaction"
Closing:	"First Purchased Stock" July 7, 2015 and "Second Transaction" TBD
Payment of Purchase Price:	\$1,000,000 cash at "First Purchased Stock" on July 7, 2015; and \$1,500,000 balance to be paid in cash on closing of "Second Transaction"

The purchase price per share is \$12,500 with total price of \$2,500,000 for the 200 shares. The purchase price is being paid in two transactions, with the first payment of \$1,000,000 made on July 7, 2015 with the transfer of 9% of shares to three members. The balance of \$1,500,000 is to be paid at closing of the remaining 91% of shares upon approval of this application. The balance will be paid in cash with no funds financed.

## Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized below:

Date:	July 9, 2015
Premises:	A 499-bed RHC located at 211 East 79 <sup>th</sup> Street, New York 10075
Lessor:	79 <sup>th</sup> Street Acquisition Group, LLC
Lessee:	DeWitt Rehabilitation and Nursing Center, Inc.
Terms:	35 years
Rental:	\$11,000,000 annual base rent with a 3% increase each year thereafter.
Provisions:	Tenant responsible for real estate taxes, general liability insurance, utilities & maintenance.

On May 26, 2015, the real property for the facility sold for \$105,500,000 to 79<sup>th</sup> Street Acquisition, LLC, of which all of the proposed shareholders of the second stock purchase are also members along with one other individual. An affidavit disclosing this non-arm's length relationship has been submitted by the applicant.

## Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the current year and year one subsequent to change in shareholders' interest, summarized as follows:

	<u>Current Year (2014)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues:</u>				
Medicare	\$640.89	\$9,215,372	\$640.89	\$16,984,400
Medicaid	\$301.91	36,267,616	\$289.95	34,833,600
Commercial	\$263.87	8,893,080	\$350.77	5,273,900
Private Pay/Other	\$289.47	<u>2,151,306</u>	\$444.64	<u>6,677,100</u>
Total Operating Revenues		\$56,527,374		\$63,769,000
Non-Operating Revenues		<u>3,289,214</u>		<u>0</u>
Total Revenue		\$59,816,588		\$63,769,000
<u>Expenses:</u>				
Operating	\$308.65	54,211,374	\$282.54	\$49,917,100
Capital	\$11.83	<u>2,077,995</u>	\$63.68	<u>11,250,000</u>
Total Expenses		\$56,289,369		\$61,167,100
Net Income		<u>\$3,527,219</u>		<u>\$2,601,900</u>
Total Patient Days		175,643		176,672
Occupancy %		96.4%		97.0%

The following is noted with respect to the submitted budget:

- Private Pay rates are projected based on the facility's 2014 payment rates.
- Medicare rates are projected based on the Medicare PPS rates in effect for 2014 increased by 2% per annum for inflation to reflect 2016 dollars and include Medicare Part B payments.
- The Medicaid rates are projected based on the statewide pricing methodology and reflect the current FFS rates guaranteed for Medicaid Managed Care during the transition period. The applicant indicated that they are prepared to work with Managed Care Organizations to transition to a Value Based Reimbursement Model once the plans have the capability to support this reimbursement system. The Medicaid rates and related revenues include the facility's current operating and capital components based on the 2015 Medicaid rate plus assessments.
- The applicant indicated that the Medicare revenues and related utilization reported for the current year (reflects cost report filing) are skewed due to a facility error in categorizing Managed Care and Commercial Insurances and bad debt write-offs.
- Salaries, benefits, and other expenses are projected based on actual 2014 experience increased for inflation by 2% per annum to reflect 2016 dollars. Reflected in the budget is a reduction in select salaries for the following: administrative and fiscal salaries were reduced by \$892,952 and \$597,809, respectively, due to centralized operations, and the direct nursing staffing pattern was revised to reduce avoidable overtime with a net savings of \$591,055.
- The Current Year Non-Operating Revenues represent bankruptcy vendor adjustments that are not anticipated to recur going forward.
- Utilization by payor is as follows:

<u>Payor</u>	<u>Year One</u>
Medicare	15.0%
Medicaid	68.0%
Private Pay/Other	17.0%
- Breakeven utilization is projected at 93.04% for year one.

## Capability and Feasibility

There are no project costs associated with this application. The total purchase price for all 200 shares is \$2,500,000 (\$12,500 per share). The first transfer of 18 shares was performed on July 7, 2015. The second transfer of 182 shares will be done upon approval of this application. The total purchase price will be paid in cash with \$1,000,000 paid at first transfer and \$1,500,000 at second transfer. Affidavits have been received from each member with the number of shares, percent of total shares, and voting rights

granted. BFA Attachment A is the summary net worth statement for the members, which shows sufficient resources to cover the equity funding of the stock purchase price.

The working capital requirement is estimated at \$10,194,517 based on two months of the first year expenses. Working capital will be satisfied from the facility's existing operations and additional members' equity. The net cash plus accounts receivable (minus accounts payable) was \$9,990,722 as of October 31, 2015, resulting in a need for additional equity of \$203,795 to be paid from members' equity. Members Pasquale DeBenedictis and Alex Solovey of DeWitt Rehabilitation and Nursing Center, Inc. have submitted affidavits stating they are willing to contribute resources disproportionate to their ownership percentages toward working capital requirements. BFA Attachment A is a summary of the net worth of the members of DeWitt Rehabilitation and Nursing Center, Inc., which indicates the availability of sufficient funds for working capital. 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 \$9,384,200.

The submitted budget indicates an excess of revenues over expenses of \$2,601,900 during the first year of the change in ownership. BFA Attachment F is a budget sensitivity analysis based on current utilization of the facility, as of October 31, 2015, which shows the budgeted revenues would decrease by \$2,380,197 resulting in a net profit in year one of \$221,703. 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 the Financial Summary for Dewitt Rehabilitation and Nursing Center, Inc. for audited years 2013-2014 and internal financials for eight months of 2015. The facility has maintained positive working capital, positive net equity and a net profit from operations in 2014 and as of October 31, 2015. In 2013 the facility experienced negative working capital and negative net equity due to a carry forward deficit.

BFA Attachments E, financial summary of the proposed members affiliated RHCf's, shows the facilities maintained positive net income from operations for the periods shown, with the exception of Sayville Nursing and Rehabilitation Center which had negative net equity of \$78,854 and a net operating loss of \$231,056 during 2013 due to a one-time charge against operations associated with the change in ownership which occurred in December 2012, but realized in 2013.

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	Net Worth Statement of the Members Purchasing Shares
BFA Attachment B	Schedule of Shareholders Costs
BFA Attachment C	Pro Forma for DeWitt Rehabilitation and Nursing Center
BFA Attachment D	DeWitt Rehabilitation and Nursing Center – Financial Summary
BFA Attachment E	Affiliated Residential Healthcare Facilities – Financial Summary
BFA Attachment F	Budget Sensitivity based on October 31, 2015 Historical
LTC Attachment A	Quality Measures Inspection Report



**Project # 152128-B  
Harlem Center for Nursing and Rehabilitation, LLC**

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

**County:** New York  
**Acknowledged:** September 1, 2015

**Executive Summary**

**Description**

Harlem Center for Nursing and Rehabilitation, LLC (Harlem Center), a New York limited liability company, requests approval to be established as the operator of the facility formerly known as Greater Harlem Center for Nursing and Rehabilitation, LLC, a 200-bed Article 28 residential health care facility (RHCF) located at 30 West 138<sup>th</sup> Street, New York (New York County). In addition, the applicant is proposing to perform renovations to bring ten beds back into operation in order to operate the RHCF at its full certified capacity. RHCF has been operating under receivership since August 19, 2014, with applicant member Joel Landau appointed as Receiver. There will be no change in services provided.

Harlem Center will enter into an Asset Purchase Agreement (draft provided) with Greater Harlem Nursing Home Company, Inc., the current owner of the nursing facility, for the sale and acquisition of the operating interests of the RHCF. Concurrently, Harlem Center Properties, LLC will enter into a Contract of Sale Agreement (draft provided) with Greater Harlem Nursing Home Company, Inc. for the sale and acquisition of the real property interests of the facility. The applicant will lease the premises from Harlem Center Properties, LLC. There is a relationship between Harlem Center Properties, LLC and Harlem Center for Nursing and Rehabilitation, LLC in that the two entities have common membership.

<u>Proposed Operator</u>	
Harlem Center for Nursing and Rehabilitation, LLC	
<u>Members</u>	<u>%</u>
Joel Landau (Manager)	33 1/3%
Marvin Rubin	33 1/3%
Solomon Rubin	33 1/3%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

The change in ownership will not result in any changes in certified bed capacity. Greater Harlem Nursing Home and Rehabilitation Center, Inc.'s occupancy was 95.5% in 2011 and 95.0% in 2012. In 2013, the facility did not submit a cost report, however, based on self-reported data, occupancy was approximately 88.5%. Current occupancy, as of September 16, 2015, is 96.3%, based on the facility's operational capacity of 190 beds.

**Program Summary**

Harlem Center for Nursing and Rehabilitation is currently operated under a receivership by Harlem Center for Nursing and Rehabilitation, LLC whose sole member is Joel Landau. The subject application will establish the limited liability company as the permanent operator, add two members, and undertake renovations to restore ten beds which had been taken out of service as a result of an earlier HEAL 12 project.

No negative information has been received concerning the character and competence of the proposed applicants. No administrative services or consulting agreements are proposed in this application.

#### Financial Summary

Total project costs of \$312,700 for renovations will be met via equity. **Total reimbursable costs are \$0 as the costs are being incurred to amend construction previously paid for with HEAL NY Phase 12 grant funds.**

The purchase price for the acquisition of the operating interests of the nursing home is \$5,000,000. The purchase price will be met with \$500,000 of equity from the proposed members and a bank loan for \$4,500,000 at 4.75% interest for a ten-year term and 15-year amortization period. The purchase price for the

acquisition of the RHCF real estate interests is \$25,000,000 and will be met with equity of \$2,500,000 from the proposed realty members and a \$22,500,000 bank loan at 4.75% interest for a ten-year term and 20-year amortization period. Skyline Capital has provided letters of interest for the respective operating and real estate loans at the stated terms. Proposed member Joel Landau has submitted an affidavit for the respective loans attesting that he will provide equity for the balloon payments if refinancing is not attainable when they become due.

The operating budget is as follows

Revenues	\$21,538,228
Expenses	<u>21,261,731</u>
Net Income	\$276,497

## 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 loan commitment for the real estate, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the operating interests, acceptable to the Department of Health. [BFA]
4. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed real estate purchase agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of 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 copy of the fully executed Operating Agreement of Harlem Center for Nursing and Rehabilitation, LLC, acceptable to the Department. [CSL]
11. Submission of a copy of a fully executed Asset Purchase Agreement between Harlem Center for Nursing and Rehabilitation, LLC and Greater Harlem Nursing Home & Rehabilitation Center, Inc., acceptable to the Department. [CSL]
12. Submission of a copy of a fully executed Agreement for the Sale of Real Property between Greater Harlem Nursing Home & Rehabilitation Center, Inc. and Harlem Center Properties, LLC, acceptable to the Department. [CSL]
13. Submission of a copy of a fully executed Lease Agreement between Harlem Center for Nursing and Rehabilitation, LLC and Harlem Center Properties, LLC, acceptable to the Department. [CSL]
14. Submission of a copy of the Articles of Organization of Harlem Center Properties, LLC, acceptable to the Department, along with proof of filing with the New York State Department of State. [CSL]
15. Submission of a copy of the Operating Agreement of Harlem Center Properties, 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. Approval by MARO staff of all areas undergoing renovation, prior to the re-occupancy of the rooms to the full 200 bed complement. [LTC]
3. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes.
4. Construction must start on or before 03/01/2016, and must be completed by 09/01/2016, 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. [AES]

Council Action Date

**February 11, 2016**

# Need Analysis

## Project Description

Harlem Center for Nursing and Rehabilitation, LLC seeks approval to become the established operator of Greater Harlem Nursing Home and Rehabilitation Center, Inc. (Greater Harlem), a 200-bed Article 28 residential health care facility (RHCF), located at 30 West 138<sup>th</sup> Street, New York, 10037, in New York County. Greater Harlem is currently under receivership by the proposed operator.

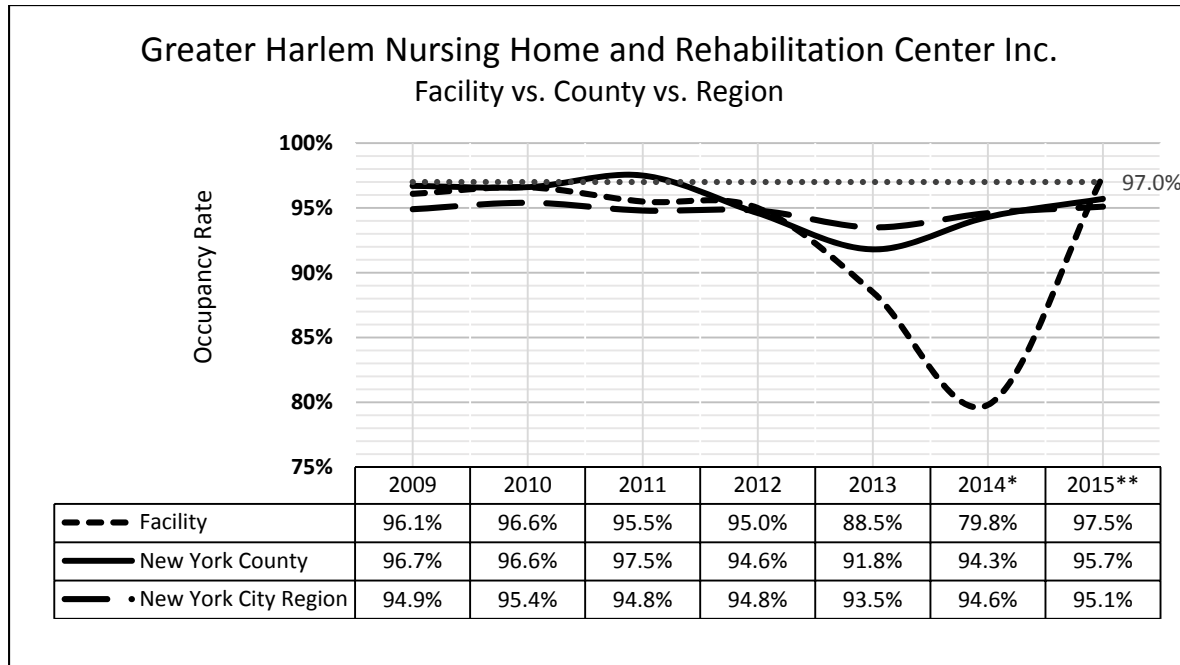
## Analysis

There is currently a need for 8,824 beds in the New York City Region as indicated in the following table:

### RHCF Need – New York City Region

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	42,151
<b>Beds Under Construction</b>	96
<b>Total Resources</b>	42,247
<b>Unmet Need</b>	8,824

The overall occupancy for the New York City Region is 93.5% for 2013, as indicated in the following chart:



\*unaudited; based on weekly census and/or facility reports at certified capacity of 200 beds

\*\*2015 census is based on 190 beds, the facility's current capacity

Greater Harlem Nursing Home and Rehabilitation Center, Inc.'s occupancy was 96.6% in 2010, 95.5% in 2011, and 95% in 2012. The facility has experienced financial losses since 2004, averaging \$1.4 million annually. The facility received HEAL Phase 12 funding to develop a 30-bed ALP, in addition to decertifying 25 RHCF beds, but was not been able to proceed with full completion of the project as the necessary approvals from the United States Department of Housing and Urban Development to close on the land where the ALP was to be located were delayed. Without the HEAL funding, the facility was not able to make the necessary capital enhancements to remain competitive in the marketplace. The applicant also noted that Harlem Hospital, which is located within two blocks of Greater Harlem, was not referring patients to the facility.



The current receiver and proposed operator was appointed to address the facility's quality issues and has since put 15 of the 25 beds that were to be decertified through HEAL Phase 12 funding back into operation. It is the applicant's intent to restore the facility to its full certified capacity of 200 beds by re-establishing and re-constructing the two-bedded rooms that were previously removed on floors 2-6 while maintaining the common-area space enhancements planned under HEAL Phase 12 funding. It is also important to note that another RHCF located in New York County, the Manhattan Center for Nursing and Rehabilitation, submitted a LRA to decertify 36 beds. The restoration of ten beds at this facility will not result in any changes to its certified bed capacity and taken in combination with Manhattan Center's decertification, will result in a net of 26 beds being removed from New York County.

While occupancy is currently near the Department's planning optimum, the applicant intends to maintain this level by implementing initiatives such as:

- Using a nurse practitioner model, Greater Harlem will work closely with area hospitals to reduce acute care length of stay at the hospitals by accelerating patient discharge and putting into place a program that will substantially eliminate hospital readmissions. This program has been successfully implemented at Linden Center for Nursing and Rehabilitation in Kings County;
- Entering into contracts with MLTCPs and other managed care insurers to accept their enrollees who need nursing home care. It is expected that Greater Harlem will attract an increasing number of MLTCP contracts;
- Working with Harlem Hospital Center to build a long-term relationship where they can refer patients to the nursing home. The hospital has already re-credentialed one of their physicians to begin working at the nursing home again and is currently discussing credentialing at the nursing home with specialists in cardiology, gastroenterology, and infectious diseases;
- Developing a Total Parenteral Nutrition (TPN) Program;
- Creating a Wound Care Program to allow the facility to admit patients with difficult wounds, multiple stage 3 and 4 decubiti, diabetic wounds, and those requiring hyperbaric chambers. These patients are often very difficult for hospitals to place and through this program, Greater Harlem will be responsive to meeting a community need;
- Hiring an urologist to perform bladder scans in-house;
- Admitting new trachea tube patients and contract with a Respiratory Therapist to work on weaning, care/management, and education to the nurses when necessary;
- Training existing staff to become IV certified nurses, thereby reducing unnecessary hospitalizations;
- Conducting in-house, at bed-side, FEES exams, thereby preventing re-hospitalizations for barium swallow exams; and
- Offering balance diagnostics, balance testing and outcomes-based vestibular therapy, which will serve to reduce hospitalizations due to falls.

#### 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.

Greater Harlem Nursing Home and Rehabilitation Center, Inc.'s Medicaid admissions for 2011 and 2012 were 68.4% and 23.8%, respectively. The facility exceeded the New York County 75% rate of 27.3% in 2011, but it did not exceed the 2012 New York County 75% rate of 26.1%. The applicant will be required to follow and satisfy the contingencies related to such.

Conclusion

Approval of this application will result in maintaining a necessary community resource to meet the current health care needs of the residents of New York County.

Recommendation

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

<b>Program Analysis</b>
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Facility Information

	Existing	Proposed
Facility Name	Greater Harlem Nursing Home and Rehabilitation Center	Harlem Center for Nursing and Rehabilitation, LLC
Address	30 West 138th Street New York, NY. 10037	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	N/A
Type of Operator	Proprietary	Proprietary
Class of Operator	Limited Liability Company	Limited Liability Company
Operator	Harlem Center for Nursing and Rehabilitation, LLC (receiver)  Sole member: Joel Landau                      100%  Established Operator: Greater Harlem Nursing Home Co, Inc.	Harlem Center for Nursing and Rehabilitation, LLC  Members: *Joel Landau                      33.33% Marvin Rubin                      33.33% Solomon Rubin                      33.33%  *Managing Member

Character and Competence - Background

**Facilities Reviewed**

Nursing Homes

Linden Center for Nursing and Rehabilitation	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation	01/2013 to present
Hamilton Park Nursing and Rehabilitation Center	08/2009 to present
Hopkins Center for Rehabilitation and Healthcare	03/2012 to present
King David Nursing and Rehabilitation Center	01/2015 to present
Greater Harlem Nursing Home (receivership)	01/2014 to present
Nostrand Center for Nursing and Rehabilitation Center	07/2015 to present
Rivington Center, LLC (real estate owner of Manhattan Center for Nursing and Rehabilitation Center currently in closure process)	02/2015 to present

New Jersey Nursing Home

Norwood Terrace Health Center	03/2005 to present
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Licensed Home Care Services Agency (LHCSA)

True Care, Inc.	03/2011 to present
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**Individual Background Review**

**Joel Landau** is the director of Care to Care, LLC, a radiology benefit management company. He is also the president of The Intelimed Group, a medical contracting and credentialing company. Mr. Landau is a notary public, licensed by the Department of State in New York State. Mr. Landau discloses the following ownership interests in health facilities:

Linden Center for Nursing and Rehabilitation	01/2013 to present
Crown Heights Center for Nursing and Rehabilitation	01/2013 to present
King David Nursing and Rehabilitation Center (33.33%)	01/2015 to present
Nostrand Center for Nursing and Rehabilitation (33.33 %)	07/2015 to present
Rivington Center LLC (40%) (Facility in closure process)	02/2015 to present

**Marvin Rubin** lists his current employment as management at Hamilton Park Nursing and Rehabilitation Center. Mr. Rubin discloses the following ownership interests in health facilities:

Linden Center for Nursing and Rehabilitation (15%)	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation (20%)	04/2013 to present
Hopkins Center for Rehabilitation and Healthcare (30%)	03/2012 to present
Hamilton Park Nursing and Rehabilitation Center (40%)	12/2012 to present
King David Nursing and Rehabilitation Center (33.3%)	01/2015 to present
True Care, Inc. (10%)	03/2011 to present
Rivington Center LLC (15%) (Facility in closure process)	02/2015 to present
Nostrand Center for Nursing and Rehabilitation (33.33 %)	07/2015 to present

**Solomon Rubin** is the controller at Grandell Rehabilitation and Nursing Center and the Beach Terrace Care Center in Long Beach. He also lists employment as management at Hamilton Park Nursing and Rehabilitation Center in Brooklyn. Mr. Rubin discloses the following ownership interests in health facilities:

Hamilton Park Nursing and Rehabilitation Center (40%)	08/2009 to present
Linden Center for Nursing and Rehabilitation (15%)	05/2013 to present
Crown Heights Center for Nursing and Rehabilitation (20%)	04/2013 to present
King David Nursing and Rehabilitation Center	01/2015 to present
Norwood Terrace Health Center (NJ) (25%)	2000 to present
Nostrand Center for Nursing and Rehabilitation (33.33 %)	07/2015 to present
Rivington Center LLC (40%) (Facility in closure process)	02/2015 to present

**Character and Competence - Analysis**

No negative information has been received concerning the character and competence of the applicants.

A review of operations for Crown Heights Center for Nursing and Rehabilitation, Greater Harlem Nursing Home, Linden Center for Nursing and Rehabilitation, Hamilton Park Nursing and Rehabilitation Center, Hopkins Center for Rehabilitation and Healthcare, King David Nursing and Rehabilitation Center, Nostrand Center for Nursing and Rehabilitation and Rivington Center, LLC for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations the Norwood Terrace Health Center in Plainfield, New Jersey for the period identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of the licensed home care services agency True Care, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

**Project Review**

The Department executed a receivership agreement for the facility effective August 19, 2014. Pursuant to this agreement, Harlem Center for Nursing and Rehabilitation, LLC (Joel Landau, sole member) assumed operation of the facility in order to stabilize operations until such time as this Certificate of Need application could be processed. Approval of this application is consistent with the terms set forth in the executed receivership agreement.

The previous operator had undertaken a construction project to create a 30 bed Assisted Living Program which required the decertification of 25 beds. Upon implementation of the receivership agreement the project was abandoned, but the nursing home could not restore the facility to its full capacity. In conjunction with the change of ownership application minor construction is necessary to enable the restoration of the full 200-bed certified capacity. The renovation project will add some lounge space, which will slightly improve the residential environment.

No changes in the program or additional physical environment changes are proposed in this application. No administrative services or consulting agreements are proposed in this application.

**Conclusion**

No negative information has been received concerning the character and competence of the proposed applicants.

**Recommendation**

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

<h2>Financial Analysis</h2>
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**Asset Purchase Agreement**

The applicant has submitted a draft asset purchase agreement for the purchase of the RHCF operations, which is summarized below:

Date:	March 5, 2014
Seller:	Greater Harlem Nursing Home and Rehabilitation Center, Inc.
Purchaser:	Harlem Center For Nursing and Rehabilitation, LLC
Assets Acquired:	Business and operation of the Facility; all tangible assets, whether owned or leased by Seller, including but not limited to, all hard assets, furniture , fixtures, equipment, instruments, supplies, inventory, vehicles, artwork, leasehold improvements and phone systems; copies of all records of the Business; all of Seller’s right, title and interest in and to any Licenses that are transferable used or in any way connected with the Business or required by Law or Governmental Authority for the conduct of the Business; personnel records of employees of Seller that Purchaser hires on or after the Closing Date; all rights of Seller under or pursuant to all warranties; to the extent transferable, all of Seller’s Medicare and Medicaid provider numbers relating to the Business; all insurance proceeds from Seller’s insurance policies and rights thereto derived from loss, damage or destruction of or to the Real Property; all cash, cash equivalents, book accounts, certificate deposits, and other cash items and investment accounts of Seller maintained by Purchaser; subject to the terms of the Receiver Agreement, all accounts receivable of Seller generated on and after the Receivership Date and all other assets and property owned by or licensed to Seller and used or held for use relating to or in connection with the Business, including, without limitation, all intangible assets, telephone and facsimile numbers, electronic mail addresses, goodwill and going concern value of the Business.
Excluded Assets:	Any of Seller’s contracts including, but not limited to, any collective bargaining agreement between Seller and any labor organization which represents Seller’s employees; those claims against third parties related to Seller’s operations prior to the Receivership Date; all of Seller’s non-transferable licenses used in connection with the Business; the Organizational documents, corporate seal, tax returns and other tax records of Seller; all equity, interests in Seller and the real property.
Assumed Liabilities:	Purchaser shall not assume or become responsible for any liabilities of Seller.
Purchase Price:	\$5,000,000

Payment of	\$1,500,000 in escrow
Purchase Price:	\$3,500,000 at Closing

The purchase price will be financed as follows:

Equity	\$500,000
Bank Loan (4.75% interest, 10-year term, 15-year amortization period)	\$4,500,000

Skyline Capital has provided a letter of interest for the loan at the above stated terms. Joel Landau has submitted an affidavit to fund the balloon payment if acceptable financing is not available 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 surcharge, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its liability and responsibility. As of December 7, 2015, the facility had outstanding Medicaid liabilities totaling \$123,589 related to assessments/surcharges.

#### Real Estate Purchase Agreement

The applicant has submitted a draft real estate purchase agreement for the acquisition of the real estate, which is summarized below:

Date	February 13, 2014
Premises:	The parcel of land situated at 30 West 138 <sup>th</sup> Street, New York, New York.
Seller:	Greater Harlem Nursing Home & Rehabilitation Center, Inc.
Purchaser:	Harlem Center Properties, LLC
Purchase Price:	\$25,000,000
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan for the real estate purchase is as follows:

Equity	\$2,500,000
Loan (4.75% interest rate, 10-year term, 20-year amortization period)	\$22,500,000

Skyline Capital has provided a letter of interest for the realty loan at the above stated terms. The applicant has submitted an affidavit indicating that the proposed realty members will provide equity to meet the balloon payment when it becomes due.

#### Lease Rental Agreement

The applicant submitted a draft lease rental agreement for the site they will occupy, summarized below:

Premises:	The site located at 30 West 138 <sup>th</sup> Street, New York, New York
Lessor:	Harlem Center Properties, LLC
Lessee:	Harlem Center For Nursing and Rehabilitation, LLC
Term:	25 years
Rental:	\$1,767,386 (annual)
Provisions:	Tenant shall be responsible for real estate taxes, maintenance, insurance and utilities.

The lease arrangement will be a non-arm's length lease agreement, since there is common ownership between the landlord and the tenant.

## Total Project Cost and Financing

Total project cost, which is for renovations, is estimated at \$312,700, further broken down as follows:

Renovation and Demolition	\$257,500
Design Contingency	25,750
Construction Contingency	25,750
CON Fee	2,000
Additional Processing Fee	<u>1,700</u>
Total Project Cost	\$312,700
<b>Total Reimbursable Cost</b>	<b>\$0</b>

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

The total project cost will be financed with equity, and will be non-reimbursable as the costs are being incurred to amend construction previously paid for with HEAL NY Phase 12 grant funds.

## Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first and third years of operation after the change in operator, summarized below:

	<u>Current Year (2014)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:						
Medicaid FFS/MC	\$243.91	\$11,957,809	\$238.37	\$12,563,707	\$238.37	\$12,828,206
Medicare FFS/MC	\$584.32	3,375,027	\$625.00	6,935,000	\$624.98	7,081,000
Commercial FFS	\$346.51	<u>1,277,240</u>	\$374.36	<u>2,039,521</u>	\$367.60	<u>2,082,458</u>
Total Revenues		\$16,610,076		\$21,538,228		\$21,991,664
Expenses:						
Operating	\$309.98	\$18,130,318	\$259.12	\$17,969,838	\$253.77	\$17,969,838
Capital	<u>14.45</u>	<u>844,927</u>	<u>47.47</u>	<u>3,291,893</u>	<u>45.78</u>	<u>3,241,423</u>
Total Expenses	\$324.43	\$18,975,245	\$306.59	\$21,261,731	\$299.55	\$21,211,261
Net Income		(\$2,365,169)		\$276,497		\$780,403
Patient Days		58,488		69,350		70,811
Occupancy %		80.12%		95.00%		97.00%
Breakeven %				93.77%		93.58%

Utilization broken by payor source for the current year (2014) and the first and third years after the change in operator is summarized as follows:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid FFS/MC	83.83%	76.00%	76.00%
Medicare FFS/MC	9.87%	16.00%	16.00%
Commercial FFS	6.30%	8.00%	8.00%

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

- Expense assumptions are based on the historical experience of the facility, except for capital expenses which are based on an increase due to the lease rental payments. The lease amount is based on the annual debt service of the real estate loan plus estimated real estate taxes.
- Revenue assumptions are based on facility's current reimbursement rates by payor. The Medicaid rate was determined based on the most current 2015 Medicaid pricing rate incorporating the facility's current case mix. The Medicare rate was based on the current actual average per diem received by the facility. Commercial/Private Pay rates are based on actual 2014 revenue increased by 3% per year to 2016.

- Projected utilization is based on the actual experience of the proposed members of Harlem Center operating their other existing RHCs. The applicant intends to change the model of care at the facility to one that directly supports Medicaid Redesign Team (MRT) initiatives, including: MRT 82 (reducing reimbursement for hospital acquired conditions and potential preventable conditions); MRT 90 (mandatory enrollment in MLTC plans); and MRT 191 (decrease the incidence and improve treatments of pressure ulcers). The applicant indicated that these changes in Harlem Center's model of care would contribute to an overall increase in the percentage of Medicare short stay patients, and potentially decrease the length of stay for Medicaid patients.

#### Capability and Feasibility

Total project cost of \$312,700 for renovations will be met via equity, and will be non-reimbursable as the costs are being incurred to amend construction previously paid for with HEAL NY Phase 12 grant funds.

The purchase price of \$5,000,000 for the operation will be met with proposed members' equity of \$500,000 and a bank loan for \$4,500,000 at 4.75% interest for a ten-year term and 15-year amortization period. Joel Landau has submitted an affidavit attesting that if refinancing is not available he will fund the balloon payment. The purchase price of \$25,000,000 for the real estate portion will be met with equity of \$2,500,000 from the proposed realty members and a bank loan for \$22,500,000 at an interest rate of 4.75% for a ten-year term and 20-year amortization period. The applicant has submitted an affidavit indicating that proposed realty member Joel Landau will provide equity to meet the balloon payment when it becomes due if refinancing is not available. Skyline Capital has provided letters of interest for the respective operating and realty loans.

Working capital requirements are estimated at \$3,542,622 based on two months of first year expenses. The applicant will finance \$1,771,311 at an interest rate of 4.5% for a five-year term. Skyline Capital has provided a letter of interest for the working capital loan at the stated terms. The remaining \$1,771,311 will be met via equity from the proposed members' personal resources. BFA Attachment A is the personal net worth statements of the proposed members of Harlem Center for Nursing and Rehabilitation, LLC, which indicates the availability of sufficient funds for the equity contribution. The applicant provided an affidavit indicating that the proposed members will provide equity disproportionate to their ownership percentages. BFA Attachment C is the pro forma balance sheet of Harlem Center for Nursing and Rehabilitation, LLC as of the first day of operation, which indicates a positive net asset position of \$2,586,011. Assets include \$5,000,000 in goodwill, which is not a liquid resource, nor is it recognized for Medicaid reimbursement. The total net assets without goodwill are negative \$2,413,989.

The submitted budget indicates a net income of \$276,497 and \$780,403 during the first year and third years subsequent to the change in ownership. The submitted budget appears reasonable, given the applicant's intent to change their business model to increase Medicare short stay rehabilitation patients. This shift in model of care is expected to increase the facility's Medicare patient day volume in the first year subsequent to the change by 62% over 2014 levels. A budget sensitivity analysis was done to assess feasibility assuming utilization by payor for the first and third years remains consistent with the facility's payor source during the current year (2014). This results in first and third year losses of \$1,490,775 and \$609,640, respectively.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment B is the financial summary of Greater Harlem Nursing Home and Rehabilitation Center from 2012 through 2014. As shown, the facility had an average negative working capital position and an average negative net asset position from 2012 through 2014. The applicant indicated that the reason for the negative net asset position in 2014 was due to the write-off of an abandoned project and a \$3,000,000 loan due to Allure to repay a working capital loan. Also, the facility incurred average losses of

\$1,729,474 from 2012 through 2014. The historical losses were the result of higher employee health and welfare costs, daily census reductions, and depleted cash reserves in both operating investment accounts. The facility submitted a request for receivership which was approved effective August 19, 2014. Subsequently, occupancy has steadily increased to 98.4% through June 2015. According to the applicant, the increase in occupancy was the result of a strengthened relationship with Harlem Hospital Center.

BFA Attachment D is the internal financial statements of Greater Harlem Nursing Home and Rehabilitation Center as of May 31, 2015. As shown, the entity had a negative working capital position and a negative net asset position through May 31, 2015. Also, the entity achieved income from operations of \$231,088 through May 31, 2015.

BFA Attachment E provides the financial summaries of the other nursing facilities that the proposed members own. As shown, the entities had an average positive working capital position and an average positive net asset position, except for Hamilton Park which had an average negative working capital position due to a \$2,000,000 line of credit facility took out and issues with vendors that increased accounts payables and accrued expenses. Also, the entities all achieved an average income from operations from 2012 through 2014. The proposed members acquired ownership interest in Nostrand Center on July 1, 2015, therefore no financial data is available for this facility.

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

Recommendation

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

## Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary – Greater Harlem Nursing Home and Rehabilitation Center
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Internal financial statements of Greater Harlem Nursing Home and Rehabilitation Center as of May 31, 2015
BFA Attachment E	Financial Summaries of other owned nursing home facilities
BFA Attachment F	Sensitized Budget Analysis
LTC Attachment A	Quality Measures and Inspection Report





**Project # 152167-E  
SBNH Acquisitions, LLC d/b/a  
St. Barnabas Rehabilitation & Continuing Care Center**

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

**County:** Bronx  
**Acknowledged:** September 18, 2015

**Executive Summary**

**Description**

SBNH Acquisition, LLC d/b/a St. Barnabas Center for Nursing and Rehabilitation, a New York limited liability company, requests approval to be established as the operator of St. Barnabas Rehabilitation & Continuing Care Center, a 199-bed Article 28 residential health care facility (RHCF) located at 2175 Quarry Road, Bronx (Bronx County). The beds are certified as follows: 144 RHCF beds, 33 AIDS beds, and 22 Ventilator Dependent beds. The facility also operates an on-site, 30-slot adult day health care program (ADHCP). There will no change in services.

On March 20, 2015, SBNH Acquisition, LLC entered into an Asset Purchase Agreement with St. Barnabas Nursing Home, Inc. for the sale and acquisition of the operating interests of St. Barnabas Rehabilitation & Continuing Care Center. The real estate will remain unchanged. The applicant will lease the premises from St. Barnabas Nursing Home, Inc., which is an unrelated party.

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

<u>Current Operator</u>	
St. Barnabas Nursing Home, Inc.	100%

<u>Proposed Operator</u> SBNH Acquisition, LLC	
<u>Members</u>	<u>%</u>
Leopold Friedman (Manager)	50%
Esther Farkovits	25%
Avi Philipson	25%

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no changes to certified beds or services upon approval of this application. St. Barnabas Rehabilitation and Continuing Care Center's (St. Barnabas) occupancy was 99.1% in 2011, 96.6% in 2012, and 95.8% in 2013. Occupancy is expected to remain near the Department's planning optimum going forward with the new operator.

**Program Summary**

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. The applicant has stated there will be no administrative services or consulting agreements.

### Financial Summary

The purchase price for the acquisition of the operating interests is \$28,000,000 and will be paid as follows: equity of \$1,600,000 from the proposed members; a promissory note for \$5,000,000 at 5% interest for a three-year term and ten-year amortization period; and a bank loan for \$21,400,000 at 5% interest for a 30-year term. Bent Philipson, the father of proposed member Avi Philipson, and Benjamin Landa, the father of proposed member Esther Farkovitz, have submitted affidavits stating they will

provide the equity to fund the balloon payment on the promissory note when the payment comes due, if needed.

The operating budget is as follows:

Revenues	\$29,838,300
Expenses	<u>29,838,300</u>
Net Income:	\$710,310

## 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, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the operating interests, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease, 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 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]
6. 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]
7. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. 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]
8. Submission of a photocopy of an executed and completed Lease Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's completed and executed Asset Purchase Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's amended and completed Operating Agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's amended and completed Articles or Organization, acceptable to the Department. [CSL]
12. Submission of an affidavit signed by Bent Philipson, acceptable to the Department, stating that it is recognized that any debt guarantee or equity payment made as part of this project does not grant

ownership interest, and it is understood that no operational control can be gained or exerted as a result of such an arrangement. [LTC]

13. Submission of an affidavit signed by Benjamin Landa, acceptable to the Department, stating that it is recognized that any debt guarantee or equity payment made as part of this project does not grant ownership interest, and it is understood that no operational control can be gained or exerted as a result of such an arrangement. [LTC]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**February 11, 2016**

# Need Analysis

## Project Description

SBNH Acquisition, LLC d/b/a St. Barnabas Center for Nursing and Rehabilitation seeks approval to become the established operator of St. Barnabas Rehabilitation and Continuing Care Center, an existing 199-bed Article 28 residential health care facility (RHCF), located at 2175 Quarry Road, Bronx, 10457, in Bronx County. The 199 beds consist of 144 RHCF beds, 33 AIDS beds, and 22 ventilator-dependent (vent) beds.

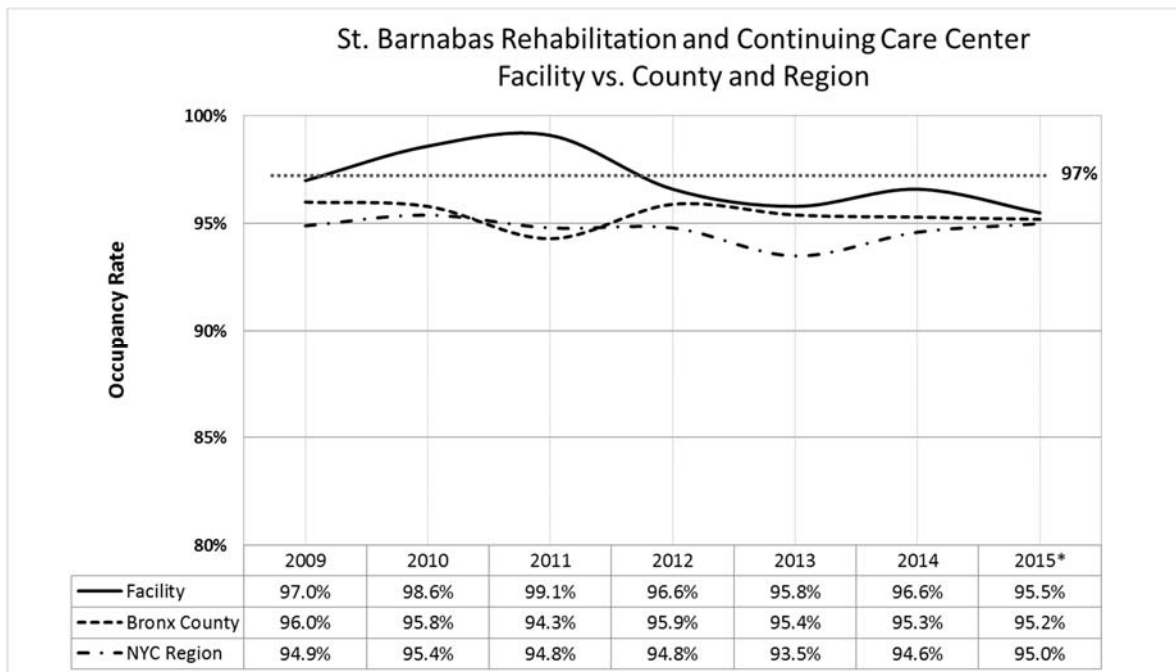
## Analysis

There is currently a need of 8,824 beds in the New York City Region as indicated in the following table:

### RHCF Need – New York City Region

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	42,151
<b>Beds Under Construction</b>	96
<b>Total Resources</b>	42,247
<b>Unmet Need</b>	8,824

The overall occupancy for the New York City Region is 93.5% for 2013 as indicated in the following chart:



\*unaudited, facility reported data

## 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.

St. Barnabas' Medicaid admissions of 80.0% in 2012 and 96.3% in 2013 exceeded the Bronx County 75% rates of 35.8% in 2012 and 29.8% in 2013.

**Conclusion**

Approval of this application will result in maintaining a necessary Medicaid resource as well as a community resource.

**Recommendation**

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

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

	Existing	Proposed
Facility Name	St. Barnabas Rehabilitation and Continuing Care Center	St. Barnabas Center for Nursing and Rehabilitation
Address	2175 Quarry Road Bronx, NY. 10457	Same
RHCF Capacity	199	Same
ADHC Program Capacity	30	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Voluntary / Not-for-profit	Proprietary
Operator	St. Barnabas Nursing Home, Inc.	SBNH Acquisitions, LLC  Membership: *Leopold Friedman            50.0% *Avi Philipson                 25.0% Esther Farkovits <u>25.0%</u> 100.0%  *Managing Member

**Character and Competence - Background**

**Facilities Reviewed**

Nursing Homes

Brooklyn Gardens Nursing and Rehabilitation Center	10/2014 to present
Dewitt Rehabilitation and Nursing Center	6/2015 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Little Neck Care Center	04/2011 to 1/2013
Nassau Extended Care Facility	07/2001 to present
Park Avenue Extended Care Facility	07/2004 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
Seagate Rehabilitation and Nursing Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
Split Rock Nursing and Rehabilitation Center	09/2002 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Center for Rehabilitation and Nursing	07/2004 to present
The Citadel Rehab and Nursing Center	02/2015 to present
White Plains Center for Nursing	07/2004 to present

Licensed Home Care Services Agency  
Ultimate Care, LLC

2/2010 to present

**Individual Background Review**

**Leopold Friedman** is the Chief Executive Officer, since 2006, of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman will serve as managing member of SBNH Acquisitions, LLC and discloses the following ownership interests:

Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
DeWitt Rehabilitation and Nursing Center	07/2015 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
The Citadel Rehab and Nursing Center	02/2015 to present
Ultimate Care, Inc. (LHCSA)	02/2010 to present

Mr. Friedman has received Public Health and Health Planning Council approval to operate Brooklyn Gardens Dialysis Center (D&TC), Highland View Care Center (receiver since 02/03/2015), and Cassena Care Dialysis at Peninsula (D&TC). The applicant has not closed on these purchases.

**Esther Farkovits** currently resides in Israel and lists no employment at present. Ms. Farkovits discloses the following health facility ownerships:

Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	03/2014 to present
The Citadel Rehab and Nursing Center	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing	07/2011 to present

**Avi Philipson** is a student in Israel. Mr. Philipson will serve as a managing member of SBNH Acquisitions, LLC and has disclosed the following health facility ownership interest:

Seagate Rehabilitation and Nursing Center (managing member)	12/2014 to present
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Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of Nassau Extended Care Facility for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to Stipulation and Order NH-14-007 issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of operations Brooklyn Gardens Nursing and Rehabilitation Center, Dewitt Rehabilitation and Nursing Center, Hendon Garden Nursing and Rehabilitation Center, Little Neck Nursing Home, Park Avenue Extended Care Facility, Peninsula Nursing and Rehabilitation Center, Seagate Rehabilitation and Health Care Center, South Shore Rehabilitation and Nursing Center, Split Rock Nursing and Rehabilitation Center, The Citadel Rehab and Nursing Center, Throgs Neck Extended Care Facility, Townhouse Center for Rehabilitation and Nursing, and White Plains Center for Nursing for the time period

indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Ultimate Care LLC (LHCSA) for the periods identified earlier, 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 has indicated there will be no administrative services or consulting agreements with Sentosa Care LLC or any other company. It is also noted that the proposed ownership includes family members of the principals of Sentosa Care LLC and individuals who are directly employed by Sentosa Care. The applicant has disclosed that Sentosa Care LLC contracts for administrative services with the following nursing homes, which are owned by the proposed members of SBNH Acquisitions, LLC:

- Nassau Extended Care Center
- Park Avenue Extended Care Facility
- Seagate Rehabilitation and Nursing Center
- Throgs Neck Extended Care Facility
- Townhouse Center for Rehabilitation and Nursing
- White Plains Center for Nursing

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. While Benjamin Landa and Bent Philipson have agreed to guarantee an operating entity loan on behalf of their children, they have agreed to provide the Department with affidavits stating that they recognize they have no operating interest or control through this arrangement. The experience of the members of SBNH Acquisitions, LLC, and their track record in operating nursing homes provides sufficient confidence that they will be able to maintain quality of care at St. Barnabas. Coupled with the satisfactory individual background review, the determination that 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) can be made.

#### 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, summarized below:

Date:	March 20, 2015
Seller:	St. Barnabas Nursing Home, Inc.
Purchaser:	SBNH Acquisition, LLC
Assets Acquired:	All equipment, instruments, tools, vehicles, inventory, supplies, medical supplies, linens, furniture and office equipment and all fixtures and leasehold improvements, all computer hardware and software, computer systems and computer programs, all patient and marketing information, all of Seller's right, title and interest under manufacturers and vendors warranties, all of Seller's books and records relating to the operation of the Business, the Seller's Medicare and Medicaid provider numbers, all resident funds held in trust by Seller, the goodwill and going concern value of the Business and any rights to refunds in connection with the Medicare and Medicaid provider numbers provided on or after the Closing Date.
Assumption of Liabilities:	All liabilities exclusively arising from and after the Closing Date with respect to the Assigned Contracts, all outstanding New York Health Facility Cash Assessment Program Liabilities of Seller as of and after the Closing Date relating to the period after the Closing Date and all known liabilities relating to Healthcare Program Liabilities relating to any period or events or emissions on or after the Closing.
Purchase Price:	\$28,000,000
Payment of Purchase Price:	Initial deposit of \$1,600,000 * Promissory note of \$5,000,000 Remaining \$21,400,000 balance paid in cash at Closing
*If CON approval has not occurred by the date which is twelve months after filing the CON application, the Buyer may seek to obtain an extension of the Closing Date by delivering and additional \$280,000 to the Escrow Agent, as further additional deposits, on the first day of each 90-day period thereafter until CON approval has occurred.	

The applicant's financing plan is as follows:

Equity	\$1,600,000
Promissory Note (5% interest, 3-year term, 10-year amortization)	5,000,000
Bank Loan (5% interest, 30-year term)	<u>21,400,000</u>
Total	\$28,000,000

Bent Philipson and Benjamin Landa have submitted a letters stating that they will provide the equity to fund the balloon payment on the promissory note when the payment becomes due, if needed.

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 Medicaid liabilities.

## Lease Rental Agreement

The applicant has submitted a draft lease agreement, which is summarized below:

Premises:	The site located at 2175 Quarry Road, Bronx, New York.
Lessor:	St. Barnabas Nursing Home, Inc.
Lessee:	SBNH Acquisition, LLC
Term:	99 years
Rental:	\$1
Provisions:	Lessee shall be responsible for insurance, utilities, maintenance and real estate taxes.

The lease agreement will be an arm's length lease arrangement.

## Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the current year and first year after the change in operator, summarized below:

<b>RHCF</b>	<u>Current Year (2014)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:				
Medicaid SNF	\$309.29	\$11,386,559	\$292.00	\$11,985,900
Medicare SNF	\$520.53	3,915,397	\$645.00	5,586,900
Private Pay SNF	\$480.41	3,100,102	\$409.25	521,800
Medicaid Vent	\$578.86	3,917,136	\$612.00	3,885,800
Medicare Vent	\$755.09	646,355	\$949.00	961,400
Private Pay Vent	\$912.56	689,898	\$657.34	282,200
Medicaid AIDS	\$471.14	4,778,337	\$427.23	4,552,600
Medicare AIDS	\$980.99	548,376	\$850.00	503,200
Private AIDS	\$657.59	562,895	\$650.00	283,400
Other Operating Revenue		<u>335,552</u>		<u>4,800</u>
Total Revenues		\$29,880,607		\$28,568,000
Expenses:				
Operating	\$396.22	\$27,983,150	\$341.13	\$24,035,000
Capital	<u>36.48</u>	<u>2,576,207</u>	<u>63.77</u>	<u>4,493,290</u>
Total Expenses	\$432.70	\$30,559,357	\$404.90	28,528,290
Net Income		(\$678,750)		\$39,710
Utilization (patient days)		70,626		70,457
Occupancy		97.23%		97.00%
<b>ADHCP</b>		<u>Current Year</u>		<u>Year One</u>
		<u>(2014)</u>		
Revenues		\$1,750,386		\$1,270,300
Expenses		<u>605,483</u>		<u>599,700</u>
Net Income		\$1,144,903		\$670,600
Visits		10,244		9,828
Cost Per Visit		\$59.11		\$61.02
<b>COMBINED</b>		<u>Current Year</u>		<u>Year One</u>
		<u>(2014)</u>		
Revenues		\$31,630,993		\$29,838,300
Expenses		<u>31,164,840</u>		<u>29,127,990</u>
Net Income		\$466,153		\$710,310

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current 2015 payment rates by payor, as the applicant believes these rates will be held for a period of time going forward.
  - ✓ The Medicaid rates for the respective services are based on the statewide pricing methodology (SNF) and specialty unit (Vent and AIDS) payment rates and include cash receipt assessments.
  - ✓ Medicare SNF and Vent rates reflect the current operator's average current reimbursement rates for Medicare geriatric and ventilator dependent patients. The Medicare AIDS rate is expected to decrease due to the impact of Managed Care, DSRIP and other service delivery reforms.
  - ✓ Private Pay Vent rates are decreasing due to anticipated billing adjustments resulting from the current operators' hospital-based ownership status transitioning to proprietary ownership.
- The applicant states that their business model includes flexibility to transition to a Value Based Payment System prior to the end of the three-year transition window.
- Expense reductions are based on the following assumptions:
  - ✓ Salaries/Wages and related Employee Benefits expenses are projected to decrease by \$1,947,013 and \$848,365, respectively, due to the elimination of costs allocated from the hospital executives and other centralized administrative functions.
  - ✓ Medical & Surgical Supplies are projected to decrease by \$782,538.
  - ✓ Other Direct Expenses are projected to decrease by \$421,338.
- The additional capital expenses are related to depreciation on moveable equipment/asset acquired under the APA, debt service for the acquisition, real estate taxes the facility will incur due to for-profit status, and debt service on the promissory note to the former operator.
- Breakeven occupancy will be 96.86% for the nursing facility beds.
- Utilization by payor for the 199 beds during the current year and anticipated for the first year after the change in ownership is as follows:

	Current Year (2014)	Year One
Medicaid	76.07%	76.13%
Medicare	12.65%	12.42%
Private Pay	11.28%	11.45%

- The ADHCP's utilization was 100% Medicaid in 2014 and will continue to be 100% Medicaid during the first year.

### Capability and Feasibility

The purchase price for the acquisition of the operating interests is \$28,000,000. The applicant will meet the purchase price with equity of \$1,600,000 from the proposed members (deposit paid), a \$5,000,000 promissory note at 5% interest for a three-year term and ten-year amortization period, and a bank loan of \$21,400,000 at 5% interest for a 30-year term. Bent Philipson has submitted a letter stating that he will pay off the balloon payment on the promissory note when it becomes due.

Working capital requirements are estimated at \$4,854,665 based on two months of first year expenses. The applicant will finance \$2,427,332 at an interest rate of 5% for a five-year term and has submitted a letter of interest in regard to the financing. The remaining \$2,427,333 will be provided as equity from the proposed members' personal resources. BFA Attachment A is the personal net worth statements for the proposed members of SBNH Acquisition, LLC, which indicates the proposed members have insufficient funds to provide required working capital equity. Bent Philipson has submitted a letter stating that he will provide the equity for Avi Philipson. Benjamin Landa has submitted an affidavit indicating he will provide equity to offset any shortfalls of the proposed members. BFA Attachment F is the net worth statement for Bent Phillipson and Benjamin Landa, which indicates the availability of sufficient funds to provide the equity for Avi Philipson's share, for the balloon payment on the promissory note and for any other equity shortfalls for the other proposed members.

BFA Attachment C is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$4,077,333.

The submitted budget projects a net income of \$710,310 during the first year after the change in operator. The applicant's revenue assumptions were based on the historical experience of the facility, as they anticipate the various payor rates to continue for a period of time going forward. The applicant indicated

that their business model includes flexibility to a transition for a value Based Payment System. The budget appears reasonable.

A transition of nursing home residents to Medicaid Managed Care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper", provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period.

BFA Attachment B is the financial summary of St. Barnabas Nursing Home from 2012 through 2014. As shown, the entity had an average positive working capital position and an average positive net asset position for the period. Also, the entity incurred average losses of \$212,995 from 2012 through 2014.

BFA Attachment G is the August 31, 2015 internal financial statement of St. Barnabas Nursing Home. As shown, the entity had a positive working capital position and positive net asset position through August 31, 2015. Also, the entity incurred a loss of \$88,147 through August 31, 2015.

BFA Attachment D is the 2012 – 2015 internal financial summaries of the nursing homes in which the proposed members have ownership interests. As shown, the facilities have maintained a positive net asset position, positive working capital position and a positive income from operations for the period shown, with the exception of White Plains, Park Avenue, Throgs Neck, Little Neck and Townhouse Extended, of which the negative working capital positions for certain year were due to vacation and sick time accrual, a prior year Medicaid adjustment, above average spending in the ancillary services and a reduction in the private pay census.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

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

## Attachments

BFA Attachment A	Personal Net Worth Statement- proposed members
BFA Attachment B	Financial Summary- St. Barnabas Nursing Home
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summaries - Proposed Members' Affiliated Nursing Facilities
BFA Attachment E	Lists of other facilities owned and percentages owned by the proposed members
BFA Attachment F	Personal Net Worth Statement for Bent Philipson and Benjamin Landa
BFA Attachment G	August 31, 2015 internal financial statements of St. Barnabas Nursing Home
LTC Attachment A	Quality Measures and Inspection Report





**Project # 152177-E**  
**TCPRNC, LLC d/b/a The Plaza Rehab and Nursing Center**

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

**County:** Bronx  
**Acknowledged:** September 21, 2015

**Executive Summary**

**Description**

TCPRNC, LLC d/b/a The Plaza Rehab and Nursing Center (The Plaza), a New York limited liability company, requests approval to be established as the new operator of Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx (JHL, Bronx), a 744-bed Article 28 residential health care facility (RHCF) located at 100 West Kingsbridge Road, Bronx (Bronx County). The facility currently operates a 100-slot adult day health care program (ADHCP) onsite, which is not part of the proposed sale. JHL, Bronx will transfer the license of the ADHCP to the license of the Jewish Home Lifecare, Manhattan Division (JHL, Manhattan). The ADHCP will remain operational at the current site under an agreement with the proposed buyers for up to 24 months, while an appropriate site in the Bronx for the ADHCP is sought by JHL Manhattan. The facility also operates a Long Term Home Health Care Program that will close prior to the change in ownership. Upon the change in ownership, the facility will transition from a voluntary/not-for-profit corporation to a proprietary facility. There will be no change in certified beds or in RHCF services other than as noted.

On July 7, 2015, Jewish Home Lifecare (parent entity) and JHL, Bronx (operations and real estate sellers) entered into an Asset Purchase Agreement (APA) with SentosaCare, LLC for the sale of the operations and real estate associated with the RHCF. The total purchase price for the operations and real estate is \$110,000,000 apportioned as follows: \$22,000,000 for the operations and \$88,000,000 for the real estate.

On September 10, 2015, SentosaCare, LLC entered into two Assignment and Assumption Agreements, whereby the RHCF operations were assigned to TCPRNC, LLC and the real estate was assigned to TCPRNC Real Estate, LLC. There is a relationship between TCPRNC, LLC and TCPRNC Real Estate, LLC in that the entities have common members. The applicant will lease the premise from TCPRNC Real Estate, LLC.

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

<u>Current Owner</u>	
Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx	
<u>Member</u>	<u>%</u>
Jewish Home Lifecare (nfp)	100%

<u>Purchaser</u>	
SentosaCare, LLC	
<u>Members</u>	<u>%</u>
Bent Philipson	50%
Benjamin Landa	50%

<u>Proposed Owner via Assignment</u>	
TCPRNC, LLC d/b/a The Plaza Rehab and Nursing Center	
<u>Members</u>	<u>%</u>
Leopold Friedman	25.0%
Esther Farkovits	25.0%
Avi Philipson	12.5%
Raquel Philipson	12.5%
Bernard Fuchs	15.0%
Bescar, LLC*	10.0%

\*Bescar, LLC members are Regina Weinstock (20%), Meryl Maybruch (20%), Barbara Gold (20%), Benjamin Fishoff (20%) and Abraham Fishoff (20%); therefore, each Bescar, LLC member will have 2% ownership interest in TCPRNC, LLC. Bescar, LLC also has 10% ownership interest in TCPRNC Real Estate, LLC, resulting in a 2% ownership interest per Bescar, LLC member in the realty entity.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will be no changes to beds upon approval of this application. Facility occupancy was 96.8% in 2011, 97.5% in 2012, and 99.0% in 2013 with 18 vacant beds. Occupancy is expected to remain near or exceed the Department's planning optimum going forward with the new operator.

Program Summary

No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. The applicant has stated there will be no administrative services or consulting agreements.

Financial Summary

SentosaCare, LLC will acquire the operating and real estate interests of the RHCF for a total purchase price of \$110,000,000 and will then assign the operating interests to TCPRNC, LLC and the real estate interests to TCPRNC Real Estate, LLC. The purchase price will be paid with \$22,000,000 equity from the proposed members of TCPRNC, LLC and TCPRNC Real Estate, LLC. The remaining \$88,000,000 will be financed as follows: a \$17,600,000 loan to TCPRNC, LLC for the RHCF operations and a \$70,400,000 loan to TCPRNC Real Estate, LLC for the real estate. The terms for both loans are identical, with interest at 5.5% for ten-year terms and 25-year amortizations. HHC Finance has provided letters of interest for the respective loans. Applicant member Bernard Fuchs (operations/realty loans) and SentosaCare members Benjamin Landa and Bent Philipson (realty loan) have provided affidavits to fund the balloon payments for the respective operating and realty financings, if acceptable terms are not available at the time of refinancing.

There are no project costs associated with this proposal. The operating budget is as follows:

Revenues	\$97,388,000
Expenses	<u>\$95,635,000</u>
Gain/(Loss)	\$ 1,753,000

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment for a permanent mortgage for the real estate portion of the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable to 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]
2. Submission of a commitment for a permanent mortgage for the operations portion of the project to be provided from a recognized lending institution at a prevailing rate of interest, acceptable to the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
5. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
6. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
7. Submission of a plan, acceptable to the Department, for the disposition of the Long Term Home Health Care Program (LTHHCP). The plan must demonstrate that the handling of the programs adheres to statutory requirements and results in a safe and orderly transition of any program participants. [LTC]



8. Submission of Articles of Organization of Bescar, LLC, acceptable to the Department. [CSL]
9. Submission of Articles of Organization of Kennedy RH Holdings, LLC, acceptable to the Department. [CSL]
10. Submission of Articles of Organization of Philipson Family, LLC, acceptable to the Department. [CSL]
11. Submission of an Operating Agreement of TCPRNC LLC, acceptable to the Department. [CSL]
12. Submission of an Operating Agreement of TCPRNC Real Estate LLC, acceptable to the Department. [CSL]
13. Submission of an Operating Agreement of Bescar LLC, acceptable to the Department. [CSL]
14. Clarification as to whether or not TCPRNC LLC will have a Shared Services Agreement with Sentosacare LLC. [CSL]
15. Submission of an executed copy of the Assignment and Assumption Agreement between Jewish Home LifeCare, Harry and Jeanette Weinberg Campus, Bronx and Sentosacare LLC. [CSL]
16. Submission of a fully executed Title Affidavit, Limited Guarantee, and Bargain and Sale Deed. [CSL]
17. Submission of a Certificate of Assumed Name for TCPRNC, LLC, acceptable to the Department. [CSL]
18. Submission of Amended Articles of Organization of TCPRNC, LLC, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date  
**February 11, 2016**

# Need Analysis

## Project Description

TCPRNC, LLC, seeks approval to become the established operator of Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, an existing 744-bed Article 28 residential health care facility (RHCF), located at 100 West Kingsbridge Road, Bronx, 10468, in Bronx County.

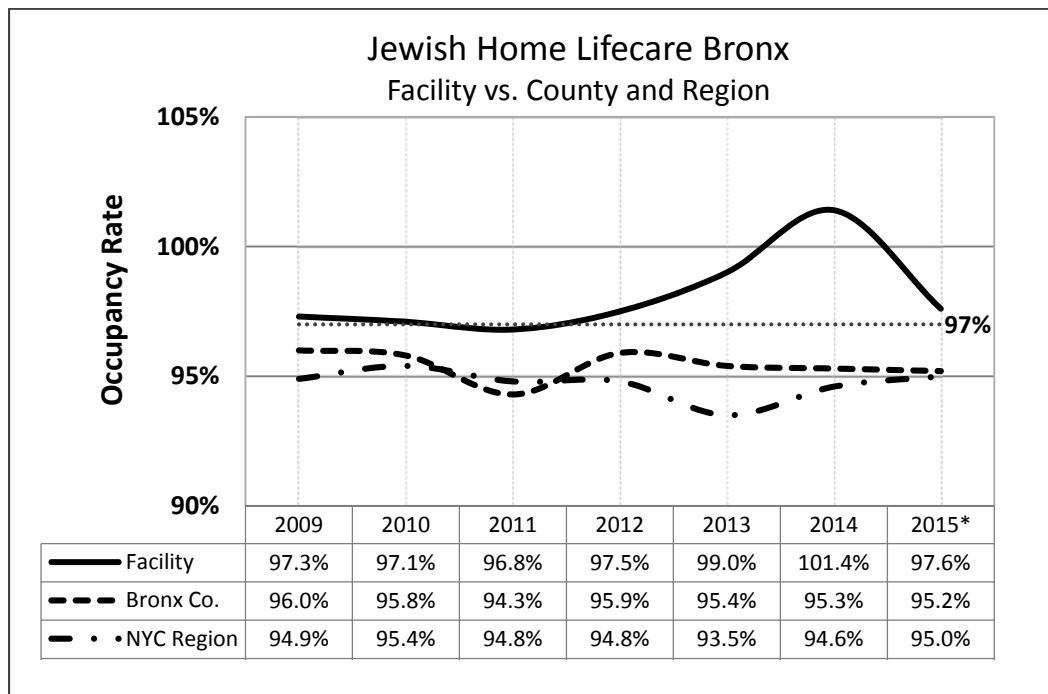
## Analysis

There is currently a need for 8,824 beds in the New York City Region as indicated in the following table:

### RHCF Need – New York City Region

<b>2016 Projected Need</b>	51,071
<b>Current Beds</b>	42,151
<b>Beds Under Construction</b>	96
<b>Total Resources</b>	42,247
<b>Unmet Need</b>	8,824

The overall occupancy for the New York City Region is 93.5% for 2013 as indicated in the following chart:



\*unaudited, facility reported data

## 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.

JHL, Harry & Jeanette Weinberg's Medicaid admissions of 33.3% in 2012 and 24.7% in 2013 did not meet or exceed the Bronx County 75% rates of 35.8% and 29.8% in 2012 and 2013, respectively, and will be required to follow the contingency plan as noted.

Conclusion

Approval of this application will result in maintaining a necessary community resource in Bronx County.

Recommendation

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

<h2>Program Analysis</h2>
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Facility Information

	Existing	Proposed
Facility Name	The New Jewish Home Lifecare, Harry and Jeanette Weinberg Campus	The Plaza Rehab and Nursing Center
Address	100 West Kingsbridge Road Bronx, NY. 10468	Same
RHCF Capacity	816	Same
ADHC Program Capacity	100	0
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Voluntary / Not-for-profit	Proprietary
Operator	The New Jewish Home Lifecare, Harry and Jeanette Weinberg Campus, Bronx	TCPRNC LLC  Membership: Esther Farkovits            25.0% *Leopold Friedman        25.0% Bernard Fuchs                15.0% *Avi Philipson                12.5% Raquel Philipson            12.5% Bescar, LLC                    10.0% *Benjamin Fishoff        20.0% Meryl Maybruch            20.0% Barbara Gold                20.0% Regina Weinstock        20.0% Abraham Fishoff        20.0% <div style="text-align: right;">100.0%</div> <div style="text-align: right;"><u>100.0%</u></div> *Managing Member

## Character and Competence - Background

### Facilities Reviewed

#### Nursing Homes

Bay Park Center for Nursing and Rehab	12/2009 to present
Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present
Brooklyn Gardens Nursing and Rehabilitation Center	10/2014 to present
Dewitt Rehabilitation and Nursing Center	06/2015 to present
Eastchester Rehabilitation and Healthcare Center	01/2006 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Hudson Pointe at Riverdale Center for Rehabilitation & Healthcare	01/2006 to 8/2010
Little Neck Care Center	04/2011 to 1/2013
Nassau Extended Care Facility	07/2001 to present
Park Avenue Extended Care Facility	07/2004 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
Sapphire Center for Rehabilitation and Nursing of Central Queens	01/2015 to present
Seagate Rehabilitation and Nursing Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	04/2014 to present
Split Rock Nursing and Rehabilitation Center	09/2002 to present
The Hamptons Center for Rehabilitation and Nursing	05/2008 to present
The Pavilion at Queens for Rehabilitation and Nursing	01/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Center for Rehabilitation and Nursing	07/2004 to present
The Citadel Rehab and Nursing Center	02/2015 to present
The Villages of Orleans Health and Rehabilitation Center	01/2015 to present
White Plains Center for Nursing	07/2004 to present

#### Licensed Home Care Services Agency

Ultimate Care, LLC	2/2010 to present
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### Individual Background Review

**Esther Farkovits** currently resides in Israel and lists no employment at present. Ms. Farkovits discloses the following health facility ownerships:

Little Neck Care Center	04/2011 to present
Nassau Extended Care Facility	07/2004 to present
Park Avenue Extended Care Facility	07/2004 to present
Seagate Rehabilitation and Health Care Center	12/2014 to present
South Shore Rehabilitation and Nursing Center	03/2014 to present
The Citadel Rehab and Nursing Center	11/2015 to present
Throgs Neck Extended Care Facility	07/2004 to present
Townhouse Extended Care Center	07/2004 to present
White Plains Center for Nursing	07/2011 to present

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

Brooklyn Gardens Nursing & Rehabilitation Center	07/2014 to present
DeWitt Rehabilitation and Nursing Center	07/2015 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
The Citadel Rehab and Nursing Center	02/2015 to present
Ultimate Care, Inc. (LHCSA)	02/2010 to present

Mr. Friedman has received Public Health and Health Planning Council approval to operate Brooklyn Gardens Dialysis Center (D&TC), Highland View Care Center (receiver since 02/03/2015), and Cassena Care Dialysis at Peninsula (D&TC). The applicant has not closed on these purchases.

**Bernard Fuchs** lists his employment as the principal to Platinum Management (NY) LLC, a hedge fund investment company located in New York, New York. He is also the CEO and Chief Investment Officer of Tiferes Investors LLC, an investment company located in Lawrence, New York. Mr. Fuchs discloses the following health facility ownership interests:

Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present
Hudson Pointe at Riverdale Center for Nursing and Rehabilitation	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Sapphire Center for Rehabilitation and Nursing of Central Queens	01/2015 to present
The Villages of Orleans Health and Rehabilitation Center	01/2015 to present
The Pavilion at Queens for Rehabilitation and Nursing	01/2015 to present

Mr. Fuchs has also received Public Health and Health Planning Council approval to operate Greene Meadows Nursing and Rehabilitation Center. The applicant has not closed on this purchase.

**Avi Philipson** is a student in Israel. Mr. Philipson will serve as the managing member of TCPRNC, and has disclosed the following health facility ownership interest:

Seagate Rehabilitation and Nursing Center (managing member)	12/2014 to present
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**Raquel Philipson** is a student. Ms. Philipson has no management experience with a health facility or agency, nor does she have any health facility ownership interests.

**Benjamin Fishoff** is retired. Mr. Fishoff is the managing member of BESCAR, LLC, and has disclosed the following health facility ownership interests:

Bay Park Center for Nursing and Rehab	12/2009 to present
Eastchester Rehabilitation and Healthcare Center	1/2013 to present
Golden Gate Rehabilitation and Health Care Center	1974-2001
The Hamptons Center for Rehabilitation and Nursing	05/2008 to present

**Meryl Maybruch** is employed as an acquisitions curator for the Kaufman Holocaust Education Center in Brooklyn. Ms. Maybruch has disclosed 3.8% membership interest in Eastchester Rehabilitation and Healthcare Center.

**Abraham Fishoff** is the owner of City Lights, a real estate company in Brooklyn. Mr. Fishoff has a 2.4% interest in Eastchester Rehabilitation and Healthcare Center.

**Barbara Gold** has no employment history. Ms. Gold has a 2.4% interest in Eastchester Rehabilitation and Healthcare Center.

**Regina Weinstock** is employed by Sentosa Care LLC as an accounts payable administrator. Ms. Weinstock has disclosed that she was previously employed by Split Rock Nursing and Rehabilitation Center, and that the company changed its name to Sentosa. Ms. Weinstock has disclosed the following health facility ownership interests:

Eastchester Rehabilitation and Healthcare Center (4.00%)	09/2002 to present
Split Rock Nursing and Rehabilitation Center (8.00%)	09/2002 to present

#### Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for Bay Park Center for Nursing and Rehabilitation for the period identified above reveals:

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-11-009 for surveillance findings on December 18, 2009. Deficiencies were found under 10 NYCRR 415.12 – Provide Care/Services for Highest Well Being.
- The facility was fined \$18,000 pursuant to Stipulation and Order NH-12-30 for surveillance findings on February 16, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) Definition Free from abuse; 10NYCRR 415.4(b) Development of Abuse Policies; 10NYCRR

415.12(h)(2) Quality of Care Accidents; 10NYCRR 415.12(i)(1) and 415.26(c)(1)(iv) Nurse Aide Competency.

- The nursing home paid a CMP of \$25,740 for Immediate Jeopardy on July 20, 2010.

A review of operations for Bay Park Center for Nursing and Rehabilitation for the time periods indicated above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

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

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-08-047 for surveillance findings on January 15, 2008. Deficiencies were found under 10 NYCRR 415.12 – Provide Care/Services for Highest Well Being.
- The facility was fined \$2,000 pursuant to a Stipulation and Order for surveillance findings on August 20, 2012. Deficiencies were found under 10 NYCRR 415.13(h)(1)(v) Transfer and Discharge Requirements, Orientation for Transfer/Discharge.

A review of operations for Eastchester Rehabilitation and Healthcare Center for the time periods indicated above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

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

- The facility was fined \$4,000 pursuant to Stipulation and Order NH-12-037 issued August 24, 2012 for surveillance findings on April 11, 2011. Deficiencies were found under 10 NYCRR (h)(1)(2) – Quality of Care: Accidents and 10 NYCRR 415.26 – Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on February 29, 2012. Deficiencies were found under 10 NYCRR 415.3(c)(l)(ii) Right to Refuse; Formulate Advanced Directives.

A review of operations for Hopkins Center for Rehabilitation and Nursing for the time periods indicated above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of Nassau Extended Care Facility for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to Stipulation and Order NH-14-007 issued September 19, 2014 for surveillance findings on August 24, 2011. Deficiencies were found under 10 NYCRR 415.4(b) Prohibit abuse/Neglect/Mistreatment, 10 NYCRR 415.5 (a) Dignity, and 10 NYCRR 415.26 Administration.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued January 5, 2016 for surveillance findings on October 15, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Pressure Sores.

A review of surveillance activity for Nassau Extended Care Facility for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of Split Rock Rehabilitation and Health Care Center for the period identified above revealed the following:

- The facility was fined \$6,000 pursuant to Stipulation and Order NH-07-24 issued for surveillance findings on December 5, 2005. Deficiencies were found under 10 NYCRR 415.4(b) Resident Behavior and Faculty Practices: Staff Treatment of Residents, 10 NYCRR 415.11(c) Resident Assessment and Care Planning: Comprehensive Care Plans and 10 NYCRR 415.12(k)(6) Quality of Care: Special Needs.

A review of surveillance activity for Split Rock Rehabilitation and Health Care Center for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of The Hamptons Center for Rehabilitation and Nursing for the period identified above revealed the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-065 for surveillance findings on September 16, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) – Quality of Care: Accidents and Supervision and 415.26 – Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-11-031 for surveillance findings on July 30, 2010. Deficiencies were found under 10 NYCRR 415.12 – Provide Care/Services for Highest Well Being.
- The nursing home paid a CMP of \$6,853.46 for Immediate Jeopardy on September 16, 2009.

A review of surveillance activity of The Hamptons Center for Rehabilitation and Nursing for the period identified above meets the requirements for approval as set forth in Public Health Law §2801-1(3).

A review of operations Bensonhurst Center for Rehabilitation and Healthcare, Brooklyn Gardens Nursing and Rehabilitation Center, Dewitt Rehabilitation and Nursing Center, Hendon Garden Nursing and Rehabilitation Center, Hudson Pointe at Riverdale Center for Rehabilitation and Healthcare, Little Neck Nursing Home, Park Avenue Extended Care Facility, Peninsula Nursing and Rehabilitation Center, Seagate Rehabilitation and Health Care Center, Sapphire Center for Rehabilitation and Nursing of Central Queens, South Shore Rehabilitation and Nursing Center, Throgs Neck Extended Care Facility, The Pavilion at Queens for Rehabilitation and Nursing, Townhouse Center for Rehabilitation and Nursing, The Citadel Rehab and Nursing Center, The Villages of Orleans Health and Rehabilitation Center and White Plains Center for Nursing for the time period indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of Ultimate Care LLC (LHCSA) for the periods identified earlier, 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 has indicated there will be no administrative services or consulting agreements with Sentosa Care LLC or any other company. It is also noted that the proposed ownership includes family members of the principals of Sentosa Care LLC, and individuals who are directly employed by Sentosa Care. The purchase of Jewish Home will be made by Sentosa Care and conveyed to the respective operating and real estate entities.

The applicant has disclosed that Sentosa Care LLC contracts for administrative services with the following nursing homes, which are owned by the proposed members of The Plaza Rehab and Nursing Center:

- Bay Park Center for Nursing and Rehabilitation;
- Eastchester Rehabilitation and Health Care Center;
- Nassau Extended Care Center;
- Park Avenue Extended Care Facility;
- Seagate Rehabilitation and Nursing Center;
- The Hamptons Center for Rehabilitation and Nursing;
- Throgs Neck Extended Care Facility;
- Townhouse Center for Rehabilitation and Nursing;
- White Plains Center for Nursing.

The members of TCPRNC Real Estate LLC, the proposed real estate owner are as follows, and listed for disclosure purposes only.

- Bescar, LLC
- Kennedy RH Holdings LLC
- Joel Edelstein
- Israel Freund
- Bernard Fuchs
- Gerald Fuchs
- Tova Fuchs
- Leopold Friedman

Benjamin Landa  
Philipson Family, LLC  
Bent Philipson  
Deborah Philipson

The applicant has indicated that the existing Jewish Home adult day health care program will not be part of the sale agreement, with the ADHCP to be operated by New Jewish Home Lifecare, Bronx at the current site for up to 24 months. Subsequently an application will be filed to transfer the program to the operating certificate of New Jewish Home Lifecare Manhattan Division. The operator will then relocate the ADHCP to a new site in the Bronx.

The applicant has also indicated the New Jewish Home long term home health care program is not part of the sale, and a closure plan will be submitted shortly.

#### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. All health care facilities are in substantial compliance with all rules and regulations. Although the ownership structure does not appear to be transparent, the individual background review indicates the applicants have met the standard to provide a substantially consistent high level of care as set forth in Public Health Law §2801-a(3).

#### Recommendation

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

## Financial Analysis

#### Asset Purchase Agreement

The applicant submitted an executed Asset Purchase Agreement for the change in ownership of the operations and real estate related to JHL, Bronx. The agreement will be effectuated upon Public Health and Health Planning Council approval of this application. The terms of the agreement are summarized below:

Date:	July 7, 2015
Seller:	Jewish Home Lifecare, Harry and Jeanette Weingerg Campus, Bronx
Purchaser:	SentosaCare, LLC
Purchased Assets (operations):	All of Sellers' rights, title and interest in all assets owned by seller used in nursing home operations other than the excluded assets.
Excluded Assets (operations):	Cash and Cash equivalents as of the closing date, accounts receivable generated for services provided prior to the effective date, any litigation by sellers and proceeds relating to business prior to the effective date, seller's and nursing home's cash on hand at effective date (other than trust funds and residents' deposits), bank account, 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. All tradenames, trademarks and service marks, copyrights, symbols, logos, domain names, email addresses and other business names that are proprietary to the seller, all goodwill associated with the facility name, all material bearing the current operator's name or trademark.



Liabilities Assumed (operations):	All liabilities for warranty obligations (express, implied or statutory) relating to any goods installed, sold leased or licensed or any services rendered or for returns of goods sold prior to closing.
Purchased Assets (real estate):	All seller's right, title and interest in and to the real property, buildings and improvements located at 100 West Kingsbridge Road, Bronx, New York
Liabilities Assumed (real estate):	None
Purchase Price:	\$22,000,000 (Operations) \$88,000,000 (Real Estate)
Payment of Purchase Price:	\$110,000,000 Total Price Less: APA deposit of \$5,250,00 and proposal deposit of \$250,000 \$104,500,000 Balance due at Closing

The purchase price inclusive of both the operations and real estate is proposed to be satisfied as follows:

Members' Equity (Cash)	\$22,000,000
Operations Loan (10-year term, 25-year amortization, 5.5% interest)	\$17,600,000
Real Estate Loan (10-year term, 25-year amortization, 5.5% interest)	<u>\$70,400,000</u>
Total	\$110,000,000

HHC Finance has provided letters of interest for the operations and real estate loans at the stated terms.

Applicant member Bernard Fuchs (operations/realty loans) and SentosaCare members Benjamin Landa and Bent Philipson (realty loan) have provided affidavits to fund the balloon payments for the respective operating and realty financings, if acceptable terms are not available at the time of refinancing.

BFA Attachment A is the net worth summary for the proposed members' of TCPRNC, LLC, which shows sufficient assets to cover the equity requirements overall. Bernard Fuchs has provided a disproportionate share affidavit to cover potential equity shortfalls of the other members.

BFA Attachment B is the net worth summary for the proposed members' of TCPRNC Real Estate, LLC, which shows sufficient assets to cover the equity requirements. Benjamin Landa has provided a disproportionate share affidavit to cover potential equity shortfalls of the other members.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. Currently, the facility has no outstanding Medicaid liabilities or assessments.

#### Assignment and Assumption Agreements

The applicant submitted executed Assignment and Assumption Agreements for the transfer of the Asset Purchase Agreement, as shown below:

#### Operations

Date:	September 10, 2015
Assignor:	SentosaCare, LLC
Assignee:	TCPRNC, LLC
Assets Transferred:	All rights and obligations under the Asset Purchase Agreement with Jewish Home Lifecare Effective July 7, 2015 in respect to the operating assets and a portion of the deposit in the amount of \$1,000,000.
Liabilities Transferred:	All of the Assignor's liabilities and obligations related to the operating assets under the agreement.

**Real Estate**

Date:	September 10, 2015
Assignor:	SentosaCare, LLC
Assignee:	TCPRNC Real Estate LLC
Assets Transferred:	All rights and obligations under the Asset Purchase Agreement with Jewish Home Lifecare Effective July 7, 2015 in respect to the real estate assets and a portion of the deposit in the amount of \$4,500,000.
Liabilities Transferred:	All of the Assignor's liabilities and obligations related to the real estate assets under the agreement.

**Lease Agreement**

The applicant submitted an executed lease agreement, as summarized below:

Date:	September 16, 2015
Premises:	A 744-bed RHCF located at 100 Kingsbridge Road, Bronx (438,000 sq. ft.)
Lessor:	TCPRNC Real Estate, LLC
Lessee:	TCPRNC, LLC
Term:	35 years
Rental:	\$9,387,111 annually or (\$782,259 per month or \$21.43 per sq. ft.)
Provisions:	Lessee pays for all taxes, utilities, insurance and maintenance fees (Triple Net)

With the change from a voluntary to a proprietary facility, the capital reimbursement methodology will be changed to reflect interest and amortization. The facility however, does not have a mortgage as the facility is leased from a related entity, which is charging rent based on interest and amortization owed on the mortgage loan, plus an additional \$4,200,000 per year based on the market value of the property.

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. Letters from two NYS realtors have been provided attesting to the reasonableness of the per square foot rental.

**Operating Budget**

The applicant provided an operating budget, in 2015 dollars, for year one subsequent to acquisition, summarized below:

	Current Year		Year One	
	Per Diem	Total	Per Diem	Total
<u>Revenues</u>				
Medicaid (Inpatient)	\$308.21	\$75,206,000	\$326.33	\$76,941,000
Medicare Inpatient)	\$549.20	\$14,439,000	\$577.81	\$14,678,000
Private Pay/Other (Inpatient)	\$347.71	\$1,782,000	\$376.41	\$1,864,000
Other Operating Revenue*		\$3,905,000		\$3,905,000
Medicaid (Outpatient)		\$6,740,000		\$0
Total		\$102,072,000		\$97,388,000
<u>Expenses</u>				
Operating	\$370.00	\$101,907,000	\$318.34	\$84,719,000
Capital	\$24.25	\$6,680,000	\$41.02	\$10,916,000
Total	\$394.25	\$108,587,000	\$359.36	\$95,635,000
Net income/(loss)		<u>(\$6,515,000)</u>		<u>\$1,753,000</u>
Utilization (patient days)		275,428		<u>266,129</u>
Occupancy		98%		98%

\*Other revenue consists of \$2,500,000 of dietary services provided to affiliated entities of the current operator, and \$1,405,000 of miscellaneous revenue sources including vending machines, purchase discounts, cable TV and telephone income, rental income, and dividends.

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

- Revenue assumptions are based on the historical experience of the current operator.
  - ✓ The Medicaid rate for year one is based on the proposed 2016 operating rate and the estimated 2016 capital per diem. The capital per diem includes the 2014 costs plus estimates for real estate taxes and return on equity.
  - ✓ The increases in the Medicare and Private Pay rates is due to the inclusion of the Part D revenue prior period adjustment.
- Expense assumptions for year one are based on the historical experience of the current operator, with consideration of the following:
  - ✓ Property rental replaces real property and movable equipment depreciation and interest expense (an increase of \$4.3 million dollars).
  - ✓ Parent Company Overhead has been reduced by \$9.1 million dollars.
  - ✓ Operating expenses were adjusted to reflect 2014 bed reductions and trended 2% from the 2014 actual expenses (a decrease of \$3.9 million dollars).
- Utilization assumptions are based on the 2014 historical experience of the facility (98%). The applicant has projected that the facility will maintain this occupancy rate.
- Utilization by payor source for Year One and Year Three is expected as follows:
 

	<u>Current Year</u>	<u>Years One &amp; Three</u>
Medicaid	88.59%	88.59%
Medicare	9.55%	9.55%
Private Pay/Other	1.86%	1.86%
Total	100.00%	100.00%
- Breakeven utilization in year one is projected at 96.24%.

#### Capability and Feasibility

There are no project costs associated with this application.

The total purchase price of \$110,000,000 will be funded with \$22,000,000 equity from the members of TCPRNC, LLC and TCPRNC Real Estate, LLC, a \$17,600,000 loan for the operations and a \$70,400,000 loan for the real estate at the above stated terms. Letters of interest for the financings have been provided.

Working capital requirements are estimated at \$15,939,167 based on two months of Year One expenses. The applicant will provide \$16,000,000 toward working capital, which is \$60,833 over the estimated requirement to be funded, via \$8,000,000 from members' equity with the remaining \$8,000,000 to be financed via a loan at 5.5% interest for a three-year term. HHC finance has provided a letter of interest for the working capital financing. BFA Attachment A is the net worth summary for the proposed members of TCPRNC, LLC, which shows sufficient liquid assets overall to cover the equity requirements of the application. Bernard Fuchs has provided a disproportionate share affidavit to cover any potential equity shortfalls of the other members. BFA Attachment A shows that Mr. Fuchs has sufficient liquid resources available.

BFA Attachment B is the net worth summary for the proposed members of TCPRNC Real Estate, LLC, which shows sufficient liquid assets to cover all aspects of the application. Benjamin Landa has provided a disproportionate share affidavit to cover any potential equity shortfalls of the other members. BFA Attachment B shows that Mr. Landa has sufficient liquid resource available.

BFA Attachment C is the pro-forma balance sheet of TCPRNC, LLC, which indicates positive members' equity of \$8,000,000. It is noted that assets include \$17,600,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. If goodwill is eliminated, the net asset position is a negative members' equity of \$9,600,000. The negative member's equity will be covered by the operator. As shown in BFA Attachment A, the operator has sufficient liquid resources available to cover this shortfall.

BFA Attachment D is the pro-forma balance sheet of TCPRNC Real Estate, LLC, which indicates positive members' equity of \$17,600,000.

The submitted budget projects a net income of \$1,753,000 for Year One. The budget is reasonable.

The applicant states that their business model does not include flexibility to transition to a Value Based Payment System, but noted that they are willing to participate in any future Value Based Payment initiatives. The current project's revenue assumptions are based on the facility's historical rate data for Medicare and Private Pay. While the Medicaid revenue assumptions are based on the facility's historical rate data plus the estimated real estate taxes and return of equity.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with NH providers. A department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NH, for three years after a county has been deemed mandatory for NH population enrollment. As a result, the benchmark FFS rate remains a viable basis for assessing NH revenues through the transition period.

BFA Attachment E is the 2013-2014 certified and the internal financial statements for JHL, Bronx as of October 31, 2015, which shows the facility had an average positive net asset position, an average negative working capital position and generated an average net loss of \$6,372,987 for the period. The negative work capital and net loss positions are due to inefficiencies in current operations, which included extremely high accounts payable, liabilities to third parties and salaries. The issues will be addressed and corrected by the proposed operators.

BFA Attachment G is the 2013-2014 certified and the 2015 internal financial summaries of the members' affiliated nursing homes. As shown, the facilities have maintained a positive net asset position, positive working capital and a positive income from operations for the period shown, with the exception of White Plains, Bay Park, The Hampton Center, Southshore Healthcare, Peninsula Nursing and Throgs Neck, which were due to vacation and sick time accrual, a prior year Medicaid adjustment, above average spending in the ancillary services and a reduction in the private pay census. In order to fix the ancillary spending the facilities moved to greater centralization of services to achieve better economies of scale and reduce the overall costs of operations. The facilities are following the current market trends related to the patient census and working on new strategies to attract other payors such as long-term care insurance.

Based on the preceding, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

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

## Attachments

BFA Attachment A	Net Worth - Proposed Members of TCPRNC, LLC
BFA Attachment B	Net Worth - Proposed Members of TCPRNC Real Estate, LLC
BFA Attachment C	Pro-forma Balance Sheet of TCPRNC, LLC
BFA Attachment D	Pro-forma Balance Sheet of TCPRNC Real Estate, LLC
BFA Attachment E	2012-2014 certified and 2015 internal Financial Summary for Jewish Home Lifecare, Harry & Jeanette Weinberg Campus, Bronx
BFA Attachment F	Affiliated RHCFC Ownership of Proposed Members of TCPRNC, LLC
BFA Attachment G	2012-2014 certified and the 2015 internal financial summaries Proposed Members Affiliated Nursing Homes
BFA Attachment H	Ownership of the real estate before and after the requested change
LTC Attachment A	Quality Measures and Inspection Report



Project # 152218-E
Sheepshead Nursing & Rehabilitation Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Kings
Acknowledged: October 15, 2015

Executive Summary

Description

Sheepshead Nursing and Rehabilitation Center, LLC d/b/a Sheepshead Nursing and Rehabilitation Center, requests approval to transfer 25% ownership interest from the estate of Adolf Wieder to Edith Weider. Sheepshead Nursing and Rehabilitation Center is a 200-bed Article 28 residential health care facility (RHCF) located at 2840 Knapp Street, Brooklyn (Kings County). The RHCF also operates a 50-slot offsite adult day health care program located at 3900 Shore Park in Brooklyn. The applicant has provided a copy of Mr. Wieder's Last Will and Testament transferring his ownership in the facility to his wife.

Ownership of the corporation resulting from the requested change is as follows:

Table with 2 columns: Name and Percentage. Rows include Edith Wieder (25.00%), Elliot Lipschitz (12.00%), Howard Lipschitz (12.00%), Samuel Lipschitz (12.00%), Pearl Kahan (11.00%), Morton Paneth (8.33%), Thomas Paneth (8.34%), Leah Werner (8.33%), Olga Lipschitz (2.00%), Jerome Kahan (1.00%), and Total (100.00%).

There are no other changes to the current ownership of the facility.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no Need recommendation for this project.

Program Summary

The transaction is required to bring the facility into compliance with 10 NYCRR §401.3(b)(1).

No negative information has been received concerning the character and competence of the proposed applicant identified as new members. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs or purchase price associated with this transaction. No budget analysis was necessary as this is a transfer of the decedent's 25% ownership interest in the RHCF to his spouse, the other current members are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

## 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 lease agreement between Lipkaw Realty and Sheepshead Nursing & Sheepshead Nursing & Rehabilitation Center that is in compliance with 10 NYCRR 600.2 (2) (d), acceptable to the Department. [CSL]
2. Submission of a photocopy of an executed Operating Agreement, amending Article 2.2, that is in compliance with 10 NYCRR 600.11, acceptable to the Department. [CSL]
3. Submission of a fully completed Schedule 4B Medicaid Affidavit, acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within one year from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]

Council Action Date

**February 11, 2016**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Sheepshead Nursing and Rehabilitation Center	Same
Address	2840 Knapp Street Brooklyn, NY 11235	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Same
Class of Operator	Proprietary	Same
Operator	Sheepshead Nursing and Rehabilitation, LLC	Same
	<u>Membership:</u> Estate of Adolf Wieder            25% Elliot Lipschitz                    12% Howard Lipschitz                   12% Samuel Lipschitz                   12% Pearl Kahan                            11% Morton Paneth                        8.33% Thomas Paneth                       8.33% Leah Werner                           8.33% Olga Lipschitz                        2% Jerome Kahan                         1%	<u>Membership:</u> Edith Wieder                           25% Elliot Lipschitz                       12% Howard Lipschitz                    12% Samuel Lipschitz                    12% Pearl Kahan                            11% Morton Paneth                        8.33% Thomas Paneth                       8.33% Leah Werner                           8.33% Olga Lipschitz                        2% Jerome Kahan                         1%

### Character and Competence-Background

**Edith Wieder** is retired from the wholesale jewelry business, since 2000. Mrs. Wieder discloses no health facility interests.

### Character and Competence Analysis

No negative information has been received concerning the character and competence for the new member.

### Project Review

No changes in the program or physical environment are proposed in this application.

This application proposes to transfer 25% membership of the existing operating LLC to one new member. New member Edith Wieder is acquiring the 25% ownership interest from the estate of her deceased husband, Adolf Wieder, in order to bring the facility into compliance with Title 10 NYCRR § 401.3(b)(1). The transfer of ownership is consistent with the requirements outlined in the operating agreement for ownership LLC.

While Ms. Wieder has no health facility ownership experience, such experience exists within the current operating structure. Olga Lipschitz has been the general manager of the facility since the current ownership structure was legally established to operate this facility in 1986. Additionally, in July of 2014, the facility Administrator Jerome Kahan joined the membership structure at 1% interest as allowed under Public Health Law §2801-a(4).

### Conclusion

No negative information has been received concerning the character and competence of the proposed applicants. 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). Approval of this application will bring the ownership into compliance with 10 NYCRR § 401.3(b)(1).

### Recommendation

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

## Financial Analysis

### Asset Transfer per Last Will and Testament of Adolf Wieder

The applicant has submitted a copy of the Last Will and Testament of Mr. Adolf Wieder for the transfer of 25% membership interest in Sheepshead Nursing and Rehabilitation Center, LLC. The terms are summarized below:

Transferor:	Estate of Adolf Wieder
Transferee:	Edith Wieder
Assets Transferred:	25% membership interest and other interest in the company.
Purchase Price:	None

### Capability and Feasibility

There are no project costs or purchase price associated with this transaction. BFA Attachment A is the personal net worth statement of Mrs. Edith Wieder, which shows the availability of sufficient liquid resources.

No budget analysis was necessary as this is a transfer of the decedent's 25% ownership interest in the RHCf to his spouse, the other current members are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable.

BFA Attachment B is the 2013-2014 audited financial summary of Sheepshead Nursing and Rehabilitation Center, LLC and the internal financials of the RHCf as of September 30, 2015. As shown, the facility had an average positive working capital position and an average positive net asset position. Also, the facility achieved an average net income of \$1,877,558 for the period shown.

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

### Recommendation

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

## Attachments

BFA Attachment A	Net Worth Statement of Proposed Member
BFA Attachment B	Financial Summary-Sheepshead Nursing and Rehabilitation Center, LLC for audited periods 2013-2014 and internals as of 9/30/2015
LTC Attachment A	Quality Measures Inspection Report





**Project # 152363-E**  
**HealthAlliance Senior Living Corp.**  
**d/b/a Woodland Pond at New Paltz**

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

**County: Ulster**  
**Acknowledged: January 6, 2016**

**Executive Summary**

**Description**

Woodland Pond at New Paltz is a 40-bed not-for-profit Article 28 skilled nursing facility (SNF) operated by HealthAlliance Senior Living Corp. The facility is located at 100 Woodland Pond Circle, New Paltz (Ulster County) and is part of an Article 46 Continuing Care Retirement Community (CCRC) that includes 201 independent living units and an enriched housing Adult Care Facility with a 60-bed assisted living unit. Effective November 29, 2012, HealthAlliance, Inc. was established as the active parent /co-operator of all elements of the CCRC. This application requests approval to disestablish HealthAlliance, Inc. as the active parent/co-operator and to change the corporate name of the remaining operator, HealthAlliance Senior Living Corp, to Woodland Pond, Inc. d/b/a Woodland Pond at New Paltz. Through separate applications, HealthAlliance, Inc. will be removed from the Article 46 Certificate of Authority and the Adult Care Facility license.

In 2015, the boards of HealthAlliance Senior Living Corp and HealthAlliance, Inc. approved resolutions to remove HealthAlliance, Inc. from the existing governance and ownership structure of the CCRC and SNF. It was jointly decided that a de-affiliation would be mutually beneficial, allowing HealthAlliance, Inc. to separate from the long-term care provider and focus on the acute care environment and its goals of expanding their acute care network. As a provider of long-term care services, HealthAlliance Senior Living Corp will be able to focus on senior living and other long-term care based affiliations with like organizations.

There are no costs associated with this application. The applicant will remain a separate not-for-profit corporation licensed under Article 28 of the New York Public Health Law, maintaining its separate operating certificate following completion of the project. There will be no change in authorized services or the number of beds as a result of the proposed change in governance structure.

**OPCHSM Recommendation**  
**Contingent Approval**

**Need Summary**  
There will be no Need review of this project.

**Program Summary**  
This application is being filed to remove HealthAlliance, Inc as the active parent and co-operator of Woodland Pond at New Paltz. As part of this application the remaining operator, Health Alliance Senior Living Corp, is requesting approval to rename to Woodland Pond Inc. This Article 28 skilled nursing facility is part of an Article 46 Continuing Care Retirement Community (CCRC). Through separate applications HealthAlliance, Inc. will be removed from the Article 46 Certificate of Authority and the Adult Care Facility license.

**Financial Summary**  
There are no costs associated with this application and no budgets are necessary, as this is a disestablishment of an active parent/co-operator. Woodland Pond at New Paltz

operates independently with no financial reliance on HealthAlliance, Inc. There has never been any type of obligated group created, and there is no cross collateralization or cross borrowing between the entities and the debt of Woodland Pond is strictly its own. The process of removing HealthAlliance, Inc. will have only nominal costs related to legal and filing fees, which have been budgeted.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval is contingent upon:**

1. Submission of a photocopy of the amended Certificate of Incorporation of Kingston Regional Senior Living Corp., acceptable to the Department. [CSL]
2. Submission of a photocopy of the amended bylaws of Kingston Regional Senior Living Corp., acceptable to the Department. [CSL]
3. Submission of a photocopy of the amended bylaws of HealthAlliance, Inc., acceptable to the Department. [CSL]
4. Submission of a photocopy of the Amended Certificate of Incorporation of Health Alliance, Inc., acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's fully executed Medicaid Affidavit, as per schedule 4B, 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. Department approval of the disestablishment for the Article 46 Continuing Care Retirement Community and the Adult Care Facility. [LTC]

Council Action Date

**February 11, 2016**

## Program Analysis

### Facility Information

	Existing	Proposed
Facility Name	Woodland Pond at New Paltz	Same
Address	100 Woodland Pond Circle New Paltz, New York 1256	Same
RHCF Capacity	40	Same
ADHC Program Capacity	None	None
Type of Operator	Corporation	Same
Class of Operator	Voluntary / Not-for-profit	Same
Operator	HealthAlliance Senior Living Corp  <u>Active Parent/Co-operator</u> HealthAlliance, Inc	Woodland Pond, Inc*  *Renaming corporation currently named HealthAlliance Senior Living Corp

### Character and Competence

#### **Corporations Reviewed**

HealthAlliance, Inc.

HealthAlliance Hospital Broadway Campus  
HealthAlliance Hospital Mary's Avenue Campus  
Margaretville Hospital  
Woodland Pond at New Paltz CCRC  
Woodland Pond at New Paltz Skilled Nursing Facility  
Woodland Pond at New Paltz Adult Care Facility

HealthAlliance Senior Living Corp.

Woodland Pond at New Paltz CCRC  
Woodland Pond at New Paltz Skilled Nursing Facility  
Woodland Pond at New Paltz Adult Care Facility

No negative information has been received concerning the character and competence of the above corporations. Facilities operated by both corporations were found to be in current compliance.

### Project Review

This application is being filed to remove HealthAlliance, Inc as the active parent and co-operator of Woodland Pond at New Paltz Skilled Nursing Facility. The nursing home is part of an Article 46 Continuing Care Retirement Community (CCRC). HealthAlliance, Inc is an active parent and co-operator of all elements of the CCRC. Through separate applications HealthAlliance, Inc. will be removed from the Article 46 Certificate of Authority and the Adult Care Facility license. The removal of the active parent and co-operator will leave HealthAlliance Senior Living Corp as the sole operator of the CCRC including the Adult Care Facility and the Skilled Nursing Facility. As part of this application HealthAlliance Senior Living Corp is requesting DOH approval to change the legal corporate name to Woodland Pond, Inc. The facility will continue to be operated under the assumed name Woodland Pond at New Paltz.

In 2015 the boards of HealthAlliance Senior Living Corp and HealthAlliance, Inc. approved resolutions to remove HealthAlliance, Inc as the active parent and co-operator of Woodland Pond CCRC and its health care facility elements. This decision was made to allow HealthAlliance, Inc. to focus on its acute care relationships and separate itself from the long term care entity. Financially Woodland Pond was operating independently with no financial reliance on HealthAlliance, Inc. and no collateralization or cross borrowing in existence. No services are being received or provided between the two entities with the exception of employee benefits. With approval of this change Woodland Pond will establish its own employee benefit coverage.

Since inception, HealthAlliance Senior Living Corp has maintained a distinct board with full membership and officers. This action will result in the need to replace only one member of the board.

Upon approval Woodland Pond will need to obtain approvals to the certificate of incorporations by The New York State Attorney General's Office and the Department of State. Bondholders Ulster County IDA and Capital Resources Corp will need to approve this transaction.

#### Conclusion

No negative information has been received concerning the character and competence of the Corporations. All health care facilities are in substantial compliance with all rules and regulations. Programmatically speaking the removal of the active parent and co-operator arrangement will have minimal impact on the operation of the CCRC and its associated Article 28 skilled nursing facility, which is the subject of this application.

#### Recommendation

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

## Financial Analysis

#### Capability and Feasibility

There are no project costs, working capital requirements or budgets associated with this application.

BFA Attachment A is the 2014 certified financial statements of Health Alliance Senior Living Corp. d/b/a Woodland Pond at New Paltz. As shown, the entity had a positive working capital position and a negative net asset position for the year 2014. The negative net asset position is the result of historical losses. Also, the entity incurred an operating loss of \$6,398,986 in 2014. Although the facility incurred historical losses and negative net asset balances, it does project continued positive cash flows adequate to operate as a viable operation.

BFA Attachment B is the November 30, 2015 internal financial statements of Health Alliance Senior Living Corp. d/b/a Woodland Pond at New Paltz. As shown, the entity had a positive working capital position and a negative net asset position through November 31, 2015. Also, the entity incurred a loss from operations of \$3,559,686 through November 30, 2015.

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

#### Recommendation

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

## Attachments

BFA Attachment A	Financial Summary- 2014 certified financial statements of Health Alliance Senior Living Corp. d/b/a Woodland Pond at New Paltz
BFA Attachment B	Financial Summary- November 30, 2015 internal financial statements of Health Alliance Senior Living Corp. d/b/a Woodland Pond at New Paltz
LTC Attachment A	Quality Measures Inspection Report

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: County of Orange  
Address: Goshen  
County: Orange  
Structure: Public  
Application Number: 152137E

Description of Project:

The County of Orange, a governmental subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The County Legislature will serve as the governing body, ultimately responsible for the operation of the Licensed Home Care Services Agency (LHCSA) to be located within the Orange County Department of Health. .

The County of Orange currently operates a certified home health agency, a long term home health care program and a diagnostic and treatment center through the Orange County Department of Health. The County of Orange intends to sell its certified home health agency and is requesting approval to become licensed as a LHCSA to enable the county to continue to provide essential public health nursing services.

The applicant proposes to serve the residents of Orange County from offices located at:

124 Main Street, Goshen, NY 10924;  
33 Fulton Plaza, Middletown, NY 10940;  
141 Broadway, Newburgh, NY 12250.

The applicant proposes to provide the following health care services:

Nursing      Medical Social Services      Nutrition      Medical Equipment, Supplies & Appliances

A seven (7) year review of the operations of the certified home health agency, long term home health care program and diagnostic and treatment center operated by the county was performed as part of this review.

The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency and long term home health care program reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

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: January 4, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Saratoga County  
Address: Saratoga Springs  
County: Saratoga  
Structure: Public  
Application Number: 152298E

Description of Project:

Saratoga County, a governmental subdivision, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law. The Saratoga County Board of Supervisors will serve as the governing body, ultimately responsible for the operation of the Licensed Home Care Services Agency (LHCSA) to be located within the Saratoga County Public Health Services.

Saratoga County currently operates a certified home health agency, a long term home health care program and a diagnostic and treatment center through the Saratoga County Public Health Nursing Service. The county is requesting approval to become licensed as a LHCSA to enable the county to continue to provide essential public health nursing services.

The applicant proposes to provide necessary home visits to the residents of Saratoga County receiving public health services from an office located at 31 Woodlawn Avenue, Saratoga Springs, New York 12866.

The applicant proposes to provide the following health care services:

Nursing      Home Health Aide                      Medical Equipment, Supplies & Appliances

A seven (7) year review of the operations of the certified home health agency, long term home health care program and diagnostic and treatment center operated by the county was performed as part of this review.

The information provided by the Division of Home and Community Based Services has indicated that the certified home health care agency and long term home health care program reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Hospitals and Diagnostic & Treatment Centers has determined that the Article 28 diagnostic and treatment center reviewed has exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent recurrent code violations.

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: January 12, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care  
Address: Brooklyn  
County: Kings  
Structure: Proprietary Corporation  
Application Number: 2250-L

Description of Project:

Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care, a business corporation, requests approval for a change in ownership in the home care services agency under Article 36 of the Public Health Law.

ADJ Wisdom Home Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its June 20, 2012 meeting and subsequently licensed as 1916L001. At that time, ADJ Wisdom Home Care, Inc. was owned Ducarmel Sagesse – 100 shares, Wildor Merivil – 35 shares, Monclas Noel – 35 shares and Stanley Ferol – 30 shares.

Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care has authorized 200 shares of stock of which 100 shares have been issued to Xiu Mei Weng and the remaining 100 shares are unissued.

The Board of Directors of Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care is comprised of the following individual:

Xiu Mei Weng – President  
Owner, Asian Elder Adult Daycare Center, Inc.  
Consultant, ADJ Wisdom Home Care, Inc.

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 in the following counties from an office located at 230 Grand Street, Suite 2M, New York, NY 10013:

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	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: January 12, 2016



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Blue Line Agency, LLC  
Address: Brooklyn  
County: Kings  
Structure: Limited Liability Company  
Application Number: 2375-L

Description of Project:

Blue Line Agency, 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.

Omega Care Services, Inc. d/b/a Living Waters Home Care Agency was previously approved as a home care services agency by the Public Health Council at its June 25, 2004 meeting and subsequently licensed as 1285L001. At that time, the following individuals each owned 100 shares in the proprietary corporation: Kwame Amofo-Danquah; Phillip Kwaku Duah, and Emmanuel Opoku-Agyare.

Blue Line Agency, LLC and Omega Care Services, Inc. d/b/a Living Waters Home Care Agency entered into a management agreement which was approved on April 30, 2014.

The membership of Blue Line Agency, LLC comprises the following individuals:

Harold Weinstein – 50%  
Vice President, Max Kahon, Inc.

Affiliations

St. James Rehabilitation & Healthcare Center (8/1/2012-present)  
The Phoenix Rehabilitation and Nursing Center (1/20/2015-present)

Hanna Weinstein – 50%  
Unemployed

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 514 Coney Island Avenue, Brooklyn, New York 11218:

Kings	Queens	Bronx
New York	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Housekeeper	Medical Social Services
Nutrition	Homemaker	

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

St. James Rehabilitation & Healthcare Center (8/1/2012-present)  
The Phoenix Rehabilitation and Nursing Center (1/20/2015-present)

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.

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: January 6, 2016



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Aquinas LLC d/b/a Senior Helpers  
Address: New York  
County: New York  
Structure: Limited Liability Company  
Application Number: 2540-L

Description of Project:

Aquinas LLC d/b/a Senior Helpers, 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.

Aquinas LLC d/b/a Senior Helpers, was previously approved as a home care services agency by the Public Health and Health Planning Council at its June 16, 2011 meeting and subsequently licensed 1893L001. At that time, Aquinas LLC d/b/a Senior Helpers was solely owned by Glen J. Galka.

Glen J. Galka has proposed to assign 25% membership interest in the Limited Liability Company to Kathryn Livingston.

Aquinas LLC will continue to operate as a Franchise of SH Franchising, LLC.

The proposed members of Aquinas LLC d/b/a Senior Helpers comprise the following individuals:

Glen J. Galka – 75%	Kathryn Livingston – 25%
President/CEO, Aquinas LLC d/b/a Senior Helpers	Senior Vice President, Aquinas, LLC d/b/a Senior Helpers

Glen J. Galka is exempt from character and competence review due to the fact that he was previously approved by the Public Health and Health Planning Council for this operator.

A search for Kathryn Livingston 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 30 Broad Street, 14<sup>th</sup> Floor, New York, New York 10004:

New York	Bronx	Kings
Queens	Richmond	Westchester

The applicant proposes to continue 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: December 8, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare  
Address: Amherst  
County: Erie  
Structure: For-Profit Corporation  
Application Number: 2628-L

Description of Project:

Pediatric Home Nursing Services, Inc. (PHNS) d/b/a PSA Healthcare, 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.

Pediatric Home Nursing Services, Inc. (PHNS) d/b/a PSA Healthcare was previously approved as a home care services agency by the Public Health Council at its January 25, 2002 meeting and subsequently licensed 1051L001. At that time PHNS was approved as a 100% wholly-owned subsidiary of Pediatric Services of America, Inc. (a Georgia corporation); Pediatric Services of America, Inc. was a 100% wholly owned subsidiary of Pediatric Services of America, Inc. (a Delaware corporation); and Pediatric Services of America, Inc. was a 100% wholly-owned subsidiary of Pediatric Services Holding Corporation (a Delaware corporation).

On December 9, 2014, a Stock Purchase Agreement was executed pursuant to which the holders of 100% of the outstanding stock of Pediatric Services Holding Corporation transferred all of its shares to PSA Healthcare Acquisition, Inc. (PSAHA), as of March 19, 2015. On that same date, PSAHA merged into Pediatric Services Holding Corporation, with Pediatric Services Holding Corporation surviving. Affidavits of the board of directors of PSAHA were submitted that state that the directors of PSAHA will not exercise control over the LHCSA between the time that PSAHA and PHNS close on the transaction and the time that the Public Health and Health Planning Council approves this application.

PHNS will remain a 100% wholly-owned subsidiary of Pediatric Services of America, Inc. Pediatric Services of America, Inc. will remain a 100% wholly owned subsidiary of Pediatric Services of America, Inc. Pediatric Services of America, Inc. will remain a 100% wholly-owned subsidiary of Pediatric Services Holding Corporation.

Pediatric Services Holding Corporation has authorized 1,000 shares of stock which are owned as follows:

PSA Healthcare Intermediate Holding, Inc. – 1,000 shares

The Board of Directors of Pediatric Services Holding Corporation is comprised of the following individuals:

Steven E. Rodgers – Chairman  
Managing Director and Operating Partner, J.H.  
Whitney Capital Partners

Eric F. Minkove – President/CEO/Board Member  
President and CEO, PSA Healthcare

Affiliations:

- Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare (March 2013 –Present)
- Healthcare Pediatric Services of America, Inc. d/b/a PSA Healthcare (March 2013 – Present: Various States)

Daniel T. Harknett – Board Member  
Vice President, J.H. Whitney Capital Partners

Robert M. Williams Jr. – Board Member  
Retired

PSA Healthcare Intermediate Holding, Inc. has authorized 1,000 shares of stock which are owned as follows:

PSA Healthcare Holding, LLC – 1,000 shares

The Board of Directors of PSA Healthcare Intermediate Holding, Inc. is comprised of the following individuals:

Steven E. Rodgers – Chairman  
(Previously Disclosed)

Eric F. Minkove – President/CEO/Board Member  
(Previously Disclosed)

Daniel T. Harknett – Board Member  
(Previously Disclosed)

Robert M. Williams Jr. – Board Member  
(Previously Disclosed)

The members of PSA Healthcare Holding, LLC is comprised of the following entity and individuals:

PSA Healthcare Investment Holding, LLC – 97.88%

Erik F. Minkove – 1.631%  
(Previously Disclosed)

Opal P. Ferraro – 0.196%  
Chief Financial Officer, Pediatric Services of  
America, Inc. d/b/a PSA Healthcare  
Chief Financial Officer, Pediatric Home Nursing  
Services, Inc.

Keith Jones – 0.196%  
Chief Business Operations Officer, Pediatric Home  
Nursing Services  
Chief Business Operations Officer, Pediatric  
Services of America, Inc. d/b/a PSA Healthcare

John P. Johnson – 0.098%  
Vice President Strategy, Pediatric Home Nursing  
Services  
Vice President Strategy, Pediatric Services of  
America, Inc. d/b/a PSA Healthcare

The members of PSA Healthcare Investment Holding, LLC comprised of the following entities and individuals:

J.H. Whitney VII, L.P. – 65.15%

Whitney Strategic Partners VII, L.P. – 2.85%

Hamilton Lane Co-Investment Fun III Holdings, L.P. – 30%

PSA Holding, L.P. – 2.0%

The sole General Partner of J.H. Whitney VII, L.P. is J.H. Whitney Equity Partners VII, LLC.

J.H. Whitney Equity Partners VII, LLC controls J.H. Whitney VIII, L.P. pursuant to a partnership agreement.

The managing members of J.H. Whitney Equity Partners VII, LLC comprise the following individuals:

Paul R. Vigano – Managing Member  
Retired

Robert M. Williams, Jr. – Managing Member  
(Previously Disclosed)

Michael C. Salvator – Managing Member  
Chief Financial Officer, J.H. Whitney Capital  
Partners, LLC

A search of the individuals (and entities, where appropriate) 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 agencies affiliated with this applicant located in the following states was performed as part of this review (unless otherwise noted):

- Arizona
- Connecticut
- Illinois
- New Jersey
- Pennsylvania
- Virginia
- California
- Florida
- Louisiana
- New York
- South Carolina
- Washington
- Colorado
- Georgia
- Massachusetts
- North Carolina
- Texas

Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare. The information provided by the New York State 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.

Responses were received from the following states: Colorado, Connecticut, Florida, Illinois, Louisiana, Massachusetts, New Jersey, North Carolina, Pennsylvania and Washington. The responses received indicated that entities in these jurisdictions have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients. The applicant provided sufficient evidence that they made an adequate effort to obtain out of state compliance for each health care facility located outside of New York State.

Pediatric Services of America, Inc. d/b/a PSA Healthcare – Clermont, Florida: was fined five thousand dollars (\$5,000.00) pursuant to a Survey Deficiency on September 19, 2012 – Acceptance of Patients or Client’s; missed visits to patient’s/client’s home.

Pediatric Services of America, Inc. d/b/a PSA Healthcare – Clermont, Florida: was fined five thousand dollars (\$5,000.00) pursuant to a Survey Deficiency on November 18, 2013 – Acceptance of Patients or Client’s; missed visits to patient’s/client’s home.

Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare operates either directly or through wholly owned subsidiaries, start-up home care businesses in Arizona, Colorado, Pennsylvania and Massachusetts. There is no compliance information available for these agencies.

Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare operates either directly or through wholly owned subsidiaries, in Massachusetts, Virginia, and South Carolina which do not require licensure. There is no compliance information available for these agencies.

Affidavits were submitted stating that Pediatric Services of America, Inc. d/b/a PSA Healthcare operates either directly or through wholly owned subsidiaries, home care businesses in California, Florida, Texas and Georgia and to the best of their knowledge each of the home care agencies currently operates, and has operated during the period their ownership or operation in compliance with all applicable codes, rules and regulations.

The applicant proposes to continue to serve the residents of the following counties from an office located at 2250 Wehrle Drive, Suite 1, Amherst, New York 14221.

Allegany	Cattaraugus	Chautauqua	Erie	Genesee
Monroe	Niagara	Orleans	Wyoming	

The applicant proposes to continue 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: November 24, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Serenity Health & Wellness, LLC  
Address: Fresh Meadows  
County: Queens  
Structure: Limited Liability Company  
Application Number: 152019-E

Description of Project:

Serenity Health & Wellness, 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.

Balm of Gilead Homecare Agency, Inc. was previously approved by the Public Health Council at its July 28, 2000 meeting and was subsequently licensed 0992L001. At that time, the shareholders were Gregory Emili – 60 shares and Florence Emili – 40 shares. In September 2013, the Department of Health approved a notice of change in shareholder interest which resulted in Florence Emili becoming the sole shareholder.

The following individual is the sole member of Serenity Health & Wellness, LLC:

Sonny Pham, HHA  
Director of Global Operations, Informa Global Markets

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

Balm of Gilead Home Health Agency, Inc. and Serenity Health & Wellness, LLC have proposed to enter into a management agreement which is currently under review by the Department of Health.

The applicant proposes to serve the residents of the following counties from an office located at 160-30 78<sup>th</sup> Avenue, Fresh Meadows, New York 11366:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	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: January 12, 2016

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Health Acquisition Corp. d/b/a Allen Health Care Services  
Address: Hempstead  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 152224

Description of Project:

Health Acquisition Corp. d/b/a Allen Health Care Services, 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.

Health Acquisition Corp. d/b/a Allen Health Care Services was previously approved by the Public Health Council at its November 16, 2007 meeting and subsequently licensed 1548L001 and 1548L002. At that time all issued and outstanding shares of stock were solely owned by AG Home Health, LLC through their subsidiary National Home Health Care Corp. Through a Stock Purchase Agreement, the applicant proposes to purchase all issued and outstanding shares of stock of National Home Health Care Corp, from AG Home Health, LLC. AG Home Health, LLC will no longer be affiliated with this LHCSA.

The proposed ownership of the LHCSA is as follows:

Health Acquisition Corp. d/b/a Allen Health Care Services authorized 200 shares of stock, which will be owned as follows:

National Home Health Care Corp – 200 shares

National Home Health Care Corp authorized 100,000 shares of stock, which are owned as follows:

BW NHHHC Holdco Inc. – 10,000 shares

90,000 shares of stock remain unissued.

BW NHHHC Holdco Inc. has authorized 1,000 shares of stock, which are owned as follows:

BW NHHHC Holdings LLC – 1,000 shares

The Board of Directors of National Home Health Care Corp, BW NHHHC Holdco, Inc. and BW NHHHC Holdings LLC comprises the following individuals:

Adam M. Blumenthal – Director  
Managing Partner, Blue Wolf Capital Partners, LLC

Charles P. Miller, Esq. – Director  
Partner and Chief Compliance Officer, Blue Wolf Capital Partners, LLC

Michael C. Ranson – Director  
Partner, Blue Wolf Capital Partners, LLC

Richard B. Becker, M.D. – Director  
Chief Executive Officer, New Found Health, LLC

Steven D. Fialkow – Director  
President and Chief Executive Officer, National Home Health Care Corp.

Affiliations:

- Accredited Health Services, Inc.
- Medical Resources Home Health Care Corp
- New England Home Care, Inc.
- Allen Health Care Services

The members of BW NHHHC Holdings LLC comprises the following Limited Partnerships:

Blue Wolf Capital Fund III, L.P.

BW NHHHC Co-Invest, L.P.

The managers of Blue Wolf Capital Fund III, L.P. and BW NHHHC Co-Invest, L.P. comprises the following individuals:

Adam M. Blumenthal  
(Previously Disclosed)

Charles P. Miller, Esq.  
(Previously Disclosed)

Michael C. Ranson  
(Previously Disclosed)

A search of the individuals (and entities, where appropriate) 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 indicate no issues with the licensure of the health professionals associated with this application.

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.

A Certificate of Good Standing has been received for all attorneys.

A seven (7) year review of the operations of facilities affiliated with this applicant was performed as part of this review (unless otherwise noted):

- Accredited Health Services, Inc.
- Medical Resources Home Health Care Corp
- New England Home Care, Inc.
- Health Acquisition Corp. d/b/a Allen Health Care Services
- New York Health Care, Inc. (NY)

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.

An Affidavit was submitted by Steven Fialkow that to the best of his actual knowledge and belief, each of the Out-of-State Health Care Entities (Connecticut, Massachusetts and New Jersey) currently operates, and has operated for the past seven (7) years or since the date of his affiliation, whichever is shorter, in substantial compliance with all material codes, and published rules and regulations required for the lawful conduct by the Out-of-State Health Care Entities of their respective businesses. To the best of Mr. Fialkow's actual knowledge and belief, no material enforcement or material administrative actions have been taken against any of the Out-of-State Health Care Entities during the time period and that Mr. Fialkow has no actual knowledge of any issues regarding any of the Out-of-State Health Care Entities in respect to which he has formed the opinion that DOH should be aware of in determining the character and competence of the undersigned with respect to this application.

The applicant proposes to continue to serve the residents of the following counties from an office located at 175 Fullerton Avenue, Suite 101, Hempstead, New York 11501:

Dutchess  
Rockland  
Westchester

Nassau  
Suffolk

Orange  
Sullivan

Queens  
Ulster

The applicant proposes to also continue to serve the residents of the following counties from an office located at 70-00 Austin Street, Suite 201, Forest Hills, New York 11375:

Dutchess  
Rockland  
Westchester

Nassau  
Suffolk

Orange  
Sullivan

Queens  
Ulster

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide              Personal Care              Housekeeper  
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: January 14, 2016



## MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** Richard J. Zahnleuter,  
Acting General Counsel

**DATE:** January 8, 2016

**SUBJECT:** Proposed Restated Certificate of Incorporation for East Hill Family Medical, Inc.

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Attached is the proposed Restated Certificate of Incorporation for East Hill Family Medical, Inc. ('East Hill'). This not-for-profit corporation seeks approval to amend its Certificate of Incorporation to modify its corporate purposes to reflect its mission of providing comprehensive family health services, which include women's reproductive health. East Hill is also seeking approval to include language by the Internal Revenue Service to operate as a charitable organization under Internal Revenue Code Section 501(c) (3). The Certificate depends on the approval of the Public Health and Health Planning Council, 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.

Also attached is the proposed Restated Certificate of Incorporation for East Hill, a letter dated January 13, 2015 from Mary M. Miner, attorney for East Hill which explains the intent and purpose of the proposed amendment and a Board Resolution of East Hill, dated September 29, 2014, and signed by Board Chairperson Daniel Larson, approving of the amendments.

The Department has no objection to the proposed amendments, and the proposed Restated Certificate of Incorporation is in legally acceptable form.

Attachments



**HANCOCK**  
**ESTABROOK, LLP**

COUNSELORS AT LAW

MARY M. MINER

[mminer@hancocklaw.com](mailto:mminer@hancocklaw.com)

January 13, 2015

Via E-mail

Colleen Leonard  
Public Health and Health Planning Council  
NYS Department of Health  
Corning Tower  
Empire State Plaza  
Albany, New York 12237

Re: East Hill Family Medical, Inc. – Restated Certificate of Incorporation

Dear Colleen:

We are attorneys for East Hill Family Medical, Inc. ("East Hill") an Article 28 Facility which received initial approval from the Public Health Council in December 1970. East Hill desires to amend its Certificate of Incorporation to slightly modify its corporate purposes, as described herein.

The original Certificate of Incorporation, a copy of which is enclosed, described East Hill's purpose as operating as a community health center focusing on women's reproductive health. East Hill is seeking approval from Public Health and Health Planning Council ("PHHPC") to change its purpose to reflect its mission of providing comprehensive family health services, which include women's reproductive health. In addition, East Hill is seeking approval to include language required by the Internal Revenue Service to operate as a charitable corporation under Internal Revenue Code Section 501(c)(3). The Restated Certificate of Incorporation also provides several non-substantive amendments unrelated to the purposes of East Hill.

Per our discussion of this matter, you believe this change in corporate purposes will require PHHPC approval. Accordingly, I request that your office consider this matter and forward it to appropriate staff as necessary to receive approval. Please contact me if you or anyone in your office has any questions or requires any additional information.

Very truly yours,

HANCOCK ESTABROOK, LLP

Mary M. Miner

Enclosure

**RESTATED CERTIFICATE OF INCORPORATION  
OF  
EAST HILL FAMILY MEDICAL INC.**

Under Section 805 of the Not-For-Profit Corporation Law

The undersigned, being the President of East Hill Family Medical Inc. (the "Corporation") hereby certifies:

1. The name of the Corporation is "East Hill Family Medical Inc." The Corporation was formed under the name "Cayuga County Family Planning Center Inc."

2. The Certificate of Incorporation was filed by the Office of the Secretary of State on February 11, 1971 pursuant to Section 402 of the Not-For-Profit Corporation Law, and was amended on October 24, 1994 pursuant to Section 802 of the Not-For-Profit Corporation Law.

3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law, and is and shall hereafter remain a charitable corporation under Section 102 of said law.

4. The Certificate of Incorporation, as previously amended from time-to-time, is hereby further amended and restated to effect the following amendments:

a. To amend paragraph 2, which sets forth the Corporation's status as a not-for-profit corporation, to modify the Corporation's type from a Type B corporation to a charitable corporation;

b. To renumber and amend the Corporation's purposes set forth in subparagraphs (a) through (i) of paragraph 2, to a new paragraph 3 with subsections (a) through (d), which confirms the Corporation will operate diagnostic treatment centers under Article 28 of the New York

State Public Health Law pursuant to a grant of authority from the New York State Department of Health.

- c. To renumber and amend the Corporation's purposes set forth in subparagraphs (j) through (p), to a new paragraph 4 with subsections (a) through (d), which confirms the Corporation will operate in compliance with applicable requirements for exempt organizations under section 501(c)(3) of the Internal Revenue Code;
- d. To renumber paragraph 3, which sets forth the location of the principal office of the Corporation, as a new paragraph 5;
- e. To renumber paragraph 4, which sets forth the territory of operation of the Corporation, as a new paragraph 6;
- f. To delete paragraph 5, which sets forth the numbers and names of the directors of the Corporation;
- g. To renumber paragraph 6, which sets forth the perpetual duration of the Corporation, as paragraph 7;
- h. To amend and renumber paragraph 7, which sets forth the address for service of process by the Secretary of State, as a new paragraph 8;
- i. To renumber paragraph 8, which sets forth applicable approvals for operation pursuant to Article 28 of the Public Health law, as paragraph 9;



j. To delete paragraph 9, which sets forth the place of meeting of the Board of Directors of the Corporation; and,

k. To delete paragraph 10, which sets forth qualifications for the original subscribers to the certificate.

5. The text of the Certificate of Incorporation, as amended, is hereby restated to read in its entirety as hereinafter set forth in full:

"1. The name of the Corporation is East Hill Family Medical Inc.

2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a charitable corporation.

3. The purposes for which the Corporation is to be formed are:

(a) To establish, operate, and maintain diagnostic and treatment centers, as authorized by the New York State Department of Health, pursuant to Article 28 of the New York State Public Health Law;

(b) To improve community health standards and increase the community's effective use of medical, dental and family planning services by: (i) disseminating information about health facilities and services available to residents of the community; (ii) promoting and encouraging the development of new or expanded health services; (iii) promoting and encouraging agreements with other health care organizations; (iv) promoting and participating in health planning and development; (v) promoting more effective municipal, county, state and federal health related services within the community;

(c) Solicit, accept, receive, hold, invest and reinvest and administer gifts, legacies, bequests, devises, funds, benefits of trusts (but not as trustee of any trust), money and property of any sort or nature, without limitations as to amount or value, for the purposes herein mentioned and to hold, manage, control and subject to the provisions of the New York Not-For-Profit Law, to sell, exchange, invest and reinvest the same and the proceeds thereof and collect and receive income and profits therefrom; and,

(d) To exercise all of the powers of a not-for-profit corporation under the laws of the State of New York, subject to any limitations set forth in this Paragraph 3 or in Paragraph 4 of this Certificate of Incorporation.

4. (a) Notwithstanding any other provision of these articles, the Corporation is organized exclusively for a charitable purpose, as specified in section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Code, or by an organization, contributions to which are deductible under Section 170 of the Code;

(b) No part of the net assets 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 affecting one or more of its purposes), and no member, trustee, officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the assets on dissolution of the Corporation, except a member which qualifies under Section 501(c)(3) of the Code;

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by Section 501(h) of the Code), and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements), and political campaign on behalf of any candidate for public office; and,

(d) In the event of dissolution, all of the remaining assets and property of the Corporation shall, after necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501(c)(3) of the Code, subject to the statutory requirements set forth in the New York Not-for-Profit Corporation Law, as amended from time to time.

5. The office of the Corporation shall be located in the City of Auburn, County of Cayuga, State of New York.

6. The territory in which the operations of the Corporation are principally to be conducted is the City of Auburn in the County of Cayuga, State of New York and its environs.

7. The duration of the Corporation shall be perpetual.

8. 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 for the Corporation is: 144 Genesee Street, Auburn, New York, 13021.

9. Applications for approval of Establishment and facilities have been made to the following local and State Institutions, and approval by said institutions are annexed hereto or endorsed hereon:

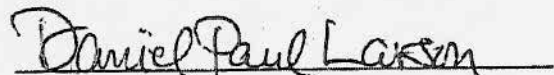
New York State Public Health Council  
c/o Dr. Donald Dickson  
Deputy Commissioner  
Division of Health Facilities and Preventive Services  
84 Holland Avenue  
Albany, New York 12208

State of New York  
Department of Law  
Albany, New York 12224

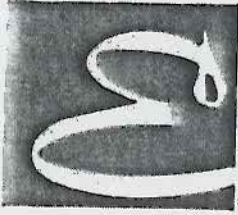
Presiding Justice  
Supreme Court of the State of New York  
County of Cayuga  
Cayuga County Courthouse  
Auburn, New York 13021

10. The amendments and restatement of the Certificate of Incorporation were authorized by a majority vote of the entire board of directors.

IN WITNESS WHEREOF, the undersigned has subscribed this Restated Certificate of Incorporation this 27th day of October, 2014.



Daniel Paul Larson, Board Chairperson



# *East Hill Family Medical, Inc.*

*Serving Cayuga, Seneca, and Wayne Counties*

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Metcalf Plaza, Suite 500  
144 Genesee Street  
Auburn, NY 13021

Telephone: 315.253.6796  
Fax: 315.252.6354  
[www.easthillmedical.com](http://www.easthillmedical.com)

## **Board Resolution**

**At a duly held meeting of the Board of Directors of East Hill Family Medical, Inc. on September 29, 2014, the directors present, voted to amend the Articles of Incorporation with New York State.**

*Daniel Paul Larson*  
**Daniel Larson, Board Chairperson**

**Dated: September 29, 2014**

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 24, 2014.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF INCORPORATION

OF

CAYUGA COUNTY FAMILY PLANNING CENTER INC.

Under Section 402 of the Not for Profit Corporation Law.

We, the undersigned, for the purpose of forming a Not-for-Profit Corporation pursuant to the laws of the State of New York, hereby certify:

1. The name of the proposed corporation shall be CAYUGA COUNTY FAMILY PLANNING CENTER INC.

2. That this is a "Type B" corporation as defined in subparagraph (a) (5) of Section 102 of the State of New York Not-for-Profit Corporation Law; and the purposes for which it is formed are:

(a) and (b) To establish, operate and maintain two, (2) treatment and diagnostic centers engaged principally in providing medical services by or under the supervision of a physician, wherein medically approved birth control information, advice and treatment will be provided, within the meaning of Subdivision 1 of Section 2801 of the Public Health Law of the State of New York;

(c) To provide information for family planning and study and social and economic consequences of various rates of population increase;

(d) To provide information about control and conception without regard to race, color or creed;

(e) To provide information and counselling for marriages and to cooperate with other responsible agencies in this field;

(f) To provide the means, through referral and otherwise, for childless couples to obtain specialized medical advice on fertility problems;

(g) To provide medically approved birth control information in conformity with the laws of the State of New York;

(h) To create public opinion favorable to family planning;

(i) To promote research in the field of human reproduction;

(j) No part of the net earnings of the corporation shall inure to the benefit of any member or any other private individual, nor shall any part of the activities of the corporation consist of participating in or intervening in any political campaign or carrying on propaganda or otherwise attempting to influence legislation. Upon any dissolution of the corporation the balance of all assets of the corporation, after the payment of all debts and obligations, shall be used and distributed subject to the order of the Supreme Court of the State of New York as provided by law, exclusively for the purposes within those set forth in subparagraphs (a) to (i) of Article 2 of this Certificate and within the intendment of Section 501 (c) (3) of the Internal Revenue Code as the same may be amended from time to time.

(k) To acquire property for corporate purposes by grant, gift, purchase, devise or bequest and to hold and to dispose of the same subject to such limitations as are prescribed by statute;

(l) To enter into, make and perform contracts of a sort and description necessary to the activities of the corporation with any person, firm, association, corporation, body politic or government;

(m) To buy, acquire, own, hold, maintain, operate, manage, use, develop, improve, rent, lease, mortgage, sell, exchange, dispose and deal in real estate, improved or unimproved, and any and all interests or rights therein, subject to such limitations as are prescribed by law;

(n) To purchase, acquire, lease or otherwise hold,

2

own, use and operate real or personal property or mixed as may be requisite for the transaction of its business or the conduct of its affairs;

(o) In general, to exercise such powers which now are or hereafter may be conferred by law upon a corporation organized for the purposes hereinabove set forth, or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the corporation, subject to such limitations as are or may be prescribed by law;

(p) The objective of each business purpose set forth in this paragraph is to provide leadership for the acceptance of family planning as an essential element of responsible parenthood and stable family life; 1) by providing general and technical education on the value of family planning; 2) by providing medically approved birth control information in conformity with the laws of the State of New York; 3) by encouraging the development of education for healthy sexuality and marriage; 4) by providing means, through referral or otherwise, for childless couples to obtain specialized medical advice on fertility problems; 5) by cooperating in teaching programs for medical students, nurses, and members of other professional disciplines; and 6) by supporting research in human reproduction and related services.

3. Its' office shall be located in the City of Auburn, County of Cayuga, State of New York.

4. The territory in which the operations of the Corporation are principally to be conducted is the City of Auburn and the County of Cayuga and its environs.

5. The names and residences of the directors until the first annual meeting will be:

Mrs. Bourke L. Kennedy III  
Box 303  
Cayuga, New York



Mrs. Elizabeth B. Metcalf  
East Lake Road  
Auburn, New York

Mr. Louis Patton  
East Lake Road  
R. D. #3  
Skanateles, New York

Mrs. Florence M. Smith  
143 East Genesee Street  
Auburn, New York

Mrs. Linda B. Grotke  
11 Frances Street  
Auburn, New York

Mrs. Pauline Riemer  
231 South Street  
Auburn, New York

Mrs. Barbara Broome  
241 Melone Village  
Auburn, New York

Mrs. Abbie Session  
125 Melone Village  
Auburn, New York

Rev. Charles T. Mulligan  
R. D. #4  
Melrose Road  
Auburn, New York

Mr. Robert McAvoy  
80 North Street  
Auburn, New York

Mrs. Agnes Springer  
Oak Ridge Road  
Auburn, New York

Mrs. Joanne Lincoln  
Port Byron  
New York

Mrs. Margot O'Dell  
Jordan  
New York

There shall be not less than 12 nor more than 18 directors.

6. The duration of the Corporation shall be perpetual.

7. The post office address within this State to which the Secretary of State shall mail a copy of any notice required by law is:

5 James Street  
Auburn, New York 13021

4

8. Applications for approval of Establishment and facilities have been made to the following local and State Institutions, and approvals by said institutions are annexed hereto or endorsed hereon:

New York State Public Health Council  
c/o Dr. Donald Dickson  
Deputy Commissioner  
Division of Health Facilities and Preventive Services  
84 Holland Avenue  
Albany, New York 12208

State of New York  
Department of Law  
Albany, New York 12224

Presiding Justice  
Supreme Court of the State of New York  
County of Cayuga  
Cayuga County Courthouse  
Auburn, New York 13021

9. The meetings of the Board of Directors shall be held within the State of New York.

10. All of the subscribers to this certificate are of full age; at least two-thirds of them are citizens of the United States; at least one of them is a resident of the State of New York.

Of the persons named as directors, at least one 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 this 24 day of November, 1970.

Mrs. Bourke L. Kennedy, III

Mrs. Bourke L. Kennedy, III  
Box 303  
Cayuga, New York

Mrs. Elizabeth B. Metcalf

Mrs. Elizabeth B. Metcalf  
East Lake Road  
Auburn, New York

Mrs. Florence M. Smith

Mrs. Florence M. Smith  
143 East Genesee Street  
Auburn, New York

Mrs. Linda B. Grotke

Mrs. Linda B. Grotke  
11 Frances Street  
Auburn, New York

Mrs. Pauline Riemer

Mrs. Pauline Riemer  
231 South Street  
Auburn, New York

Mrs. Barbara Broome

Mrs. Barbara Broome  
241 Melone Village  
Auburn, New York

Mr. Robert McAvoy

Mr. Robert McAvoy  
80 North Street  
Auburn, New York

STATE OF NEW YORK }  
COUNTY OF CAYUGA }  
CITY OF AUBURN }

SS.:

On this 24 day of November, 1970, before me personally came Mrs. Bourke L. Kennedy III, Mrs. Elizabeth B. Metcalf, Mrs. Florence M. Smith, Mrs. Linda B. Grotke, Mrs. Pauline Riemer, Mrs. Barbara Broome and Mr. Robert McAvoy, to me known and known to me to be the same persons described in and who executed the foregoing Certificate of Incorporation and they thereupon severally duly acknowledged to me that they executed the same.

ROSS M. TISCI  
Notary Public in the State of New York  
Qualified in Cayuga Co. No. 1900873  
My Commission Expires March 30, 1971

Ross M. Tisci

Notary Public

STATE OF NEW YORK }  
COUNTY OF CAYUGA }  
CITY OF AUBURN }

SS.:

Mrs. Bourke L. Kennedy III, Mrs. Elizabeth B. Metcalf, Mrs. Florence M. Smith, Mrs. Linda B. Grotke, Mrs. Pauline Riemer, Mrs. Barbara Broome and Mr. Robert McAvoy, being duly sworn depose and say that they are the subscribers of the aforementioned Certificate.

That they constitute in the aggregate, a majority of the

6

members of a committee duly authorized to incorporate such association.

Mrs. Bourke L. Kennedy III  
Mrs. Bourke L. Kennedy, III  
Box 303  
Cayuga, New York

Mrs. Elizabeth B. Metcalf  
Mrs. Elizabeth B. Metcalf  
East Lake Road  
Auburn, New York

Mrs. Florence M. Smith  
Mrs. Florence M. Smith  
143 East Genesee Street  
Auburn, New York

Mrs. Linda B. Grötke  
Mrs. Linda B. Grötke  
11 Frances Street  
Auburn, New York

Mrs. Pauline Riemer  
Mrs. Pauline Riemer  
231 South Street  
Auburn, New York

Mrs. Barbara Broome  
Mrs. Barbara Broome  
241 Malone Village  
Auburn, New York

Mr. Robert McAvoy  
Mr. Robert McAvoy  
80 North Street  
Auburn, New York

Sworn to before me this 24 day  
of November, 1970.

Ross M. Tisci  
Notary Public

ROSS M. TISCI  
Notary Public in the State of New York  
Qualified in Cayuga Co. No. 00-198970  
By Commission Expires March 31, 1971

STATE OF NEW YORK }  
COUNTY OF CAYUGA } SS.:  
CITY OF AUBURN }

ROSS M. TISCI, being duly sworn, deposes and says:

1. That he has been retained by the Cayuga County Family Planning Center Inc., to incorporate said Center pursuant to the Not For Profit Corporation Law of the State of New York.

2. That no previous application has been made by the deponent to the Supreme Court, State of New York for approval of a Certificate of Incorporation for Cayuga County Family Planning Center Inc.

3. To the best of deponent's knowledge no previous application has been made by any other member of said Center, or any other attorney.

Dated: January 26, 1971.

Ross M. Tisci  
ROSS M. TISCI

Sworn to before me this 26  
day of January, 1971.

John J. Pettigrew

JOHN J. PETTIGREW  
NOTARY PUBLIC, STATE OF NEW YORK  
My Comm. Expires on 12/31/71  
71

8

I, ALVIN IRVIN BLAUVELT, a Justice of the Supreme Court of the Seventh Judicial District, hereby approve the foregoing Certificate of Incorporation.

Alvin Irvin Blauvelt  
Justice of the Supreme Court

Dated: February 26, 1972.



STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY, N. Y. 12224

LOUIS J. LEFKOWITZ  
ATTORNEY GENERAL

Telephone 474-7206

January 12, 1971

Ross M. Tlaci, Esq.  
64 Genesee St.  
Auburn, New York 13021

Dear Sir:

Re: FAMILY PLANNING CENTER OF CAYUGA COUNTY,  
INC.

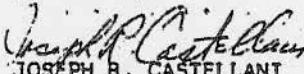
Due and timely service of the Notice of Application for the approval of the proposed Certificate of Incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

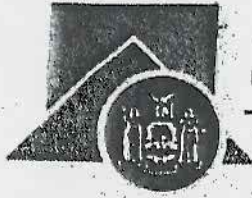
Very truly yours,

LOUIS J. LEFKOWITZ  
Attorney General

By:

  
JOSEPH R. CASTELLANI  
Assistant Attorney General

10



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY

# PUBLIC HEALTH COUNCIL

RICHARD H. MATTOX  
SECRETARY

January 5, 1971

Ross M. Tisci, Esq.  
64 Genesee Street  
Auburn, New York

Re: Family Planning Center of  
Cayuga County, Inc.

Dear Mr. Tisci:

At its December 18, 1970 meeting, the  
Public Health Council adopted a Resolution approving the subject application.

A certified copy of such Resolution is enclosed.

Sincerely yours,

Richard H. Mattox

Enc.

cc: Family Planning Center of  
Cayuga County, Inc.

COUNCIL

NORMAN S. MOORE, M.D.  
CHAIRMAN  
GEORGE BRENN, M.D.  
BLONEVA P. BOND  
DETLEV BROWN, M.D.

GORDON T. BROWN  
HERMAN E. HILLESBOE, M.D.  
GERALD D. HANLEY, M.D.  
GEORGE R. METCALP  
W. KENNETH RILAND, D.O.

JOHN P. ROACH, M.D.  
HOWARD A. RUSEK, M.D.  
WILLIAM H. WISELY, D. E.H.C.  
MOLLIE S. INGRAHAM, M.D.  
EX OFFICIO

11



WHEREAS, on August 28, 1970, the applicants, Mrs. Bourke L. Kennedy III and Mrs. Elizabeth B. Metcalf, et al., as directors of a proposed non-profit corporation, to be known as Family Planning Center of Cayuga County, Inc., filed an application for establishment of a family planning clinic to be located in Auburn, Cayuga County, New York, and

WHEREAS, copies of the application were forwarded on behalf of the Public Health Council to the Hospital Review and Planning Council of Central New York and the State of New York Hospital Review and Planning Council for their advice, and

WHEREAS, both the Hospital Review and Planning Council of Central New York and the State of New York Hospital Review and Planning Council have recommended approval of the application, and

WHEREAS, the Staff of the New York State Department of Health, in a report to this Council, has recommended approval of the application, and

WHEREAS, the Public Health Council is satisfied that there is presently a public need for the establishment of the proposed non-profit corporation as the operator of a family planning clinic in Auburn, Cayuga County, New York, and

WHEREAS, the Public Health Council is satisfied as to the character, competence, and standing in the community of the directors of the proposed non-profit corporation, and

12

WHEREAS, the Public Health Council is satisfied as to the financial resources of the proposed facility and as to the adequacy of the sources of its future revenue, now therefore be it

RESOLVED, that the application of Mrs. Bourke L. Kennedy III and Mrs. Elizabeth B. Metcalf, et al., as directors of a proposed non-profit corporation to be known as Family Planning Center of Cayuga County, Inc., for approval pursuant to the provisions of Section 2801-a of the Public Health Law to operate family planning clinics, provided, however, that the corporation shall not begin the operation of any such clinic until it shall have received the prior written approval of the Public Health Council, and be it further

RESOLVED, that the Public Health Council hereby approves the operation by Family Planning Center of Cayuga County, Inc. of a family planning clinic to be located at 17 Lansing Street, Auburn, Cayuga County, New York.

I, RICHARD H. MATTOX, the duly qualified Secretary of the Public Health Council, DO HEREBY CERTIFY that the above is a true and correct copy of a resolution duly adopted and approved by the members of the Council, and that not less than eight members of the Council voted in favor of said resolution.

IN WITNESS THEREOF, I have hereunto set my hand this 5th day of January, 1971.

  
RICHARD H. MATTOX  
Secretary

13

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on 19

Dated,

Years, etc.,

ROSS M. TISCI

Attorney for  
Office and Post Office Address

64 GENESEE STREET  
AUBURN, NEW YORK 13021  
TELEPHONE: (315) 253-9738

To

Attorney for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the \_\_\_\_\_ day of \_\_\_\_\_ 19

M.

Dated,

Yours, etc.,

ROSS M. TISCI

Attorney for  
Office and Post Office Address

64 GENESEE STREET  
AUBURN, NEW YORK 13021  
TELEPHONE (315) 253-9738

To

Attorney for

INDEX NO. _____	YEAR 19 _____
STATE OF NEW YORK	
COUNTY _____	
County of _____	
CERTIFICATE OF INCORPORATION	
OF	
CAYUGA COUNTY FAMILY PLANNING CENTER INC.	
<i>Do not fund 5/2/10</i>	
<i>RS(B)</i>	
ROSS M. TISCI	
Attorney for Cayuga County Family Planning Center Inc. Office and Post Office Address	
64 GENESEE STREET AUBURN, NEW YORK 13021 TELEPHONE: (315) 253-9738	
To	Attorney for
Service of a copy of the within is hereby admitted.	
Dated,	Attorney for
SAMSON PAPER CO., CONSHOHOCKEN, PA. N.Y. 9-5	

888090 -14

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED FEB 11 1971  
CLERK OF THE COURT  
AUBURN, NEW YORK

*John P. Young*

Secretary of State

*Rob Cayuga*  
*Tyler B...*

14

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 24, 2014.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

104102400017  
SERVICO 35

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

CAYUGA COUNTY FAMILY PLANNING CENTER INC.

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, Michael Dropallo and Holly Davidson, President and Secretary respectively of CAYUGA COUNTY FAMILY PLANNING CENTER INC., hereby certify:

1. The name of the corporation is:

CAYUGA COUNTY FAMILY PLANNING CENTER INC.

2. Its certificate of incorporation was filed by the Department of State on the 11th day of February, 1971, under the Not-for-Profit Corporation Law.

3. The corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law, and is a Type B Corporation as defined in section 201 of that law. Upon filing of this certificate of amendment, the corporation shall be a Type B Corporation as defined in Section 201 of the Not-for-Profit Corporation Law.

4. The Secretary of State is designated as the agent of the corporation upon whom process against the corporation may be served, and the address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is C/o 49 North Fulton Street, Auburn, NY 13021.

5. The certificate of incorporation is hereby amended as follows:

To amend the name of the corporation in the first paragraph. The first paragraph shall now read as follows:

FIRST: The name of the corporation is:


EAST HILL FAMILY MEDICAL INC.

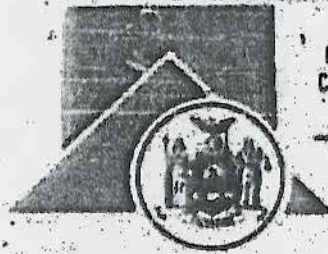
6. The above amendments to the certificate of incorporation were authorized by a majority vote of the members entitled to vote thereon at a meeting.

IN WITNESS WHEREOF, this certificate has been subscribed by the undersigned who affirm that the statements made herein are true under the penalties of perjury.

DATED: 8/9/94

  
\_\_\_\_\_  
Michael Orpello  
President

  
\_\_\_\_\_  
Holly Davidson  
Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, NY 12237

# PUBLIC HEALTH COUNCIL

September 26, 1994



Ms. Josephine M. Rose  
Executive Director  
The Family Planning Center, Inc.  
49 North Fulton Street  
Auburn, New York 13021

Re: Certificate of Amendment of the Certificate of Incorporation  
of Cayuga County Family Planning Center, Inc.

Dear Ms. Rose:

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 Certificate of Amendment to the Certificate of Incorporation of Cayuga County Family Planning Center, Inc., hereafter to be known as East Hill Family Medical, Inc., dated August 9, 1994 is approved.

Sincerely,

Karen S. Westervelt  
Executive Secretary

F9410240002M

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

CAYUGA COUNTY FAMILY PLANNING CENTER INC.

Under Section 803 of the Not-for-Profit Corporation Law

RECEIVED  
OCT 24 11 59 AM '84

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED OCT 24 1984

TAXES 0

BY: JAH

*Cayuga*

FILED:

W.C. FOULKE & ASSOCIATES

5 COURT STREET

P.O. BOX 797

AUBURN, NEW YORK 13021-0797

FILED  
OCT 24 11 59 AM '84

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NEW YORK  
STATE OF  
OPPORTUNITY.

Department  
of Health

## MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** Richard J. Zahnleuter  
General Counsel

**DATE:** January 11, 2016

**SUBJECT:** Restated Certificate of Incorporation for HELP/PSI Services Corp.

---

Attached is the proposed Restated Certificate of Incorporation of HELP/PSI Services Corp. (the 'Applicant') This not-for-profit corporation seeks approval to change its name to "Brightpoint Health." Public Health and Health Planning Council approval for a change in corporate name is therefore required by Not-for-Profit Corporation Law §804 (a) and 10 NYCRR §600.11 (a) (1).

Also attached is a letter dated November 20, 2015 from Helen R. Pfister, attorney for the Applicant, which explains the intent and purpose of the name change.

The Department has no objection to the proposed name change, and the proposed Restated Certificate of Incorporation is in legally acceptable form.

Attachments

November 20, 2015

**VIA ELECTRONIC MAIL**

Colleen M. Leonard  
Executive Secretary  
Public Health and Planning Council  
Albany, NY 12237

Re: Restated Certificate of Incorporation for HELP/PSI Services Corp. (Op. Cert. No. 7000277R)

Dear Ms. Leonard:

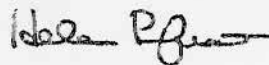
Enclosed for the approval of the Public Health and Health Planning Council please find an executed Restated Certificate of Incorporation which would change the legal name of my client, HELP/PSI Services Corp. (the "Applicant"), to Brightpoint Health. I have also enclosed a copy of the original Certificate of Incorporation of the Applicant.

The Applicant is a New York not-for-profit organization that is licensed as a diagnostic and treatment center under Article 28 of the Public Health Law. The Applicant is a well-established and respected organization with a proud history of providing health care services to underserved populations in New York City. However, the Applicant suffered poor name recognition, and many important audiences were not aware of the Applicant's operations or the results the Applicant achieves. Accordingly, last year, the Applicant applied for and received the consent of the Department of Health to operate under the assumed name Brightpoint Health, which has permitted the Applicant to develop greater name recognition among donors, government agencies, community leaders and patients, and which more accurately reflects the Applicant's mission than its legal name, HELP/PSI Services Corp.

In order to avoid any residual confusion associated with having a legal name that is different from the name the Applicant operates under, the Applicant is now seeking the Public Health and Health Planning Council's approval of the enclosed Restated Certificate of Incorporation, which would legally change the Applicant's name to Brightpoint Health.

If you have any questions concerning this submission, please do not hesitate to contact me.

Sincerely,



Helen R. Pfister

Encl.

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**HELP/PSI SERVICES CORP.**

**(Under Section 805 of the Not-For-Profit Corporation Law)**

---

I, the undersigned, being the President and Chief Executive Officer of HELP/PSI Services Corp. (hereinafter the "Corporation"), do hereby certify:

1. The name of the Corporation is HELP/PSI Services Corp. The name under which the Corporation was formed is H.E.L.P./Project Samaritan Services Corp.
2. The Corporation was formed and duly incorporated under Section 402 of the Not-For-Profit Corporation Law (the "N-PCL") on January 27, 2000. A restated certificate of incorporation of the Corporation was filed by the New York State Department of State on July 27, 2007, and a second restated certificate of incorporation of the Corporation was filed by the New York State Department of State on February 26, 2008, and a third restated certificate of incorporation was filed by the New York State Department of State on July 23, 2008, and a fourth restated certificate of incorporation was filed by the New York State Department of State on July 22, 2015.
3. The Certificate of Incorporation of the Corporation is amended to effect the following amendments authorized by the N-PCL:
  - a. Article FIRST, setting forth the name of the Corporation, is hereby amended to read in its entirety as follows:

"FIRST, the name of the Corporation is Brightpoint Health (hereinafter referred to as the "Corporation")."
  - b. Article ELEVENTH, designating 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 the agent of the Corporation upon whom process against it may be served. The post office address at which the Secretary of State shall mail a copy of any process against the Corporation is:

Brightpoint Health  
71 West 23rd Street, 8th Floor  
New York, NY 10010"

4. The text of the certificate of incorporation is hereby restated, as amended, to read as herein set forth in full:

**FIRST:** The name of the corporation is Brightpoint Health (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:

- i. To promote the welfare of persons in the community and raise the standards of their lives by providing administrative, management, purchasing, promotional and marketing services to affiliated not-for-profit entities which operate community-based facilities and programs for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition; and
- ii. To assist community-based providers of health-related services in identifying the needs of persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive; and
- iii. To promote the delivery of health-related services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive; and
- iv. To assist community-based health care providers to provide educational programs and services to persons in the community

- with special needs, including those of low-income, homeless, AIDS and/or HIV positive, regarding health-related matters; and
- v. To establish, operate and maintain one or more diagnostic and treatment centers, as defined in Article 28 of the Public Health Law of the State of New York, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition; and
  - vi. To operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation may not establish any facility or program without first obtaining such operating certificate; and
  - vii. To operate chemical dependence, alcoholism and/or substance abuse services, within the meaning of Articles 19 and 32 of the Mental Hygiene Law and the Rules and Regulations adopted pursuant thereto as each may be amended from time to time, which shall require as a condition precedent before engaging in the conduct of any such services an Operating Certificate from the New York State Office of Alcoholism and Substance Abuse Services; and
  - viii. 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 Section 404(a) through (n), Section 404(p), Section 404(r), or Section 404(v) of the Not-for-Profit Corporation Law.

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 (2) 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, except as provided in Article EIGHTH.

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 and subject to the approval of a Justice of the Supreme Court of the State of New York, shall arrange for either the direct distribution of all of the assets of the Corporation to HELP/PSI, Inc., or distribution to one or more other organizations that then qualify for exemption under the provisions of I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3), 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 New York, 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 at which the Secretary of State shall mail a copy of any process against the Corporation is:

Brightpoint Health  
71 West 23rd Street, 8th Floor  
New York, NY 10010

TWELFTH: The Corporation may be authorized by resolution of its board of directors to accept subventions from members and non-members, on terms and conditions not inconsistent with the Not-for-Profit Corporation Law, and to issue certificates therefor."

5. This amendment and restatement of the certificate of incorporation of the Corporation was authorized by the affirmative vote of a majority of the entire Board of Directors of the Corporation at a meeting duly called and held for that purpose, the affirmative vote being at least equal to a quorum.

IN WITNESS WHEREOF, this certificate has been subscribed this 23rd day of July, 2015 by the undersigned who affirms that the statements made are true under the penalties of perjury.

  
\_\_\_\_\_  
Paul Vitale  
President and Chief Executive Officer



F000127000754  
01-07

## CERTIFICATE OF INCORPORATION

OF

H.E.L.P./PROJECT SAMARITAN SERVICES CORP.

(Under Section 402 of the Not-For-Profit Corporation Law)

The undersigned, natural persons at least 18 years of age, for the purpose of forming a corporation under Section 402 of the Not-For Profit Corporation Law of the State of New York, do hereby certify:

FIRST: The name of the corporation is H.E.L.P./ Project Samaritan Services Corp. (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:

- i. To promote the welfare of persons in the community and raise the standards of their lives by providing administrative, management, purchasing, promotional and marketing services to affiliated and non-affiliated not-for-profit entities which operate community-based facilities and programs for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition; and

- ii To assist community-based providers of health-related services in identifying the needs of persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive; and
- iii. To promote the delivery of health-related services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive; and
- iv. To assist community-based health care providers to provide educational programs and services to persons in the community with special needs, including those of low-income, homeless, AIDS and/or HIV positive, regarding health-related matters; and
- v. To engage in any and all other lawful activities incidental to and in pursuit of the foregoing purposes, except as restricted herein. Nothing contained in this Certificate of Incorporation shall authorize the corporation to establish or operate a hospital or to provide hospital or health-related services, or operate a home care agency, a hospice, a health maintenance organization, or a comprehensive health services plan, as provided for by Articles 28,36, 40 and 44 respectively of the Public Health Law or to solicit, collect or otherwise raise or obtain any funds, contributions or grants, from any source, for the establishment or operation of any hospital.

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 not otherwise authorized or approved pursuant to N-PCL § 404 (a) - (v).

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 (2) 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, except as provided in Article EIGHTH.

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 and subject to the

approval of a Justice of the Supreme Court of the State of New York, shall arrange for either, the direct distribution of all of the assets of the Corporation to Project Return Foundation, Inc. and Samaritan Village, Inc., in equal shares, or distribution to one or more other organizations that then qualify for exemption under the provisions of I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3), 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 Queens, State of New York.

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:

Davidoff & Malito, LLP  
 605 Third Avenue - 34<sup>th</sup> Floor  
 New York, New York 10158

4

TWELFTH: All references herein to "I.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).

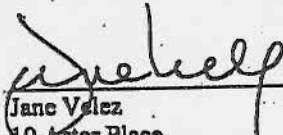
THIRTEENTH: The names and addresses of the initial directors, until the first annual meeting, are:

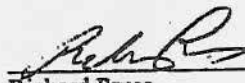
<u>Name</u>	<u>Address</u>
Jane Velez	10 Astor Place New York, NY 10003-6935
Richard Pruss	138-02 Queens Boulevard Briarwood, NY 11435
Marshall Goldberg	10 Astor Place New York, NY 10003-6935
Wallace Leinhardt	666 Old Country Road, Suite 705 Garden City, NY 11530
Nancy Schonberg	10 Astor Place New York, NY 10003-6935
Raymond Diaz	138-02 Queens Boulevard Briarwood, NY 11435

FOURTEENTH: The Corporation shall have one class of membership comprised of two members - Project Return Foundation, Inc. and Samaritan Village, Inc. The Corporation shall issue non-transferable membership certificates to evidence membership.

FIFTEENTH: The corporation shall be managed by a board composed of four to twelve directors to be elected at the first annual meeting. One-half of the total number of directors shall be elected, appointed and chosen by Project Return Foundation, Inc and one-half of the directors shall be elected, appointed and chosen by Samaritan Village, Inc.

IN WITNESS WHEREOF, this certificate has been subscribed this 25<sup>th</sup> day of January 2000 by the undersigned who affirm that the statements made are true under the penalties of perjury.

  
\_\_\_\_\_  
Jane Velez  
10 Astor Place  
New York, NY 10003-6935

  
\_\_\_\_\_  
Richard Pruss  
138-02 Queens Boulevard  
Briarwood, NY 11435

6

CT-07 F000127000796

CERTIFICATE OF INCORPORATION

OF

H.E.L.P./PROJECT SAMARITAN SERVICES CORP.

PURSUANT TO SECTION 402

OF THE NOT-FOR-PROFIT CORPORATION LAW

JAN 27 3 12 PM '00

*SMC*

*1cc*

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JAN 27 2000

TAX \$ \_\_\_\_\_  
BY: *SMC*

*Queens*

JAN 27 3 04 PM '00

Howard S. Weiss  
Davidoff & Malito  
605 Third Avenue  
34th Floor  
New York, NY 10158-0000

**DRAWDOWN**

*7*

000127000796



## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Richard J. Zahnleuter, General Counsel

**Date:** January 15, 2016

**Subject:** Beth Israel Ambulatory Care Services Corp.  
Proposed Certificate of Amendment to Certificate of Incorporation  
and Restated Certificate of Incorporation

---

Beth Israel Ambulatory Care Services Corp. ("BIACSC") is a not for profit corporation that operated a diagnostic and treatment center in association with Beth Israel Medical Center. Counsel for the corporation advises that the diagnostic and treatment center was closed during 2013 pursuant to approval from the Department. Thereafter, pursuant to a transaction that combined the former constituents of the Continuum Health Partners, which was the sole member of Beth Israel Medical Center, with The Mount Sinai Hospital and its affiliates, to form a single integrated group of affiliated healthcare providers and related legal entities, BIACSC became a wholly controlled affiliate of the Mount Sinai Health System.

BIACSC would like to amend its Certificate of Incorporation in order to accomplish the following:

- A. Change its name to Mount Sinai Ambulatory Ventures, Inc.
- B. Add the purpose that it shall be operated "exclusively for the charitable purposes of benefiting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code ...."
- C. Remove the purpose of operating a diagnostic and treatment center.

Approval of these amendments by the Public Health and Health Planning Council is required by Public Health Law §2801-a, Not-for-Profit Corporation Law §804(a), and 10 NYCRR §600.11(a)(1).

Attached are the following with regard to this matter:

1. Proposed Certificate of Amendment of Certificate of Incorporation.
2. Proposed Restated Certificate of Incorporation, which sets forth the entire Certificate of Incorporation as revised by the proposed amendments.
3. A redlined version of the Restated Certificate which shows the currently proposed amendments.
2. Existing Certificate of Incorporation.

The proposed Certificate of Amendment and Restated Certificate are in legally acceptable form.

---



**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**MOUNT SINAI AMBULATORY VENTURES, INC.**

**Under Section 805 of the  
New York State Not-For-Profit Corporation Law**

The undersigned, Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), 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 Mount Sinai Ambulatory Ventures, Inc. The name under which the Corporation was formed was Beth Israel Ambulatory Care Services Corp.
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 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. This Restated Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.
5. The text of the Certificate of Incorporation of the Corporation is hereby restated to read in its entirety as follows:

**FIRST:** The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation").

**SECOND:** The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law ("NPCL").

**THIRD:** (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefiting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of

1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

(b) This Corporation is not formed for pecuniary profit or financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any member, director, trustee, officer or private individual, firm or corporation;

(c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(d) The Corporation has been organized exclusively to serve a public purpose.

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(f) If at any time the Corporation is determined to be other than an organization described in Section 509(a)(1), (2) or (3), of the Code (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(1) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(2) prohibits the Corporation, its trustees, or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(5) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(g) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

**FOURTH:** The Corporation shall be a charitable corporation under Section 201(c) of the NPCL.

**FIFTH:** The office of the Corporation is to be located in the County of New York, State of New York.

**SIXTH:** The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation.

**SEVENTH:** The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

**EIGHTH:** In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 10<sup>th</sup> day of November, 2015.



By: Jill Clayton  
Title: Secretary

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**MOUNT SINAI AMBULATORY VENTURES, INC.**

**Under Section 805 of the  
New York State Not-For-Profit Corporation Law**

Filed By:

Jay Gerzog, Esq.  
Sheppard Mullin Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112-0015

RESTATED

CERTIFICATE OF INCORPORATION

PH-32

OF

~~CERTIFICATE OF INCORPORATION 5 0 61 9 0 00~~

~~of~~ ~~of~~ ~~of~~

~~BETH ISRAEL~~ MOUNT SINAI AMBULATORY CARE SERVICES CORP VENTURES,  
INC.

~~Under Section 402805 of the Not for Profit~~  
New York State Not-For-Profit Corporation Law

The undersigned, ~~a natural person over the age of eighteen years, desiring to form a corporation pursuant to the provisions of~~ Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York and Article 28 of the New York Public Health Law hereby certifies ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is+ Mount Sinai Ambulatory Ventures, Inc. The name under which the Corporation was formed was Beth Israel Ambulatory Care Services Corp. (hereafter
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 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. This Restated Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL,
5. The text of the Certificate of Incorporation of the Corporation is hereby restated to read in its entirety as follows:

FIRST: The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation").

~~2-~~ SECOND: The Corporation is a corporation as defined in Subparagraph (a)(5) of Section ~~10,~~1102 of the New York Not-for-Profit Corporation Law ("NPCL").

THIRD: (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of

~~3- The purposes for which it is to be formed are exclusively charitable purposes as follows:~~

~~(a) To operate, manage or otherwise administer, one or more diagnostic and treatment centers throughout the New York metropolitan area.~~

~~(b) To own, lease and purchase equipment and supplies necessary to operate, manage or otherwise administer diagnostic and treatment centers.~~



1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

~~(c) To provide or otherwise make available diagnostic and treatment services or other necessary services to individuals, provided, that all prior approvals required by law including, that of the Public Health Council, as appropriate, shall first be obtained.~~

~~(d) To operate exclusively for the benefit of, and in a manner consistent with the purposes of, the Beth Israel Medical Center.~~

~~(e) To conduct such other activities as shall from time to time be found appropriate in connection with the foregoing purposes and as are lawful for a not for profit corporation under the Not for Profit Corporation Law.~~

~~(f) To receive and hold real and personal property in order to carry on the aims and purposes of this Corporation as expressed in this Certificate of Incorporation; to expend, contribute, disburse, develop and otherwise handle and dispose of the same for such aims and purposes, either directly or by contributions to other agencies, organizations or institutions organized for the same or similar charitable aims and purposes and to otherwise cooperate with and assist such other agencies, organizations and institutions in~~

~~order to further the charitable aims and purposes of  
this Corporation.~~

(~~eb~~) This Corporation is not formed for pecuniary profit or financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any member, director, trustee, officer or private individual, firm or corporation-;

(~~hc~~) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the ~~corporation~~Corporation shall not participate or intervene (including the publishing or distributing of

statements) in any political campaign on behalf of any candidate for public office.

(d) The Corporation has been organized exclusively to serve a public purpose.

~~(j) Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not for Profit Corporation Law, Section 404(b) (n), (p) (s), and (u) (v) or Social Services Law Section 460-a.~~

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(f) If at any time the Corporation is determined to be other than an organization described in Section

509(a)(1), (2) or (3), of the ~~Internal Revenue Code of 1986 (the "Code")~~ (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(~~i~~1) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(~~ii~~2) prohibits the Corporation, its ~~director~~trustees, or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(~~iii~~3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(~~iv~~4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(~~v~~5) prohibits the Corporation from making any

taxable expenditures which are subject to tax under Section 4945 of the Code.

(1g) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following ~~proposes~~purposes as more specifically described above: charitable, scientific, religious or

educational purposes, as specified in ~~Section 501(c)(3) of the Code~~ and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income taxation under Section 501(c)(3) of the Code (or the corresponding provision of any ~~further~~future United States Internal Revenue Law).

~~4.~~ FOURTH: The Corporation shall be a ~~Type-B~~charitable corporation under Section 201(~~bc~~) of the ~~Not-for-Profit-Corporation-Law~~NPCL.

~~5.~~ FIFTH: The office of the Corporation is to be located in the County of New York, State of New York.

~~6. The names and addresses of the initial  
Directors of the Corporation are as follows:~~

~~(Del)~~ SIXTH: The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation.

<u>Names</u>	<u>Addresses</u>
<del>Merton P. Hyman, Esq.</del>	<del>16th Street and First Avenue New York, NY 10003</del>
<del>Robert C. Newman, M.D.</del>	<del>16th Street and First Avenue New York, NY 10003</del>
<del>Alfred Engleberg</del>	<del>90 Park Avenue New York, NY 10016</del>
<del>Joel I. Pickett</del>	<del>8 Pleasant Ridge Road Harrison, NY 10528</del>
<del>Jane R. Crotty</del>	<del>3 Stuyvesant oval New York, NY 10009</del>
<del>Paul Ramos</del>	<del>111 St. Marks Avenue Brooklyn, NY 11217</del>

~~7.~~ SEVENTH: The Secretary of State of the State of New York is

designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: ~~16th Street and~~ Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

EIGHTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]



~~First Avenue, New York, NY 10003, Attention: President.~~

~~8. 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 contingent on the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c) (3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).~~

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 /Day of

Sincerely,

K  
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~~penalties of perjury this 7<sup>th</sup> day of~~ Wnve, ive day of ~~1995~~ 2015.

~~Kathryn C. Meyer, Esq.~~

~~Sole Incorporator~~

~~Beth Israel Medical Center~~

~~First Avenue at 16th Street~~

*Jill Clayton*

By: Jill Clayton

~~Sincerely,~~

~~New York, NY 10003~~

Sincerely,

K  
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PH-32

CERTIFICATE OF INCORPORATION

F95061900042

OF

BETH ISRAEL AMBULATORY CARE SERVICES CORP.

PH-32

(Under Section 402 of the Not-for-Profit Corporation Law)

The undersigned, a natural person over the age of eighteen years, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York and Article 28 of the New York Public Health Law hereby certifies as follows:

1. The name of the Corporation is: Beth Israel Ambulatory Care Services Corp. (hereafter called the "Corporation").
2. The Corporation is a corporation as defined in Subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.
3. The purposes for which it is to be formed are exclusively charitable purposes as follows:
  - (a) To operate, manage or otherwise administer, one or more diagnostic and treatment centers throughout the New York metropolitan area.
  - (b) To own, lease and purchase equipment and supplies necessary to operate, manage or otherwise administer diagnostic and treatment centers.

(c) To provide or otherwise make available diagnostic and treatment services or other necessary services to individuals, provided, that all prior approvals required by law including, that of the Public Health Council, as appropriate, shall first be obtained.

(d) To operate exclusively for the benefit of, and in a manner consistent with the purposes of, the Beth Israel Medical Center.

(e) To conduct such other activities as shall from time to time be found appropriate in connection with the foregoing purposes and as are lawful for a not-for-profit corporation under the Not-for-Profit Corporation Law.

(f) To receive and hold real and personal property in order to carry on the aims and purposes of this Corporation as expressed in this Certificate of Incorporation; to expend, contribute, disburse, develop and otherwise handle and dispose of the same for such aims and purposes, either directly or by contributions to other agencies, organizations or institutions organized for the same or similar charitable aims and purposes and to otherwise cooperate with and assist such other agencies, organizations and institutions in

order to further the charitable aims and purposes of this Corporation.

(g) This Corporation is not formed for pecuniary profit or financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any member, director, officer or private individual, firm or corporation.

(h) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(i) The Corporation has been organized exclusively to serve a public purpose.

(j) Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-for-Profit Corporation Law, Section 404(b)-(n), (p)-(s), and (u)-(v) or Social Services Law Section 460-a.

(k) If at any time the Corporation is determined to be other than an organization described in Section

509(a)(1), (2) or (3), of the Internal Revenue Code of 1986 (the "Code") (or the corresponding provision of any future United States Internal Revenue Law) it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(i) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(ii) prohibits the Corporation, its directors or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.



(1) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income taxation under Section 501(c)(3) of the Code (or the corresponding provision of any further United States Internal Revenue Law).

4. The Corporation shall be a Type B corporation under Section 201(b) of the Not-for-Profit Corporation Law.

5. The office of the Corporation is to be located in the County of New York, State of New York.

6. The names and addresses of the initial Directors of the Corporation are as follows:

<u>Names</u>	<u>Addresses</u>
Morton P. Hyman, Esq.	16th Street and First Avenue New York, NY 10003
Robert G. Newman, M.D.	16th Street and First Avenue New York, NY 10003
Alfred Engleberg	90 Park Avenue New York, NY 10016
Joel I. Picket	8 Pleasant Ridge Road Harrison, NY 10528
Jane R. Crotty	3 Stuyvesant Oval New York, NY 10009
Paul Ramos	111 St. Marks Avenue Brooklyn, NY 11217

7. The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: 16th Street and First Avenue, New York, NY 10003, Attention: President.

8. 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 contingent on the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

IN WITNESS WHEREOF, this Certificate has been signed  
and the statements made herein are affirmed as true under the  
penalties of perjury this 16 day of May, 1995.

Kathryn C. Meyer  
Kathryn C. Meyer, Esq.  
Sole Incorporator  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, NY 10003



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

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June 6, 1995

Mr. Peter A. Kelly  
Executive VP/Operations  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, NY 10003

Re: Certificate of Incorporation of Beth Israel Ambulatory Care  
Services Corp.

Dear Mr. Kelly:

AFTER INQUIRY and INVESTIGATION and in accordance with  
action taken at a meeting of the Public Health Council held on  
the 19th day of May, 1995, I hereby certify that the Public  
Health Council consents to the filing of the Certificate of  
Incorporation of Beth Israel Ambulatory Care Services Corp.,  
dated May 16, 1995.

Sincerely,

*Karen Westervelt*

Karen S. Westervelt  
Executive Secretary

F 950 619000426

PH-32

CERTIFICATE OF  
INCORPORATION  
OF

BETH ISRAEL AMBULATORY CARE  
SERVICES CORP.

PROSKAUH ROSE GOETZ & MENDELSON  
COUNSELLORS AT LAW  
1585 BROADWAY  
BOROUGH OF MANHATTAN  
E. P. GREEN NEW YORK CITY 10036  
212-969-3227

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STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUN 19 1995

TAX \$ \_\_\_\_\_

BY: SAC

New York

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S. Schwarz



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

June 6, 1995

Mr. Peter A. Kelly  
Executive VP/Operations  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, NY 10003

Re: Application No. 942689 - Beth Israel Ambulatory Care Services Corporation  
(Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Ambulatory Care Services Corporation 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 May 19, 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, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4258, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt  
Executive Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

*Bern*

# PUBLIC HEALTH COUNCIL

June 6, 1995

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EXECUTIVE VICE PRESIDENT, OPERATIONS  
BETH ISRAEL MEDICAL CENTER

Mr. Peter A. Kelly  
Executive VP/Operations  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, NY 10003

Re: Application No. 942669 - Beth Israel Ambulatory Care Services Corporation  
(Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Ambulatory Care Services Corporation 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 May 19, 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, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4258, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt  
Executive Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

June 15, 1995

Mr. Peter A. Kelly  
Executive Vice President  
Operations  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, New York 10003

Re: Application No. 942868 - Beth Israel Medical Center (Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Medical Center 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 May 19, 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, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4900, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westerveit  
Executive Secretary



*State of New York* } ss:  
*Department of State* }

*I hereby certify that I have compared the annexed copy with the original documents filed by the Department of State and that the same is a correct transcript of said original.*

*Witness my hand and seal of the Department of State on*

JUN 19 1995

*Alexander F. Treadwell*  
Secretary of State

FILING RECEIPT

COMPANY NAME : BETH ISRAEL AMBULATORY CARE SERVICES CORP.

DOCUMENT TYPE : DOMESTIC (NOT-FOR-PROFIT) CORPORATION TYPE: B COUNTY: NEWY

SERVICE COMPANY : PRENTICE-HALL CORPORATION SYSTEM, INC. SERVICE CODE: 32

FILED: 06/19/1993 DURATION: PERPETUAL CASH #: 950619000465 FILM #: 950619000

ADDRESS FOR PROCESS

THE CORPORATION  
ATTN: PRESIDENT  
NEW YORK, NY 10003

REGISTERED AGENT



16TH STREET & FIRST AVENUE

FILER	FEE		PAYMENTS	
PROSKAUER ROSE GOETZ & MENDELSON	FILING	75.00	CASH	0
COUNSELLORS AT LAW	TAX	0.00	CHECK	0
1585 BROADWAY	CERT	0.00	BILLED:	110
NEW YORK, NY 10036	COPIES	10.00		
	HANDLING:	25.00	REFUND:	0

**CERTIFICATE OF AMENDMENT**  
**OF THE**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**BETH ISRAEL AMBULATORY CARE SERVICES CORP.**

**Under Section 803 of the**  
**New York State Not-For-Profit Corporation Law**

The undersigned, Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), 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 Beth Israel Ambulatory Care Services Corp.
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 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 in accordance with Section 801 of the NPCL as follows:
  - a. Paragraphs 1 through 8 are hereby amended to change the numerical paragraph references to "FIRST," "SECOND" "THIRD" "FOURTH" "FIFTH" "SIXTH" "SEVENTH" and "EIGHTH", respectively.
  - b. Article FIRST (formerly Paragraph 1) of the Certificate of Incorporation, which sets forth the name of the Corporation, is amended to change the name of the Corporation to Mount Sinai Ambulatory Ventures, Inc. Accordingly, Article FIRST shall read in its entirety as follows:

**"FIRST. The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation")."**
  - c. Article THIRD (formerly Paragraph 3) of the Certificate of Incorporation, which sets forth the Corporation's purposes, is amended to change the purposes of the Corporation and update the language to reflect amendments to the NPCL pursuant

to the New York Not-for-Profit Revitalization Act of 2013. Accordingly, Article THIRD shall read in its entirety as follows:

**THIRD.** (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates):

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

(b) This Corporation is not formed for pecuniary profit or financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any member, director, trustee, officer or private individual, firm or corporation;

(c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(d) The Corporation has been organized exclusively to serve a public purpose.

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(f) If at any time the Corporation is determined to be other than an organization described in Section 509(a)(1), (2) or (3), of the Code (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(1) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(2) prohibits the Corporation, its trustees or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(5) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(g) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law)."

- d. Article FOURTH (formerly Paragraph 4) of the Certificate of Incorporation, which sets forth the Corporation's type as provided in Section, is amended to change the reference to "Type B" to charitable, pursuant to Section 201(c) of the NPCL. Accordingly, Article FOURTH shall read in its entirety as follows:

**"FOURTH.** The Corporation shall be a charitable corporation under Section 201(c) of the NPCL."

- e. Article SIXTH (formerly Paragraph 6) of the Certificate of Incorporation, which sets forth the initial trustees of the Corporation, shall be amended in accordance with Section 805(c) of the NPCL to omit this text, and to insert a new Article SIXTH which states that the Corporation shall be a corporation with members. Accordingly, Article SIXTH shall read in its entirety as follows:

**"SIXTH.** The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation."

- f. Article SEVENTH (formerly Paragraph 7) of the Certificate of Incorporation, which sets forth the address to which the Secretary of State shall forward copies of process accepted on behalf to the Corporation, is amended to change such address. Accordingly, Article SEVENTH shall read in its entirety as follows:

**"SEVENTH.** The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029."

- g. Article EIGHTH (formerly Paragraph 8) of the Certificate of Incorporation, which describes the distribution of assets upon dissolution of the Corporation, is amended to (i) provide for the distribution of the Corporation's assets to Mount

Sinai Health System, Inc. and/or one or more affiliates or successors thereof, as are then in good standing and qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and (ii) to update the language to reflect amendments to the NPCL pursuant to the New York Not-for-Profit Revitalization Act of 2013. Accordingly, Article EIGHTH shall read in its entirety as follows:


**EIGHTH.** In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine."

5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.
6. The Secretary of 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 which is served upon him is Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

**[SIGNATURE PAGE TO FOLLOW.]**

IN WITNESS WHEREOF, this Certificate of Amendment has been signed and the statements made herein affirmed as true under penalties of perjury this 10<sup>th</sup> day of November, 2015.

  
\_\_\_\_\_  
By: Jill Clayton  
Title: Secretary



**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL AMBULATORY CARE SERVICES CORP.**

**Under Section 803 of the  
New York State Not-For-Profit Corporation Law**

Filed By:

Jay Gerzog, Esq.  
Sheppard Mullin Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112-0015



## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Richard J. Zahnleutner, General Counsel

**Date:** January 15, 2016

**Subject:** Beth Israel Ambulatory Care Services Corp.  
Proposed Certificate of Amendment to Certificate of Incorporation  
and Restated Certificate of Incorporation

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Beth Israel Ambulatory Care Services Corp. ("BIACSC") is a not for profit corporation that operated a diagnostic and treatment center in association with Beth Israel Medical Center. Counsel for the corporation advises that the diagnostic and treatment center was closed during 2013 pursuant to approval from the Department. Thereafter, pursuant to a transaction that combined the former constituents of the Continuum Health Partners, which was the sole member of Beth Israel Medical Center, with The Mount Sinai Hospital and its affiliates, to form a single integrated group of affiliated healthcare providers and related legal entities, BIACSC became a wholly controlled affiliate of the Mount Sinai Health System.

BIACSC would like to amend its Certificate of Incorporation in order to accomplish the following:

A. Change its name to Mount Sinai Ambulatory Ventures, Inc.

B. Add the purpose that it shall be operated "exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code ...."

C. Remove the purpose of operating a diagnostic and treatment center.

Approval of these amendments by the Public Health and Health Planning Council is required by Public Health Law §2801-a, Not-for-Profit Corporation Law §804(a), and 10 NYCRR §600.11(a)(1).

Attached are the following with regard to this matter:

1. Proposed Certificate of Amendment of Certificate of Incorporation.
2. Proposed Restated Certificate of Incorporation, which sets forth the entire Certificate of Incorporation as revised by the proposed amendments.
3. A redlined version of the Restated Certificate which shows the currently proposed amendments.
2. Existing Certificate of Incorporation.

The proposed Certificate of Amendment and Restated Certificate are in legally acceptable form.

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**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL AMBULATORY CARE SERVICES CORP.**

**Under Section 803 of the  
New York State Not-For-Profit Corporation Law**

The undersigned, Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), 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 Beth Israel Ambulatory Care Services Corp.
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 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 in accordance with Section 801 of the NPCL as follows:
  - a. Paragraphs 1 through 8 are hereby amended to change the numerical paragraph references to "FIRST," "SECOND" "THIRD" "FOURTH" "FIFTH" "SIXTH" "SEVENTH" and "EIGHTH", respectively.
  - b. Article FIRST (formerly Paragraph 1) of the Certificate of Incorporation, which sets forth the name of the Corporation, is amended to change the name of the Corporation to Mount Sinai Ambulatory Ventures, Inc. Accordingly, Article FIRST shall read in its entirety as follows:

**FIRST**. The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation")."
  - c. Article THIRD (formerly Paragraph 3) of the Certificate of Incorporation, which sets forth the Corporation's purposes, is amended to change the purposes of the Corporation and update the language to reflect amendments to the NPCL pursuant

to the New York Not-for-Profit Revitalization Act of 2013. Accordingly, Article THIRD shall read in its entirety as follows:

**THIRD**. (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the N.P.C.L., in furtherance of accomplishing the foregoing purposes.

(b) This Corporation is not formed for pecuniary profit or financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any member, director, trustee, officer or private individual, firm or corporation;

(c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(d) The Corporation has been organized exclusively to serve a public purpose.

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(f) If at any time the Corporation is determined to be other than an organization described in Section 509(a)(1), (2) or (3), of the Code (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(1) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(2) prohibits the Corporation, its trustees or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(5) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(g) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law)."

- d. Article FOURTH (formerly Paragraph 4) of the Certificate of Incorporation, which sets forth the Corporation's type as provided in Section, is amended to change the reference to "Type B" to charitable, pursuant to Section 201(c) of the NPCL. Accordingly, Article FOURTH shall read in its entirety as follows:

**"FOURTH.** The Corporation shall be a charitable corporation under Section 201(c) of the NPCL."

- e. Article SIXTH (formerly Paragraph 6) of the Certificate of Incorporation, which sets forth the initial trustees of the Corporation, shall be amended in accordance with Section 805(c) of the NPCL, to omit this text, and to insert a new Article SIXTH which states that the Corporation shall be a corporation with members. Accordingly, Article SIXTH shall read in its entirety as follows:

**"SIXTH.** The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation."

- f. Article SEVENTH (formerly Paragraph 7) of the Certificate of Incorporation, which sets forth the address to which the Secretary of State shall forward copies of process accepted on behalf to the Corporation, is amended to change such address. Accordingly, Article SEVENTH shall read in its entirety as follows:

**"SEVENTH.** The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029."

- g. Article EIGHTH (formerly Paragraph 8) of the Certificate of Incorporation, which describes the distribution of assets upon dissolution of the Corporation, is amended to (i) provide for the distribution of the Corporation's assets to Mount

Sinai Health System, Inc. and/or one or more affiliates or successors thereof, as are then in good standing and qualifying under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and (ii) to update the language to reflect amendments to the NPCL pursuant to the New York Not-for-Profit Revitalization Act of 2013. Accordingly, Article EIGHTH shall read in its entirety as follows:

**EIGHTH.** In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine.”

5. This Certificate of Amendment of the Corporation’s Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation’s Board of Trustees at a duly constituted meeting thereof and by the Corporation’s sole member in accordance with Section 802(a) of the NPCL.
6. The Secretary of 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 which is served upon him is Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

**[SIGNATURE PAGE TO FOLLOW.]**

IN WITNESS WHEREOF, this Certificate of Amendment has been signed and the statements made herein affirmed as true under penalties of perjury this 10<sup>th</sup> day of November, 2015.

*Jill Clayton*

By: Jill Clayton  
Title: Secretary



**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL AMBULATORY CARE SERVICES CORP.**

**Under Section 803 of the  
New York State Not-For-Profit Corporation Law**

Filed By:

Jay Gerzog, Esq.  
Sheppard Mullin Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112-0015

RESTATED

CERTIFICATE OF INCORPORATION

PH-32

OF

~~CERTIFICATE OF INCORPORATION 5 0 61 9 0 00~~

~~epi:/. of~~

~~BETH ISRAEL~~ MOUNT SINAI AMBULATORY ~~CARE SERVICES CORP~~ VENTURES,  
INC.

~~Under Section 402805 of the Not for Profit~~  
New York State Not-For-Profit Corporation Law

The undersigned, ~~a natural person over the age of eighteen years, desiring to form a corporation pursuant to the provisions of~~ Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York and Article 28 of the New York Public Health Law hereby certifies ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is+ Mount Sinai Ambulatory Ventures, Inc. The name under which the Corporation was formed was Beth Israel Ambulatory Care Services Corp.-(hereafter
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 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. This Restated Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.
5. The text of the Certificate of Incorporation of the Corporation is hereby restated to read in its entirety as follows:

FIRST: The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation").

~~2-~~ SECOND: The Corporation is a corporation as defined in Subparagraph (a)(5) of Section ~~1-0, 1102~~ of the New York Not-for-Profit Corporation Law ("NPCL").

THIRD: (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefitting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of

~~3- The purposes for which it is to be formed are exclusively charitable purposes as follows:~~

~~(a) To operate, manage or otherwise administer, one or more diagnostic and treatment centers throughout the New York metropolitan area.~~

~~(b) To own, lease and purchase equipment and supplies necessary to operate, manage or otherwise administer diagnostic and treatment centers.~~

1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, in furtherance of accomplishing the foregoing purposes.

~~(c) To provide or otherwise make available diagnostic and treatment services or other necessary services to individuals, provided, that all prior approvals required by law including, that of the Public Health Council, as appropriate, shall first be obtained.~~

~~(d) To operate exclusively for the benefit of, and in a manner consistent with the purposes of, the Beth Israel Medical Center.~~

~~(e) To conduct such other activities as shall from time to time be found appropriate in connection with the foregoing purposes and as are lawful for a not for profit corporation under the Not for Profit Corporation Law.~~

~~(f) To receive and hold real and personal property in order to carry on the aims and purposes of this Corporation as expressed in this Certificate of Incorporation; to expend, contribute, disburse, develop and otherwise handle and dispose of the same for such aims and purposes, either directly or by contributions to other agencies, organizations or institutions organized for the same or similar charitable aims and purposes and to otherwise cooperate with and assist such other agencies, organizations and institutions in~~

~~order to further the charitable aims and purposes of  
this Corporation.~~

(~~eb~~) This Corporation is not formed for pecuniary profit or financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any member, director, trustee, officer or private individual, firm or corporation;

(~~hc~~) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the ~~corporation~~Corporation shall not participate or intervene (including the publishing or distributing of

statements) in any political campaign on behalf of any candidate for public office.

(~~id~~) The Corporation has been organized exclusively to serve a public purpose.

~~(j) Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not for Profit Corporation Law, Section 404(b) - (n), (p) - (s), and (u) - (v) or Social Services Law Section 460-a.~~

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(~~ef~~) If at any time the Corporation is determined to be other than an organization described in Section

509(a)(1), (2) or (3), of the ~~Internal Revenue Code of 1986 (the "Code")~~ (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(~~1~~) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(~~2~~) prohibits the Corporation, its ~~directors~~trustees, or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(~~3~~) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(~~4~~) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(~~5~~) prohibits the Corporation from making any

taxable expenditures which are subject to tax under Section 4945 of the Code.



(g) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following ~~proposes~~ purposes as more specifically described above: charitable, scientific, religious or

educational purposes, as specified in ~~Section 501(c)(3) of the Code and shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income taxation under~~ Section 501(c)(3) of the Code (or the corresponding provision of any ~~further~~ future United States Internal Revenue Law).

4. FOURTH: The Corporation shall be a ~~Type B~~ charitable corporation under Section 201(~~bc~~) of the ~~Not for Profit Corporation Law~~ NPCL.

5. FIFTH: The office of the Corporation is to be located in the County of New York, State of New York.

~~6. The names and addresses of the initial Directors of the Corporation are as follows:~~

~~(Del)~~ SIXTH: The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation.

<u>Names</u>	<u>Addresses</u>
<del>Morton P. Hyman, Esq.</del>	<del>16th Street and First Avenue New York, NY 10003</del>
<del>Robert C. Newman, M.D.</del>	<del>16th Street and First Avenue New York, NY 10003</del>
<del>Alfred Engleberg</del>	<del>90 Park Avenue New York, NY 10016</del>
<del>Joel I. Pickett</del>	<del>8 Pleasant Ridge Road Harrison, NY 10528</del>
<del>Jane R. Crotty</del>	<del>3 Stuyvesant oval New York, NY 10009</del>
<del>Paul Ramos</del>	<del>111 St. Marks Avenue Brooklyn, NY 11217</del>

~~7.~~ SEVENTH: The Secretary of State of the State of New York is

designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: ~~16th Street and~~Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

EIGHTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

~~First Avenue, New York, NY 10003, Attention: President.~~

~~8. 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 contingent on the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c) (3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).~~

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 /Dilday of

Sincerely,

~~penalties of perjury this 7<sup>th</sup> day of~~ Wnve<sub>m</sub>ive day of ~~1995~~ 2015.

~~Kathryn C. Meyer, Esq.~~

~~Sole Incorporator~~

~~Beth Israel Medical Center~~

~~First Avenue at 16th Street~~



By: Jill Clayton

~~Sincerely,~~

~~New York, NY 10003~~

Sincerely,

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PH-32

CERTIFICATE OF INCORPORATION

F95061900042

OF

BETH ISRAEL AMBULATORY CARE SERVICES CORP.

PH-32

(Under Section 402 of the Not-for-Profit Corporation Law)

The undersigned, a natural person over the age of eighteen years, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York and Article 28 of the New York Public Health Law hereby certifies as follows:

1. The name of the Corporation is: Beth Israel Ambulatory Care Services Corp. (hereafter called the "Corporation").

2. The Corporation is a corporation as defined in Subparagraph (a) (5) of Section 102 of the Not-for-Profit Corporation Law.

3. The purposes for which it is to be formed are exclusively charitable purposes as follows:

(a) To operate, manage or otherwise administer, one or more diagnostic and treatment centers throughout the New York metropolitan area.

(b) To own, lease and purchase equipment and supplies necessary to operate, manage or otherwise administer diagnostic and treatment centers.



(c) To provide or otherwise make available diagnostic and treatment services or other necessary services to individuals, provided, that all prior approvals required by law including, that of the Public Health Council, as appropriate, shall first be obtained.

(d) To operate exclusively for the benefit of, and in a manner consistent with the purposes of, the Beth Israel Medical Center.

(e) To conduct such other activities as shall from time to time be found appropriate in connection with the foregoing purposes and as are lawful for a not-for-profit corporation under the Not-for-Profit Corporation Law.

(f) To receive and hold real and personal property in order to carry on the aims and purposes of this Corporation as expressed in this Certificate of Incorporation; to expend, contribute, disburse, develop and otherwise handle and dispose of the same for such aims and purposes, either directly or by contributions to other agencies, organizations or institutions organized for the same or similar charitable aims and purposes and to otherwise cooperate with and assist such other agencies, organizations and institutions in

order to further the charitable aims and purposes of this Corporation.

(g) This Corporation is not formed for pecuniary profit or financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any member, director, officer or private individual, firm or corporation.

(h) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(i) The Corporation has been organized exclusively to serve a public purpose.

(j) Nothing herein shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Not-for-Profit Corporation Law, Section 404(b)-(n), (p)-(s), and (u)-(v) or Social Services Law Section 460-a.

(k) If at any time the Corporation is determined to be other than an organization described in Section

509(a)(1), (2) or (3), of the Internal Revenue Code of 1986 (the "Code") (or the corresponding provision of any future United States Internal Revenue Law) it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(i) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(ii) prohibits the Corporation, its directors or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code;  
and

(v) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(1) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code and shall not carry on any activities not permitted to be carried-on by a corporation exempt from federal income taxation under Section 501(c)(3) of the Code (or the corresponding provision of any further United States Internal Revenue Law).

4. The Corporation shall be a Type B corporation under Section 201(b) of the Not-for-Profit Corporation Law.

5. The office of the Corporation is to be located in the County of New York, State of New York.

6. The names and addresses of the initial Directors of the Corporation are as follows:

<u>Names</u>	<u>Addresses</u>
Morton P. Hyman, Esq.	16th Street and First Avenue New York, NY 10003
Robert G. Newman, M.D.	16th Street and First Avenue New York, NY 10003
Alfred Engleberg	90 Park Avenue New York, NY 10016
Joel I. Picket	8 Pleasant Ridge Road Harrison, NY 10528
Jane R. Crotty	3 Stuyvesant Oval New York, NY 10009
Paul Ramos	111 St. Marks Avenue Brooklyn, NY 11217

7. The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: 16th Street and First Avenue, New York, NY 10003, Attention: President.

8. 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 contingent on the approval of a Justice of the Supreme Court of the State of New York, but only to an organization or organizations whose purposes are exclusively charitable, scientific, religious and/or educational, and which organization or organizations qualify as exempt at such time under Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).

IN WITNESS WHEREOF, this Certificate has been signed  
and the statements made herein are affirmed as true under the  
penalties of perjury this 16 day of May, 1995.

Kathryn C. Meyer  
Kathryn C. Meyer, Esq.  
Sole Incorporator  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, NY 10003



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

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June 6, 1995

Mr. Peter A. Kelly  
Executive VP/Operations  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, NY 10003

Re: Certificate of Incorporation of Beth Israel Ambulatory Care  
Services Corp.

Dear Mr. Kelly:

AFTER INQUIRY and INVESTIGATION and in accordance with  
action taken at a meeting of the Public Health Council held on  
the 19th day of May, 1995, I hereby certify that the Public  
Health Council consents to the filing of the Certificate of  
Incorporation of Beth Israel Ambulatory Care Services Corp.,  
dated May 16, 1995.

Sincerely,

*Karen Westervelt*

Karen S. Westervelt  
Executive Secretary

F 950 619000 426

PH-32

CERTIFICATE OF  
INCORPORATION  
OF

BETH ISRAEL AMBULATORY CARE  
SERVICES CORP.

PROSNAUHH ROSE GOETZ & MENDELSON  
COUNSELLORS AT LAW  
1585 BROADWAY  
BOROUGH OF MANHATTAN  
E. P. Green NEW YORK CITY 10036  
212-969-3227

1 cc

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUN 19 1995

TAX \$ \_\_\_\_\_

BY: SAC  
New York

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S. Schuyler



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

June 6, 1995

Mr. Peter A. Kelly  
Executive VP/Operations  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, NY 10003

Re: Application No. 942669 - Beth Israel Ambulatory Care Services Corporation  
(Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Ambulatory Care Services Corporation 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 May 19, 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, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4258, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt  
Executive Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

*Bern* 10/1  
**PUBLIC HEALTH COUNCIL**

June 6, 1995

**RECEIVED**

JUN 12 1995

EXECUTIVE VICE PRESIDENT, OPERATIONS  
BETH ISRAEL MEDICAL CENTER

Mr. Peter A. Kelly  
Executive VP/Operations  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, NY 10003

Re: Application No. 942669 - Beth Israel Ambulatory Care Services Corporation  
(Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Ambulatory Care Services Corporation 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 May 19, 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, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4258, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt  
Executive Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

June 15, 1995

Mr. Peter A. Kelly  
Executive Vice President  
Operations  
Beth Israel Medical Center  
First Avenue at 16th Street  
New York, New York 10003

Re: Application No. 942868 - Beth Israel Medical Center (Kings Co.)

Dear Mr. Kelly:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Beth Israel Medical Center 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 May 19, 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, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, (212) 613-4900, within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt  
Executive Secretary

*State of New York* } ss:  
*Department of State* }

*I hereby certify that I have compared the annexed copy with the original documents filed by the Department of State and that the same is a correct transcript of said original.*

*Witness my hand and seal of the Department of State on*

JUN 19 1995

*Alexander F. Treadwell*  
Secretary of State



FILING RECEIPT

COMPANY NAME : BETH ISRAEL AMBULATORY CARE SERVICES CORP.

DOCUMENT TYPE : DOMESTIC (NOT-FOR-PROFIT) CORPORATIO TYPE: B COUNTY: NEW

SERVICE COMPANY : PRENTICE-HALL CORPORATION SYSTEM, INC. SERVICE CODE: 32

FILED: 06/17/1995 DURATION: PERPETUAL CASH #: 950619000465 FILM #: 950619000

ADDRESS FOR PROCESS

THE CORPORATION  
ATTN: PRESIDENT  
NEW YORK, NY 10003

REGISTERED AGENT



FILER	FEE	AMOUNT	PAYMENTS	AMOUNT
PROSKAUER ROSE GOETZ & MENDELSON COUNSELLORS AT LAW 1585 BROADWAY NEW YORK, NY 10036	FILING TAX CERT COPIES HANDLING:	75.00 0.00 0.00 10.00 25.00	CASH CHECK BILLED:  REFUND:	0 0 110  0

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**MOUNT SINAI AMBULATORY VENTURES, INC.**

**Under Section 805 of the  
New York State Not-For-Profit Corporation Law**

The undersigned, Jill Clayton, hereby certifies that she is the Secretary of Beth Israel Ambulatory Care Services Corp. (the "Corporation"), 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 Mount Sinai Ambulatory Ventures, Inc. The name under which the Corporation was formed was Beth Israel Ambulatory Care Services Corp.
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on June 19, 1995 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. This Restated Certificate of Incorporation was authorized by the affirmative vote of the members of the Corporation's Board of Trustees at a duly constituted meeting thereof and by the Corporation's sole member in accordance with Section 802(a) of the NPCL.
5. The text of the Certificate of Incorporation of the Corporation is hereby restated to read in its entirety as follows:

**FIRST:** The name of the Corporation is Mount Sinai Ambulatory Ventures, Inc. (hereinafter called the "Corporation").

**SECOND:** The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law ("NPCL").

**THIRD:** (a) The Corporation is formed, and shall be operated, exclusively for the charitable purposes of benefiting, supporting and furthering the charitable, scientific, research and educational purposes of (i) The Mount Sinai Hospital, Beth Israel Medical Center, The St. Luke's-Roosevelt Hospital Center, and The New York Eye and Ear Infirmary (the "Hospitals"), and the Icahn School of Medicine at Mount Sinai (the "School"), which are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of

1986, as amended (the "Code") and qualify as public charities pursuant to Section 509(a)(1) of the Code, and (ii) such other not-for-profit or education corporations exempt from federal income tax pursuant to Section 501(c)(3) of the Code and qualifying as public charities pursuant to Sections 509(a)(1) or 509(a)(2) of the Code, which are or may become constituent entities of the integrated group of affiliated hospitals, health care providers and related legal entities known as the Mount Sinai Health System (such entities, together with the Hospitals and the School, hereinafter referred to collectively as the "Supported Organizations") by:

(1) Owning and holding membership and/or other ownership interests in, and otherwise supporting and facilitating the provision of health care through, one or more: (i) ambulatory surgical centers and other health care facilities that provide surgical, urgent or critical care, including diagnostic and preventative treatment and procedures on an out-patient basis ("Ambulatory Facilities"); and (ii) such other not-for-profit and/or for-profit entities engaged in health care related services, including, but not limited to, entities engaged in services that relate to and/or otherwise support the missions of the Supported Organizations (together with the Ambulatory Facilities, the "Affiliates");

(2) Using any revenues and other amounts received by the Corporation (including membership distributions and other revenues derived from Affiliates and proceeds derived by the Corporation from the sale or other disposition of any ownership interest in any of the Affiliates) that the Corporation's Board of Trustees determines are not required to be used to support the Corporation's day-to-day operations, to make grants and/or other legally permissible distributions to, or for the benefit of, the Supported Organizations in furtherance of supporting their charitable, educational and scientific purposes, missions, objectives, operations and activities; and

(3) Subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCIL, in furtherance of accomplishing the foregoing purposes.

(b) This Corporation is not formed for pecuniary profit or financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any member, director, trustee, officer or private individual, firm or corporation;

(c) No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

(d) The Corporation has been organized exclusively to serve a public purpose.

(e) The Corporation is not formed for the purpose of engaging in, and shall not engage in, any activity or for any purpose requiring consent or approval of any state official, department, board, agency or other body, including, in particular, any purposes or activities which require the approval of the New York State Department of Health under Article 28 of the New York Public Health Law. No other consent or approval is required.

(f) If at any time the Corporation is determined to be other than an organization described in Section 509(a)(1), (2) or (3), of the Code (or the corresponding provision of any future United States Internal Revenue Law), it shall, to the extent applicable, comply with Section 508 of the Code insofar as such Section:

(1) requires the Corporation to distribute such amounts for each taxable year allocated at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(2) prohibits the Corporation, its trustees, or members from engaging in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(3) prohibits the Corporation from retaining any excess business holdings which are subject to tax under Section 4943 of the Code;

(4) prohibits the Corporation from making any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(5) prohibits the Corporation from making any taxable expenditures which are subject to tax under Section 4945 of the Code.

(g) In furtherance of the foregoing purposes, the Corporation shall have the power, subject to such limitations and conditions as are or may be prescribed by law, to exercise such other powers as are now, or hereafter may be, conferred by law upon a corporation organized for the purposes hereinbefore set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof, subject to the further limitations and conditions that, notwithstanding any other provision of these articles, the Corporation is organized exclusively for one or more of the following purposes as more specifically described above: charitable, scientific, religious or educational purposes, as specified in Section 501(c)(3) of the Code (or the corresponding provision of any future United States Internal Revenue Law).



**FOURTH:** The Corporation shall be a charitable corporation under Section 201(c) of the NPCL.

**FIFTH:** The office of the Corporation is to be located in the County of New York, State of New York.

**SIXTH:** The Corporation shall be a corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the Bylaws of the Corporation.

**SEVENTH:** The Secretary of State of the State of New York is designated as agent of the Corporation upon whom process against it may be served. The post office address within this State to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is: Office of the General Counsel, One Gustave Levy Place, Box 1099, New York, New York, 10029.

**EIGHTH:** In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) Mount Sinai Health System, Inc. and/or one or more of the Supported Organizations if then in existence and qualifying under Section 501(c)(3) of the Code, for use by such entities in furtherance of charitable, scientific and educational purposes substantially similar to those of the Corporation; (b) in the event that Mount Sinai Health System, Inc. and the Supported Organizations have ceased to exist or are not then in existence and qualifying under Section 501(c)(3) of the Code, then to one or more other charitable and/or educational organizations that operate in furtherance of purposes which are substantially similar to the purposes of the Corporation and are then in existence and qualifying under Section 501(c)(3) of the Code; or (c) to the Federal, State and/or local governments for a public purpose related to the purposes of the Corporation in such proportions as the Board of Trustees of the Corporation shall determine.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

[SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF, this Restated Certificate of Incorporation has been signed and the statements made herein affirmed as true under penalties of perjury this 10<sup>th</sup> day of November, 2015.

A handwritten signature in cursive script that reads "Jill Clayton". The signature is written in dark ink and is positioned above a horizontal line.

By: Jill Clayton  
Title: Secretary

**RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**MOUNT SINAI AMBULATORY VENTURES, INC.**

**Under Section 805 of the  
New York State Not-For-Profit Corporation Law**

**Filed By:**

**Jay Gerzog, Esq.  
Sheppard Mullin Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112-0015**



## MEMORANDUM

**To:** Public Health and Health Planning Council

**From:** Richard J. Zahnleuter, General Counsel

**Date:** January 15, 2016

**Subject:** Beth Israel Medical Center  
Proposed Certificate of Amendment to Certificate of Incorporation  
to amend purpose clause

---

Beth Israel Medical Center is a not for profit corporation that operates a school of nursing. The facility proposes to amend its purposes to add the ability to confer Bachelor of Science degrees in addition to Associate in Applied Science degrees. The consent of the State Education Department has been obtained. Approval of this amendment to the purposes clause of the Certificate of Incorporation by the Public Health and Health Planning Council is required by Not-for-Profit Corporation Law §804(a).

Attached are the following with regard to this matter:

1. Proposed Certificate of Amendment of Certificate of Incorporation with the consent of the State Education Department.
2. Existing Certificate of Incorporation and amendments thereto.

The proposed Certificate of Amendment is in legally acceptable form.

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Chairman of the Board of Trustees of Beth Israel Medical Center (the "Corporation"), does hereby certify:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."
2. The Corporation was created pursuant to Section 50 of the New York Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law.
4. The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon the Secretary of State is: Attn: Legal Department, 150 E. 42<sup>nd</sup> Street, New York, NY 10177.
5. The Corporation's Certificate of Incorporation is hereby amended as follows:

Article THIRD of the Certificate of Incorporation of the Corporation, which specifies the purposes for which the Corporation is organized, is hereby amended by modifying paragraph (b) thereof, which provides for the conduct of certain training programs for nurses and other health care professionals, to include a reference to bachelor of science degrees in connection with nurse training programs, and said paragraph (b) shall, as so amended, read in its entirety as follows:

“(b) to operate a program for the training of nurses leading to associate in applied science (A.A.S.) and bachelor of science (B.S.) degrees at the Phillips Beth Israel School of Nursing; to engage, in conjunction with universities, colleges and professional schools, in programs related to the training of other health care professionals;”

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on October 21, 2013.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 6<sup>th</sup> day of December, 2013.

By

  
Name: Steven I. Hochberg

Title: Senior Vice Chairman

STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT  
Albany, New York

**CONSENT TO FILING WITH THE DEPARTMENT OF STATE  
(General Use)**

Consent is hereby given to the filing of the annexed certificate of amendment

of Beth Israel Medical Center

[name of entity]

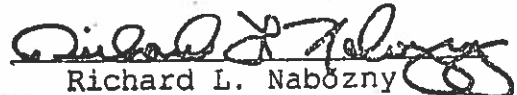
pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

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.

MaryEllen Elia  
Commissioner of Education

By:

  
Richard L. Nabozny

Commissioner's authorized designee

12-03-2015  
Date

**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***  
***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 October 21, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State





State of New York—Department of Social Welfare  
**State Board of Social Welfare**

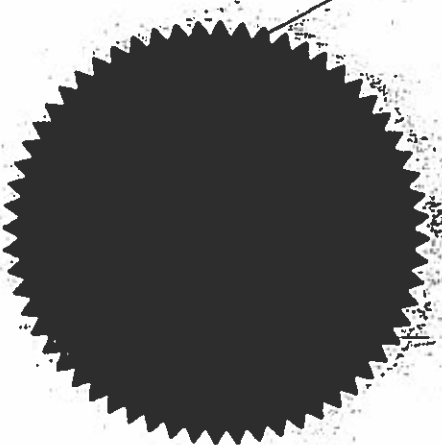
Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on  
the eighteenth day of June, 1946, due inquiry and investiga-  
tion having been made, the Board approved the consolidation of BETH ISRAEL  
HOSPITAL ASSOCIATION and JEWISH MATERNITY HOSPITAL forming the new corporation  
BETH ISRAEL HOSPITAL ASSOCIATION, pursuant to Section 50 of the Membership  
Corporations Law of the State of New York.

106

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 here-  
unto affixed, this twenty-seventh day of  
June, in the year one thousand  
nine hundred and forty-six.



*Joseph J. [Signature]*

Secretary

11699-106-1

CERTIFICATE OF CONSOLIDATION FORMING BETH  
ISRAEL HOSPITAL ASSOCIATION, PURSUANT TO  
SECTION FIFTY OF THE MEMBERSHIP CORPORATIONS

LAW.

WE, CHARLES H. SILVER, SAMUEL HAUSMAN, LOUIS SATENSTEIN and NATHAN RATNOFF, being respectively a Vice-President and the Secretary of BETH ISRAEL HOSPITAL ASSOCIATION, and the President and Secretary of JEWISH MATERNITY HOSPITAL, do CERTIFY:

1. BETH ISRAEL HOSPITAL ASSOCIATION, whose certificate of incorporation was filed in the office of the Secretary of State on the 28th day of May, 1890, and JEWISH MATERNITY HOSPITAL, whose certificate of incorporation was filed in the office of the Secretary of State on the 27th day of April, 1906, are the corporations to be included in this consolidation.
2. The name of the new corporation is BETH ISRAEL HOSPITAL ASSOCIATION.
3. The territory in which its operations are to be principally conducted is the City of New York, New York.
4. The office of the corporation shall be located in the ~~City~~ <sup>and County</sup> of New York, New York.
5. The number of its directors shall be not less than thirty-five (35) nor more than forty (40).
6. The names and residences of the directors of the corporation until the first annual meeting, with the street and number of the residence of each director residing in a city, are as follows:

NAMESRESIDENCE ADDRESSES

Morris Asinof	1055 Park Avenue, New York City
Abraham Blumenkrantz	450 West End Avenue, New York City
Joseph H. Cohen	2 Sutton Place, New York City
Leo M. Cooper	Dorset Hotel, 30 West 54th Street, New York City
Harry Fischel	910 Park Avenue, New York City
Paul P. Gelles	77 Greenacres, Scarsdale, New York
Samuel H. Golding	5th Avenue Hotel, 5th Avenue & 9th Street, New York City
Samuel Hausman	460 E. Shore Road, Great Neck, Kings Pt., L.I.
Henry Homes	239 Central Park West, New York City
Isidor Kaplan	160 Central Park South, New York City
Irving D. Karpas	1 West 81st Street, New York City.
George Kletz	Essex House Hotel, 160 Central Park South, New York City
Abraham Krasne	115 Central Park West, New York City
Abraham Landau	45 East 82nd Street, New York City
Hon. Aaron J. Levy	4551 Livingston Avenue, Fieldston, New York
Joseph Levy	115 Central Park West, New York City
Hon. Samuel Levy	Waldorf Astoria, 50th Street & Park Avenue, New York City
Irving D. Lipkowitz	15 West 81st Street, New York City

Hon. Nathan D. Perlman	25 East 9th Street, New York City
Seymour J. Phillips	1185 Park Avenue, New York City
David L. Fodell	1 East 88th Street, New York City
Louis M. Rabinowitz	1052 East 8th Street, Brooklyn, New York
Joseph Ravitch	230 Central Park West, New York City
Saul Ravitch	15 West 81st Street, New York City
Karl Robbins	300 Central Park West, New York City
Samuel Rosen	1185 Park Avenue, New York City
Arthur M. Rosenbloom	812 Park Avenue, New York City
Jonathan Rubin	25 Central Park West, New York City
Jack P. Sadowsky	14 East 75th Street, New York City
Louis Satenstein	115 Central Park West, New York City
Julius Schwartz	1016 - 5th Avenue, New York City
Charles H. Silver	101 Central Park West, New York City
Louis Surut	885 Park Avenue, New York City
Jerome I. Udell	300 Central Park West, New York City
Walter W. Weismann	180 East 79th Street, New York City

7. The terms and conditions of the consolidation are as follows:

(a) The name of the new corporation, the territory in which it is to operate, the office of the new corporation, the number of its directors and the names and residences of the directors

until the first annual meeting are as heretofore set forth.

~~(b) The purposes and objects of such new corporation shall be:~~

~~To support and maintain an institution known as Beth Israel Hospital and the maternity pavilion thereof known as Jewish Maternity Hospital.~~

~~To give medical and surgical aid, nursing and dispensary service and medical social service to the sick or disabled, to give pre-natal, obstetrical and post-partum care to women, and to cooperate with health and welfare organizations in the prevention of disease, all toward the service of humanity in accord with the highest ideals of medical science.~~

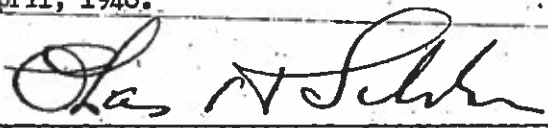
~~To provide the services of this institution to poor people free of charge, regardless of race, creed or nationality.~~


~~In furtherance of the foregoing objects, to make the services of this institution available to persons who are able to pay therefor in order to help defray the cost of providing its services to the poor.~~


~~(c) Mr. Louis Satenstein, one of the directors above named, shall be appointed Chairman of a committee to be named by the President of Beth Israel Hospital for the ensuing year, to deal with matters relating to the Maternity Division of the hospital.~~

~~(d) The time of the annual election shall be the second Tuesday of December in each year.~~

IN WITNESS WHEREOF, we have made and subscribed this Certificate this 23rd day of April, 1946.

  
Vice-President of Beth Israel Hospital Association

  
Secretary of Beth Israel Hospital Association

  
President of Jewish Maternity Hospital

  
Secretary of Jewish Maternity Hospital

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS:

On this 23rd day of April, 1946, before me personally came CHARLES H. SILVER, SAMUEL HAUSMAN, LOUIS SATENSTEIN and NATHAN RATNOFF, to me known and known to me to be the individuals described in and who executed the foregoing Certificate of Consolidation, and they severally duly acknowledged to me that they executed the same.

*Nathan D. Perlman*  
Justice Court of Special  
Sessions of City of New York

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS:

CHARLES H. SILVER and SAMUEL HAUSMAN, being duly sworn, depose and say, and each for himself deposes and says:

That he, Charles H. Silver, is a Vice-President and he, Samuel Hausman, is the Secretary of Beth Israel Hospital Association, <sup>which has more than 500 members;</sup> that he was duly authorized to execute and file the foregoing Certificate of Consolidation by the votes cast by two-thirds of the members of said corporation present, in person or by proxy, at a meeting of such corporation held at 10/17 Livingston Place, in the Borough of Manhattan, New York City, New York, on the 23rd day of April, 1946, upon notice prescribed by Section Forty-Three of the Membership Corporations Law.

Sworn to before me this  
23rd day of April, 1946.

*Charles H. Silver*  
Charles H. Silver  
*Samuel Hausman*  
Samuel Hausman

*Nathan D. Perlman*  
Justice Court of  
Special Sessions  
City of New York

STATE OF NEW YORK )  
                          ) SS:  
COUNTY OF NEW YORK )

LOUIS SATENSTEIN and NATHAN RATNOFF, being duly sworn,  
depose and say, and each for himself deposes and says:

That he, Louis Satenstein, is the President and he, Nathan  
Ratnoff, is the Secretary of Jewish Maternity Hospital, <sup>which has more than 500 members;</sup> that he was  
duly authorized to execute and file the foregoing Certificate of  
Consolidation by the votes cast by two-thirds of the members of said  
corporation present, in person or by proxy, at a meeting of such cor-  
poration, held at 10/17 Livingston Place, in the Borough of Manhattan,  
New York City, New York, on the 23rd day of April, 1946, upon notice  
prescribed by Section Forty-Three of the Membership Corporations Law.

Sworn to before me this  
23rd day of April, 1946.

*Louis Satenstein*  
\_\_\_\_\_  
Louis Satenstein

*Nathan Ratnoff*  
\_\_\_\_\_  
Nathan Ratnoff

*Nathan D. Rubin*  
*Justice Court of*  
*Special Sessions of*  
*City of New York*

\* 4699-146-7

The State Department of Social Welfare of the State of  
New York does hereby consent to and approve the foregoing Certificate  
of Consolidation.

Dated, New York, 1946.

STATE DEPARTMENT OF SOCIAL WELFARE

By: \_\_\_\_\_

4698-106-8



Upon the foregoing Certificate of Consolidation, and the petition  
of BETH ISRAEL HOSPITAL ASSOCIATION and JEWISH MATERNITY HOSPITAL, duly  
verified April 23, 1946, I,

**LOUIS A. VALENTE**  
a Justice of the Supreme Court of the First Judicial District of the  
State of New York, hereby approve the said Certificate of Consolidation.

Dated, New York, July 3<sup>RD</sup> 1946.

*Louis A. Valente*

JUSTICE OF THE SUPREME COURT

*Order*

# 4699-116-9

4698-106

7/25/90 37P-163  
m y lo

CERTIFICATE OF CONSOLIDATION  
FORMING BETH ISRAEL HOSPITAL

ASSOCIATION PURSUANT TO SECTION  
FIFTY OF THE MEMBERSHIP CORPORA-

TIONS LAW. 9.9.

4/1-7/04 698-142

9/4/68  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 8 1946

TAX \$ 100.00  
FILING FEE \$ 25

*Thomas D. Lipkowitz*  
BY *[Signature]*

IRVING D. LIPKOWITZ  
ATTORNEY AT LAW  
270 BROADWAY  
NEW YORK CITY



4698-106-10



***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 October 21, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

This is to inform you that

BETH ISRAEL HOSPITAL ASSOCIATION  
(Name and Address of Corporation)

-58.  
filed a "Certificate of Report of Existence" with the  
Secretary of State, Albany, N.Y. on \_\_\_\_\_  
(Date)

BETH ISRAEL HOSPITAL ASSOCIATION  
BY: *[Signature]*  
(For Signature and Title)  
President

Please mail to:

New York State Department of Social Welfare  
112 State Street  
Albany, New York

6315 (b)

Certificate of Report of Existence  
of

BETH ISRAEL HOSPITAL ASSOCIATION

Exact Name of Corporation

Pursuant to Section 57 of the Membership Corporations Law

1. The name of the corporation is Beth Israel Hospital Association. The  
Name of Corporation

original name was Beth Israel Hospital Association and Jewish Maternity

If name has been changed, insert original name.

Hospital, which were consolidated into Beth Israel Hospital Association by certificate  
of Consolidation filed July 8, 1946.

2. The certificate of incorporation was filed in the Department  
of State on July 8, 1946.

Date of Incorporation

3. The corporation was formed pursuant to the Membership Corporations Law.  
Cite Incorporation Statute

4. The existence of the foregoing corporation is hereby continued.

BETH ISRAEL HOSPITAL ASSOCIATION

BY: Charles H. Silver

President

To be signed by an officer,  
trustee, director or five  
members in good standing.

State of New York }  
County of New York } SS.:

On this 28th day of December, 1950, before me  
personally appeared CHARLES H. SILVER to me personally known  
and known to me to be the person(x) described in and who executed  
the foregoing certificate, and (he) ~~(she)~~ thereupon acknowledged  
to me that (he) ~~(she)~~ executed the same for the uses and purposes  
therein mentioned.

Samuel Romanoff  
Notary Public

County of New York

NOTE: If the foregoing acknowledgment is taken without the State of  
New York, the signature of the notary public should be  
authenticated by a certificate of the clerk of the county in  
which such notary has power to act, or other proper officer.

SAMUEL ROMANOFF  
Notary Public, State of New York  
No. 41-3336200  
Qualified in Queens County  
Certificates filed with  
New York County  
Commission Expires March 30, 1951

***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 October 21, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF CHANGE TO PROVIDE  
THAT THE NUMBER OF DIRECTORS SHALL  
BE NOT LESS THAN 35 NOR MORE THAN 75,  
OF BETH ISRAEL HOSPITAL ASSOCIATION,  
PURSUANT TO SECTION 30 OF THE MEMBER-  
SHIP CORPORATIONS LAW.

WE, CHARLES H. SILVER and IRVING D. KARPAS, being respectively the president and the secretary of BETH ISRAEL HOSPITAL ASSOCIATION, hereby certify:

1. The name of the corporation is BETH ISRAEL HOSPITAL ASSOCIATION.

2. The certificate of incorporation was filed in the office of the secretary of state on the 8th day of July, 1946.

3. The statement as to the number of directors to be amended is:

The number of directors previously authorized is not less than 35 nor more than 40. The number of directors as increased by this certificate shall hereafter be not less than 35 nor more than 75.

*Charles H. Silver*

President

*Irving D. Karpas*

Secretary

188961

STATE OF NEW YORK )  
                          ) SS:  
COUNTY OF NEW YORK )

On this 23rd day of November, 1959, before me personally came CHARLES H. SILVER and IRVING D. KARPAS, to me known and known to me to be the persons described in and who executed the foregoing certificate, and that they thereupon duly acknowledged that they executed the same.

*IDA BUD...*  
IDA BUD...  
Notary Public, State of New York  
No. 03 588300  
Qualified in Nassau County  
Certificate and Commission  
Commission Expires 10/31/60

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK )

CHARLES H. SILVER and IRVING D. KARPAS,  
being duly sworn depose and say, and each for himself deposes  
and says, that he, CHARLES H. SILVER, is the president of  
BETH ISRAEL HOSPITAL ASSOCIATION, and he, IRVING D. KARPAS,  
is the secretary thereof; that they have been duly authorized  
to execute and file the foregoing certificate of increase in  
number of directors by the concurring vote of a majority of  
the members of the corporation present at a special meeting  
held on the 23rd day of November 1959, upon notice pursuant  
to Section 43 of the Membership Corporations Law.

Subscribed to and sworn  
to before me this 23rd  
day of November, 1959.

*IDA BERGER*  
IDA BERGER  
Notary Public, State of New York  
No. 03-5263900  
Qualified in Bronx County  
Certificate of the New York County  
Commissioner of Stamps No. 10, 1959

*Charles H. Silver*



188961

CERTIFICATE OF CHANGE TO PROVIDE  
THAT THE NUMBER OF DIRECTORS SHALL  
BE NOT LESS THAN 35 NOR MORE THAN  
75, OF BETH ISRAEL HOSPITAL  
ASSOCIATION, PURSUANT TO SECTION 30  
OF THE MEMBERSHIP CORPORATIONS LAW

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 2-1959

TAX \$ None

FILING FEE \$ 25

*Caroline E. Johnson*  
Secretary of State

By *J. M. Plaut*

LIPKOWITZ & PLAUT  
ATTORNEYS AT LAW  
16 WEST 40TH STREET  
NEW YORK 36 N. Y.

***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 October 21, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF CHANGE OF NAME OF  
BETH ISRAEL HOSPITAL ASSOCIATION

-to-

BETH ISRAEL MEDICAL CENTER

(Pursuant to Section 40 of the  
General Corporation Law)

WE, CHARLES H. SILVER and IRVING D. KARPAS, being re-  
spectively the President and Secretary of BETH ISRAEL  
HOSPITAL ASSOCIATION, certify:

- 489549
1. The name of this corporation is BETH ISRAEL  
HOSPITAL ASSOCIATION.
  2. The Certificate of Incorporation of BETH ISRAEL  
HOSPITAL ASSOCIATION was filed in the Office of the Secretary  
of State on the 28th day of May, 1890, and thereafter by  
Certificate of Consolidation filed in the Office of the  
Secretary of State on August 8, 1946 the said BETH ISRAEL  
HOSPITAL ASSOCIATION was consolidated with JEWISH MATERNITY  
HOSPITAL, whose Certificate of Incorporation was filed in  
the Office of the Secretary of State on the 27th day of April,  
1906, and the name of the corporations as consolidated was  
BETH ISRAEL HOSPITAL ASSOCIATION.
  3. The new name to be assumed by this corporation is  
BETH ISRAEL MEDICAL CENTER.

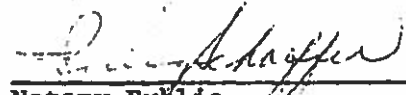
IN WITNESS WHEREOF, we have made and subscribed this  
Certificate this 20 day of February, 1965.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

On this 27 day of February, 1965 before me personally came CHARLES H. SILVER and IRVING D. KARPAS, to me known and known to me to be the persons subscribed in and who executed the foregoing Certificate of Change of Name, and they thereupon severally duly acknowledged to me that they executed the same.

  
\_\_\_\_\_  
Notary Public

IRVING SCHAEFFER  
Notary Public  
Qualified in New York State  
Term Expires 12/31/65

2

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

CHARLES H. SILVER and IRVING D. KARPAS, being duly sworn, depose and says, and each for himself deposes and says: That he, CHARLES H. SILVER, is President of BETH ISRAEL HOSPITAL ASSOCIATION, and he, IRVING D. KARPAS, is Secretary thereof; that they were duly authorized to execute and file the foregoing Certificate of Change of Name of said corporation by votes of a majority of the Board of Trustees of record of the corporation who are entitled to vote, and that such votes were cast at a meeting called for that purpose, which meeting was held on the 24 day of February, 1965, at 10 Nathan D. Perlman Place, Borough of Manhattan, City of New York, the said Board of Trustees constitute all of the members of said corporation.

Sworn to before me  
this 24 day  
of February, 1965.

  
Charles H. Silver

  
Irving D. Karpas

  
Notary Public

IRVING SCHAEFFER  
Notary Public, State of New York  
No. 24275700  
Qualified in New York

Term Expires 11/1/65

*NY*  
*116 pg - 106*

489549

CERTIFICATE OF CHANGE OF  
NAME OF BETH ISRAEL  
HOSPITAL ASSOCIATION

-to-

BETH ISRAEL MEDICAL CENTER

(Pursuant to Section 40  
of the General Corporation  
Law)

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED MAR 31 1965

TAX \$ none  
FILING FEE \$ 30

*John P. Stump*  
Secretary of State

SIDNEY SCHULTZ  
Attorney at Law By *S. Schultz*  
110 West 57th Street  
New York 19, New York

*Do not send*

*5/3/22*

*3/30*

*60*

*X*

***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 October 21, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

DIVISION OF CORPORATIONS AND STATE RECORDS  
162 Washington Avenue, Albany 12225

CERTIFICATE OF TYPE OF NOT-FOR-PROFIT CORPORATION  
OF

BETH ISRAEL MEDICAL CENTER

Exact Name of Corporation

Under Section 113 of the Not-for-Profit Corporation Law

The name of the corporation is BETH ISRAEL MEDICAL CENTER.

The original name was BETH ISRAEL HOSPITAL ASSOCIATION

The certificate of incorporation was filed by the Department of State on July 8, 1946  
Date of Incorporation

The corporation was formed pursuant to An Act for the Incorporation of Benevolent,  
Charitable, Scientific and Missionary Societies  
Cite Incorporation Statute

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 10 Nathan D. Perlman Place, New York, N.Y.

That under Section 201, it is a Type B Not-for-Profit Corporation as defined in this chapter.  
(Insert A, B, C or D)

IN WITNESS WHEREOF, this certificate has been subscribed this 30 day of August 1973 at the County of  
by the undersigned who affirm(s) that the statements made herein are true under the penalties of perjury.

To be signed pursuant to  
Section 104(d) of the N-PCL

*Jack A. Rothenstein*  
\_\_\_\_\_  
Jack A. Rothenstein, Secretary  
*Seymour J. Phillips*  
\_\_\_\_\_  
Seymour J. Phillips, Vice President

NOTE: The fee for filing the foregoing certificate is \$10 payable to the Department of State by certified check or money order.  
Every corporation required to file under Paragraph (a) of Section 113 of the N-PCL will be considered a Type B corporation until it has filed a certificate of type.



- 2

**A1017 CERTIFICATE OF TYPE  
OF  
NOT-FOR-PROFIT CORPORATION  
OF**

*and 3-31-65*

**BETH ISRAEL MEDICAL CENTER**  
Exact Name of Corporation

*Formed by laws 1946  
with amended articles  
of incorporation*

**Under Section 113  
of the  
NOT-FOR-PROFIT CORPORATION LAW**

*7-8-46*

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

*NYC*

**FILED SEP 18 1973**

*4698-106*

TAX \$ None  
FILING FEE \$ 10

*Joseph J. Zimminger*

*re NY  
not type*

Secretary of State

*31 ny  
Dyke B*

*I*

**BETH ISRAEL MEDICAL CENTER**

**10 Nathan D. Perleman Place  
New York, New York**

Name and address of filer

*2*

***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 October 21, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION

- of -

BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the  
Not-For-Profit Corporation Law)

WE, the undersigned, hereby certify:

1. The name of the corporation is BETH ISRAEL MEDICAL CENTER. It was formed under the name of BETH ISRAEL HOSPITAL ASSOCIATION, and its name was changed from that name to BETH ISRAEL MEDICAL CENTER by Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965.

2. The Certificate of Incorporation of said corporation was filed by the Department of State on the 28th day of May, 1890 and thereafter by Certificate of Consolidation filed by the Department of State on <sup>July</sup> ~~August~~ 8, 1946 the said BETH ISRAEL HOSPITAL ASSOCIATION was consolidated with JEWISH MATERNITY HOSPITAL, whose Certificate of Incorporation was filed by the Secretary of State on the 27th day of April, 1906, and the name of the corporation as consolidated was BETH ISRAEL HOSPITAL ASSOCIATION, and thereafter the name was changed to BETH ISRAEL MEDICAL CENTER as aforesated.

A 292634

3. The corporation is a corporation as defined under sub-paragraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law, and is a Type B corporation under Section 201, *and shall continue to be a Type B corporation,*

4. The post office address to which the Secretary of State shall mail a copy of any notice required by law is:  
Beth Israel Medical Center, 10 Nathan D. Perlman Place, New York, New York 10003.

5. The corporate powers of the corporation are restated to include the following;

To provide on a non-profit basis, hospital facilities and services for the care and treatment of persons who are acutely ill who otherwise require medical care and related services of the kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

6. The Certificate of Incorporation is amended so that the corporation is empowered:

- (a) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in paragraph 5 hereof.
- (b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the corporation's property.

- (c) To do and perform all acts necessary to accomplish the purposes of the corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the corporation, its successors and assigns, so long as a mortgage on the corporation's property is insured or held by the Secretary of Housing and Urban Development.

7. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the entire Board of Directors, voting in person, at a meeting of the Board of Directors duly called for that purpose upon due notice to all Directors of record given in the manner required for a regular meeting of the corporation; said meeting was held at the office of the corporation, 10 Nathan D. Perlman Place, New York, New York, at 2:00 P.M. on December 17, 1975; a majority of the entire Board of Directors was present; the Certificate of Incorporation of the corporation does not require the consent of more than a majority of the entire Board of Directors to amend the corporate powers of the corporation. There are no members entitled to vote.

8. The following approvals or consents were endorsed on or annexed to the aforementioned Certificate of Incorporation and the aforementioned Certificate of Consolidation at the time they were filed with the Department of State:

(a) A Justice of the Supreme Court of the State of New York, First Judicial <sup>District</sup> Department; and

(b) The State Board of Social Welfare approving the consolidation of Beth Israel Hospital Association and Jewish Maternity Hospital, under the designation of Beth Israel Hospital Association.

No other approvals were required at the time of filing of said Certificate of Incorporation and Certificate of Consolidation.

The following approvals or consents will be endorsed upon or annexed to this Certificate of Amendment prior to its delivery to the Department of State:

(c) A Justice of the Supreme Court of the State of New York, First Judicial <sup>District</sup> Department; and

(d) Public Health Council of the State of New York.

IN WITNESS WHEREOF, we have executed this Certificate  
this 18th day of December, 1975.

*Chas. N. Silver*

President

*Jan A. Rothenshteyn*

Secretary

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

CHARLES H. SILVER and JACK A. ROTHENSTEIN, being severally, duly sworn, depose and say that they are the President and Secretary, respectively of BETH ISRAEL MEDICAL CENTER, and that they have read the foregoing Certificate of Amendment of Certificate of Incorporation of BETH ISRAEL MEDICAL CENTER, and know the contents thereof; that the same is true to their own knowledge, except as to those matters stated therein to be alleged on information and belief, and that as to those matters deponents believe them to be true.

*Charles H. Silver*

CHARLES H. SILVER

*Jack A. Rothenstein*  
JACK A. ROTHENSTEIN

Subscribed and sworn to before me this 18<sup>th</sup> day of December, 1975.

*Rhea L. Davidson*

Notary Public

RHEA L. DAVIDSON  
Notary Public, State of New York  
No. 117,911  
Commission Expires March 20, 1977



STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

CHARLES H. SILVER and JACK A. ROTHENSTEIN, being severally, duly sworn, depose and say:

1. That CHARLES H. SILVER is the President of BETH ISRAEL MEDICAL CENTER mentioned in the foregoing Certificate and was such President at the time of the consent mentioned therein to amend the corporate powers of the corporation.

2. That JACK A. ROTHENSTEIN is the Secretary of BETH ISRAEL MEDICAL CENTER mentioned in the foregoing Certificate and was such Secretary at the time of the consent mentioned therein to amend the corporate powers of the corporation.

3. That they were duly authorized to execute and file the foregoing Certificate of Amendment by action of a majority of the entire Board of Directors at a regular meeting.

4. Such consent was given by affirmative votes cast in person by a majority of the entire Board of Directors at a meeting of the Directors duly called for that purpose after due notice to the entire Board of Directors of the corporation given in the manner required for a regular meeting of the corporation; said meeting was held at 10 Nathan D. Perlman Place, New York, New York on December 17, 1975, at 2:00 P.M.; a majority of the entire Board of Directors was present. There are no members entitled to vote.

7

5. That the Certificate of Incorporation of this corporation does not require the consent of more than a majority of the entire Board of Directors to amend the corporate powers of the corporation.

*Charles H. Silver*

CHARLES H. SILVER

*Jack A. Rothenstein*

JACK A. ROTHENSTEIN

Sworn to before me this  
18th day of December, 1975.

*Rhea L. Davidson*

Notary Public

RHEA L. DAVIDSON  
Notary Public for New York  
No. 614,17091  
Qualified in New York City  
Commission Expires March 19, 1977

8

STATE OF NEW YORK DEPARTMENT OF HEALTH  
OFFICE OF THE COMMISSIONER OF HEALTH

CONSENT BY COMMISSIONER OF HEALTH  
TO FILING OF CERTIFICATE TO AMEND  
CORPORATE POWERS

I, ROBERT P. WHALEN, M.D., Commissioner of Health of the State of New York, do this 26<sup>th</sup> day of January, 1976 pursuant to Section 804 of the Not-For-Profit Corporation Law, hereby certify that I consent to the filing with the Secretary of State of the State of New York of the foregoing Certificate.

ROBERT P. WHALEN, M.D.  
COMMISSIONER OF HEALTH

By Frank T. Green M.D.  
Deputy Commissioner

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: ) \_\_\_\_\_

~~LOUIS J. LEFKOWITZ,  
ATTORNEY GENERAL~~

9

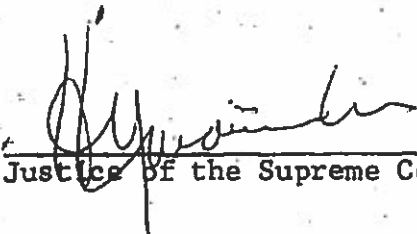
CORPORATE POWERS

CONSENT BY A RESIDENT SUPREME COURT  
JUSTICE TO FILING OF CERTIFICATE TO  
AMEND CORPORATE POWERS

I, HYMAN KORN, Justice of  
the Supreme Court of the State of New York for the First  
Judicial District, hereby approve the within Certificate of  
amend the corporate powers of the corporation, Beth Israel Medical  
Center.

Dated: NEW YORK, NY.

FEB 3 - 1976

  
Justice of the Supreme Court

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: JANUARY 30, 1976  
LOUIS J. LEFKOWITZ  
Attorney General

By Peter D. Berlowitz  
Assistant Attorney General



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY 12237

# PUBLIC HEALTH COUNCIL

January 26, 1976

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 23rd day of January, 1976, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

*Marianne K. Adams*

MARIANNE K. ADAMS  
Secretary

Sent to: Sidney Schutz, Esq.  
55 Fifth Avenue  
New York, New York 10003

cc: Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

COUNCIL

HERMAN S. MOORE, M.D.  
CHAIRMAN

GLORIA P. BORG  
William Lee Frost  
GORDON E. BROWN  
VERNAL G. CAVE, M.D.

HORTON P. HYMAN

GEORGE METCALF  
JAMES F. X. O'ROURKE, M.D.  
W. KENNETH RILAND, D.O.  
JOHN E. ROACH, M.D.

HOWARD A. RUSK, M.D.  
JOHN M. WALSH

COMMISSIONER OF HEALTH  
ROBERT P. WHALEN, M.D.  
IN OFFICIO

A292634-12

CERTIFICATE OF AMENDMENT OF  
CERTIFICATE OF INCORPORATION

- of -

BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the  
Not-For-Profit Corporation Law)

STATE OF NEW YORK  
DEPARTMENT OF STATE

TAX \$ None  
FILING FEE \$ 30

FILED FEB 10 1976

*W. A. ...*  
Secretary of State

SIDNEY SCHUTZ  
Attorney at Law  
55 Fifth Avenue  
New York, New York 10003  
(212) 929-0400

31 my  
types

***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 October 21, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

WSC



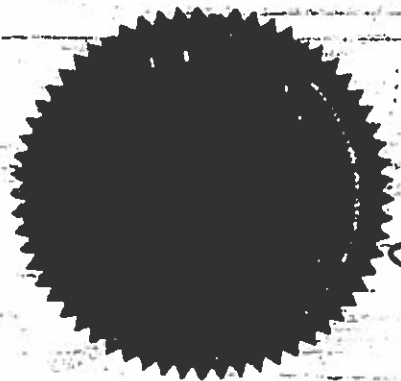
The University of the State of New York

STATE OF NEW YORK:
COUNTY OF ALBANY:

Pursuant to the provisions of section 804 of the Not-for-profit Corporation Law, consent is hereby given to the restatement and amendment of the text of the certificate of incorporation of BETH-ISRAEL MEDICAL CENTER as set forth in the annexed restated and amended certificate of incorporation.

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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 6th day of September, 1985.

Gordon M. Ambach
Commissioner of Education

Handwritten signature of Gordon M. Ambach

Robert D. Stone
Counsel and Deputy Commissioner
for Legal Affairs



USC

RESTATED CERTIFICATE OF INCORPORATION  
OF

USC

BETH ISRAEL MEDICAL CENTER

(Under Section 805 of the Not-for-Profit Corporation Law)

We, the undersigned, being the President and Secretary of BETH ISRAEL MEDICAL CENTER, do hereby certify that:

(1) The name of the corporation is: BETH ISRAEL MEDICAL CENTER (the "Corporation").

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965.

(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) 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:

Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

(5) The Restated Certificate of Incorporation amends or changes the Certificate of Consolidation filed July 8, 1946 and all amendments thereto as follows:

(a) The purposes and powers of the constituent corporations that were parties to the Certificate of Consolidation are hereby amended to read as set forth in Article THIRD of the Restated Certificate of Incorporation.

(b) Paragraph 5 of the Certificate of Consolidation (relating to the number of directors) is hereby amended to read as set forth in Article SIXTH of the Restated Certificate of Incorporation.

(c) To make clear that the Corporation shall have no members, as set forth in Article SIXTH of the Restated Certificate of Incorporation.

(d) Provisions relating to the duration of the Corporation's existence, post office address and by-laws, all as continued by the Certificate of Consolidation, are amended to read as set forth in Articles SEVENTH, EIGHTH and NINTH, respectively, of the Restated Certificate of Incorporation.

(6) The Restated Certificate of Incorporation was authorized by a majority of the votes cast at a meeting of members by the members entitled to vote thereon, such majority having been at least equal to the quorum required at such meeting.

43

FIRST: The name of the corporation is: BETH ISRAEL MEDICAL CENTER (hereinafter referred to as the "Corporation").

~~SECOND: (a) The Corporation is a corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law of the State of New York.~~

(b) The Corporation shall be a Type B corporation under Section 201 of the Not-For-Profit Corporation Law of the State of New York.

THIRD: The Corporation is organized exclusively for charitable and educational purposes, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954, as amended, and the corresponding provisions of any future United States Internal Revenue Law (collectively, the "Code"), which purposes shall include, but are not limited to, the following:

~~(a) to establish, maintain and/or operate an~~  
institution or institutions with facilities which include  
inpatient beds and a broad range of medical services,  
including dental services, for the diagnosis and treatment  
of patients, and associated services, including, but not  
limited to, outpatient care, home care, and extended care  
provided that the Corporation has obtained all approvals and  
consents as required by law prior to the provision of any  
such services;

(b) to operate a program for the training of  
nurses leading to the degree of associate in applied science  
(A.A.S.); to engage, in conjunction with universities,  
colleges and professional schools, in programs related to  
the training of other health care professionals;

~~(c) to promote and carry 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;

(d) to engage in educational activities related  
to providing care to the sick, injured and disabled, and  
related to promoting the health of the public; and

(e) to provide, on a non-profit basis, hospital  
facilities and services for the care and treatment of

56

persons who are acutely ill who otherwise require medical care and related services of a kind customarily furnished most effectively by hospitals, pursuant to Section 242 of the National Housing Act, as amended.

In furtherance of these objects and purposes, the Corporation is authorized:

(a) To buy, own, sell, convey, assign, mortgage or lease any interest in real estate and personal property and to construct, maintain and operate improvements thereon necessary or incident to the accomplishment of the purposes set forth in this Article;

(b) To borrow money and issue evidence of indebtedness in furtherance of any or all of the objects of its business, and to secure the same by mortgage, pledge or other lien on the Corporation's property; and

(c) To do and perform all acts necessary to accomplish the purposes of the Corporation, including the execution of a Regulatory Agreement with the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of financing with the assistance of mortgage insurance under the provisions of the National Housing Act. Such Regulatory Agreement and other instruments and undertakings shall remain binding upon the Cor-

47

poration, its successors and assigns, so long as a mortgage on the Corporation's property is insured or held by the Secretary of Housing and Urban Development.

Notwithstanding any other provision of this Article Third, the Corporation may not exercise any power, either express or implied, in such a manner as to disqualify the Corporation from exemption from Federal income tax under sections 501(a) and 501(c)(3) of the Code. It is the intention of the Corporation at all times to qualify and remain qualified as exempt from Federal income tax under sections 501(a) and 501(c)(3) of the Code. Accordingly:

(1) The Corporation shall receive, administer, maintain, use and employ its funds, net earnings, and real and personal property exclusively for charitable and educational purposes, within the meaning of section 501(c)(3) of the Code, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Code;

(2) No part of the net earnings of the Corporation shall inure to the benefit of any officer, trustee, director, member, employee or any private individual (except that reasonable compensation may be paid for services rendered to or for the Corporation and to make

8

payments and distributions in furtherance of one or more of its purposes). No officer, trustee, director, member or employee of the Corporation or any private individual shall be entitled to share in the distribution of any corporate assets upon dissolution of the Corporation or in any other event;

(3) The Corporation shall not carry on propaganda or otherwise attempt to influence legislation to an extent that would disqualify it from exemption from Federal income tax under section 501(a) of the Code by reason of attempting to influence legislation, and the Corporation shall not participate or intervene (including the publishing or distributing of statements or otherwise) in any political campaign on behalf of or in opposition to any candidate for public office;

(4) In the event of liquidation, dissolution or winding up of the business and affairs of the Corporation upon approval of a Justice of the Supreme Court of the State of New York, whether voluntary or involuntary or by operation of law, the Board of Trustees shall, after paying or making provision for payment of all liabilities of the Corporation, dispose of all assets exclusively for the purposes of the Corporation or to one or more corporations or organizations located in the United States as shall at



the time qualify as exempt under section 501(a) of the Code pursuant to section

501(c)(3) of the Code, or to one or more corporations or other organizations, contributions to which are deductible under section 170(c)(1) of the Code, in such manner as the Board of Trustees shall determine. Any assets not so distributed shall be distributed by a court of competent jurisdiction exclusively for such purposes or to such corporations or other organizations as said court shall determine are organized and operated solely for such purposes; and

(5) If the Corporation shall at any time be a private foundation within the meaning of section 509 of the Code, the Corporation, so long as it shall be such a private foundation, shall distribute its income for each taxable year at such time and in such manner as not to subject it to the tax on undistributed income imposed by section 4942 of the Code, and, so long as it shall be such a private foundation, the Corporation shall not (i) engage in any act of self-dealing as defined in section 4941(d) of the Code; (ii) retain any excess business holdings as defined in section 4943(c) of the Code; (iii) make any investments in such manner as to subject it to tax under section 4944 of

10 8

the Code; or (iv) make any taxable expenditures as defined in section 4945(d) of the Code.

FOURTH: The principal office of the Corporation is to be located in the County and City of New York, State of New York.

FIFTH: The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-laws of the Corporation, and in any case shall be not less than thirty-five (35) nor more than seventy-five (75). The Corporation shall have no members.

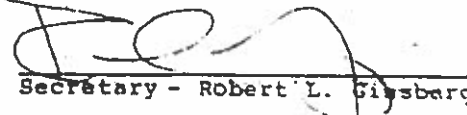
SIXTH: The existence of the Corporation shall be perpetual.

SEVENTH: The Corporation hereby designates the Secretary of State as agent of the Corporation upon whom process against it may be served. The post office address within or without this state to which the Secretary of State shall mail a copy of any process against it served upon him is: 10 Nathan D. Perlman Place, New York, New York 10003.

EIGHTH: By-laws of the Corporation may be adopted or amended by an affirmative vote of two-thirds of the Trustees present at any regular meeting, or at any special meeting called for that purpose, at which a quorum of trustees is present so long as the by-laws are not inconsistent with the provisions of this Certificate or the laws of the State of New York.

IN WITNESS WHEREOF, we hereunto sign our names and affirm that the statements made herein are true under the penalties of perjury, this 29th day of May, 1985, at New York, New York.

  
\_\_\_\_\_  
President - Robert Newman

  
\_\_\_\_\_  
Secretary - Robert L. Ginsberg

12

I, **THOMAS J. HUGHES** Justice of the Supreme Court of the State of New York, First Judicial District, do hereby approve the foregoing Restated Certificate of Incorporation of Beth Israel Medical Center, and consent that the same be filed.

*Thomas J. Hughes*  
Justice of the Supreme Court  
of the State of New York

Dated: SEP 19 1985

**THOMAS J. HUGHES**

NEW YORK COUNTY

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.,  
STATE OF NEW YORK

*Laura Werner*  
**LAURA WERNER**

Deputy Attorney General

*3*



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 30, 1985

KNOW ALL MEN BY THESE PRESENTS:

After inquiry and investigation and in accordance with action taken at a meeting of the Public Health Council held on the 26th day of July, 1985, I hereby certify that the Restated Certificate of Incorporation of Beth Israel Medical Center dated May 29, 1985 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

*Nancy A. Massaroni*  
NANCY A. MASSARONI  
Executive Secretary

Sent to: Robert G. Newman, M.D., President  
Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

RECEIVED

AUG 2 1985

PRESIDENT  
Beth Israel Medical Center

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STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED OCT 1 - 1985

TAX \$ \_\_\_\_\_  
NOT. OF GREEN \$ 49.50  
TRADE FE \$ 10  
CORP. FEE \$ 5.00  
SPEC. HANDLE \$ 10  
M. \_\_\_\_\_

*Handwritten signature*

RESERVED CERTIFICATE OF  
INCORPORATION OF  
BETH ISRAEL MEDICAL CENTER  
(Under Section 805 of the  
Not-For-Profit Corporation  
Law)

Paul, Weiss, Rifkind, Wharton & Garrison  
ATTORNEYS AT LAW  
345 PARK AVENUE, NEW YORK, N. Y. 10154

E272659

*Handwritten mark*

USC

**FILED**

SEP 29 1985

OCT 1 6 54 AM '85

FILED

SEP 27 9 AM '85

FILED

**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 October 21, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

PH

PH

CERTIFICATE OF AMENDMENT OF THE  
RESTATED CERTIFICATE OF INCORPORATION OF  
BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the Not-For-Profit Corporation Law)

We, the undersigned, being the President and  
Secretary of BETH ISRAEL MEDICAL CENTER, do hereby certify  
that:

(1) The name of the corporation is: BETH ISRAEL  
MEDICAL CENTER (the "Corporation").

(2) The Corporation was formed pursuant to  
a Certificate of Consolidation filed by the Department  
of State of the State of New York on July 8, 1946. The  
corporations included in such consolidation were Beth  
Israel Hospital Association, which was formed by the filing  
of a Certificate of Incorporation on May 28, 1890, and  
Jewish Maternity Hospital, which was formed by the filing  
of a Certificate of Incorporation on April 27, 1906.  
The name of the Corporation as consolidated was Beth Israel  
Hospital Association. The name was changed from that  
name to Beth Israel Medical Center by Certificate of Change  
of Name dated February 24, 1965, and filed by the Secretary  
of State on March 31, 1965. A restated certificate of

100182



incorporation was filed by the Department of State on October 1, 1985.

(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 as defined in Section 201 of that law.

~~(4) The Corporation designates the Secretary of State of the State of New York 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 served upon him is as follows:~~


Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

(5) The restated certificate of incorporation is amended to permit the Corporation to have members. Article FIFTH of the restated certificate is amended by deleting therefrom the sentence, "The Corporation shall have no members." Article FIFTH shall state as follows:

The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-Laws of the Corporation, and in any case shall not be less than thirty-five (35) nor more than seventy-five (75).

(6) The above amendment to the restated certificate of incorporation was authorized by a vote of the majority of the entire Board of Trustees.

IN WITNESS WHEREOF, we have signed this certificate this 16<sup>th</sup> date of December, 1987.

  
President - Robert Newman

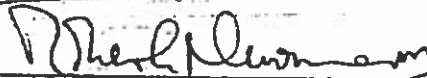
  
Secretary - Stephen A. Hochman

VERIFICATION

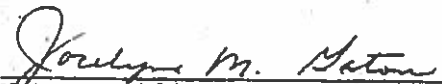
STATE OF NEW YORK     )  
                                  )     SS:  
COUNTY OF NEW YORK    )

ROBERT NEWMAN, being duly sworn, deposes and  
say:

1. I am, the President of Beth Israel Medical  
Center.
2. I have read the annexed Certificate of Amendment  
and know the contents thereof to be true.

  
Robert Newman

Sworn to before me this  
16<sup>th</sup> day of DECEMBER, 1987

  
Notary Public

JOCELYN M. EATON  
NOTARY PUBLIC, State of New York  
No. 00 1R21364  
Qualified in Westchester County  
Commission Expires Feb. 28, 1989

~~The undersigned has no objection to the granting  
of Judicial approval hereon and waives statutory notice.~~

ROBERT ABRAMS  
ATTORNEY GENERAL  
STATE OF NEW YORK

By:

Date: \_\_\_\_\_

I, **JAWN A. SANDIFER**, a Justice of the Supreme  
Court of the State of New York for the FIRST  
Judicial District do hereby approve the foregoing Certificate  
of Amendment of the <sup>RESTATED</sup> Certificate of Incorporation of Beth  
Israel Medical Center, and consent that the same be filed.

Date: **FEB 24 1988**  
New York, New York

*Jawn A. Sandifer*  
\_\_\_\_\_  
J.S.C.

**JAWN A. SANDIFER**  
JUSTICE OF THE SUPREME COURT  
OF THE STATE OF NEW YORK  
*First Judicial District*

*Feb 16, 1988*  
THE UNDERSIGNED HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL  
APPROVAL HEREON AND WAIVES  
STATUTORY NOTICE.

ROBERT ABRAMS, ATTORNEY GEN.  
STATE OF NEW YORK

*By Clark [Signature]*



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

January , 1987

Morton P. Hyman  
Chairman

Robert M. Kaufman, Esq.  
Proskauer, Rose, Goetz & Mendelsohn  
300 Park Avenue  
New York, New York 10022

Re: Proposed Certificate of Amendment of the Restated  
Certificate of Incorporation: Beth Israel Medical Center

Dear Mr. Kaufman:

~~The proposed Certificate of Amendment to the Restated Certificate of Incorporation of Beth Israel Medical Center, as executed on the 16th day of December, 1987, does not, pursuant to §804(a) of the Not-for-Profit Corporation Law, require the formal approval of the Public Health Council, as the amendment neither adds, changes or eliminates a purpose, power or provision the inclusion of which requires the approval of the Council, nor changes the name of the corporation.~~

Sincerely,

Karen Westervelt  
Acting Executive Secretary  
Public Health Council

**P H**

-7

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED **MAR 21 1968**

AMT. OF CHECK	\$ 30
FILING FEE	\$
TAX	\$
COUNTY FEE	\$
COPY	\$
CERT.	\$
REFUND	\$
SPEC. HANDLE	\$

*Handwritten signatures and initials*

BETH ISRAEL MEDICAL CENTER Certificate of Amendment of Restated Certificate of Incorporation (Under Section 803 of the Not-For-Profit Corporation Law)	<b>FILED</b>
--	--------------

PROSSAUER ROSE GOETZ & MENDELSON  
 COUNSELLORS AT LAW  
 305 PARK AVENUE  
 BOROUGH OF MANHATTAN,  
 NEW YORK CITY 10022

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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 October 21, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

F990702000684  
CSC 45CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION OF  
BETH ISRAEL MEDICAL CENTER

(Under Section 803 of the Not-For-Profit Corporation Law)

The undersigned, the sole member of Beth Israel Medical Center, a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York (the "Corporation") does hereby certify as follows:

(1) The name of the corporation is: BETH ISRAEL MEDICAL CENTER.

(2) The Corporation was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946. The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by Certificate of Change of Name dated February 24, 1965, and filed by the Secretary of State on March 31, 1965. A restated certificate of incorporation was filed by the Department of State of October 1, 1985. A certificate of amendment of the restated certificate of incorporation was filed by the Department of State on March 2, 1988.

(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 as defined in Section 201 of that law.

(4) The Corporation designates the Secretary of State of the State of New York 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 served upon him is as follows:

Beth Israel Medical Center  
10 Nathan D. Perlman Place  
New York, New York 10003

(5) The certificate is amended to delete therefrom the fixed number of trustees of the Corporation and permit the number of trustees of the Corporation to be fixed by, or determined in accordance with, the by-laws of the Corporation. Article FIFTH of the certificate of incorporation is amended to delete from the last clause of the sentence the language, "and in any case shall not be less than thirty-five (35) nor more than seventy-five (75)." Article FIFTH is hereby amended to read as follows:

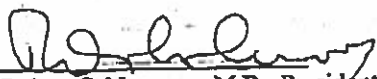
The number of directors of the Corporation, who shall be known as Trustees, shall be fixed by, or determined in accordance with, the By-laws of the Corporation

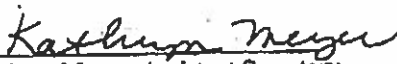


(6) The foregoing amendment to the certificate of incorporation of the Corporation was authorized by a majority of the votes cast at a meeting of the sole member of the Corporation, held on June 7, 1999, the affirmative votes cast in favor of the amendment being at least equal to the quorum, blank votes and abstentions not being counted in the number of votes cast.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 15 day of June, 1999 and affirms the statements made herein are true under penalties of perjury.

CONTINUUM HEALTH PARTNERS, INC.

By:   
Robert G. Newman, M.D., President  
Continuum Health Partners, Inc.  
555 West 57th Street  
New York, New York 10019

By:   
Kathryn Meyer, Assistant Secretary  
Continuum Health Partners, Inc.  
555 West 57th Street  
New York, New York 10019

/s:conten

**F090702000684**

**CSC 45**

**STATE OF NEW YORK  
DEPARTMENT OF STATE**

JUL 02 1999

CERTIFICATE OF AMENDMENT

OF

BETH ISRAEL MEDICAL CENTER

Under Section 803 of the No-For-Profit Corporation Law

FILED  
TAX 3  
BY:

*W. J. ...*

*[Handwritten signature]*

FILED

JUL 27 36 PM '99

JUL 2 1 35 PM '99

FILED BY: Anna L. Brown, Esq  
BETH ISRAEL MEDICAL CENTER  
555 West 57th Street  
18th Floor-legal Dept  
New York, NY 10019  
Cust. Ref#295963MPJ

DRAWDOWN

*3*

**990702000716**

***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 October 21, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

F020927000245

Exhibit A

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER  
Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President and Chief Executive Officer and the Assistant Secretary of Continuum Health Partners, Inc, the sole member of Beth Israel Medical Center, a New York State not-for profit corporation (the "Corporation"), do hereby certify and set forth:

1 The name of the Corporation is "Beth Israel Medical Center". The Corporation was formed under the name "Beth Israel Hospital Association"

2 The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of the State of New York on July 8, 1946 (the "Certificate of Incorporation") The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certificate of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association The name was changed from that name to Beth Israel Medical Center by a Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965 A Restated Certificate of Incorporation was filed by the Department of State on October 1, 1985 A Certificate of Amendment of the Restated Certificate of Incorporation was filed by the Department of State on March 2, 1988 A Certificate of Incorporation was filed by the Department of State on July 2, 1999.

3 The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B Corporation under section 201 of said law and shall remain a Type B Corporation after this amendment to the Certificate of Incorporation becomes effective.

4. The Corporation's Certificate of Incorporation is hereby amended by adding the following language to the end of paragraph (4) of Article THIRD

" Notwithstanding any other provisions of this paragraph (4), the Corporation shall at all times have the power to convey any or all of its property to the Secretary of Housing and Urban Development or his nominee, subject to approval of a Justice of the

Supreme Court of the State of New York pursuant to New York State Law,"

5 Article EIGHTH of the Corporation's Certificate of Incorporation is hereby amended to delete the language, ["EIGHTH: By-laws of the Corporation may be adopted or amended by an affirmative vote of two-thirds of the Trustees present at any regular meeting, or at any special meeting called for that purpose, at which a quorum of trustees is present so long as the by-laws are not inconsistent with the provisions of this Certificate or the laws of the State of New York "] and insert the following language in its place,

"EIGHTH So long as a mortgage on the Corporation's property is insured or held by the United States Secretary of Housing and Urban Development, the Corporation shall not amend its bylaws to be inconsistent with this Certificate of Incorporation or any Regulatory Agreement between the Corporation and the said Secretary."

6 A new Article NINTH is added following Article EIGHTH as follows.

"NINTH So long as a mortgage on the Corporation's property is insured or held by the United States Secretary of Housing and Urban Development, this Certificate of Incorporation may not be amended without the prior written approval of said Secretary "

7 The Secretary of State is hereby designated as agent of the Corporation upon whom process 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

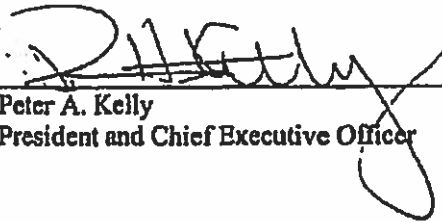
Beth Israel Medical Center  
c/o Continuum Health Partners, Inc  
555 West 57<sup>th</sup> Street, 18<sup>th</sup> Floor  
New York, New York 10019  
Attn. General Counsel


8. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting held on July 17, 2002.

2

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment  
this 18<sup>th</sup> day of July, 2002 and affirmed the contents to be true under the penalty of perjury.

CONTINUUM HEALTH PARTNERS, INC.

By:   
Peter A. Kelly  
President and Chief Executive Officer

By:   
Kathryn C. Meyer  
Assistant Secretary

3

The undersigned has no objection to the granting of Judicial approval hereon and waives statutory notice

THE ATTORNEY GENERAL HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON, ACKNOWLEDGES RECEIPT OF STATUTORY NOTICE AND DEMANDS SERVICE OF THE FILED CERTIFICATE SAID NO OBJECTION IS CONDITIONED ON SUBMISSION OF THE MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

ELIOT SPITZER  
ATTORNEY GENERAL  
STATE OF NEW YORK

by Laura Warner DATE  
ASSISTANT ATTORNEY GENERAL

by: \_\_\_\_\_

August 5  
2002

Date: \_\_\_\_\_

**PHYLLIS GANGEL-JACOB**

I, \_\_\_\_\_, a Justice of the Supreme Court of the State of

New York for the First Judicial District do hereby approve of the foregoing

Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

and consent that the same be filed

Date: August 23, 2002

Phyllis Gangel-Jacob  
J.S.C.

**PHYLLIS GANGEL-JACOB**



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

Coming Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.  
Commissioner

Dennis P. Whelan  
Executive Deputy Commissioner

August 16, 2002

Frederick B. Martinez  
Sidley Austin Brown & Wood LLP  
787 Seventh Avenue  
New York, NY 10019

Re: Certificate of Amendment of the Restated Certificate of Incorporation  
of Beth Israel Medical Center

Dear Mr. Martinez:

The Certificate of Amendment of the Restated Certificate of Incorporation of Beth Israel Medical Center, dated July 18, 2002, does not require the formal approval of the Public Health Council or Commissioner of Health, since the Certificate of Amendment neither changes the corporation's name nor makes any substantive change to the corporation's purposes which would require such approval under either the Public Health Law or Not-for-Profit Corporation law.

The Department has no objection to the subject Certificate of Amendment being filed with the Department of State.

Sincerely,

A handwritten signature in black ink that reads "Frank Barry". The signature is written in a cursive style with a large, sweeping flourish at the end.

Frank Barry  
Attorney  
Bureau of House Counsel

FB/mem

5



F 020927000 245

*abc*

CERTIFICATE OF AMENDMENT

OF

BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-For-Profit Corporation Law

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP. 27 2002

TAX \$

BY:

*[Signature]*  
*ny*

FILED BY:

Sidley Austin Brown & Wood LLP  
Attn: Erik F. Remmler, Esq.  
787 Seventh Avenue  
New York, NY 10019  
(212) 839-5796

*6*

*256*

***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 October 21, 2015.



*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

090723000 212

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER**  
Under Section 803 of the Not-For-Profit Corporation Law

The undersigned, being the President and Chief Executive Officer and the Assistant Secretary of Continuum Health Partners, Inc., the sole member of Beth Israel Medical Center, a New York State not-for-profit corporation (the "Corporation"), do hereby certify and set forth:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."
2. The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation"). The corporations included in such consolidation were Beth Israel Hospital Association, which was formed by the filing of a Certification of Incorporation on May 28, 1890, and Jewish Maternity Hospital, which was formed by the filing of a Certificate of Incorporation on April 27, 1906. The name of the Corporation as consolidated was Beth Israel Hospital Association. The name was changed from that name to Beth Israel Medical Center by a Certificate of Change of Name dated February 24, 1965 and filed by the Secretary of State on March 31, 1965. A Restated Certificate of Incorporation was filed by the Department of State on October 1, 1985. A Certificate of Amendment of the Certificate of Incorporation was filed by the Department of State on March 2, 1988. A Certificate of Amendment was filed by the Department of State on July 2, 1999. A Certificate of Amendment of the Certificate of Incorporation was filed by the Department of State pursuant to Section 803 of the Not-for-Profit Corporation Law on September 27, 2002.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law of the State of New York and is a Type B Corporation under section 201 of said law and shall remain a Type B Corporation after this amendment to the Certificate of Incorporation becomes effective.
4. The Corporation's Certificate of Incorporation is hereby amended. A new Article TENTH is added following article NINTH as follows:

"TENTH. The Corporation, The New York Eye and Ear Infirmary and The St. Luke's-Roosevelt Hospital Center (these three hospitals are collectively referred to herein as the "Affiliated Hospitals"), among others, have a common passive parent corporation, Continuum Health Partners, Inc. The Corporation may institute a joint application process to the medical staffs of the Affiliated Hospitals and share credentialing and quality assurance

information concerning medical staff members and applicants with the other Affiliated Hospitals, provided that the Corporation shall make a separate decision concerning admission of each applicant to its medical staff according to its medical staff bylaws.”

5. The Secretary of State of the State of New York is hereby 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/her is:

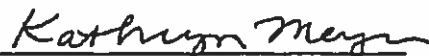
Beth Israel Medical Center  
c/o Continuum Health Partners, Inc.  
555 West 57<sup>th</sup> Street, 18<sup>th</sup> Floor  
New York, New York 10019  
Attn: General Counsel

6. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting on January 30, 2008.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment this 11 day of June, 2009, and affirmed the contents to be true under the penalty of perjury.



Stanley Brezenoff  
President and Chief Executive Officer



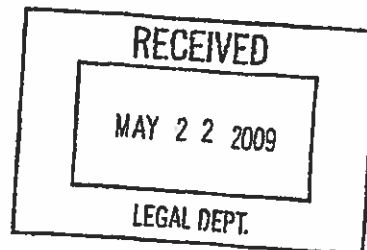
Kathryn Meyer  
Assistant Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

May 18, 2009



Ms. Nina Brodsky  
Senior Associate General Counsel  
Continuum Services  
555 West 57<sup>th</sup> Street, 18<sup>th</sup> Floor  
New York, New York 10019

Re: Certificate of Amendment of the Certificate of Incorporation of  
Beth Israel Medical Center

Dear Ms. Brodsky:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 8th day of May 2009, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center, dated January 30, 2008.

Sincerely,

Colleen M. Frost  
Executive Secretary

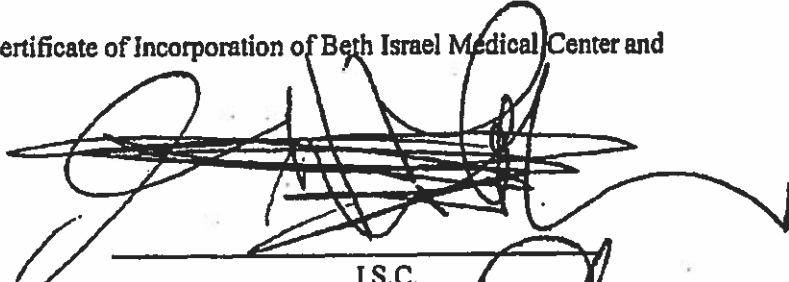
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I, **EDWARD H. LEHNER**, a Justice of the Supreme Court of the State of

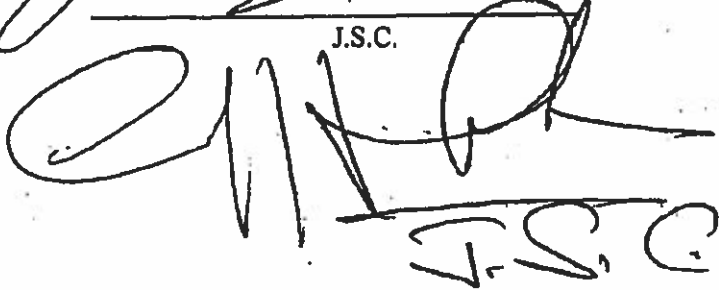
New York for the First Judicial District do hereby approve of the foregoing  
Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center and  
consent that the same be filed.

JUL 16 2009

Date: \_\_\_\_\_



\_\_\_\_\_  
J.S.C.



\_\_\_\_\_  
J.S.C.

THE ATTORNEY GENERAL HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL APPROVAL  
HEREON, ACKNOWLEDGES RECEIPT OF  
STATUTORY NOTICE AND DEMANDS SERVICE  
OF THE FILED CERTIFICATE. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE  
MATTER TO THE COURT WITHIN 60 DAYS HEREAFTER.

by Laura Werner  
ASSISTANT ATTORNEY GENERAL      DATE

June 25, 2009

UNI-37

090723000 2/2

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
Beth Israel Medical Center

Under Section 803 of the Not-for-Profit Corporation  
Law of the State of New York

FILED

2009 JUL 23 AM 10:16

PROSKAUER ROSE LLP  
1585 Broadway  
New York, NY 10036-8299

*lmb*

*lcc*  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 23 2009  
TAXS \_\_\_\_\_  
BY: *lmb*

*ny*

2009 JUL 23 AM 9:07 2009 JUL 22 PM 12:03

RECEIVED RECEIVED

DRAWDOWN

238



***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 October 21, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the Chairman of Beth Israel Medical Center (the "Corporation"), does hereby certify:

1. The name of the Corporation is "Beth Israel Medical Center." The Corporation was formed under the name "Beth Israel Hospital Association."
2. The Corporation was created pursuant to Section 50 of the Membership Corporations Law and was formed pursuant to a Certificate of Consolidation filed by the Department of State of New York on July 8, 1946 (the "Certificate of Incorporation").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL, and is a Type B corporation as defined in Section 201 of the NPCL.
4. The Corporation's Certificate of Incorporation is hereby amended as follows:
  - (a) Article TENTH of the Certificate of Incorporation, which specifies the identity of the sole member of the Corporation and certain affiliates of the Corporation and provides for certain processes relating to the medical staffs of the Corporation and such affiliates, is hereby deleted and replaced in its entirety with a new Article TENTH which shall read in its entirety as follows:

"TENTH: Notwithstanding anything in this Certificate of Incorporation to the contrary, the Corporation shall be a

corporation with members. The identity of the member(s) of the Corporation, and the rights and obligations of the member(s), shall be set forth in the By-Laws of the Corporation.”

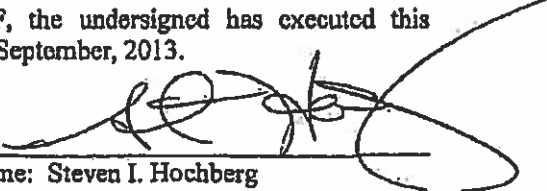
- (b) Article SEVENTH of the Certificate of Incorporation, which designates the Secretary of State as the agent of the Corporation upon whom process against the Corporation may be served and the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him/her is amended to change the post office address to which Secretary of State shall mail a copy of any process against the Corporation to:

Beth Israel Medical Center  
c/o Mount Sinai Hospitals Group  
One Gustave L. Levy Place  
New York, New York 10029  
Attention: General Counsel

5. This amendment to the Certificate of Incorporation was authorized by the unanimous vote of the sole member of the Corporation at a meeting of the sole member held on July 16, 2013.
6. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him/her is:

Beth Israel Medical Center  
c/o Mount Sinai Hospitals Group  
One Gustave L. Levy Place  
New York, New York 10029  
Attention: General Counsel

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this 12th day of September, 2013.

By   
Name: Steven I. Hochberg  
Title: Chairman

**NEW YORK**  
state department of  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

September 17, 2013

Kenneth L. Davis, MD  
President and CEO  
The Mount Sinai Medical Center  
One Gustave L. Levy Place  
Box 1220  
New York, New York 10029

Re: Certificate of Amendment of the Certificate of Incorporation of Beth Israel Medical Center

Dear Dr. Davis:

The above referenced Certificate of Amendment of the Certificate of Incorporation, dated September 12, 2013 and signed by Stephen I. Hochberg, 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 or the Not-for-Profit Corporation Law, since the certificate neither changes the corporation's name nor changes substantively a purpose the inclusion of which 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

cc: Michael MacDonald, Mount Sinai Legal Counsel  
Beth Essig, Continuum Health Partners Legal Counsel  
Brad Beckstrom, Director, Government Affairs

HEALTH.NY.GOV  
facebook.com/NYSDOH  
twitter.com/HealthNYGov

ACR-41

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CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
BETH ISRAEL MEDICAL CENTER

Under Section 803 of the Not-For-Profit Corporation Law

Epstein, Becker & Green, P.C.  
250 Park Avenue  
New York, NY 10177

2013 SEP 20 PM 12: 29

FILED

loc  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED SEP 20 2013

TAXS \_\_\_\_\_

BY: lmc

NY

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2013 SEP 20 AM 11: 55

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## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** Richard J. Zahnleuter, General Counsel  
**Date:** January 15, 2016  
**Subject:** The Greater Hudson Valley Family Health Center, Inc.  
Proposed Certificate of Amendment to Certificate of Incorporation to change  
name to Cornerstone Family Healthcare

---

The Greater Hudson Valley Family Health Center, Inc. is a not for profit corporation that operates a Diagnostic and Treatment Center that has been designated as a Federally Qualified Health Center. The facility proposes to change its name to Cornerstone Family Healthcare by way of an amendment to its Certificate of Incorporation. Approval of this name change by the Public Health and Health Planning Council is required by Not-for-Profit Corporation Law §804(a) and 10 NYCRR §600.11(a)(1).

Attached are the following with regard to this matter:

1. Proposed Certificate of Amendment of Certificate of Incorporation.
2. Existing Certificate of Incorporation and amendments thereto.

Pursuant to Not-for-Profit Corporation Law §301(a)(1), the word "corporation", "incorporated" or "limited", or an abbreviation of one of such words, does not have to be included in the corporate name because this is a not for profit corporation the formation of which requires the approval of the Council.

The proposed Certificate of Amendment is in legally acceptable form.

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE GREATER HUDSON VALLEY FAMILY HEALTH CENTER, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

**FIRST:** The name of the corporation is

THE GREATER HUDSON VALLEY FAMILY HEALTH CENTER, INC.

The corporation was formed under the name Family Health Center of Orange and Ulster County, Inc.

**SECOND:** The certificate of incorporation was filed by the Department of State on February 6, 1981.

**THIRD:** The corporation was formed under Section 402 of the 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 amended to read in its entirety as follows:

**FIRST:** The name of the corporation is:

CORNERSTONE FAMILY HEALTHCARE

**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:

2570 Route 9W  
Cornwall, New York 12518

**SEVENTH:** The certificate of amendment was authorized by a vote of a majority of the entire board of directors. The corporation has no members.

Dated: November 11, 2015

  
Linda S. Muller, President

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**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE GREATER HUDSON VALLEY FAMILY HEALTH CENTER, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

---

Filed by: Catania, Mahon, Milligram & Rider, PLLC  
One Corwin Court  
Newburgh, NY 12550



CERTIFICATE OF INCORPORATION

OF

FAMILY HEALTH CENTER OF ORANGE  
AND ULSTER COUNTY, INC.

UNDER Section 402 of the Not-for-Profit Corporation Law  
We, the undersigned, being of full age, acting as incor-  
porators for the purpose of creating a non-profit corporation  
Under the laws of the State of New York, in conformity with Sec-  
tion 402 of the New York State Not For Profit Corporation Law,  
do hereby certify:

FIRST: The name of the corporation shall be FAMILY HEALTH  
CENTER OF ORANGE AND ULSTER COUNTY, INC. and the period of dura-  
tion of the corporation shall be perpetual.

SECOND: The corporation is a corporation as defined in  
subparagraph (a) (5) of Section 102 (Definitions) of the Not-For-  
Profit Corporation Law and will be a Type B corporation under  
Section 201 of said Law.

Third: The purposes for which the corporation is organized  
are as follows:

(a) To establish, operate, and maintain a primary care diagnostic  
and treatment center at one or more sites, provided however, that prior to  
operating or opening each such site the corporation will obtain all approval  
required by Article 28 of the Public Health Law, and to deliver comprehensive  
primary health services to migrant and seasonal farm workers and all other  
medically underserved citizens of Orange and Ulster County with health services  
provided on a sliding fee basis in relation to the patient's ability to pay.

(b) To increase the availability of high quality family  
centered health care services to the medically underserved portion  
of the community.

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(c) It is intended that this corporation will qualify as an exempt organization under Section 501 (C) (3) of the Internal Revenue Code and shall be entitled to do any acts as may pertain to the operation of a business in pursuit of the purposes above stated which are permitted by law and permitted by Section 501 (C) (3) of the Internal Revenue Code.

(d) Subject to the approval of any body or governmental entity as may be required, to own and acquire land to construct, erect and maintain buildings for corporate purposes.

FOURTH: The corporation shall principally conduct its activities in Counties of Orange and Ulster, State of New York.

FIFTH: Prior to the delivery of this certificate to the Department of State for filing all approvals or consents required by ~~Not-For-Profit Law, the Public Health Law or any other applicable statute of the State of New York shall be endorsed upon or annexed to the certificate, including the approval of the Public Health Counsel as required by Article 28 of the Public Health Law.~~

SIXTH: The office of the corporation shall be located at 20 Grand Street (P.O. Box 357) in the Village and Town of Warwick, County of Orange, State of New York.

SEVENTH: The names and addresses of the initial directors of the Corporation until the first annual meeting, each of whom is at least eighteen years of age, are:

HERBERT GARDNER, JR.

Sullivan Road  
Warwick, New York 10996

JAYNE L. FIERO

R.D. 3, Box 257  
Beyers Road  
Middletown, New York 10940

DOUGLAS J. ANDERSON

Pine Hill Road  
Chester, New York 10918

DOMINIC CAPPELLERI

Pinecrest  
Warwick, New York 10990

PAUL S. McCOY

Jessup Road  
Warwick, New York 10990

CHARLES CARLTON

R.D. L, Glenwood Road  
Pine Island, New York 10969

FRED WIBIRALSKE

Barry Road  
Monroe, New York 10950

JOHN SANFORD, III

Seward Highway  
Warwick, New York 10990

SILVIA QUIROZ

C/O Sobiech  
Pine Island Turnpike  
Pine Island, New York 10969

ELVIA S. CORTEZ

212 Wisner Avenue  
Middletown, New York 10940

ANGELA M. GIARDINO

21 Grand Street  
Warwick, New York 10990

SOLOMAN WILLIAMS

C/O Sobiech  
Pine Island Turnpike  
Pine Island, New York 10969

EIGHTH: The post office address to which the Secretary of State shall mail a copy of any notice required by law is c/o MANDELL & CHARDE, 105 Main Street, P.O. Bdx 82, Warwick, New York 10990.

IN WITNESS WHEREOF, we the undersigned incorporators, being all at least eighteen years of age, have made, subscribed and acknowledged this certificate this 3rd day of November 1980.

MANDELL AND CHARDE  
105 MAIN STREET  
WARWICK, N.Y. 10990

Warwick, New York  
Beyers Road, Warwick, New York 10990

*Jayne L. Piero*  
Jayne L. Piero, R.D. 3, Box 257, Bevers Ad.  
Middletown, New York 10940

*Douglas J. Anderson*  
Douglas J. Anderson, Pine Hill Road,  
Chester, New York 10918

*Dominic Cappelle*  
Dominic Cappelle, Pinecrest, Warwick,  
New York 10990

*Paul S. McCoy*  
Paul S. McCoy, Jessup Road, Warwick,  
New York 10990

*Charles Carlton*  
Charles Carlton, R.D. 1, Glenwood Road,  
Pine Island, New York 10969

*Fred Wibiralski*  
Fred Wibiralski, Barry Road, Monroe,  
New York 10950

*John W. Sanford*  
John W. Sanford, III, Seward Highway,  
Warwick, New York 10990

*Silvia Quiroz*  
Silvia Quiroz, c/o Sobiech, Pine Island  
Turnpike, Pine Island, New York 10969

*Elvia S. Cortez*  
Elvia S. Cortez, 222 Wisner Avenue,  
Middletown, New York 10940

*Angela M. Giardino*  
Angela M. Giardino, 21 Grand Street,  
Warwick, New York 10990

*Soloman Williams*  
Soloman Williams, c/o Sobiech, Pine Island  
Turnpike, Pine Island, New York 10969

STATE OF NEW YORK)  
COUNTY OF ORANGE )ss.:

On the 3rd day of November, 1980, before me personally  
came Herbert Gageiss, Jr., to me known to be the individual descri-  
bed in and who executed the foregoing instrument and acknowledged  
that he executed the same.

*Richard Mandell*

**RICHARD MANDELL**  
Notary Public, State of New York  
No. 433120  
Qualified in Orange County, N.Y.  
Commission Expires March 30, 1982

MANDELL AND CHASE  
100 MAIN STREET  
P. O. BOX 62  
MIDDLETOWN, NY 10940

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally came JAYNE L. FIERO, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that she executed the same.

*Richard Mandell*

Notary Public, State of New York  
Qualified in Orange County  
Commission expires March 30, 1981

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally came DOUGLAS J. ANDERSON, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

*Richard Mandell*

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally came DOMINIC CAPPELLERI, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

*Richard Mandell*

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally came PAUL S. MC COY, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

*Richard Mandell*

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally came CHARLES CARLTON, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

*Richard Mandell*

MANDRELL AND GRANT  
100 MAIN STREET  
WARREN, NY 10990

Notary Public, State of New York  
No. 4021489  
Qualified in Orange County  
Commission expires March 30, 1981

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally  
came FRED WEBERALSKE, to me known to be the individual described  
in and who executed the foregoing instrument and acknowledged to  
me that he executed the same.

RICHARD MANDELL  
Notary Public, State of New York  
No. 1621439  
Qualified in Orange County  
Commission expires March 30, 1981

*Richard Mandell*

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally  
came JOHN W. SANFORD, III, to me known to be the individual de-  
scribed in and who executed the foregoing instrument and acknow-  
ledged to me, that he executed the same.

RICHARD MANDELL  
Notary Public, State of New York  
No. 1621439  
Qualified in Orange County  
Commission expires March 30, 1981

*Richard Mandell*

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally  
came SILVIA QUIROZ, to me known to be the individual described in  
and who executed the foregoing instrument and acknowledged to me  
that she executed the same.

RICHARD MANDELL  
Notary Public, State of New York  
No. 1621439  
Qualified in Orange County  
Commission expires March 30, 1981

*Richard Mandell*

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally  
came ELVIA S. CORTEZ, to me known to be the individual described  
in and who executed the foregoing instrument and acknowledged to  
me that she executed the same.

RICHARD MANDELL  
Notary Public, State of New York  
No. 1621439  
Qualified in Orange County  
Commission expires March 30, 1981

*Richard Mandell*

STATE OF NEW YORK  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980, before me personally  
came ANCELA M GIARDINO, to me known to be the individual described  
in and who executed the foregoing instrument and acknowledged to  
me that she executed the same.

RICHARD MANDELL  
Notary Public, State of New York  
No. 1621439  
Qualified in Orange County  
Commission expires March 30, 1981

*Richard Mandell*

ROBERT A. CHANDLER  
100 N. 10th STREET  
ORANGE, N.Y. 10962

STATE OF NEW YORK )  
COUNTY OF ORANGE ) ss.:

On the 3rd day of November, 1980 before me personally came SOLOMAN WILLIAMS, to me known to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

RICHARD MANDELL  
Notary Public, State of New York  
No. 402140  
Qualified in Orange County 81  
Commission expires March 30, 1981

*Richard Mandell*

MANDELL AND CHASE  
100 MAIN STREET  
P. O. BOX 50  
MIDDLETOWN, NY 10940

7



STATE OF NEW YORK

DEPARTMENT OF LAW

ALBANY, N.Y. 12214

ROBERT ABRAMS  
ATTORNEY GENERAL

Telephone: 474-7206

January 13, 1981

Richard Mandell, Esq.  
105 Main Street  
P.O. Box 82  
Warwick, New York 10990

Dear Mr. Mandell:

Re: FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC.

Due and timely service of the notice of application  
for the approval of the proposed certificate of incorporation  
of the above organization is hereby admitted.

The Attorney General does not intend to appear at the  
time of application.

Very truly yours,

ROBERT ABRAMS  
Attorney General

By

*Richard S. Redlo*  
RICHARD S. REDLO  
Assistant Attorney General



At a Special Term, Part I, of the  
Supreme Court of the State of New  
York, held in and for the County  
of Orange, at the Orange County  
Government Center, Goshen, New York,  
on the 28 day of January, 1981.

Present: HON. EDWARD M. O'GORMAN.

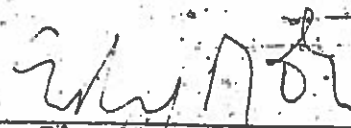
In the Matter of the Approval of the  
Certificate of Incorporation of the  
FAMILY HEALTH CENTER OF ORANGE AND  
ULSTER COUNTY, INC. pursuant to  
Section 404(t) of the Not For Profit  
Corporation Law.

O R D E R  
Index No.

Upon reading the foregoing Certificate of Incorporation  
and upon motion of RICHARD MANDELL, attorney for the proposed  
corporation for an Order approving such Certificate of Incorpora-  
tion, I, EDWARD M. O'GORMAN, the undersigned Justice of the  
Supreme Court, State of New York Ninth Judicial District do here-  
by approve the foregoing Certificate of Incorporation.

ENTER:

Dated: JANUARY 28, 1981

  
Edward M. O'Gorman, Justice  
Supreme Court

MANDELL AND CHARDE  
ATTORNEYS AT LAW  
100 N. 9th St.  
Goshen, N.Y. 10924



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY, 12237

# PUBLIC HEALTH COUNCIL

January 12, 1981

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation, I hereby certify that the establishment, application of Family Health Center of Orange and Ulster County, Inc. to operate a diagnostic and treatment center is APPROVED, the contingencies having been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of October 24, 1980.

The Certificate of Incorporation of Orange and Ulster County, 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.

*Stephen P. Krill*  
STEPHEN P. KRILL  
Secretary

Sent to: Richard Mandell, Esq.  
Mandell and Charde,  
P.O. Box 82  
105 Main Street  
Warsaw, New York 10990

cc: Ms. Peggy O'Neil Hammond  
Family Health Center of Orange  
and Ulster County, Inc.  
P.O. Box 357  
20 Grand Street  
Warwick, New York 10990

COUNCIL

KENNETH G. JOHNSON, M.D.  
CHAIRMAN  
GORDON E. BROWN  
ROBERT J. COLLINS, M.D.  
THOMAS P. DOWLING  
MR. CHARLES J. FAHEY

JOSEPH R. FONTANETTA, M.D.  
WILLIAM LEE FROST  
MORTON P. HYMAN  
JEANNE E. JONES  
MARY C. MC LAUGHLIN, M.D.  
ROBERT H. SANDER, M.D.

HOWARD A. RUMK, M.D.  
KENNETH W. WOODWARD, M.D.  
COMMISSIONER OF HEALTH  
DAVID AXELROD, M.D.  
EX OFFICIO

CERTIFICATE OF INCORPORATION  
OF  
FAMILY HEALTH CENTER OF  
ORANGE AND ULSTER COUNTY,  
INC.

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*Pub Health Center*

STATE OF NEW YORK  
DEPARTMENT OF STATE

FEB 6 1981

AMT OF CHECK \$

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TAX \$

CONF \$

STAMP \$

REPORT \$

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*Orange*

*B*

CERTIFICATE OF AMENDMENT

of the Certificate of Incorporation of  
FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC.  
UNDER Section 803 of the Not-for-Profit Corporation Law.

We, the undersigned, PAUL S. McCOY, President, and DOROTHY SANFORD, Secretary, of the FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC., hereafter sometimes referred to as the Corporation, hereby certify as follows:

1. The name of the Corporation at the time of incorporation was FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC.

2. The certificate of its incorporation was filed by the Department of State on February 6, 1981.

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.

4. The Certificate of Incorporation is hereby amended to change the name of the corporation to FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.

5. The Certificate of Incorporation is hereby amended to add additional paragraphs NINTH, TENTH, ELEVENTH and TWELFTH as follows:

NINTH: Notwithstanding any other provision of these articles, the corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international sports competition (but only if no part of its activities involve the provision of athletic facilities or

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EDWARD M. MANUEL  
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equipment), ~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~, 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.

TENTH: No part of the net earnings of the corporation shall inure to 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.

ELEVENTH: No substantial part of the activities of the corporation shall be carrying on progaganda, or otherwise attempting to influence legislation (except as other provided by Internal Revenue Code section 501 (h), or participating in, or intervening in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office.

TWELFTH: In the event of dissolution, all of the remaining assets and property of the corporation shall after necessary

expenses thereof be distributed to such organizations as shall qualify under Section 501 (c) (3) of the Internal Revenue Code of 1954, as amended, or, to another organization to be used in such manner as in the judgment of a Justice of the Supreme Court of the State of New York will best accomplish the general purposes for which this corporation was formed.

The corporation has no members and  
6. /the above amendments to the Certificate of Incorporation were authorized by a vote of a majority of all members of the Board of Directors at a regular meeting of the Board of Directors held on September 7, 1982.

7. The Secretary of State is designated as agent of the corporation upon whom process on any notice required by law may be served, and the address to which the Secretary of State shall mail a copy of such process or notice is Drawer 1, Warwick, New York 10990.

8. See below.

IN WITNESS WHEREOF, we have subscribed our names and affixed our seals this 21<sup>st</sup> day of December, 1982.

Paul S. McCoy, President

Dorothy Sanford, Secretary

9. Approvals to the original certificate of incorporation were the approvals of the New York State Attorney General, a New York State Supreme Court Justice, and the New York State Public Health Council and prior to delivery of this Certificate of Amendment to the Department of State for filing the same approvals will be annexed.

STATE OF NEW YORK )  
COUNTY OF ORANGE ) ss:

PAUL S. McCOY, being duly sworn, deposes and says that he is the President of the FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC., the corporation named in and described in the foregoing certificate. He has read the foregoing certificate and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

*Paul S. McCoy*

Sworn to before me this 21st day of December, 1982.

*Richard Mandell*  
Notary Public

RICHARD MANDELL  
Notary Public, State of New York  
No. 4621429  
Qualified in Orange County  
Commission expires March 30, 1983

STATE OF NEW YORK )  
COUNTY OF ORANGE ) ss:

DOROTHY SANFORD, being duly sworn, deposes and says that she is the Secretary of the FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC., the corporation named in and described in the foregoing certificate. She has read the foregoing certificate and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

*Dorothy Sanford*

Sworn to before me this 21st day of December, 1982.

*Richard Mandell*  
Notary Public

RICHARD MANDELL  
Notary Public, State of New York  
No. 4621429  
Qualified in Orange County  
Commission expires March 30, 1983

4

RICHARD MANDELL  
NOTARY PUBLIC  
STATE OF NEW YORK  
NO. 4621429  
COMMISSION EXPIRES MARCH 30, 1983

I, *Abraham Issaks*, a Justice of the Supreme Court of the State of New York, Ninth Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Family Health Center of Orange and Ulster County, Inc., and consent that same be filed.

Dated: *FEBRUARY 25*, 1983  
Supreme Court, Orange County  
Special Term, Part II  
Goshen, New York



Justice of the Supreme Court  
Ninth Judicial District

HONORABLE ABRAHAM ISSEKS  
JUSTICE OF THE SUPREME COURT





STATE OF NEW YORK

DEPARTMENT OF LAW

ALBANY, N.Y. 12242

Telephone: 474-7206

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. McSPARRON  
ASSISTANT ATTORNEY GENERAL  
IN CHARGE  
LITIGATION BUREAU

March 31, 1983

Luke M. Charde, Jr., Esq.  
105 Main Street  
P.O. Box 82  
Warwick, New York 10990

Dear Mr. Charde:

RE: FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.  
(NEW)  
FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC.  
(OLD)

Due and timely service of the notice of application for the approval of the proposed certificate of amendment of the certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

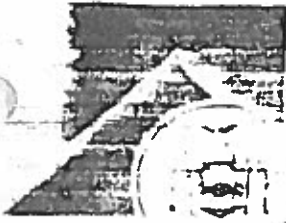
Very truly yours,

ROBERT ABRAMS  
Attorney General

By

  
RICHARD S. REDLO  
Assistant Attorney General

6



STATE OF NEW YORK  
DEPARTMENT OF HEALTH

# PUBLIC HEALTH COUNCIL

July 25, 1983

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 22nd day of July, 1983, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of Family Health Center of Orange and Ulster County, Inc., dated December 21, 1982 is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. ~~Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.~~

SUSAN I. LANGLITZ  
Acting Secretary

Sent to: Richard Mandell, Esq.  
P.O. Box 82  
105 Main Street  
Warwick, New York - 10990

cc: Family Health Center of Orange  
and Ulster County, Inc. ✓  
Drawer 1  
Warwick, New York 10990

COUNCIL

WILLIAM STEIN  
MORTON R. HYMAN  
James Introne  
HOWARD W. STEINBERG, M.D.  
MARY G. MULLIGAN, M.D.

Gerald E. Thomson, M.D.

ROBERT W. HANDEL, M.D.  
WILLIAM A. RUSH, M.D.  
KENNETH W. WOODWARD, M.D.  
COMMISSIONER OF HEALTH  
DAVID A. ELLIOTT, M.D.

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STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED AUG 8 - 1983

AMT. OF CHECK \$ 30  
FILING FEE \$ 90  
TAX \$ \_\_\_\_\_  
COUNTY FEE \$ \_\_\_\_\_  
COPY \$ \_\_\_\_\_  
CERT \$ \_\_\_\_\_  
REFUND \$ \_\_\_\_\_  
SPEC. HANDLE \$ \_\_\_\_\_

*H. George*  
BY: *H. George*

Dated: 1 December 21, 1982

CERTIFICATE OF AMENDMENT  
OF THE CERTIFICATE OF  
INCORPORATION OF FAMILY  
HEALTH CENTER OF ORANGE  
AND ULSTER COUNTIES, INC.

RICHARD MANDELL, ESQ.  
105 Main Street  
P.O. Box 82  
Watwick, New York 10990  
(914) 986-1172

2/6/84

1772065-1

Thurwick Manry & Co.

NY

NY 1772065-1

Richard Mandell, Esq.

105 Main St  
Watwick NY

10990

DC

FY2042 DC 00496

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.

UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned, being the President and Secretary of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. do hereby certify and set forth:

1. The name of the corporation is FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.

2. The Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. was filed by the Department of State on the 6th day of February, 1981, under the name of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC. The said corporation was formed under the Not-For-Profit Corporation Law of the State of New York.

3. FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under Section 201 of said law.

4. Paragraph (FIRST) of the Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. which sets forth the name of the corporation is hereby amended to read as follows:

FIRST: The name of the corporation is FAMILY HEALTH CENTER OF NEWBURGH, INC. and the period of duration of the corporation shall be perpetual.

5. Paragraph (EIGHTH) of the Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. which sets forth the post office address to which the Secretary of State shall mail a copy of any process served by law is hereby amended to read as follows:

EIGHTH: The Secretary of State is designated as 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 is 3 Washington Center, Newburgh, NY 12550.

6. The Secretary of State is designated as 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 is 3 Washington Center, Newburgh, NY 12550.

7. The corporation shall hereafter be (or continue to be ) a Type B Corporation under Section 201 of the Not-For-Profit Corporation Law.

8. The manner in which this amendment to the Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. was authorized by the consent of a majority of the members of the entire Board of Directors of the Corporation, voting in person at a meeting duly called. There are no members eligible to vote.

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate this 24th day of September 1991 by the undersigned who affirms that the statements made herein are true under the penalties of perjury.

S/ Ann Pagliaro  
ANN PAGLIARO, President

S/ Anne M. Coon  
ANNE M. COON, Secretary

STATE OF NEW YORK )  
: ss.:  
COUNTY OF ORANGE )

ANN PAGLIARO being duly sworn, says: I am the President of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC., a corporation; I have read the annexed Certificate of Amendment of the Certificate of Incorporation, know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon investigation into the books and records of the corporation.

S/ Ann Pagliaro  
ANN PAGLIARO

Sworn to before me this  
24th day of March, 1992

S/ Marsha Henderson


STATE OF NEW YORK )  
: ss.:  
COUNTY OF ORANGE )

ANNE M. COON being duly sworn, says: I am the Secretary of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC., a corporation; I have read the annexed Certificate of Amendment of the Certificate of Incorporation, know the contents thereof and

the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon investigation into the books and records of the corporation.

  
ANNE M. COON

Sworn to before me this  
34<sup>th</sup> day of March, 1992



MARSHA HENDERSON  
Notary Public, State of New York  
No. 4288278  
Qualified in Orange County  
Commission Expires January 31, 1993

I, HOWARD HILLER, a Justice of the Supreme Court of the Ninth Judicial District of the State of New York, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC.

Dated: April 7 1992

  
HOWARD MILLER, Justice Supreme Court



STATE OF NEW YORK  
DEPARTMENT OF LAW  
ALBANY 12224

ROBERT ABRAMS  
ATTORNEY GENERAL

JAMES G. McSPARRON  
DEPUTY FIRST ASSISTANT  
ATTORNEY GENERAL

(518) 474-5303

October 9, 1991

Alan J. Axelrod, Esq.  
Larkin & Axelrod  
34 Rt. 17K  
Newburgh, New York 12550

Dear Mr. Axelrod:

RE: OLD: FAMILY HEALTH CENTER OF ORANGE AND ULSTER, INC.  
NEW: FAMILY HEALTH CENTER OF NEWBURGH, INC.

Due and timely service of the notice of application for the approval of the proposed certificate of amendment to the certificate of incorporation of the above-entitled organization is hereby admitted.

The Attorney General does not intend to appear at the time of application. Approval is contingent upon your designating the Secretary of State as agent of the corporation upon whom process may be served pursuant to Section 803 of the Not-For-Profit Corporation Law,

Very-truly yours,

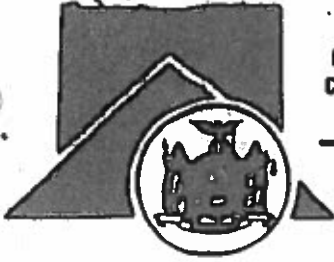
ROBERT ABRAMS  
Attorney General

By:

  
RICHARD S. REDLO  
Assistant Attorney General



4



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

November 25, 1991

Mr. Alan J. Axelrod  
Larkin & Axelrod  
Attorneys at Law  
34 Route 17K  
Newburgh, NY 12550

Re: Certificate of Amendment of the Certificate of Incorporation of  
Family Health Center of Orange and Ulster, Inc.

Dear Mr. Axelrod:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 22nd day of November, 1991, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of Family Health Center of Orange and Ulster, Inc. hereafter to be known as Family Health Center of Newburgh, Inc. dated September 24, 1991 is approved.

Sincerely,

Karen S. Westervelt  
Executive Secretary

5



RESOLUTION

RESOLVED, that the Public Health Council, on this 22nd day of November, 1991, approves the filing of the Certificate of Amendment to the Certificate of Incorporation of Family Health Center of Orange and Ulster, Inc., hereafter to be known as Family Health Center of Newburgh, Inc., dated September 24, 1991.

CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.

F920423000496

RECEIVED

APR 23 10 02 AM '92

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED APR 23 1992

TAX \$ \_\_\_\_\_  
BY: JAA

*JAA*  
*Orange*

LARKIN & AXELROD  
34 Route 17K  
Newburgh, NY 12550

DC

BILLED

APR 21 10 07 AM '92

RECEIVED

920423000551

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DC-08

1-040205000285

New York State  
Department of State  
Division of Corporations, State Records  
and Uniform Commercial Code  
41 State Street  
Albany, NY 12231

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
FAMILY HEALTH CENTER OF NEWBURGH, INC.**

**UNDER SECTION 803 OF THE NOT-FOR PROFIT CORPORATION LAW**

**FIRST:** The name of the Corporation is: Family Health Center of Newburgh, Inc.

**SECOND:** The date of filing of the certificate of incorporation with the Department of State is: February 6, 1981.

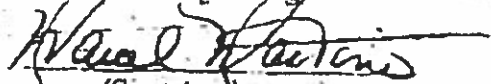
**THIRD:** The law of the corporation was formed under is: Not-for Profit Corporation Law - Section 402.

**FOURTH:** The corporation is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law. The corporation is a Type B corporation.  
The certificate of incorporation of: FAMILY HEALTH CENTER OF NEWBURGH, INC. was filed by the Department of State on the 6TH day of February, 1981 under the name of: FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC. A Certificate of Amendment for FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTY, INC. was filed 8/5/1983, changing the name to: FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC.. A Certificate of Amendment for FAMILY HEALTH CENTER OF ORANGE AND ULSTER COUNTIES, INC. was filed 4/23/1992, changing the name to: FAMILY HEALTH CENTER OF NEWBURGH, INC.

**FIFTH:** The amendment effected by this certificate of amendment is as follows:  
Paragraph 1 of the Certificate of Incorporation relating to the name of the Corporation is hereby amended to read in its entirety as follows:  
The name of the Corporation is: The Greater Hudson Valley Family Health Center, 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: 3 Washington Centre, Newburgh, NY 12550

**SEVENTH:** The certificate of amendment was authorized by a vote of a majority of the members at a meeting

  
(Signature)

Marcel Martiño - Chairman - Authorized Person  
(Name & Capacity of Signer)

Dated: August 5, 2003



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

RECEIVED  
FEB 2 2004

January 27, 2004

Rider, Weiner, Frankel & Calhoun

Ms. Meg King Broderick  
Rider, Weiner, Frankel & Calhelha, P.C.  
655 Little Britain Road  
New Windsor, New York 12553

Re: Certificate of Amendment of the Certificate of Incorporation of Family Health Center of Newburgh, Inc.

Dear Ms. Broderick:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 23rd day of January, 2004, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of Family Health Center of Newburgh, Inc. hereinafter known as The Greater Hudson Valley Family Health Center, Inc., dated August 5, 2003.

Sincerely,

Karen S. Westervelt  
Executive Secretary

/rmd

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040205000245

CERTIFICATE OF AMENDMENT  
OF

FAMILY HEALTH CENTER OF NEWBURGH, INC.

cm

Under SECTION 803 of the Not-for-Profit Corporation Law

RECEIVED  
2004 FEB -4 PM 2:16

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STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED FEB 05 2004  
TAX \$  
BY: *ow*  
*orange*

Filed By:

Rider, Weiner, & Frankel, P.C.  
655 Little Britain Road  
New Windsor NY 12553

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D.C. -08  
DRAWDOWN

- ROUTINE
- 24 HOUR
- SAME DAY
- 2 HOUR

040205000245



## MEMORANDUM

**TO:** Public Health and Health Planning Council

**FROM:** Richard J. Zahnleuter  
Acting General Counsel

**DATE:** January 7, 2016

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of Samaritan Daytop Village, Inc.

---

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Samaritan Daytop Village, Inc. ("Samaritan") This not-for-profit corporation seeks approval to amend its Certificate of Incorporation to reflect the transition of certain operations of Narco Freedom, Inc. to Samaritan. The New York State Office of Mental Health (OMH) – pursuant to an Omnibus Program Termination Agreement, dated September 1, 2015 – is requiring Samaritan to amend its Certificate of Incorporation in order for Samaritan to operate as an OMH provider. Samaritan's ability to file the certificate depends on the approval of the Public Health and Health Planning Council, 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.

Also attached is the proposed Certificate of Amendment of the Certificate of the Incorporation of Samaritan Daytop Village, Inc. and a letter dated October 19, 2015 from Tricia A. Asaro, attorney for Samaritan which explains the intent and purpose of the proposed amendment.

The Department has no objection to the proposed amendments, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments

Tricia A. Asaro  
518-689-1416  
asarot@gtlaw.com

October 19, 2015

**VIA E-MAIL & OVERNIGHT DELIVERY**

Ms. Janet L. Paloski  
Director, Bureau of Certification and Systems Management  
NYS Office of Alcoholism and Substance Abuse Services  
1450 Western Avenue  
Albany, New York 12203-3526  
janet.paloski@oasas.ny.gov

Ms. Kathleen Bova-Lang  
Project Manager  
Bureau of Inspection and Certification  
Office of Mental Health  
44 Holland Avenue  
Albany, New York 12229  
kathleen.bovalang@omh.ny.gov

Colleen M. Leonard  
Executive Secretary, Public Health and Health Planning Council  
Center for Health Care Facility Planning, Licensure and Finance  
NYS Department of Health  
Corning Tower, Room 1805  
Albany, New York 12237  
colleen.leonard@health.ny.gov

Re: Proposed Certificate of Amendment of Certificate of Incorporation of  
Samaritan Daytop Village, Inc.

Dear Ms. Paloski, Ms. Bova-Lang, and Ms. Leonard:

I am writing on behalf of Samaritan Village, Inc. ("Samaritan"). As you know, in connection with the transition of certain operations of Narco Freedom, Inc. to Samaritan pursuant to that certain Omnibus Program Termination Agreement, dated September 1, 2015, the New York State Office of Mental Health ("OMH") is requiring Samaritan to amend its Certificate of Incorporation in order for Samaritan to operate as an OMH provider. As you may also know, Samaritan is in the process of changing its name to Samaritan Daytop Village, Inc., which we anticipate will be effectuated on or before October 30, 2015.

Ms. Janet L. Paloski  
Ms. Kathleen Bova-Lang  
Colleen M. Leonard  
October 19, 2015  
Page 2 of 2

Enclosed for your review is a proposed Certificate of Amendment effectuating the language changes required by OMH (for your convenience we have highlighted the relevant language). Because we anticipate the name change to be effective by the time of filing, we have drafted the proposed Certificate of Amendment using the name Samaritan Daytop Village, Inc.

Please let me know if you have any questions or would like to discuss.

Respectfully Submitted,

GREENBERG TRAUERIG, LLP

*Tricia A. Asaro/BAF*

Tricia A. Asaro

TAA/EJO/map  
Enclosure

cc: Mark Boss (via e-mail)  
Keith McCarthy (via e-mail)  
Michael Bass (via e-mail)

ALB 1888829v3



**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
SAMARITAN DAYTOP VILLAGE, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

**FIRST:** The name of the Corporation is Samaritan Daytop Village, Inc. The name under which the Corporation was formed is Samaritan Village, Inc.

**SECOND:** The Certificate of Incorporation was filed by the Department of State on December 29, 1981.

**THIRD:** The Corporation was formed under 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 **THIRD** of the Certificate of Incorporation regarding the purposes and powers of the Corporation is hereby deleted and amended to read in its entirety 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 care for, educated or treated in regular public or private programs, including, but not limited to, the operation of "drug-free" substance abuse programs, chemotherapy 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;

- 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 and 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, r s).

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 professions in New York, unless authorized to do so under an operating certificate or license by an appropriate State, regional or local agency.

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 art therapists. Such practitioners will provide such services for the corporation only to the extent permitted under section 6503-a of the Education Law."

**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:** This Certificate of Amendment was authorized by a unanimous written consent of the board of directors of the Corporation. The Corporation has no members.

*[Remainder of page intentionally left blank]*

To operate medical facilities such as diagnostic and treatment centers providing health services under Article 28 and 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 operate outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health, provided that the Corporation may not establish any facility or program without first obtaining such operating certificate.

To provide information as to narcotics addiction and abuse;

To stimulate research and community concern about drug dependency, emotion 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.

**IN WITNESS WHEREOF**, the undersigned has executed this Certificate of Amendment.

---

**TINO HERNANDEZ**  
Chief Executive Officer

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
SAMARITAN DAYTOP VILLAGE, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

**Filer's Name and Address:**

**Tricia A. Asaro, Esq.  
54 State Street, 6th Floor  
Albany, New York 12207**



## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** Richard J. Zahnleuten, ~~Acting~~ General Counsel  
**Date:** December 22, 2015  
**Subject:** Proposed Dissolution of Gouverneur Nursing Home Company, Inc.

---

Gouverneur Nursing Home Company, Inc. ("Company") 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 Company was incorporated pursuant to New York's Not-For-Profit Law on July 22, 1969 for the purpose of providing nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income. The Company ceased operations on October 28, 2015 and surrendered its operating certificate to the Department of Health. The Company has not carried on any business or activities since that time, has no assets and has liabilities of \$1,657, 514.00 and has no reason to continue its existence.

Attached are a copy of the proposed Certificate of Dissolution, a letter from the Family Medical Care'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 Attorney General's approval to file Company's Certificate of Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

Attachments.



October 29, 2015

**VIA FEDERAL EXPRESS**

Ms. Colleen Leonard  
Executive Assistant  
Public Health and Health Planning Council  
New York State Department of Health  
Corning Tower, Room 1441  
Albany, New York 12223

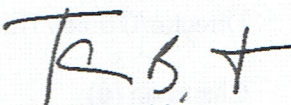
Re: Dissolution of Gouverneur Nursing Home Company, Inc.

Dear Ms. Leonard:

At the direction of Attorney Mark Furnish of the NYS Department of Health, I enclose a copy of the dissolution papers of Gouverneur Nursing Home Company, Inc. for your Council's review and approval. Please note that the Petitioner plans to file its 2014 990 Form by the November 16, 2015 deadline so that paragraph 8 of the Verified Petition will be accurate.

Of course, I am available to respond to any questions or concerns the Council may have about the enclosures.

Respectfully submitted,



Janice B. Grubin

JBG:kk

Encls.

cc: Deanna Nelson, Esq. (w/enclosures)  
Mark Furnish, Esq. (w/enclosures)

E-mail: [Janice.Grubin@leclairryan.com](mailto:Janice.Grubin@leclairryan.com)  
Direct Phone: (212) 634-5016  
Direct Fax: (212) 634-5062

885 Third Avenue, Sixteenth Floor  
New York, New York 10022  
Phone: 212.697.6555 \ Fax: 212.986.3509

CALIFORNIA \ COLORADO \ CONNECTICUT \ MARYLAND \ MASSACHUSETTS \ MICHIGAN \ NEVADA \ NEW JERSEY \ NEW YORK \ PENNSYLVANIA \ TEXAS \ VIRGINIA \ WASHINGTON, D.C.

-----  
In the Matter of the Application of GOUVERNEUR  
NURSING HOME COMPANY, INC. For Approval of  
Certificate of Dissolution pursuant to Section 1002 of the  
New York Not-For-Profit Corporation Law.

**VERIFIED PETITION**

-----  
**TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK**  
**OFFICE OF THE ATTORNEY GENERAL**  
Watertown Regional Office  
Dulles State Office Building  
317 Washington Street  
Watertown, NY 13601-3744

Petitioner, Gouverneur Nursing Home Company, Inc. (the "Petitioner"), by Michael J. Burgess, Chairman of the corporation, for its Verified Petition alleges:

1. Gouverneur Nursing Home Company, Inc., whose principal address is located in the County of St. Lawrence, was incorporated pursuant to New York's Not-for-Profit Corporation Law on July 22, 1969.

2. The names, addresses and titles of the directors and officers are as follows:

Name	Director/Officer/Title	Address
Michael J. Burgess	Chairman (d)	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Nicholas Gardner, DDS	Board Member (d) Vice Chairman	119 East Main Street Gouverneur, New York 13642
Mark Brackett	Board Member (d) Secretary/Treasurer	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Andrew Williams, MD	Board Member (d)	Community Health Center of the North Country 4 Commerce Lane Canton, New York 13617



**VERIFICATION**

I, Michael J. Burgess, affirm and say: I am the Chairman of the Board of GOUVERNEUR NURSING HOME COMPANY, INC., a non-profit corporation and Petitioner of the within action; I have read the foregoing Petition and know the contents thereof and the same is true to my own knowledge. I make this verification because the above party is a corporation and I am the Chairman of the Board thereof.

Michael J. Burgess

Name: Michael J. Burgess  
Title: Chairman of the Board

STATE OF NEW YORK; COUNTY OF ST. LAWRENCE: ss:

On October 29, 2015, before me, the undersigned, personally appeared Michael J. Burgess, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, executed the instrument.

Alane Day  
Notary Public

ALANE DAY  
Notary Public, State of New York  
No. 01DAB 83510  
Qualified in St. Lawrence County  
Commission Expires November 18, 2018

**GOUVERNEUR NURSING HOME COMPANY, INC. DBA KINNEY NURSING HOME  
BALANCE SHEET  
SEPTEMBER 30,2015**

**ASSETS**

TOTAL ASSETS (1)

\$ -

**LIABILITIES**

TOTAL LIABILITIES (2)

\$ 1,657,514

**NET ASSETS**

UNRESTRICTED

\$ (1,657,514)

TOTAL NET ASSETS

\$ (1,657,514)

TOTAL LIABILITIES AND NET ASSETS

\$ -

(1) TOTAL ASSETS REPRESENTS AMOUNT DUE FROM FORMER PATIENT (\$55,000) CURRENTLY IN LITIGATION. MANAGEMENT IS UNCERTAIN AS TO THE COLLECTIBILITY OF THIS ACCOUNT DUE TO THE CURRENT LITIGATION.

(2) AMOUNT DUE GOUVERNEUR HOSPITAL (UNSECURED)

\$ 1,607,183

AMOUNTS DUE TO THE FOLLOWING UNSECURED CREDITORS-

OMNICARE

\$ 1,098

HEALTH FACILITY ASSESSMENT

\$ 37,768

HEALTH DIRECT

\$ 11,465

TOTAL

\$ 1,657,514

Certificate of Dissolution

of

Gouverneur Nursing Home Company, Inc.

Pursuant to § 1003 of the Not-for-Profit Corporation Law

I, Michael J. Burgess, the Chairman of the Board of Gouverneur Nursing Home Company, Inc. hereby certifies:

1. The name of this corporation is Gouverneur Nursing Home Company, Inc.
2. The Certificate of Incorporation of Gouverneur Nursing Home Company, Inc. was filed by the Department of State of the State of New York on the 22<sup>nd</sup> day of July, 1969.
3. The names and addresses of each of the directors and officers of the corporation and the title of each are as follows:

Name	Officer or Director/Title	Address
Michael J. Burgess	Chairman	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Nicholas Gardner, DDS	Board Member	119 East Main Street Gouverneur, New York 13642
Mark Brackett	Board Member	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Andrew Williams, MD	Board Member	Community Health Center of the North Country 4 Commerce Lane Canton, New York 13617

4. Dissolution of the corporation was authorized by a unanimous vote of the Board of Directors. The corporation has no members.
5. The corporation elects to dissolve.
6. At the time of dissolution, the corporation is a charitable corporation.
7. The corporation will file with the Attorney General a petition for Approval of the Certificate of Dissolution with the original certified Plan of Dissolution.
8. When the Board authorized the Plan of Dissolution, the corporation had no assets and liabilities of \$1,657,514.00 and did not hold any assets required to be used for a restricted purpose.

9. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Gouverneur Nursing Home Company, Inc. this 29<sup>th</sup> day of October, 2015.

Michael J. Burgess  
Signature

Michael J. Burgess, Chairman of the Board

EXHIBIT A

Plan of Dissolution

of

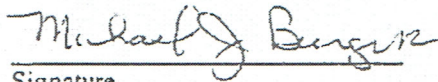
Gouverneur Nursing Home Company, Inc.

The Board of Directors ("Directors") of Gouverneur Nursing Home Company, Inc. does hereby resolve that the corporation be dissolved. The Directors agreed to this resolution at a meeting duly convened on the 28th day of October, 2015, pursuant to notice given in accordance with law. At the meeting, a quorum was present at all times, and the Directors considered the advisability of voluntarily dissolving the corporation. All of the Directors determined that dissolution was advisable and in the best interest of the corporation. They adopted the following plan:

1. There being no members of the corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. Approval of the dissolution must be obtained from the following government agency, whose approval is attached.
  - a. New York State Department of Health
3. The corporation has no assets and liabilities of \$1,657,514.00.
4. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.

Certification

I, Michael J. Burgess, Chairman of the Board of Directors of the Gouverneur Nursing Home Company, Inc., hereby certifies under penalties for perjury that a meeting of the Board of Directors and the Corporation was duly held at 6:00 p.m. on October 28, 2015 at 77 West Barney Street, Gouverneur, New York and the within Plan of Dissolution was duly submitted and passed by a unanimous vote of the Board of Directors.

  
Signature

Michael J. Burgess, Chairman of the Board of Directors

Dated the 29<sup>th</sup> day of October, 2015.

EXHIBIT B

**GOUVERNEUR NURSING HOME COMPANY, INC. DBA KINNEY NURSING HOME**  
**BALANCE SHEET**  
**SEPTEMBER 30,2015**

ASSETS

TOTAL ASSETS (1)		\$ -
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LIABILITIES

TOTAL LIABILITIES (2)		\$ 1,657,514
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NET ASSETS

UNRESTRICTED		\$ (1,657,514)
TOTAL NET ASSETS		\$ (1,657,514)

TOTAL LIABILITIES AND NET ASSETS		\$ -
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(1) TOTAL ASSETS REPRESENTS AMOUNT DUE FROM FORMER PATIENT (\$55,000) CURRENTLY IN LITIGATION. MANAGEMENT IS UNCERTAIN AS TO THE COLLECTIBILITY OF THIS ACCOUNT DUE TO THE CURRENT LITIGATION.

(2) AMOUNT DUE GOUVERNEUR HOSPITAL (UNSECURED)		\$ 1,607,183
AMOUNTS DUE TO THE FOLLOWING UNSECURED CREDITORS-		
OMNICARE		\$ 1,098
HEALTH FACILITY ASSESSMENT		\$ 37,768
HEALTH DIRECT		\$ 11,465
TOTAL		\$ 1,657,514



EXHIBIT C

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In the Matter of the Application of GOUVERNEUR  
NURSING HOME COMPANY, INC. For Approval of  
Certificate of Dissolution pursuant to Section 1002 of the  
New York Not-For-Profit Corporation Law.  
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**VERIFIED PETITION**

**TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK**  
**OFFICE OF THE ATTORNEY GENERAL**  
Watertown Regional Office  
Dulles State Office Building  
317 Washington Street  
Watertown, NY 13601-3744

Petitioner, Gouverneur Nursing Home Company, Inc. (the "Petitioner"), by Michael J. Burgess, Chairman of the corporation, for its Verified Petition alleges:

1. Gouverneur Nursing Home Company, Inc., whose principal address is located in the County of St. Lawrence, was incorporated pursuant to New York's Not-for-Profit Corporation Law on July 22, 1969.

2. The names, addresses and titles of the directors and officers are as follows:

Name	Director/Officer/Title	Address
Michael J. Burgess	Chairman (d)	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Nicholas Gardner, DDS	Board Member (d) Vice Chairman	119 East Main Street Gouverneur, New York 13642
Mark Brackett	Board Member (d) Secretary/Treasurer	KPH Healthcare Services, Inc. 29 Main Street Gouverneur, New York 13642
Andrew Williams, MD	Board Member (d)	Community Health Center of the North Country 4 Commerce Lane Canton, New York 13617

Marlinda LaValley	CEO (o)	77 West Barney Street. Gouverneur, New York 13642
Richard T. Lang	CFO (o)	77 West Barney Street Gouverneur, New York 13642

3. Petitioner was incorporated for the purpose of providing nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income and, in furtherance of that goal, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, maintaining and operating a nursing home project pursuant to the terms and provisions of the Public Health Law.

4. Petitioner is a charitable corporation.

5. Petitioner's Board of Directors (the "Directors") met pursuant to duly given notice on October 28, 2015 at 6:00 p.m. At the meeting, a resolution was passed by a unanimous vote by all of the Directors. The Directors adopted a Plan of Dissolution and authorized the filing of a Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law.

6. Petitioner has no members.

7. A certified copy of Petitioner's Plan of Dissolution is attached as Exhibit A hereto.

8. As set forth on the balance sheet attached as Exhibit B hereto, Petitioner has no assets and has liabilities in the amount of \$1,657,514.00. Its final report showing zero assets has been filed with the Attorney General.

9. Approval of Petitioner's dissolution must be obtained from the following governmental body, and a copy of such approval is attached as an Exhibit C attached hereto:

a. New York State Department of Health

10. With this Petition, the Original Certificate of Dissolution is being submitted to

the Attorney General for approval pursuant to the Not-for-Profit Corporation Law Section 1003.

WHEREFORE, Petitioner requests that the Attorney General approve the Certificate of Dissolution of Gouverneur Nursing Home Company Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed

This twenty-ninth day of October, 2015, by

LECLAIRRYAN, A PROFESSIONAL  
CORPORATION

By: 

Janice B. Grubin  
LeClairRyan, A Professional Corporation  
885 Third Avenue - 16<sup>th</sup> Floor  
New York, NY 10022  
(212) 634-5016

Counsel for Petitioner  
Gouverneur Nursing Home Company,  
Inc.



## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** Richard J. Zahnleuter, General Counsel  
**Date:** January 15, 2016  
**Subject:** Jewish Home Lifecare, Receivership Corporation  
Proposed Dissolution

---

Jewish Home Lifecare, Receivership Corporation is a not for profit corporation. Counsel for the Corporation advises that the Corporation was formed for the purpose of acting as a receiver for nursing homes in distress, but has not conducted any business in over ten years. Approval of the dissolution of the Corporation by the Public Health and Health Planning Council is required by Not-for-Profit Corporation Law §1003(b) and 10 NYCRR Part 650.

Attached are the following with regard to this matter:

1. Proposed Certificate of Dissolution.
2. Plan of Dissolution.
3. Petition for Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

**CERTIFICATE OF DISSOLUTION  
OF  
JEWISH HOME LIFECARE, RECEIVERSHIP CORPORATION**

(Under Section 1003 of the Not-for-Profit Corporation Law)

I, Audrey S. Weiner, the President of Jewish Home Lifecare, Receivership Corporation hereby certify:

**FIRST:** The name of the corporation is Jewish Home Lifecare, Receivership Corporation (the "corporation").

**SECOND:** The certificate of incorporation of the corporation was filed by the Department of State on May 28, 1987 under the original name of JH & H Receivership Corporation.

**THIRD:** The names and addresses of each of the officers and directors of the corporation and the title of each are as follows:

Name	Title	Address
Audrey S. Weiner	President	120 West 106 <sup>th</sup> Street New York, NY 10025
Elizabeth Grayer	Chair	120 West 106 <sup>th</sup> Street New York, NY 10025
David Haas	Treasurer/Secretary	120 West 106 <sup>th</sup> Street New York, NY 10025

**FOURTH:** Dissolution of the corporation was authorized by an unanimous written consent of the Board of Directors. The Corporation has no members.

**FIFTH:** The corporation elects to dissolve.

**SIXTH:** At the time of dissolution, the corporation is a type B corporation.

**SEVENTH:** The corporation filed with Attorney General a certified copy of its Plan of Dissolution.

**EIGHTH:** The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution the corporation had no assets or liabilities.

NINTH: At the time of the authorization of its Plan of Dissolution, the corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

TENTH: Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of Jewish Home Lifecare, Receivership Corporation this 26 day of December, 2014.



\_\_\_\_\_  
Audrey S. Weiner, President

**Certificate of Dissolution**

**Of**

**Jewish Home Lifecare, Receivership Corporation**

**Pursuant to § 1003 of the Not-for-Profit Corporation Law**

Filed by:

Wolf Haldenstein Adler Freeman & Hertz LLP

270 Madison Avenue, 9<sup>th</sup> Floor

New York, NY 10016



**PLAN OF DISSOLUTION OF  
JEWISH HOME LIFECARE, RECEIVERSHIP CORPORATION**

The Board of Directors of Jewish Home Lifecare, Receivership Corporation, by unanimous written consent dated December 26, 2014, pursuant to N-PCL §708 (b), having considered the advisability of voluntarily dissolving the corporation, and it being the unanimous opinion of the Board that dissolution is advisable and it is in the best interests of the corporation to effect such dissolution, and the Board of Directors having adopted, by unanimous written consent, a Plan for voluntary dissolution of the corporation, does hereby resolve that the corporation be dissolved in accordance with the following plan:

1. There being no members of the corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. Approval of the dissolution of the corporation is required by NYS Department of Health.
3. The corporation has no assets or liabilities.
4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PLC § 1002(d).
5. A certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

**CERTIFICATION**

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

I, Audrey S. Weiner, President of Jewish Home Lifecare, Receivership Corporation, hereby certify under penalties for perjury that the within Plan of Dissolution was duly submitted and passed by an unanimous written consent of the Board of Directors.



\_\_\_\_\_  
Audrey S. Weiner, President

-----X  
In the Matter of the Application of  
JEWISH HOME LIFECARE, RECEIVERSHIP  
CORPORATION,

VERIFIED PETITION

For Approval of Certificate of  
Dissolution pursuant to  
Section 1002 of the Not-for -Profit  
Corporation Law.

-----X  
TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
Charities Bureau  
120 Broadway, 3<sup>rd</sup> Floor  
New York, New York 10271

Petitioner, Jewish Home Lifecare, Receivership Corporation, by Audrey S. Weiner, President of the corporation, for its Verified Petition alleges:

1. Jewish Home Lifecare, Receivership Corporation, whose principal address is 120 West 106<sup>th</sup> Street, New York, NY 10025 was incorporated pursuant to New York's Not-for-Profit Corporation Law on March 9, 1988. Copies of the Certificate of Incorporation and Certificate of Amendment are attached.

2. The names, addresses and titles of the corporation's officers and directors are as follows:

<u>Title</u>	<u>Name</u>	<u>Address</u>
President	Audrey S. Weiner	120 West 106 <sup>th</sup> Street New York, NY 10025
Chair	Elizabeth Grayer	120 West 106 <sup>th</sup> Street New York, NY 10025
Treasurer/Secretary	David Haas	120 West 106 <sup>th</sup> Street New York, NY 10025

3. The purposes for which the corporation was organized are as follows:

The Corporation was formed for the purpose of acting as a receiver for nursing homes in distress.

4. The corporation is a Type B corporation.

5. The Board of Directors of the corporation executed a unanimous written consent dated December 26, 2014 adopting a Plan and authorizing the filing of the Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Plan and written consent of the Directors is attached as an exhibit.

6. The corporation has no members.

7. A certified copy of the corporation's Plan of Dissolution was filed with the Office of the Attorney General.

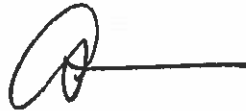
8. The corporation has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.

9. Approval of the dissolution of the corporation is required by NYS Department of Health.

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of Jewish Home Lifecare, Receivership Corporation, a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 402.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 26 day of December, 2014 by



\_\_\_\_\_  
Audrey S. Weiner, President

**Verification**

STATE OF NEW YORK    )  
  :SS.:  
COUNTY OF NEW YORK )

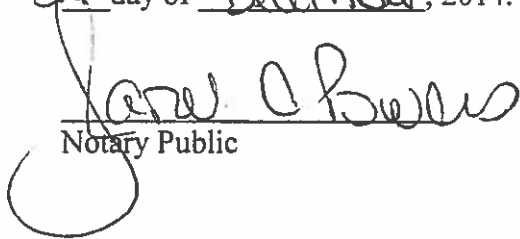
Audrey S. Weiner, being duly sworn, deposes and says:

I am the President of Jewish Home Lifecare, Receivership Corporation, the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.



\_\_\_\_\_  
Audrey S. Weiner

Sworn to before me this  
24 day of December, 2014.

  
\_\_\_\_\_  
Notary Public

**JANET A. POWERS  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK - NO. 4-4886  
CERTIFICATE FILED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 1, 2015**



## MEMORANDUM

**To:** Public Health and Health Planning Council  
**From:** Richard J. Zahnleuter, General Counsel  
**Date:** January 15, 2016  
**Subject:** W.K. Diagnostic and Treatment Center, Inc.  
Proposed Dissolution

---

W.K. Diagnostic and Treatment Center, Inc. is a not for profit corporation. Counsel for the Corporation advises that the Corporation has not conducted any business since it was decertified as a diagnostic and treatment center approximately seven years ago. Approval of the dissolution of the Corporation by the Public Health and Health Planning Council is required by Not-for-Profit Corporation Law §1003(b) and 10 NYCRR Part 650.

Attached are the following with regard to this matter:

1. Proposed Certificate of Dissolution.
2. Plan of Dissolution.
3. Petition for Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

**CERTIFICATE OF DISSOLUTION****OF****W.K. DIAGNOSTIC AND TREATMENT CENTER, INC.**

(Under Section 1003 of the Not-for-Profit Corporation Law)

I, Audrey S. Weiner, the President of W.K. Diagnostic and Treatment Center, Inc. hereby certify:

**FIRST:** The name of the corporation is W.K. Diagnostic and Treatment Center, Inc. (the "corporation").

**SECOND:** The certificate of incorporation of the corporation was filed by the Department of State on March 9, 1988.

**THIRD:** The names and addresses of each of the officers and directors of the corporation and the title of each are as follows:

Name	Title	Address
Audrey S. Weiner	President	120 West 106 <sup>th</sup> Street New York, NY 10025
Lynn Oberlander	Chair	120 West 106 <sup>th</sup> Street New York, NY 10025
Rita Morgan	Treasurer/Secretary	120 West 106 <sup>th</sup> Street New York, NY 10025

**FOURTH:** Dissolution of the corporation was authorized by an unanimous written consent of the Board of Directors. The Corporation has no members.

**FIFTH:** The corporation elects to dissolve.

**SIXTH:** At the time of dissolution, the corporation is a type B corporation.

**SEVENTH:** The corporation filed with Attorney General a certified copy of its Plan of Dissolution.

**EIGHTH:** The Plan of Dissolution filed with the Attorney General included a statement that at the time of dissolution the corporation had no assets or liabilities.

NINTH: At the time of the authorization of its Plan of Dissolution, the corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

TENTH: Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of W. K. Diagnostic and Treatment Center, Inc. this 26 day of December, 2014.



\_\_\_\_\_  
Audrey S. Weiner, President



**Certificate of Dissolution**

**Of**

**W.K. Diagnostic and Treatment Center, Inc.**

**Pursuant to § 1003 of the Not-for-Profit Corporation Law**

Filed by:

Wolf Haldenstein Adler Freeman & Hertz LLP

270 Madison Avenue, 9<sup>th</sup> Floor

New York, NY 10016

**PLAN OF DISSOLUTION OF  
W.K. DIAGNOSTIC AND TREATMENT CENTER, INC.**

The Board of Directors of W.K. Diagnostic and Treatment Center, Inc., by unanimous written consent dated December 26, 2014, pursuant to N-PCL §708 (b), having considered the advisability of voluntarily dissolving the corporation, and it being the unanimous opinion of the Board that dissolution is advisable and it is in the best interests of the corporation to effect such dissolution, and the Board of Directors having adopted, by unanimous written consent, a Plan for voluntary dissolution of the corporation, does hereby resolve that the corporation be dissolved in accordance with the following plan:

1. There being no members of the corporation, no vote of membership is required to approve this dissolution, and action of the Board of Directors is sufficient.
2. Approval of the dissolution of the corporation is required by Public Health Council.
3. The corporation has no assets or liabilities.
4. Within ten (10) days after the authorization of the Plan of Dissolution by a vote of the board, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to N-PLC § 1002(d).
5. A certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-for-Profit Corporation Law shall be attached thereto.

**CERTIFICATION**

STATE OF NEW YORK    }  
                                  } ss.:  
COUNTY OF NEW YORK }

I, Audrey S. Weiner, President of W.K. Diagnostic and Treatment Center, Inc., hereby certify under penalties for perjury that the within Plan of Dissolution was duly submitted and passed by an unanimous written consent of the Board of Directors.



\_\_\_\_\_  
Audrey S. Weiner, President

-----X  
In the Matter of the Application of  
W.K. DIAGNOSTIC AND TREATMENT  
CENTER, INC.,

VERIFIED PETITION

For Approval of Certificate of  
Dissolution pursuant to  
Section 1002 of the Not-for -Profit  
Corporation Law.

-----X  
TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
Charities Bureau  
120 Broadway, 3<sup>rd</sup> Floor  
New York, New York 10271

Petitioner, W.K. Diagnostic and Treatment Center, Inc., by Audrey S. Weiner,  
President of the corporation, for its Verified Petition alleges:

1. W. K. Diagnostic and Treatment Center, Inc., whose principal address is  
120 West 106<sup>th</sup> Street, New York, NY 10025 was incorporated pursuant to New York's Not-for-  
Profit Corporation Law on March 9, 1988. A copy of the Certificate of Incorporation is attached.

2. The names, addresses and titles of the corporation's officers and directors  
are as follows:

<u>Title</u>	<u>Name</u>	<u>Address</u>
President	Audrey S. Weiner	120 West 106 <sup>th</sup> Street New York, NY 10025
Chair	Lynn Oberlander	120 West 106 <sup>th</sup> Street New York, NY 10025
Treasurer/Secretary	Rita Morgan	120 West 106 <sup>th</sup> Street New York, NY 10025

3. The purposes for which the corporation was organized are as follows:

The Corporation was formed for the purpose of providing diagnostic and  
therapeutic rehabilitative services on an out-patient basis to aged persons suffering from illness  
or disease.

4. The corporation is a Type B corporation.

5. The Board of Directors of the corporation executed a unanimous written consent dated December 26, 2014 adopting a Plan and authorizing the filing of the Certificate of Dissolution in accordance with Section 1003 of the Not-for-Profit Corporation Law. A copy of the Plan and written consent of the Directors is attached as an exhibit.

6. The corporation has no members.

7. A certified copy of the corporation's Plan of Dissolution was filed with the Office of the Attorney General.

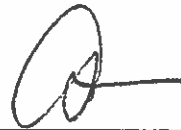
8. The corporation has no assets or liabilities and its final report showing zero assets has been filed with the Attorney General.

9. Approval of the dissolution of corporation is required from Public Health and Health Planning Council and attached thereto.

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of W.K. Diagnostic and Treatment Center, Inc., a not-for-profit corporation, pursuant to Not-for-Profit Corporation Law Section 402.

IN WITNESS WHEREFORE, the corporation has caused this Petition to be executed this 26 day of December, 2014 by



\_\_\_\_\_  
Audrey S. Weiner, President

**Verification**

STATE OF NEW YORK    )  
                                  :SS.:  
COUNTY OF NEW YORK )

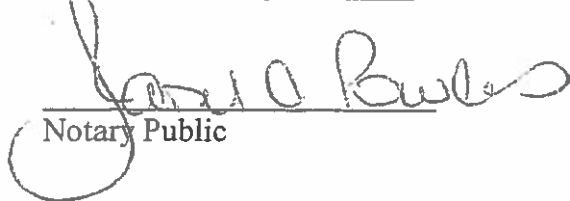
Audrey S. Weiner, being duly sworn, deposes and says:

I am the President of W.K. Diagnostic and Treatment Center, Inc., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.



\_\_\_\_\_  
Audrey S. Weiner

Sworn to before me this  
26<sup>th</sup> day of December, 2014.

  
\_\_\_\_\_  
Notary Public

**JANET A. POWERS  
COMMISSIONER OF DEEDS  
CITY OF NEW YORK - NO. 4-4886  
CERTIFICATE FILED IN QUEENS COUNTY  
COMMISSION EXPIRES MARCH 1, 2015**