

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

October 7, 2021

*Immediately following the Committee on Codes, Regulations and Legislation Meeting
(Codes scheduled to begin at 10:15 a.m.)*

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

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

July 29, 2021 Meeting Minutes

August 26, 2021 Meeting Minutes

September 2, 2021 Meeting Minutes

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Howard A. Zucker, M.D., J.D., Commissioner of Health

B. Report of the Office of Health Insurance Programs

Brett Friedman, Deputy Commissioner and Medicaid Director (Acting)

Discussion of Concept Paper for NYS's Next 1115 Waiver

IV. REGULATION

Report of the Committee on Codes, Regulations and Legislation

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

For Discussion

21-19 Amendment of Sections 600.1 and 600.2 of Title 10 NYCRR (Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements)

For Information

20-25 Amendment of Section 405.34(g) of Title 10 NYCRR (Stroke Services)

V. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair of Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Cardiac Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	211079 C	Garnet Health Medical Center (Orange County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services- Cardiac Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	211180 C	New York Community Hospital of Brooklyn, Inc. (Kings County) Mr. Kraut – Interest Dr. Lim – Interest/Abstaining	Contingent Approval
2.	211213 C	Mount Sinai Hospital – Mount Sinai Hospital of Queens (Queens County) Dr. Lim - Recusal	Contingent Approval

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	202263 C	Staten Island University Hosp- North (Richmond County) Mr. Kraut – Recusal Dr. Strange - Recusal	Contingent Approval
	211176 C	Strong Memorial Hospital (Monroe County) Mr. Thomas – Interest/Abstaining Mr. Robinson - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	211219 B	Alpha Ambulatory Project, LLC t/b/k/a Alpha Ambulatory Surgery Center, LLC (New York County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	211042 B	Rockwell Health, LLC (Kings County)	Contingent Approval
	211251 B	Allhealth D&T Center – Brooklyn2 (Kings County)	Contingent Approval

Certified Home Health Agency – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	201230 E	VNA Home Health (Albany County)	Contingent Approval

Certificates

Certificate of Dissolution

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
The C.M.H. Group, Inc.	Approval

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Wheel Chair Home, Inc.	Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 212013 E	Long Island Center for Digestive Health, LLC (Nassau County) Mr. Kraut – Recusal Dr. Strange – Recusal	Contingent Approval

Certificates

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Massena Memorial Hospital Auxiliary, Inc. Mr. Thomas – Abstaining/Interest	Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

VI. NEXT MEETING

November 18, 2021 (Albany)
December 9, 2021 (Albany)

VII. PROFESSIONAL

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

VIII. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
July 29, 2021

The meeting of the Public Health and Health Planning Council was held on Thursday, July 29, 2021 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner	Dr. Mario Ortiz
Dr. Jo Ivey Boufford	Mr. Peter Robinson
Dr. Angel Gutiérrez	Dr. John Ruge
Mr. Thomas Holt	Ms. Nilda Soto
Dr. Gary Kalkut	Dr. Theodore Strange
Mr. Jeffrey Kraut	Mr. Hugh Thomas
Mr. Scott La Rue	Dr. Anderson Torres
Mr. Harvey Lawrence	Dr. Kevin Watkins
Dr. Roxanne Lewin	
Dr. Sabina Lim	

DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|-------------------------|----------------------|
| Mr. Udo Ammon | Ms. Kathy Marks |
| Ms. Lynn Baniak | Mr. Nicholas Mestoik |
| Dr Richard Becker | Ms. Vanessa Murphy |
| Ms. Barbara DelCogliano | Ms. Marthe Ngwashi |
| Mr. Mark Furnish | Mr. Mark Noe |
| Mr. Brian Gallagher | Ms. Laura Palmer |
| Ms. Shelly Glock | Ms. Tracy Raleigh |
| Mr. Michael Heeran | Ms. Jackie Sheltry |
| Dr. Eugene Heslin | Ms. Lisa Thomson |
| Mr. Jonathan Karmel | Ms. Jennifer Treacy |
| Ms. Colleen Leonard | |
| Mr. George Macko | |

INTRODUCTION

Mr. Kraut called the meeting to order and welcomed Council members, Executive Deputy Commissioner Pino, meeting participants and observers.

MEMBERSHIP

Mr. Kraut introduced and welcomed Dr. Lewin and Dr. Lim who were recently appointed to serve on the Council and announced the Committee's they have agreed to serve on.

Mr. Kraut also announced that Dr. Brown and Dr. Martin's terms on the Council have expired. Mr. Kraut thanked Dr.'s Brown and Martin for their many years of dedicated service to the Council and the State of New York. On behalf of the Council Dr.'s Brown and Dr. Martin received Resolutions of Appreciation.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

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

21-06 Addition of Subpart 66-4 to
Title 10 NYCRR (COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel)

21-07 Amendment of Section 415.3 of
Title 10 NYCRR and Addition of Section 485.18 to Title 18 NYCRR (Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes and Adult Care Facilities)

20-24 Addition of Sections 1.2, 700.5 and
Part 360 to Title 10 NYCRR; Amendment of Sections 400.1, 405.24 & 1001.6 of
Title 10 NYCRR and Sections 487.3, 488.3 and 490.3 of Title 18 NYCRR (Surge and Flex Health Coordination System)

20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease; Isolation and Quarantine)

20-07 Amendment of Part 66 of Title 10 NYCRR (Enforcement of Social Distancing Measures)

20-27 Amendment of Section 405.11 and Addition of New Sections 77.13, 77.14 and 415.33 to Title 10 NYCRR (COVID-19 Confirmatory Testing)

Dr. Gutiérrez began his report by introducing 20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements) and motioned for emergency adoption. The motion was seconded by Mr. Holt. The motion for emergency adoption carried. Please see page 3 of the transcript.

Dr. Gutiérrez introduced 21-06 Addition of Subpart 66-4 to Title 10 NYCRR (COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel) and motioned for emergency adoption. The motion was seconded by Mr. Holt. The motion for emergency adoption carried. Please see page 4 of the transcript.

Dr. Gutiérrez described 21-07 Amendment of Section 415.3 of Title 10 NYCRR and Addition of Section 485.18 to Title 18 NYCRR (Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes and Adult Care Facilities) and motioned for emergency adoption. The motion was seconded by Mr. Holt. The motion for emergency adoption carried. Please see page 4 of the transcript.

Dr. Gutiérrez introduced 20-24 Addition of Sections 1.2, 700.5 and Part 360 to Title 10 NYCRR; Amendment of Sections 400.1, 405.24 & 1001.6 of Title 10 NYCRR and Sections 487.3, 488.3 and 490.3 of Title 18 NYCRR (Surge and Flex Health Coordination System) and motioned for emergency adoption. The motion was seconded by Mr. Holt. The motion for emergency adoption carried. Please see pages 4 and 5 of the transcript.

Dr. Gutiérrez introduced 20-06 Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease; Isolation and Quarantine) and motioned for emergency adoption. The motion was seconded by Mr. Holt. The motion for emergency adoption carried. Please see pages 5 and 6 of the transcript.

Dr. Gutiérrez described 20-07 Amendment of Part 66 of Title 10 NYCRR (Enforcement of Social Distancing Measures) and motioned for emergency adoption. The motion was seconded by Mr. Holt. The motion for emergency adoption carried. Please see page 6 of the transcript.

Lastly, Dr. Gutiérrez introduced 20-27 Amendment of Section 405.11 and Addition of New Sections 77.13, 77.14 and 415.33 to Title 10 NYCRR (COVID-19 Confirmatory Testing) and motioned for emergency adoption. The motion was seconded by Mr. Holt. The motion for emergency adoption carried. Please see page 6 of the transcript.

Dr. Gutiérrez concluded his report

APPROVAL OF THE MEETING MINUTES OF JUNE 3, 2021

Mr. Kraut asked for a motion to approve the June 3, 2021 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval. Mr. Robinson seconded the motion. The minutes were unanimously adopted. Please refer to page 6 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Department of Health Activities

Mr. Kraut introduced Ms. Pino to give a report on the Department of Health report.

Ms. Pino began her report by stating that despite COVID the Department continues to respond to other public health issues, such as drug use, drug overdoses, opioid crisis, the threat of gun violence and other environmental health threats, such as emergent contaminants and tick borne illnesses. The Department is tracking and managing the spread of emerging COVID variants of concern, mainly the Delta variant. The Delta variant has quickly become the predominant source of new infections in New York and around the country. As of July 26, 2021 72 percent of new positives are linked to the Delta variant. The Wadsworth Center continues to conduct sampling and screening of positive test specimens, as well as partner with academic centers around the state to better understand which variants are circulating and at what proportions. After several weeks of seeing daily tests, positivity rates of under 1 percent. Now, the current 7 day average test positivity rate has jumped to 2 percent. We are seeing a parallel increase in hospitalizations. While the State had only 330 hospitalized COVID patients on June 26th, on July 29th to 611 hospitalizations just one month later. The Department continues to watch all local and statewide trends in cases, hospitalizations and deaths.

Ms. Pino gave an update on the COVID-19 vaccine. On June 15th, New York met the goal of administering at least 1 vaccine dose to 70 percent of adults within the State. By that time, 75 percent of adults across the state had at least 1 vaccination and 68.2 percent of New Yorkers fully vaccinated. As a result, on June 24th, after nearly 16 months, the Governor Cuomo declared an end to the state of emergency, allowing some of the previous pandemic regulations to be relaxed. Despite this tremendous progress, with 25 percent of the state still unvaccinated, that's 3.5 million New Yorkers and still vulnerable to the virus and its variants. The Department has turned resources to more targeted localized outreach efforts like community based pop up sites in areas with low vaccination rates. The Department is also supporting in-home vaccinations for New Yorkers who are homebound. However, due to the rise of the Delta variant and the increasing rates of new cases and hospitalizations, it has become clear that yet again additional State actions are needed to protect New Yorkers from a resurgence of the virus.

Ms. Pino announced that the State awarded \$15 million dollars in funding to community health centers and other community based organizations serving New Yorkers who are disproportionately impacted by COVID-19. The State on July 28th announced that all patient facing health care workers at state run hospitals, nursing homes and veterans homes will be

required to get vaccinated for COVID-19 by Labor Day. She also stated that all New York State employees, about 130,000 will be required to get vaccinated for COVID-19 by the same deadline by Labor Day, September 6. State employees who do not get vaccinated will be required to be tested for the virus on a weekly basis. Governor Cuomo called on the FDA to expedite the final approval of the vaccine and end the emergency use authorization restrictions. The Department continues to call on our network of over 5,000 health care providers enrolled in the COVID vaccination program statewide, including local health departments, hospitals, pharmacies, community health centers and private medical practices to help us get to the vaccination finish line. The Department is partnering with trusted messengers, including health care providers and community leaders, to join the Governor and the Commissioner in the effort to dispel misinformation about the vaccine. Through initiatives like the New York State Citizen Public Health Training Program, a publicly available training course designed in partnership with Cornell University. We are providing all New Yorkers with the knowledge and tools that they can use to combat disinformation and misinformation about the vaccine and become effective public health ambassadors in their communities.

Ms. Pino noted that masks continue to be a critical layer of protection against the spread of COVID-19 and the Delta variant, and they continue to be required in settings such as public transit, nursing homes and health care settings, pre-K through 12 schools, homeless shelters and correctional facilities. The CDC just came out with new recommendations and guidance. The Department continues to speak with federal partners and international health experts and closely working together to review the CDC guidance.

Ms. Pino spoke on the topic of health equity. She advised that due to structural racism, socioeconomic factors, disparities in access to care and the disproportionate exposure to the virus among communities of color, the risk of COVID-19 hospitalization is 2.8 times higher for the Black community and Latino Americans for the Latinx community compared with White non Hispanics, according to the CDC. For American Indian and Alaska Native Persons, the risk is 3.4 times as high. The vaccine will only bring an end to the pandemic if every New Yorker, no matter who they are or where they live in the state, has access to the vaccine. Health equity has become a cornerstone of our program from the very beginning. In December of last year, the Governor established the Vaccine Equity Task Force consisting of health and policy experts, community leaders to help guide our state's vaccine rollout, ensuring equitable vaccine distribution, addressing vaccine hesitancy and reducing barriers to access. Through the work of the Task Force, the Department partners with the Office of New Americans and other community surrogates and leaders to help disseminate credible multilingual information from immigrant communities incorporating limited English proficiency, cultural competence about the vaccine and its effectiveness. As of July 29th, New York State has established over 350 community based pop up vaccination sites, especially in communities with low vaccination rates. The Department has taken many steps to be sure the vaccine is accessible to anyone; ensuring time off for employees to get vaccinated, paid sick leave for those who experience side effects, walk in appointments at all vaccine sites and various incentive programs. For communities with low vaccination rates and large uninsured populations, the Department is concentrating efforts to both provide them with the

vaccine and enroll them in insurance, so they are protected from COVID-19 and simultaneously gain long term access to the health care that they need.

Ms. Pino mentioned, while the Department has been fully engaged in our COVID response for the past 18 months, the Department has also continued the critically important work of responding to our many other public health threats. One such threat is the issue of gun violence, the number one cause of premature death in the United States. In 2019, nearly 40,000 Americans died due to a firearm injury as a result of interpersonal or gang related violence, active duty, law enforcement, self-harm and accidents. As with COVID, the burden of this loss of life is not distributed equally again and disproportionately impacted communities of color. 68.4 percent of gun violence victims in New York state are non-White. The toll of gun violence is not limited just to human loss. Gun violence cost an estimated 280 billion dollars in health care and societal cost every year. And recently, the Governor declared gun violence a statewide disaster emergency and announced the creation of the new Office for Gun Violence Prevention, overseen here within the Department of Health to provide assistance in protecting the public health, welfare and safety of New Yorkers. By creating this office and investing our resources into a broad range of evidence based community intervention strategies, we are treating gun violence as the public health crisis that it truly is. The Office for Gun Violence Prevention will pursue both short term solutions to manage the immediate crisis and reduce the shooting rate. As well as implement longer term solutions, focusing on community based interventions and data driven prevention strategies to break the cycle of violence. The Office will also support and build upon a statewide network of violence interrupter programs, ensure that state agencies and other state and local programs are coordinated and unified in our prevention strategies. Use data to drive decision making and allocate resources, analyze and share data, and engage community partners as part of a comprehensive approach to preventing gun violence.

Ms. Pino gave an update on the environmental health front, as New Yorkers spend the Summer outside in nature again, it's important that we protect ourselves against mosquito and tick borne illnesses. Anthropos borne diseases, which are transmitted by mosquitoes, ticks and other insects are in fact a growing threat. Over the last few years, we've seen an increase in the tick population throughout the state, due in part to increasing temperatures, milder Winters, as well as an expansion of the areas of the state where ticks are found. The Department maintains 100 sampling sites across the state where ticks are collected and tested for pathogens, including the bacteria that causes Lyme disease, Babesiosis virus. We have seen more ticks this year than last year, and a higher percentage of ticks that are being sampled at labs across the state carry a disease carrying disease causing rather bacteria or virus. According to Upstate Medical University, in the first 5 months of 2020, 22.4 percent of ticks tested carried one of these pathogens. In 2021, a year later, this number has increased to 37 percent. The Department continues to engage in educational activities, including media campaigns, as well as the development and distribution of educational materials on these diseases. Summer is also the time of year when we start to observe and report harmful algae blooms on new York's waterways. Local health departments have reported a total of 37 beach closures so far this year as a result of HAB's within the regulated swimming area. Regarding drinking water quality, New York took the leap and adopted maximum contaminant limits for MCL's, for PFOA, PFOS and 1, 4-dioxane in August 2020 and round one, a phased in

testing programs for public water systems is nearly complete. All systems had to initiate testing by February 26 of this year, and test results from round one are still being received by the Department. The first round of that data shows that 87 percent of the suppliers required to test water have reported approximately 130 MCL exceedances across the state. Public water systems with these exceedances are entering into treatment compliance timetables through local health departments to remove identified contaminants from their finished drinking water.

Ms. Pino concluded her report. To read the complete report and questions from the Members, please see pages 7 through 14 of the attached transcript.

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

Mr. Kraut thanked Ms. Pino and next introduced Dr. Becker to give the Report on the Activities of the Office of Primary Care and Health Systems Management.

Dr. Becker thanked the entire Department of Health for its hard work. Dr. Zucker and the executive team for their leadership, and especially the leadership team and staff of OPCHSM today for their tireless work through the entire pandemic. He also acknowledged and thanked the hard work of the vaccine teams and in particular the Hub Hospital leadership in partnership with many primary care and community providers that continues to help drive vaccine access to some of the communities that have unique challenges and needs. This work continues despite the formal end of the state of emergency as we carefully monitor Delta and other variables while preparing for a potential resurgence. The Department recognized this pandemic required a statewide public private partnership with a multidisciplinary approach to whole person care. We have learned much collectively throughout the pandemic and are incorporating that knowledge and experience into how we prepare for any near-term increase in COVID related illness, as well as how we remain prepared for any future threat.

Dr. Becker stated that the Department continues the extensive work to strengthen and improve access to high quality health care for the most vulnerable residents of our state in high density urban areas, rural areas and even suburban areas that have their own sets of unique access challenges. The approach recognizes that while hospitals continue to be a vital part of any health care delivery system, the key to improving a community's health, especially for those patients living with chronic illness, is ensuring regular and continuous access to primary and specialty care, where significant gaps still exist. In many communities, health and safety net hospitals engage and integrate with their existing health care partners and new health care partners is essential to building and strengthening health care delivery networks that truly meet the needs, the unique needs of their community residents. While the financial health of our community hospitals is obviously important and something that must be achieved, the pathway to creating that health involves not only hospital, but health system transformation that must align with local and regional health care needs in a manner that focuses on all factors, including prevention and social determinants of health that impact on onset, management and outcome of any illness. We have a lot of work to do in these areas, but we are on the right pathway and appreciate the input and support of this committee towards those efforts.

Dr. Becker advised that a more specific area of clinical focus for the Office of Primary Care and Health Systems Management (OPCHSM) as well as the Department is maternal and neonatal health and outcomes, especially for participants, pregnant women who are at risk because of clinical or social circumstances or both. While much focus is placed on the event of labor and delivery, we are also looking more closely at prenatal and postpartum care, two periods where mothers and babies are most vulnerable and where better access and when necessary intervention can make a real difference in achieving better outcomes. Redesigning reimbursement models to incentivize, support and align with these models of care is an essential part of this work.

Dr. Becker also noted that an area of health care that sadly requires our continued attention, especially during this pandemic time, is opioid use, where across the country, including New York State, deaths from this crisis continue to occur at far too high a rate. As part of the Department's comprehensive approach to combating the opioid epidemic, OPCHSM has implemented multiple improvements to the prescription monitoring program, or PMP to better assist practitioners in deciding when controlled substances are the best options for their patients. We are also expanding efforts to integrate the PMP with electronic health records, improving our ability to share bi directional PMP data with other states, and develop a PMP dashboard that will display a summary of key indicators to alert practitioners to patient risk factors that further inform provider prescription decisions. These and other efforts underway will help to impact this crisis.

Lastly, Dr. Becker spoke on the topic of CON and licensure process. We learned through the pandemic that we can be expeditious and flexible with the licensure process for surge purposes and maintain quality and patient safety. The Department wants to continue that work. To that end, we are actively reviewing the current processes to understand how we may not only improve their efficiency and transparency, but also shift the emphasis from a transactional approach to one that more consistently aligns with and impacts policy surrounding health care delivery. The Department wants to work with this Council more closely to focus upon large, impactful projects important to ensuring health care delivery as envisioned and needed, while allowing smaller and more routine projects to advance without rising to the same level of review. This will allow us to better utilize everyone's time and improve efficiency for all involved who are more effectively addressing the intersection of projects and policies.

Dr. Becker concluded his report. To see the complete report and Members comments and questions, please see pages 14 through 17.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

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

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211234 C	Mount St. Mary’s Hospital and Health Center (Niagara County)	Contingent Approval
202168 C	Lewis County General Hospital (Lewis County)	Contingent Approval
211008 C	Roswell Park Cancer Institute (Erie County)	Contingent Approval

Mr. Robinson introduced application 211234 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 17 and 18 of the transcript.

Mr. Robinson introduced application 202168 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 18 and 19 of the transcript.

Mr. Robinson introduced application 211008 and noted for the record that Dr. Watkins has an interest and is abstaining. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 19 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211073 C	John T. Mather Memorial Hospital of Port Jefferson New York, Inc. (Suffolk County) Mr. Kraut – Recusal Dr. Strange - Recusal	Contingent Approval

Mr. Robinson introduced application 211073 and noted for the record that Mr. Kraut and Dr. Strange have declared a conflict and have exited the meeting room. Mr. Robison motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with the noted recusals. Mr. Kraut and Dr. Strange returned to the meeting room. Please see pages 19 and 20 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Diagnostic and Treatment Centers Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
201275 B	New York City Health & Hospital Corporation/Gotham Health FQHC, Inc. d/b/a Tremont Community Health Center of Excellence (Bronx County) Dr. Yang – Recusal (not present at meeting)	Contingent Approval
202004 B	New York City Health & Hospital Corporation/Gotham Health FQHC, Inc. d/b/a Broadway Community Health Center of Excellence (Kings County) Dr. Yang – Recusal (not present at meeting)	Contingent Approval
202005 B	New York City Health & Hospital Corporation/Gotham Health FQHC, Inc. d/b/a Roosevelt Community Health Center of Excellence (Queens County) Dr. Yang – Recusal (not present at meeting)	Contingent Approval

Mr. Robinson introduced applications 201275, 202004, and 202005 and noted for the record that Dr. Yang declared conflicts on these applications but was not present at the meeting. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see page 20 of the transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers -Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211054 B	Ainsworth Health, LLC (Nassau County) Dr. Lim – Interest/Abstaining	Contingent Approval

Mr. Robinson called application 211054 and noted for the record that Dr. Lim has declared an interest and will be abstaining. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Dr. Lim’s noted abstention. Please see page 21 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

Mr. Robinson concluded his report.

Mr. Kraut thanked Mr. Robinson for his report. He next introduced Ms. Raleigh.

Ms. Raleigh announced that for personal reasons she has made the difficult decision to leave the Department. She thanked the Department staff for their support. Mr. Kraut thanked Ms. Raleigh for her 5 years of dedication and stated that on behalf of the Council, Dr. Boufford and himself signed a Resolution of Appreciation. Ms. Raleigh received a standing ovation by all in attendance.

ADJOURNMENT:

Mr. Kraut announced the upcoming PHHPC meetings and adjourned the public portion of the meeting and was calling into order Executive Session to consider a Health Personnel and Interprofessional Relations matter.

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JULY 29, 2021
FULL COUNCIL TRANSCRIPT

Jeffrey Kraut Thank you very much.

Jeffrey Kraut Get myself organized here.

Jeffrey Kraut Okay, I am calling to order the July 29th meeting of the Public Health and Health Planning Council. I'm Jeff Kraut. This is our first meeting since March of 2020. I'd like to welcome the members, the Executive Deputy Commissioner, Lisa Pino, who will be joining us in the moment, participating and observers. And I just want to point out that this is the 108th meeting of a year that we have been meeting. And we did meet once at least in 2020, so we'll count that. It's an uninterrupted record of 108 years of the Public Health Council convening. And it's been a tough year, a little over a year for many of us and certainly for our industry and the department and the millions of New Yorkers whose lives were affected. And again, we want to give our thanks to the department staff who we know who have worked tirelessly these past almost 2 years and unfortunately continue to do so in meeting the changing challenges that the state has to do to get back to some new sense of normalcy. And I'd like to thank Colleen and Lisa, who have put together a little welcome back breakfast for us. I just want to make sure everybody notices in the corner. Feel free to get up during the meeting. And for those new members, don't get used to this. It took away our food many years ago, but we've reintroduced it. And I want to thank Colleen and Lisa for organizing that and getting this done for us. Thank you so much. Welcome back. And in tradition, there's plenty to eat, so I would also encourage our visitors and observers in the audience feel free just to get up if you're hungry and grab something. As a reminder for our audience, this public meeting is being viewed through the webcast. There's a forum that needs to be filled out, which records your attendance. It's required by the Joint Commission on Public Ethics in accordance with Executive Law 166. We post this form on the Department of Health website, www.NewYorkHealth.gov under Certificate of Need. We'd appreciate if you would email the completed forms back to Colleen Leonard at Health.NY.gov. We appreciate your support in doing so. I want to remind council members that we're subject to the open meeting law and its broadcast over the internet. Now, I was asked at the last meeting, we and I think many other councils were hoping the legislature is going to review aspects of the open meeting law to take advantage of contemporary technologies, particularly to allow us to have a quorum using Zoom or some other devices, but for the moment now, we're required to comply with the somewhat anachronistic laws and hopefully they'll be resolved in the next legislative session. In doing so, we have to make sure that we're on mute when not speaking. You don't rustle your papers and actually make sure it's turned off, because we picked that up and particularly side chatter. There's synchronized captioning, so we need to speak only one person at a time. And when you do so, please identify yourself as a council member, DOH staff. This will be very helpful. We want to encourage the public to join the department's Certificate of Need listserv. The unit sends out important council information; notices our agenda, our meeting dates, our policy matters. Unfortunately, we've been promoting this and we still seem to have both providers and other interested members of the public not understanding our process and sending us letters with very great public comments that should have been made during the committee sessions. We would like to encourage that. You can join the listserv by going to www.Health.NY.gov/Facility/CONS/Listserv, or easily just send a note to Colleen, and she will help you, the council secretary. Today, we're going to change up some of the agenda,

because the Codes Committee just spent a significant amount of time on the regs. I'm going to ask Dr. Gutierrez to kick off the meeting and present that for adoption, since it's all fresh in our minds and we'll be able to do that depending on the time and Ms. Pino's Arrival, then move to the Project Review Committee to take up actions. And then we'll proceed with the reports from Ms. Pino, who will talk about the Department of Health Activities. Dr. Becker, the Office of Primary Care and Health Systems Management. Again, we'll do this a little on the fly. And members of the council and most of our guests know are familiar with the reorganization of the agenda. We've batched CON applications for the Establishment Project Review. And please take a look at them to see if there's any changes that need to be done. As you know, we welcome two new members to the council. I want to introduce Dr. Roxanne Lewin and Dr. Sabina Lim sitting on my right. Dr. Lewin serves as the Associate Medical Director of Beacon Health Options, and she's going to serve on the Codes Committee and the Health Planning Committee. Dr. Lim is the system Vice President for Mt. Sinai Health System. She also serves as the Head of Behavioral Health, Safety and Quality System, Medical Director, regulatory and government affairs. As a Professor of Psychiatry and the Icon School of Medicine at Mount Sinai, Dr. Lim is going to serve on the Establishment of Project Review Committee, as well as the Public Health Committee. And I really look forward to welcoming you and to your participation. As a consequence of their appointment, you probably are aware that both Dr. Brown and Dr. Martin's terms have expired. They were appointed by virtue of serving on the Behavioral Services Committee, and they are being replaced by doctors Lim and Lewin. And I want to take the time at the beginning to thank Dr. Brown, who served on the council for 8 years, and Dr. Martin, who served on the council 10 years since 2011, when it was first formed. They both were absolutely dedicated to the work and the important role we've done. We want to wish them well. And on behalf of the council, both Dr. Boufford and myself, we have assigned a resolution of appreciation. I'm going to kind of go through some of the highlights here. But, you know, Dr. Brown has been a stalwart in really reinforcing what the Public Health Council means. He served on Establishment and Project Review, the Public Health committee, the Ad Hoc Committee to lead the state health improvement plan. And we could always count on Dr. Brown to ask applicants questions and engage in policy conversations that are really focused on, yeah, I get what you're doing, but how is that helping the health of the communities that you serve? And he kind of all grounded it in kind of the purpose. He has made countless contributions both in his professional life and what he did in this room. And we are just conveying our admiration and our esteem and appreciation for the role that he played and the committed years of service that he gave. Dr. Martin has been one of these people that, you know, you always enjoy different perspectives coming into a room. And I can make some jokes on him. A little curmudgeonly, but but the fact is, he raised such fascinating, taking his experience both from behavioral health. As a physician and administrative capacities. He really saw things from a slightly different angle. And I thought that enriched our conversation. It certainly made me think a little harder about things. As I said, he served in since its inception in 2011, and he was both on the Establishment and Health Establishment Project Review, the Health Planning Committee, and he Chaired a thankless job of serving as Chair of the Committee on Health Professional and Interprofessional Relationships. Dr. Strange can attest to the amount of work that you really have to do to make sure that due process is followed. And a clinicians with regard to appointments are treated fairly and appropriately and where we needed to act to protect the public. I think that is a unique role. Both he and Dr. Brown are really going to be missed here. You're going to take it, Dr. Lim, r. Lewin. You will bring your own special perspective, I'm sure, to the council. These two gentlemen just really made unique contributions here. I think we're going to miss them, but we are going to welcome new perspectives as well. We have put together two resolutions that we will get to them. You

saw a note that Dr. Martin sent to us. Please reach out to both Dr. Martin and to Dr. Brown, to just thank them for their service and their friendship all these many years.

Jeffrey Kraut I'm now going to call, I think I'm going to talk to Dr. Gutierrez. If you would give a report of the Codes Committee.

Dr. Gutierrez Thank you very much, Mr. Kraut.

Dr. Gutierrez At this morning meeting of the Codes, Regulation and Legislation Committee, we passed 7 proposals for emergency adoption. The first one deals with hospital and nursing home personal protective equipment, otherwise known as PPE. That was approved unanimously by the committee. I so move for approval here in the council. Present with us is Jackie Sheltry, Vanessa Murphy and Laura Palmer from the department for information that may be necessary.

Jeffrey Kraut I have a motion.

Jeffrey Kraut May I have a second?

Jeffrey Kraut I have a second.

Jeffrey Kraut Are we going to do these one at a time?

Dr. Gutierrez I can batch them up.

Jeffrey Kraut How do you want us to do these?

Dr. Gutierrez I'm told one at a time

Jeffrey Kraut We got to do them one at a time.

Jeffrey Kraut I have a motion. I have a second.

Jeffrey Kraut Who seconded?

Jeffrey Kraut Any questions?

Jeffrey Kraut Any comments from the department?

Jeffrey Kraut Any questions from the council?

Jeffrey Kraut Hearing, none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Jeffrey Kraut Dr. Gutierrez.

Dr. Gutierrez For emergency adoption, also, COVID-19 vaccination of nursing home and adult care facility residents and personnel that also passed, and Ms. Jackie Sheltry and Laura Palmer from the department here are available for further information. And I so move.

Jeffrey Kraut I have a motion by Dr. Gutierrez. I have a second by Mr. Holt.

Jeffrey Kraut Any questions from the members?

Jeffrey Kraut Hearing none, all those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Dr. Gutierrez Number three for emergency adoption, personal care, giving compassionate care, giving visitors in nursing homes and adult care facilities is also passed. Jackie Sheltry and Laura Palmer from the department are available and will provide us with information if necessary. And I so move.

Jeffrey Kraut I have a motion by Dr. Gutierrez. I have a second by Mr. Holt.

Jeffrey Kraut Any questions from the council?

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Dr. Gutierrez Number four for emergency adoption surge and flex health coordination system. This was approved. Richard Becker and John Karmel are available for further information. I so move.

Jeffrey Kraut I have a motion by Dr. Gutierrez. I have a second by Mr. Holt.

Jeffrey Kraut A question by Dr. Boufford.

Dr. Boufford It's really a comment, because it would appear in the minutes of the council meeting when obviously the minutes of the Codes Committee is not kept, that we look forward to a report from, recommendations from Dr. Becker about how to create a fully integrated response opportunity that looks at health systems, hospitals, community health centers and local health departments coming forward, hopefully at our next meeting in September.

Dr. Boufford Thank you.

Jeffrey Kraut Any other questions or comments from the council?

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Dr. Gutierrez Number five for emergency adoption investigation, communicable diseases, isolation and quarantine. It was approved. And Vanessa Murphy of the department is available for further information. I so move.

Jeffrey Kraut Thank you, Dr. Gutierrez.

Jeffrey Kraut I have a second by Mr. Holt.

Jeffrey Kraut Are there any questions or comments by the council?

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Dr. Gutierrez Number six for emergency adoption, the enforcement of social distancing measures. This was approved. Vanessa Murphy and Andy Newman from the department are available. I so move.

Jeffrey Kraut I have a motion from Dr. Gutierrez, a second by Mr. Holt.

Jeffrey Kraut Are there any comments or questions from the council?

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Dr. Gutierrez For emergency adoption, COVID-19 confirmation testing. It was approved. Vanessa Murphy and Ernest Clement from the department are present. I so move.

Jeffrey Kraut I have a motion. I have a second by Mr. Holt.

Jeffrey Kraut Any questions or comments by the council?

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Dr. Gutierrez Mr. Kraut, I would like to thank the members of the department that prepared 130 pages of reports for us to review and be educated before we discuss this.

Jeffrey Kraut I will accept a second.

Jeffrey Kraut And I also want to thank the department of the staff who worked on this, particularly given where we started the process in the previous meeting. And we appreciate that you took into account the comments and the perspectives that you heard. It certainly is a much better regulation, I think, than the ones we originally saw. We do thank you for that partnership.

Jeffrey Kraut Before I turn it over to Ms. Pino, I neglected to ask for a motion on the adoption of the June 3rd, 2021 meeting minutes.

Jeffrey Kraut I have a motion by Dr. Berliner, a second by Mr. Robinson.

Jeffrey Kraut I have a motion.

Jeffrey Kraut I have a comment by Dr. Boufford.

Dr. Boufford I want to just again, because I think it's helpful for things to be on the public record and to help the staff in making revisions at the segment, which Jeff, where the Chair reported our concerns about the initial regulation on surge from the Codes committee was incomplete. And I would ask that that be the the audiotape or videotape be revisited so that the summary of his comments reflect concern about integration of specific integration around primary care and local health departments.

Dr. Boufford Thank you.

Jeffrey Kraut So, just to be clear, I will make an additional comment in the thanks to the department. Your work isn't done, and we are looking forward to yet an additional proposal on how to integrate the remaining part of the health care delivery system, so it's a more cohesive, comprehensive and holistic approach in preparation for hopefully what may never come again, but what inevitably will be necessary. So, I thank you, Dr Boufford, for holding my feet to the fire.

Jeffrey Kraut We approved the minutes.

Jeffrey Kraut I'm going to depart from our agenda, and I will now turn the floor over to Ms. Pino, who's going to update the council about the department's activities since our last meeting.

Ms. Pino Thank you, Chair.

Ms. Pino Good morning, everyone. It's wonderful to be here. It must be exciting to see everyone after such a long time. And, you know, I know that I've met most of you by Zoom. I'm here on behalf of Dr. Zucker, the Commissioner, of course. It's wonderful to welcome all of you and that we're here on a beautiful day and that we're all safe and vaccinated, hopefully. Good morning. It's a pleasure to be with you today for the first in person, New York State Public Health and Planning Council since the beginning of COVID-19 pandemic. I think it's been 18 months.

Ms. Pino When was the last council meeting?

Jeffrey Kraut March of 2020.

Ms. Pino Wow, so right before the storm hit. I am Lisa Pino, of course, the Executive Deputy Commissioner for the department. And I'm pleased to be here to update on the department activities. It's been quite a year and a half, quite a last 18 months. Despite COVID attacking the very foundation of our public health system and pushing our health care workforce to the limits. Goodness, isn't that true? We continue to respond to other public health issues, such as drug use, drug overdoses, opioid crisis, the threat of gun violence and other environmental health threats, such as emergent contaminants and tick borne illnesses, since it is Summer. And though it is only July, this Summer has already been quite eventful. As you well know, we've focused on tracking and managing the spread of emerging COVID variants of concern, mainly the Delta variant. The Delta variant has quickly become the predominant source of new infections in New York and around the country. And with the Governor noting on Monday that 72 percent of new positives are linked to the Delta variant. Our Wadsworth Center continues to conduct sampling and screening of positive test specimens, as well as partner with academic centers around the state to better understand which variants are circulating and at what proportions. After several weeks of seeing daily tests, positivity rates of under 1 percent. I remember was

just a few weeks ago. We were well under 1 percent. Now, the current 7 day average test positivity rate has jumped to 2 percent. We're seeing a parallel increase in hospitalizations. While the state had only 330 hospitalized COVID patients on June 26th, we have now jumped today and July 29 to 611 hospitalizations just one month later. The department continues to watch all local and statewide trends in cases, hospitalizations and deaths. And we work closely with health care providers across the state to make sure that they have the support they need. Our push to vaccinate every eligible New Yorker continues. And on June 15, 3 weeks ahead of the federal July 4 target issued by President Biden, Governor set and we met the goal of administering at least 1 vaccine dose to 70 percent of adults within the state. By that time, 75 percent of adults across the state had at least 1 vaccination and 68.2 percent of New Yorkers fully vaccinated. As a result, on June 24th, after nearly 16 months, the Governor declared an end to the state of emergency, allowing some of the previous pandemic regulations to be relaxed. Despite this tremendous progress, with 25 percent of the state still unvaccinated, that's 3.5 million New Yorkers and still vulnerable to the virus and its variants. We've turned our resources to more targeted localized outreach efforts like community based pop up sites in areas with low vaccination rates. We're also supporting in-home vaccinations for New Yorkers who are homebound. However, due to the rise of the Delta variant and the increasing rates of new cases and hospitalizations, it's become clear that yet again additional state actions are needed to protect New Yorkers from a resurgence of the virus. As the Governor said yesterday, it's like deja vu. Earlier this week, the Governor also awarded 15 million dollars in funding to community health centers and other community based organizations serving New Yorkers who are disproportionately impacted by COVID-19. And just yesterday, the Governor also announced that all patient facing health care workers at state run hospitals, nursing homes and veterans homes will be required to get vaccinated for COVID-19 by Labor Day. He similarly announced that all New York State employees, about 130,000 of us will be required to get vaccinated for COVID-19 by the same deadline by Labor Day, September 6. State employees who do not get vaccinated will be required to be tested for the virus on a weekly basis. He also called on the FDA to expedite the final approval of the vaccine and end the emergency use authorization restrictions. We continue to call on our network of over 5,000 health care providers enrolled in the COVID vaccination program statewide, including local health departments, hospitals, pharmacies, community health centers and private medical practices to help us get to the vaccination finish line. We're partnering with trusted messengers, including health care providers and community leaders, to join the Governor and the Commissioner in the effort to dispel mis information about the vaccine. Through initiatives like the New York State Citizen Public Health Training Program, a publicly available training course designed in partnership with Cornell University. We are providing all New Yorkers with the knowledge and tools that they can use to combat disinformation and misinformation about the vaccine and become effective public health ambassadors in their communities. Masks continue to be a critical layer of protection against the spread of COVID-19 and the Delta variant, and they continue to be required in settings such as public transit, nursing homes and health care settings, pre-K through 12 schools, homeless shelters and correctional facilities. And as you know, the CDC just came out with new recommendations and guidance. We are talking with our federal partners and international health experts and closely working together to review the CDC guidance. On health equity, due to structural racism, socioeconomic factors, disparities in access to care and the disproportionate exposure to the virus among communities of color, the risk of COVID-19 hospitalization is 2.8 times higher for the Black community and Latino Americans for the Latinx community compared with White non Hispanics, according to the CDC. For American Indian and Alaska Native Persons, the risk is 3.4 times as high. The vaccine will only bring an end to the pandemic if every New Yorker, no matter who they are or where they live in the state, has access to the vaccine. Health equity has become a

cornerstone of our program from the very beginning. In December of last year, the Governor established the Vaccine Equity Task Force consisting of health and policy experts, community leaders to help guide our state's vaccine rollout, ensuring equitable vaccine distribution, addressing vaccine hesitancy and reducing barriers to access. And through the work of the task force, we work with partners like the Office of New Americans and other community surrogates and leaders to help disseminate credible multilingual information from immigrant communities incorporating limited English proficiency, cultural competence about the vaccine and its effectiveness. To date, New York State has established over 350 community based pop up vaccination sites, especially in communities with low vaccination rates. We've taken as a department many steps to be sure the vaccine is accessible to anyone; ensuring time off for employees to get vaccinated, paid sick leave for those who experience side effects, walk in appointments at all vaccine sites and various incentive programs. I think some even include beer, so I've heard, for communities with low vaccination rates and large uninsured populations, we are concentrating efforts to both provide them with the vaccine and enroll them in insurance, so they are protected from COVID-19 and simultaneously gain long term access to the health care that they need. As I mentioned, while the department has been fully engaged in our COVID response for the past 18 months, we've also continued the critically important work of responding to our many other public health threats. One such threat is the issue of gun violence, the number one cause of premature death in the United States. In 2019, nearly 40,000 Americans died due to a firearm injury as a result of interpersonal or gang related violence, active duty, law enforcement, self-harm and accidents. As with COVID, the burden of this loss of life is not distributed equally again and disproportionately impacted communities of color. 68.4 percent of gun violence victims in New York state are non-White. The toll of gun violence is not limited just to human loss. Gun violence cost an estimated 280 billion dollars in health care and societal cost every year. And recently, the Governor declared gun violence a statewide disaster emergency and announced the creation of the new Office for Gun Violence Prevention, overseen here within the Department of Health to provide assistance in protecting the public health, welfare and safety of New Yorkers. By creating this office and investing our resources into a broad range of evidence based community intervention strategies, we are treating gun violence as the public health crisis that it truly is. The Office for Gun Violence Prevention will pursue both short term solutions to manage the immediate crisis and reduce the shooting rate. As well as implement longer term solutions, focusing on community based interventions and data driven prevention strategies to break the cycle of violence. The office will also support and build upon a statewide network of violence interrupter programs, ensure that state agencies and other state and local programs are coordinated and unified in our prevention strategies. Use data to drive decision making and allocate resources, analyze and share data, and engage community partners as part of a comprehensive approach to preventing gun violence. And on the environmental health front, as New Yorkers spend the Summer outside in nature again, it's important that we protect ourselves against mosquito and tick borne illnesses. Anthropos borne diseases, which are transmitted by mosquitoes, ticks and other insects are in fact a growing threat. Over the last few years, we've seen an increase in the tick population throughout the state, due in part to increasing temperatures, milder Winters, as well as an expansion of the areas of the state where ticks are found. The department maintains 100 sampling sites across the state where ticks are collected and tested for pathogens, including the bacteria that causes Lyme disease, Babesiosis and ---, as well as the --- virus. We have seen more ticks this year than last year, and a higher percentage of ticks that are being sampled at labs across the state carry a disease carrying disease causing rather bacteria or virus. According to Upstate Medical University, in the first 5 months of 2020, 22.4 percent of ticks tested carried one of these pathogens. But now, a year later, this number has increased to 37 percent. We continue to engage in

educational activities, including media campaigns, as well as the development and distribution of educational materials on these diseases. Our most recently published research on the topic includes an analysis of human --- --- for HGA and --- -- cases in New York State in the Journal of Medical Entomology and a 9 year analysis on the epidemiology and special emergence of --- in New York State in the journal Emerging Infectious Diseases. Summer is also the time of year when we start to observe and report harmful algae blooms on New York's waterways. Local health departments have reported a total of 37 beach closures so far this year as a result of HAB's within the regulated swimming area. Regarding drinking water quality, New York took the leap and adopted maximum contaminant limits for MCL's, for PFOA, PFOS and 1, 4-dioxane in August 2020 and round one, a phased in testing programs for public water systems is nearly complete. All systems had to initiate testing by February 26 of this year, and test results from round one are still being received by the department. The first round of that data shows that 87 percent of the suppliers required to test water have reported approximately 130 MCL exceedances across the state. Public water systems with these exceedances are entering into treatment compliance timetables through local health departments to remove identified contaminants from their finished drinking water. While those are many of the COVID and non COVID related highlights, please keep in mind there are other important issues and activities the department continues to work on while managing the ongoing pandemic. But now it's time for you, the council, to continue your important work here today.

Ms. Pino So, with that, thank you again for the opportunity to visit with you and to get to meet to all of you face to face, which is wonderful. And I look forward to have just a few minutes to take a few questions.

Ms. Pino Thank you so much, Chair.

Jeffrey Kraut Thank you, Ms. Pino.

Jeffrey Kraut I do appreciate you coming down. And I know you have a commitment, but are there questions? Any questions from the council?

Jeffrey Kraut Mr. Robinson.

Mr. Robinson Thank you and welcome. Thank you for that great report. And clearly, we do appreciate all of the progress the department has made on these very, very important public health issues. At I believe the last meeting of the council, I asked the Commissioner about the strategy for the reporting of vaccines through the system and and back to individual patient records. One of the big gaps that has existed in the ability to sort of put a comprehensive health bracket together is the movement of vaccine data from it back to individual patient records. I believe the department and them are now working on that and have done that as part of the effort to address data that's very important to managing the current epidemic. But this seems to me a moment of opportunity for us to comprehensively and permanently for all vaccinations move that data from where it is reported back through the system so that it populates individual patient records and primary care providers and others can see a whole picture of the patient's health status. And I can't think of anything more important from a public health perspective than the vaccine status of the patient that you're taking care of. Just wondered whether or not that was still moving forward and whether we could get some kind of a status report on that, perhaps at the next council meeting to see what the department's plans and intentions are to implement that.

Ms. Pino Well, we'll definitely take that to report in more detail in the next council, but I'm not sure if any of my colleagues have anything else to address that question about the data and the platforms.

Jeffrey Kraut Well, why don't we kind of take that and maybe the next meeting come back and have a discussion?

Jeffrey Kraut Dr. Strange then, Mr. La Rue.

Jeffrey Kraut And who else?

Jeffrey Kraut Mr. Lawrence.

Dr. Strange Again, thank you for being here and thank you on behalf of the department for all the hard work that's been done in the last few months. As a primary care physician on Staten Island and in New York City area, working with promoting primary care, specifically looking at the vaccination programs and some of the other programs like the monoclonal antibody programs, which also need to be looked at on the other end, as people with developing disease. Access is an issue, for example, to monoclonal antibodies. I don't know if the state could have an impact on getting better access to that, both from an educational point of view and from getting it out into the community in a better way.

Ms. Pino Can you repeat the first part?

Dr. Strange The monoclonal antibody treatments for active disease. I think there's an issue with treating acute disease, even though we're looking at the prevention side of getting better access, both by education because patients are not aware of it. And so when they're going through their testing, for example, at these pop up sites around the city. We have a bunch of them on Staten Island. Somehow education, as they get their pulse up scimitars and they get all their other information, something about getting monoclonal antibodies. Since the data now is supporting the fact that there's some evidence that it may work and it may work in a very good way to prevent hospitalizations and decrease the infectivity of this disease and thereby maybe decrease the spread at some point. So, just to give you an example, on Staten Island, we only have two places to go to infuse monoclonal antibodies for all of Staten Island. One, that's just not good. And two, patients are not aware. That's my monoclonal antibody comment. In terms of the vaccines and getting primary docs more invested in this. And I take primaries as pediatricians, obstetricians and anybody else who as an MD license couple of key wording, believe it or not, a couple of words that make a difference by society. So, for example, some of the societies, like the obstetrical societies state in their literature that the vaccine is available to all of their patients. If you look at the American College of Physicians recommendations, it says the vaccine is recommended. That one word difference between available and recommended. And why is that? Well, some of it has to do with liability and the thought of liability. An obstetrician has liability from the day the baby's born till 19 years old. Pediatricians the same. Early on in this disease and pandemic, there was an immunity for physicians and providers from liability with malpractice as it related to COVID, and that was taken away. We need to relook at that. This disease changes every day. We are getting different messages every day from the federal government, from the state, from the city. And we physicians are taking on the brunt of that. We cannot have liability on our backs. I can't imagine, I can imagine, because I've heard it from my colleagues that they're not some of them willing to go all out and say, you should take this vaccine. They may say it's available. There's a very different wording to say one is available and when it's

recommended. I really believe that is a very, very important point that needs to be brought back to the Governor's office and the legislature, that there needs to be some malpractice liability immunity that's put back in place here to take that off of the heads of all of us who are practicing. My last comment about the vaccines in smaller offices and where this is an issue where we want to get it out, because every single day I get a patient that asks me, are you giving it out today? It's the bureaucracy around delivering the vaccine, because of reporting the CIR, which has to happen because of the somebody mentioned waste before in terms of opening up the vial, because of the temperature issues, which have become a less of an issue. We've gotten, you know, freezers in our offices and so on. But we need to get some of that bureaucracy looked at because to continue to take care of as a primary care doc, all of the non COVID things that we need to do because some of that fell off and still have to deliver vaccine, it almost cannot be done in parallel in small offices. It just doesn't work. Those are my comments. And I really, really push that liability immunity issue, because I think that is so important that you have to talk about.

Jeffrey Kraut Thank you, Tad.

Ms. Pino Thank you, Dr. Strange.

Jeffrey Kraut Mr. Lawrence, and then Mr. La Rue.

Mr. Lawrence Thank you for the report. It's really gratifying to hear that violence as a focus. This is a work that started with Dr. Boufford here on the committee of the council. I think almost a year ago, we were having these conversations around violence and the need to get engaged and with some mitigation. It's really gratifying. My comments or concerns are around COVID testing. I think the state was involved with a pretty large way with sort of comprehensive PCR testing across the state and with the end of the emergency, that it sort of pulled back from a lot of that testing. What I'm concerned about is that in some of these communities where there's very low vaccination rates, and we have low vaccination rates with the Delta variant that is very easily transmitted. And you put those two things together, it seems that at some point, if you cannot get out in front and understand early on that you have a problem, that you may have an incredibly large problem creep up on you. And then we're sort of back to the earlier points in the pandemic where we've had an exponential increase in infection, hospitalization and potentially mortality. What is the state's approach absence testing? Because early on with the pandemic, it was testing, testing and then tracing to mitigate. And I'm a little afraid that in these pockets where you have very low vaccination rates, that you'll end up with a nightmarish situation again, where you have all of a sudden, you know, positivity rates jump sky high, pretty much what we've seen in other parts of the country where there have been states with low vaccination rates.

Ms. Pino Yes. Thank you. You know, and we absolutely are continuing those mitigation efforts. I think that in light of increasing rates and the new CDC guidelines, we are evaluating and, you know, we're talking to international health experts, academic leaders to see how best to have that balance. But, you know, as shared, we have a very strong focus. And looking at the Governor's mentioned several times, the 117 zip codes where there's low vaccination rates and where the Deltas spread is most high. So, you know, as you all know, it's a continuing fluid dynamics situation. Every day we're reassessing and recalibrating. But thank you so much for highlighting that. We're going to adopt that is part of how we're going to best respond going forward.

Mr. Lawrence If I could just have a follow up.

Mr. Lawrence And again, I don't know how much testing is being done, but I guess I'm just concerned that at some point without some early indication that you can really become over, that communities could be overrun with infections. And oftentimes those communities are the ones that have been most vulnerable to the COVID virus.

Jeffrey Kraut Thank you.

Ms. Pino Thank you.

Jeffrey Kraut Mr. La Rue, I'm going to give you the last question. Ms. Pino has to get out of here by like 12:15 or so, so let's do our best.

Mr. La Rue Good morning.

Ms. Pino Good morning.

Mr. La Rue My question about vaccines, the current vaccination rate. You know, we spent a lot of time, a lot of effort on education inducements, financial inducements, you know, a lot of efforts. We're kind of hitting a brick wall in terms of that last percentage that we need to get vaccinated. And I was really pleased yesterday with what the Governor did in mandating the vaccines or the testing for state run facilities. Instead of fighting this employer by employer, is there consideration or are we moving in the direction of mandating vaccines for health care workers?

Ms. Pino Well, I mean---

Jeffrey Kraut Isn't the Governor kind of...go ahead.

Ms. Pino Well, I mean, he obviously has you know, we've taken a step with the announcement yesterday, but, you know how much further, that is yet to be considered. I think also what the federal, how the federal landscape responds to that will play a role. But at this time, it really is, you know, entity by entity. But I think, you know, we'll see if things change, but right now, we're evaluating a lot. And the Governor has to obviously make those decisions.

Jeffrey Kraut I think if you look at the papers, the groundswell is building towards that. I know the President is supposed to make an announcement and I know it's an active conversation.

Mr. La Rue We're probably facing the most significant staffing crisis in the state, at least in my career. And I think that's the biggest barrier for health care providers to take that final step of mandating the vaccine is you're going to have employees moving between employers based on who's forcing the vaccine and who isn't. It just gets a lot easier if we get to the point of mandating vaccines for health care workers.

Ms. Pino I mean, in the meanwhile, we continue to encourage, right? And help educate the importance and value. You know, for those 3 and a half million New Yorkers that are left, I think they're seeing that what the impacts are as you know, families and loved ones are being increasingly impacted.

Ms. Pino Thank you so much.

Jeffrey Kraut And Dr. Kalkut, I said that was the last word, but you better make this the last word, okay?

Dr. Kalkut I'll be quick.

Dr. Kalkut I agree about the question about mandates and the federal approval has a lot to do with that. The issue of monitoring, the challenge of monitoring, testing weekly in large systems I think is enormous and has to be considered in what we're going to do. It's easy to say it. It's very difficult to do.

Jeffrey Kraut Thank you so much for coming down. I appreciate you were able to show up today. And please thank the Commissioner as well and give him our best.

Jeffrey Kraut Thank you.

Ms. Pino I wanted to thank all of you for the important work that you're doing, for your time and your passion and commitment. It's great to see you. You're going to have a productive day for sure.

Jeffrey Kraut Thank you. Thank you.

Jeffrey Kraut I'm now going to turn it over to Dr. Becker to give the report on the activities of the Office of Primary Care and Health Systems Management.

Jeffrey Kraut Dr. Becker.

Dr. Becker Thank you, Mr. Chairman, and good afternoon and thank you for your time today.

Dr. Becker My name is Dr. Richard Becker, and I'm the Deputy Commissioner of the Office of Primary Care and Health Systems Management, or OPCHSM. While the work of OPCHSM, which covers many areas, I would like to comment on a few that will be of interest and are most relevant to this group. As a caveat, out of respect for time, my list of items is by no means exhaustive and is in no particular order. But first and foremost, I need to thank our entire Department of Health for its hard work. Dr. Zucker and the executive team for their leadership, and especially the leadership team and staff of OPCHSM today for their tireless, and I do mean tireless work through the entire pandemic. I would also be remiss if I did not acknowledge and thank the hard work of our vaccine teams and in particular our Hub Hospital leadership in partnership with many primary care and community providers that continues to help drive vaccine access to some of the communities that have unique challenges and needs. This work continues despite the formal end of the state of emergency as we carefully monitor Delta and other variables while preparing for a potential resurgence. We recognize this pandemic required a statewide public private partnership with a multidisciplinary approach to whole person care. We have learned much collectively throughout the pandemic and are incorporating that knowledge and experience into how we prepare for any near-term increase in COVID related illness, as well as how we remain prepared for any future threat. We're continuing our extensive work to strengthen and improve access to high quality health care for the most vulnerable residents of our state in high density urban areas, rural areas and even suburban areas that have their own sets of unique access challenges. Our approach recognizes that while hospitals continue to be a vital part of any health care delivery

system, the key to improving a community's health, especially for those patients living with chronic illness, is ensuring regular and continuous access to primary and specialty care, where significant gaps still exist. In many communities, health and safety net hospitals engage and integrate with their existing health care partners and new health care partners is essential to building and strengthening health care delivery networks that truly meet the needs, the unique needs of their community residents. While the financial health of our community hospitals is obviously important and something that must be achieved, the pathway to creating that health involves not only hospital, but health system transformation that must align with local and regional health care needs in a manner that focuses on all factors, including prevention and social determinants of health that impact on onset, management and outcome of any illness. We have a lot of work to do in these areas, but we are on the right pathway and appreciate the input and support of this committee towards those efforts. A more specific area of clinical focus for OPCHSM, as well as the DOH is maternal and neonatal health and outcomes, especially for participants, pregnant women who are at risk because of clinical or social circumstances or both. While much focus is placed on the event of labor and delivery, we are also looking more closely at prenatal and postpartum care, two periods where Mothers and babies are most vulnerable and where better access and when necessary intervention can make a real difference in achieving better outcomes. Redesigning reimbursement models to incentivize, support and align with these models of care is an essential part of this work. An area of health care that sadly requires our continued attention, especially during this pandemic time, is opioid use, where across the country, including New York State, deaths from this crisis continue to occur at far too high a rate. As part of the department's comprehensive approach to combating the opioid epidemic, OPCHSM has implemented multiple improvements to the prescription monitoring program, or PMP to better assist practitioners in deciding when controlled substances are the best options for their patients. We are also expanding efforts to integrate the PMP with electronic health records, improving our ability to share bi directional PMP data with other states, and develop a PMP dashboard that will display a summary of key indicators to alert practitioners to patient risk factors that further inform provider prescription decisions. These and other efforts underway will help to impact this crisis. One final area to touch on today is the CON and licensure process. We learned through the pandemic that we can be expeditious and flexible with the licensure process for surge purposes and maintain quality and patient safety. We want to continue that work. To that end, we are actively reviewing the current processes to understand how we may not only improve their efficiency and transparency, but also shift the emphasis from a transactional approach to one that more consistently aligns with and impacts policy surrounding health care delivery. We want to work with this committee more closely to focus upon large, impactful projects important to ensuring health care delivery as envisioned and needed, while allowing smaller and more routine projects to advance without rising to the same level of review. This will allow us to better utilize everyone's time and improve efficiency for all involved who are more effectively addressing the intersection of projects and policies. These are just a few of our focus areas, but hopefully provide you with a window into how we are addressing some of the more important issues. I'd like to thank the committee for its ongoing support and commitment and I'm happy to answer any questions as best I'm able.

Dr. Becker Thank you again.

Jeffrey Kraut Thank you very much, Dr. Becker.

Jeffrey Kraut Are there any questions for Dr. Becker?

Jeffrey Kraut Yes, Mr. La Rue.

Mr. La Rue Good morning. My question was on the enhanced map money. I thought the department did a really great job in putting that roadmap together in terms of how they were proposing that those funds were going to be used. Do you have a timeline or the next steps in terms of when we think those federal funds are going to be able to flow?

Dr. Becker I don't have that off the top of my head. I don't know if any of my colleagues can address that.

Jeffrey Kraut Any other questions?

Jeffrey Kraut Yes, Dr. Ortiz.

Dr. Ortiz Just a comment really for opioid use disorder. I practice in a opioid use disorder clinic. And I hope that your department and the state will further support the use of telehealth. We were able to expand from 29 counties, now serving 40 counties, and our outcomes have been really good.

Dr. Becker That's definitely a priority.

Dr. Becker Thank you.

Jeffrey Kraut Thanks, Dr. Ortiz.

Jeffrey Kraut Anyone else?

Jeffrey Kraut Dr. Becker, thank you very much for your report.

Jeffrey Kraut Before we return back to the agenda, I'm going to turn it over to Dr. Boufford a brief message about the public health. I doesn't have to be brief, but a message about the public health care.

Dr. Boufford I'll be brief.

Dr. Boufford I just wanted to advise council members that although the Public Health Committee has not been meeting or reporting recently, it's not for lack of good interaction and dialogue. And I think some of them are beginning to, they've all been needlessly, needless to say, completely time obsessed and attention obsessed appropriately with COVID, but we seem to be turning the corner a little bit. I've had conversations. We're hoping to be able to reconvene the Public Health Committee in September. We had had a meeting scheduled March 20th, 2020 to review the first year's reports on the prevention agenda, which local health departments are still moving ahead with. We're hoping to basically take that agenda and have it in September, where we'll hear the second year report, because the data is still coming in. And we'll also be revisiting, as was mentioned, the Public Health Committee had convened multiple times to explore the role of violence prevention, how we could impact violence prevention in the context of the prevention agenda. And we want to revitalized that discussion. That may be not immediate because, again, it's more demanding on staff. But the other issue is to get an update on maternal mortality, which the Public Health Committee has been tracking. We're still hoping to revitalize the committee. I appreciate the interest that you all have expressed in your comments.

Dr. Boufford Thank you.

Jeffrey Kraut Thank you, Dr. Boufford.

Jeffrey Kraut I'm now going to turn it over to Mr. Robinson to give us a report of the Establishment Project Review Committee.

Jeffrey Kraut Mr. Robinson.

Mr. Robinson Thank you.

Mr. Robinson As Mr. Kraut mentioned at the beginning, we batch applications in discussing them here with the full council. They are taken up individually at committee meetings. And if, however, if a member wishes to have a particular application discussed and acted on separately, please let me know.

Mr. Robinson However, as I look down the application, every one of these is going to be done individually, because I've got recusals or special items on each of them, but it's a shorter list than normal, so I'm sure we'll make this work.

Mr. Robinson I'll first bring up the application 2 1 1 2 3 4 C, Mount St. Mary's Hospital and Health Center in Niagara County. This is to construct a new 10 bed hospital division with shelf space that could accommodate an additional 10 beds located at 6001 Shimer Drive in Lockport to replace the current East Niagara Hospital. The department and the committee recommend approval with conditions and contingencies. And I so move.

Jeffrey Kraut I have a motion.

Jeffrey Kraut May I have a second?

Jeffrey Kraut Dr. Gutierrez.

Jeffrey Kraut Ms. Raleigh.

Ms. Raleigh Thank you.

Ms. Raleigh It's Tracy Raleigh from the department. I just wanted to point out that we did receive correspondence that was sent to you on this project from the New York Civil Liberties Union. We hope you had a chance to read that. We take important notice of any comments we receive. It was unfortunately not received during the time of the committee meeting when there could be, active discussion, but we also did receive and send to you all a response from Catholic Health Services CEO, Mark Sullivan. We hope you have had a chance to read both of those in consideration of this project. Just to remind members we had an active discussion and at the committee meeting and the department really is supporting this project to continue access to health care service in an integrated and sustainable way for Niagara County residents.

Jeffrey Kraut So, Ms. Raleigh, just to, so you feel the issues raised in the letter that we got were reasonably addressed. And it was actually we had a conversation, these same issues came up. I wish, as you said, they would have, its lawyers, they should have known the regulations and appeared before the committee. But nevertheless, they do raise

important issues. And the letter we received from Catholic Health, I think. I hope everybody had an opportunity to read this. I think they did address it. I just want to remind the council members periodically we have these issues to come up with faith based organizations and the concern about access to reproductive and other issues. And we've been able to kind of deal with these. I think the last major one was Kingston Benedictine. The same issues were raised. We made sure the department was monitoring. There were provisions made to ensure access. And that was done several years. I mean, it's almost 10 years ago now, maybe a little longer. We've not had issues arise. I pulled this out of the batch, specifically because of what was written and the response. I wanted to make sure everybody had a chance to comment on it or everything. If there are any other questions, I want to make sure everybody's comfortable, but the department is and the committee, I think, went through some of these same issues.

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Jeffrey Kraut Thank you.

Mr. Robinson Thank you.

Mr. Robinson 2 0 2 1 6 8 C, Lewis County General Hospital in Lewis County. This is to construct a 36,000 square foot, two story surgical pavilion on the existing campus and perform renovations to an existing 13,700 square feet in a medical surgical patient wing, adding one operating room and one procedure room to the two existing operating rooms. Here, the department recommends approval with conditions and contingencies, as did the committee. And I so move.

Dr. Gutierrez Second.

Jeffrey Kraut I have a second by Dr. Gutierrez.

Jeffrey Kraut Department.

Ms. Raleigh Just questions only.

Jeffrey Kraut Are there any questions on this matter?

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Mr. Robinson Thank you.

Mr. Robinson Application 2 1 1 0 0 8 C, Roswell Park Cancer Institute in Erie County certifying 24 new inpatient beds, which involve 22 additional metasearch beds and 2 additional ICU beds, and to perform the requisite construction. The department is recommending approval with conditions and contingencies, as does the committee. And I so move, noting, of course, that there is an interest declared by Dr Watkins who is going to be abstaining from the vote.

Dr. Gutierrez Second.

Jeffrey Kraut I have a second, Dr. Gutierrez.

Jeffrey Kraut Any comments from the department?

Ms. Raleigh Just questions only, please.

Jeffrey Kraut Questions.

Jeffrey Kraut Any questions from the council?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Mr. Robinson This next application involves a conflict and recusal by Mr. Kraut and Dr. Strange, who are leaving the room.

Mr. Robinson This is application 2 1 1 0 7 3 C, John T. Mather Memorial Hospital of Port Jefferson, New York, Inc in Suffolk County. This is to construct a new Emergency Department in an addition and use the old space for potential expansion of surgical services. The department recommends approval with conditions and contingencies, as did the committee. I so move.

Dr. Gutierrez Second.

Dr. Boufford I have a second. Dr. Gutierrez, was that you?

(Laughing)

Dr. Boufford Any comments from from staff?

Ms. Raleigh Just questions.

Ms. Raleigh Thank you.

Dr. Boufford Any comments or questions from members of the council?

Dr. Boufford Okay.

Dr. Boufford All in favor, please say aye.

All Aye.

Dr. Boufford Opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Motion passes.

Dr. Boufford Call our colleagues back in.

Mr. Robinson That'd be great.

Mr. Robinson And we'll just keep moving along.

Mr. Robinson Application 2 0 1 2 7 5 B, this is New York City Health and Hospitals Corporation, Gotham Health FQHC Inc doing business as Treatment, Community Health Center of Excellence in Bronx County.

Mr. Robinson And I'm going to continue on with the next two as part of a batch.

Mr. Robinson Application 2 0 2 0 0 4 B, New York City Health and Hospitals Corporation, Gotham Health FQHC Inc doing business as Broadway Community Health Center of Excellence in Kings County.

Mr. Robinson Application 2 0 2 0 0 5 B, New York City Health and Hospitals Corporation, Gotham Health FQHC Inc doing business as Roosevelt Community Health Center of Excellence in Queens County.

Mr. Robinson In all of these applications, Dr. Yang, who is not here, but nonetheless declared a conflict in a recusal. I just want to note that for the record.

Mr. Robinson The department in all three instances recommends approval with conditions and contingencies, as did the committee. And I so move.

Jeffrey Kraut I have a motion and I have a second by Dr. Gutierrez.

Jeffrey Kraut Any questions from the council?

Jeffrey Kraut Yes, Dr. Ortiz.

Dr. Ortiz It's really just a note. I don't want us to get lost and not forget that we want to address certain words and titles.

Jeffrey Kraut Yes, we did have that discussion at the committee, did we not?

Mr. Robinson We have them all the time.

Jeffrey Kraut I don't know how to, when the department accepts an application, you know, other than us saying that we have trouble with these superlatives that are very hard to define and may convey an inappropriate expectation on the public, or and certainly as far as health providers. I don't know. I'd ask the department to kind of think through the approval of names. I know you're not in the business of approving names. I believe that's under the Secretary of State. But when they are applied to health, we do have the ability to reject an application, I believe, on any other matter. And if we choose the thing, I think it would be a good thing that we have some policy so we don't do this on an ad hoc basis. The problem with words is these words are okay, and these are not bad, and then they'll create new words. It's hard to regulate, but I would ask the department to maybe give some guidance on how we might best do that. And other than telling the industry, don't come in here, because maybe the next one won't get through, but nevertheless, it is in front of us with that name.

Jeffrey Kraut Any other comment?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Mr. Robinson Thank you.

Mr. Robinson Application 2 1 1 0 5 4 B, Ainsworth Health LLC in Nassau County.

Mr. Robinson I'm noting an interest and an abstention by Dr. Lim.

Mr. Robinson This is to establish and construct a pain management single specialty freestanding ambulatory surgery center to be located at 1103 Stewart Avenue, 3rd floor in Garden City. The department and the committee recommend approval with conditions and contingencies and with an expiration of the operating certificate 5 days from the date of issuance. I make that motion.

Jeffrey Kraut I have a motion.

Jeffrey Kraut I have a second, Dr. Gutierrez.

Jeffrey Kraut Any questions from the council?

Ms. Ngwashi Just clarifying for the record. 5 years from, not 5 days.

Mr. Robinson I'm sorry, did I say 5?

Mr. Robinson I meant 5 years from the date of issuance.

Mr. Robinson Thank you.

Jeffrey Kraut Thank you for staying awake and noticing that.

Jeffrey Kraut Thank you.

Jeffrey Kraut Any other questions or points?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Mr. Robinson This is one of the briefest reports of the Establishment and Project Review Committee in my memory.

Mr. Robinson But with that, I turn it back to you, Mr. Kraut.

Jeffrey Kraut Thank you.

Jeffrey Kraut Just one or two other matters and don't get used to it. We've talked periodically about kind of having some strategic sessions and some topics. Given the fact the department, you know, people are coming back to work, and some of the issues that Dr. Becker spoke about is, you know, rethinking. There's kind of like four basic umbrella areas that I think we'll be focusing on. One is certainly the public health infrastructure and the prevention agenda and promoting health in all policies. That has been the purview of the Public Health Committee under Dr. Boufford. And we now have to also focus both in that committee and in Health Planning on promoting health equity and the elimination of health disparities, which is clearly a priority for the state, for the department. The Governor had announced it. We'll be seeing regulations that will be coming forward on the long term care industry. And I think as the long term care industry in general, in the I call the post acute care, as opposed to just low, you know, the support for aging, disabled individuals, those with complex chronic conditions and the different models of the care that are evolving. We should also have a kind of a focus on as well. And then the issue about the organization and structure of health care providers. We noted certainly during COVID, and repeatedly in the room when we've dealt with institutions merging, consolidating, there is really the evolution of health systems and multiservice arrangements both on the acute care and long term care side that we've confronted. We've had issues that we need to address and put behind us on dialysis ownership. The new types of provider models. We've approved freestanding emergency departments. They've now had several years of experience that we believe we should bring back into the room and understand. The development of DNT centers with 23 hour capability, moving more care outside the walls

of traditional acute care hospitals and then the development and acquisition of new technology, new means, you know, telemedicine. We just heard the importance that Dr. Ortiz spoke about. I think there's that kind of organizational structure and how those evolve maybe into the state's new Medicaid waiver as well, because there's a lot of, you know, how we deal with a safety net institution. There's a big, broad category there of organization and delivery and support for health care. And lastly, I'd pick up on the work that Dr. Becker spoke about, about the consent and licensure process. I think we need to take a very close look at our role and our processes and procedures to support the kind of regulatory modernization, so we spend more time and activities in a more robust way on the four other topics I just described. I think we'll come out with some sort of meeting and support schedule of that in the near future. But I think those are the general areas that we're kind of getting agreement in. I'll send out and draft a note to be exchanging with the department so we can kind of memorialize those decisions.

Jeffrey Kraut Before we adjourn, I just want to remind people the next meeting is September 23rd, is going to be held in New York City, that's Committee Day and October 7th.

Jeffrey Kraut I'd like to turn it over to Mr. Tracy Raleigh, who just has some closing comments, announcements.

Jeffrey Kraut Go ahead.

Ms. Raleigh Thanks. Thanks, Jeff, and thanks, everyone.

Ms. Raleigh And, you know, coming off that I wanted to let people know that I for personal reasons, I am leaving the department. It is a very difficult decision. And for me personally, I've had the pleasure and privilege of working under Dr. Zucker's leadership with Dr. Becker and the privilege and honor to work with this body. And that's been over the 6 years here, which to me feels like in DOH terms, more like 20 years, but it is all for the good. And I feel as though my time here I've, you know, accomplished several initiatives, but there's a lot more work, as Jeff laid out. And it wouldn't happen without the dedicated team that I have. Shelly Glock, who is my Deputy, is on vacation this week, but she, along with George Matko and others, will carry on the good work. And I hope to continue my work, which has been, you know, advocating for the streamlining and improvement of processes and transparencies in CON, as well as working with our safety net providers outside of the work of the council in my future endeavors. I'm not leaving health care. Hoping to continue that work. But thank you for the honor and privilege.

(Clapping)

Jeffrey Kraut And, Tracy, you know, on behalf of the council, the past years, 5 or more years that we've spent together, you've contributed so much to our work to health care. The work you did on the regulatory modernization project, the safety net transformation, capital funding to the safety net is essential. There's just so many things we are grateful for and I think New Yorkers and our industry should be grateful for. We're going to certainly miss you. We have a resolution of appreciation and, you know, without going and reading it, I just personally, all of us know the content of your character, the level of professionalism and thoughtfulness, the unflappability, the hard work, the good listener that you are just has an immense impact on moving so many things forward through what has really been a difficult year and a challenging regulatory environment. We are so grateful of all the work you've done. I know your colleagues hold you in the highest of

esteem. People who interact with you are just so pleased they get that opportunity, because you're a person that we all know that listens to a problem and figures out how to solve it. And you can't ask for a greater professional and you've done it with such grace and intelligence. And the content of your character is to be something to hold up as a standard for all professionals. And we thank you greatly. We do have a framed resolution that I will give to you, but we would ask, I'm going to adjourn the meeting. And when I would ask of all of us could gather around, we have a cake to congratulate. Like you didn't have enough food. You have a cake, too. We want to wish you well and ask you to say goodbye.

Jeffrey Kraut So again, Tracy, thank you so much.

(Clapping)

Ms. Raleigh Thank you, Jeff.

(Clapping).

Ms. Raleigh Thank you.

(Clapping)

Jeffrey Kraut We are adjourned.

(Laughing)

Jeffrey Kraut Thank you, everybody.

State of New York
Special Public Health and Health Planning Council

Minutes
August 26, 2021

The meeting of the Public Health and Health Planning Council was held on Thursday, August 26, 2021 at the New York State Department of Health Offices at 90 Church Street, 4th Floor, CR 4 A/B, NYC, New York State Department of Health Offices at 295 Main Street, 7th Floor Bears Conference Room, Buffalo, NY 14203, and the Empire State Plaza, Concourse Level, Meeting Room 6, Albany. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. John Bennett - Albany Dr. Howard Berliner – NYC Ms. Carver-Cheney – Albany Dr. Angel Gutiérrez – Buffalo Mr. Thomas Holt – Buffalo Dr. Gary Kalkut - NYC Mr. Jeffrey Kraut – NYC Mr. Scott LaRue – NYC Mr. Harvey Lawrence - NYC Dr. Sabina Lim – NYC	Ms. Ann Monroe – Buffalo Dr. Mario Ortiz – Albany Ms. Ellen Rautenberg – via phone\Mr. Ms. Nilda Soto - NYC Mr. Hugh Thomas – Buffalo Dr. Kevin Watkins – Buffalo Dr. Patsy Yang – NYC Commissioner Zucker – ex officio
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DEPARTMENT OF HEALTH STAFF PRESENT

Mr. Mark Furnish – Albany Ms. Shelly Glock – Albany Mr. Michael Heeran – Albany Dr Eugene Heslin – Albany Mr. Jason Riegert – Albany Ms. Colleen Leonard- NYC Ms. Emily Lutterloh – Albany Ms. Kathy Marks – Albany	Mr. Nicholas Mestoik - Albany Ms. Vanessa Murphy - Albany Ms. Marthe Ngwashi - Albany Ms. Lisa Thomson - NYC
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INTRODUCTION

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

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

21-14 Adding Section 2.61 Title 10 NYCRR
(Prevention of COVID-19 Transmission by Covered Entities)

Dr. Gutiérrez introduced for emergency adoption the proposed 21-14 Adding Section 2.61 Title 10 NYCRR (Prevention of COVID-19 Transmission by Covered Entities). Dr. Gutiérrez motioned for approval. Dr. Berliner seconded the motion. The motion for emergency adoption carried.

Please see pages 1 through 3 of the attached transcript to view the members questions and comments.

ADJOURNMENT:

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

**NEW YORK STATE DEPARTMENT OF HEALTH
SPECIAL PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
FULL COUNCIL MEETING TRANSCRIPT**

AUGUST 26, 2021

Jeffrey Kraut Now, going to call a Special Public Health and Health Council meeting of August 26th, 2021 to order. I'm Jeffrey Kraut, and I have the privilege to the order the meeting of the Special Public Health and Health Planning Council, and welcome the members and participants and observers today. I'm going to introduce Dr. Gutierrez to give a report on the Codes, Regulations and Legislation committee. I will make a brief comment and then I will call for a vote of the council.

Jeffrey Kraut Before I do that, for the record, I want to state that in New York City we have Dr. Kalkut, Mr. La Rue, Ms. Soto, Dr Lim, Mr. Lawrence, Dr Berliner, Dr. Yang and myself, Jeff Kraut. In Albany, we have Dr. Bennett, Ms. Carver-Cheney, Cheney, Dr. Ortiz. In Buffalo we have Ms. Monroe, Dr. Watkins, Dr. Gutierrez, Mr. Holt and Mr. Thomas. Have I left anybody out? And on the phone we have Mrs. Rautenger. I believe I have now accounted for all the council members in attendance. We meet the minimum requirements to act of 13 members.

Jeffrey Kraut I will turn it over to Dr. Gutierrez to provide a report of the Committee on Codes, Regulations and Legislation.

Dr. Gutierrez Thank you, Mr. Kraut.

Dr. Gutierrez I'm the Chair of the Codes, Regulation and Legislation committee. At today's meeting of the committee, we reviewed and voted to recommend adoption of the following emergency regulation proposal for approval before the full council. This regulation is for emergency adoption in its name, prevention of COVID-19 transmission by covered entity. Representatives are present to answer any questions from the members.

Dr. Gutierrez I move to accept this emergency regulation.

Jeffrey Kraut Thank you very much.

Jeffrey Kraut I have a motion.

Jeffrey Kraut May I have a second?

Jeffrey Kraut I have a second by Dr. Berliner.

Jeffrey Kraut Are there any comments from the committee?

Jeffrey Kraut Before we vote, I just want to thank everybody for assembling in these dog days of August to vote on this very special, important measure. For 113 years the Public Health and Health Planning Council and its predecessor committees have been called upon to act in times of crisis of New York State. This goes back to the Spanish flu epidemic, polio, measles, AIDS, TB, H1N1, Ebola and now COVID-19. We've been charged with protecting the water supply, the sanitary codes, the food distribution, camps and swimming and the health of New Yorkers. And this is yet another time that we're

called upon to act. I really appreciate it. To the Department of Health, we thank you for the efforts that you've made over these last two years, almost. How tirelessly you've worked to protect us and how proud we are to have come out of this, achieved some superior vaccination rates of around the country and mitigating the impacts of it on our society as much as we have suffered. We're hoping today that you listen to the comments I think are generally supportive of the regulation that's being proposed. As you heard our last public comment from Mr. Cardillo, there are probably unintended consequences that Dr. Bennett also spoke about. We're going to encourage you to come back if we adopt this to modify it, to improve it, to fix those that would even make the health of New Yorkers more secure. And we do appreciate the efforts. We will continue to partner with the department and the legislature and our new governor and Administration to just maximize the protection and advance the health of all New Yorkers. On behalf of the council, we thank you for that opportunity to do so and discharge our responsibilities.

Jeffrey Kraut With that, I have a motion.

Jeffrey Kraut I have a second.

Jeffrey Kraut Do we have any questions?

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor, aye.

All Aye.

Jeffrey Kraut We'll just do a roll call up in Albany.

Jeffrey Kraut I see Ms. Monroe, Dr. Watkins, Dr. Gutierrez, Mr. Holt, Mr. Thomas have all voted in the affirmative.

Jeffrey Kraut In New York, Dr. Kalkut, Mr. La Rue, Ms. Soto, Dr. Lim, Mr. Lawrence, Dr. Berliner, Dr. Yang have have all voted in the affirmative.

Jeffrey Kraut Could you just, Dr. Bennett, could you just give us the votes in Albany?

Dr. Bennett The votes in Albany are all affirmative, Dr. Ortiz and myself.

Jeffrey Kraut I'll include myself in that vote.

Jeffrey Kraut We have unanimous approval.

Jeffrey Kraut Are there any other matters that need to be brought before the council?

Jeffrey Kraut Hearing none, we'll adjourn.

Jeffrey Kraut I just want to let everybody know the full meeting of the Public Health and Health Planning Council will be on committee days on September 24th. We may be required to reconvene earlier than that date. We will notify you in the event of additional regulations may have to be approved. And we hope you continue to be as flexible as you have.

Jeffrey Kraut With that done, we will stand adjourned.

Jeffrey Kraut Thank you today, and thank everybody for participating.

State of New York
Special Public Health and Health Planning Council

Minutes
September 2, 2021

The meeting of the Public Health and Health Planning Council was held on Thursday, September 2, 2021 at the New York State Department of Health Offices at 90 Church Street, 4th Floor, CR 4 A/B, NYC, New York State Department of Health Offices at 295 Main Street, 7th Floor Bears Conference Room, Buffalo, NY 14203, and the Empire State Plaza, Concourse Level, Meeting Room 6, Albany. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. John Bennett – Albany	Ms. Ellen Rautenberg – via phone
Dr. Angel Gutiérrez – Buffalo	Mr. Peter Robinson – Albany
Mr. Thomas Holt – Albany	Ms. Nilda Soto - NYC
Mr. Jeffrey Kraut – NYC	Dr. Theodore Strange - NYC
Mr. Scott LaRue – NYC	Mr. Hugh Thomas – Buffalo
Mr. Harvey Lawrence - NYC	Dr. Anderson Torres - NYC
Dr. Roxanne Lewin – Albany	Dr. Kevin Watkins – Buffalo
Dr. Sabina Lim - NYC	Dr. Patsy Yang - NYC
Ms. Ann Monroe – Buffalo	

DEPARTMENT OF HEALTH STAFF PRESENT

Mr. Mark Furnish – Albany	Mr. Nicholas Mestoik - Albany
Ms. Shelly Glock – Albany	Ms. Vanessa Murphy - Albany
Mr. Michael Heeran - Albany	Ms. Marthe Ngwashi - Albany
Dr Eugene Heslin - Albany	Travis O'Donnell – Albany
Mr. Jason Riegert - Albany	Ms. Lisa Thomson – NYC
Ms. Colleen Leonard- NYC	
Ms. Kathy Marks - Albany	
Ms. Johanne Morne - Albany	

INTRODUCTION

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

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

21-15 Addition of Sections 2.9 and 2.62 to Title 10 NYCRR (COVID-19 Reporting and Testing)

Dr. Gutiérrez introduced for emergency adoption the proposed 21-15 Addition of Sections 2.9 and 2.62 to Title 10 NYCRR (COVID-19 Reporting and Testing). Dr. Gutiérrez motioned for emergency adoption. Dr. Torres seconded the motion. The motion for emergency adoption carried. Please see pages 1 through 6 of the attached transcript to view the members questions and comments.

ADJOURNMENT:

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

**NEW YORK STATE DEPARTMENT OF HEALTH
SPECIAL PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
FULL COUNCIL MEETING TRANSCRIPT**

SEPTEMBER 2, 2021

Jeff Kraut I am now going to call to order the September 2nd Special Public Health and Health Council meeting. Again, I'm Jeff Kraut. I'd like to welcome members, participants and observers. Today's meeting has one item on the agenda. Dr. Gutierrez will present a regulation for emergency adoption.

Jeff Kraut I just want to get a count here in New York. I have with me Mr. Lawrence, Dr. Lim, Dr. Strange, Ms. Soto, Dr. Torres, Dr. Yang, myself, Mr. La Rue is joining through a Zoom link. In Buffalo, we have Dr. Gutierrez, Ms. Monroe, Dr. Watkins. In Albany, we have Dr. Rugge, Mr. Robinson, Mr. Holt, Dr. Bennett. I have sufficient numbers for a quorum to conduct the business of the council.

Jeff Kraut Dr. Gutierrez, I ask you to present the start to the report of the Codes committee.

Jeff Kraut Oh, wait a minute.

Jeff Kraut Has joined us in Albany as well.

Dr. Gutierrez Whatever you said in the last 5 seconds, we couldn't hear.

Jeff Kraut Joined us in Albany.

Dr. Gutierrez Okay.

Dr. Gutierrez Good morning again. I am Angel Gutierrez, and I Chair the Committee on Codes, Regulation and Legislation. At this morning's meeting of the Committee on Codes, Regulation and Legislation, the committee reviewed and voted to recommend adoption of the following emergency regulation proposals for approval before the full council. For emergency adoption, only COVID-19 reporting on schools and COVID-19 testing requirements, Mr. Riegert and Travis O'Donnell from the Department are present, and could answer questions from the members.

Dr. Gutierrez And at this point, I move to accept this emergency regulation.

Dr. Gutierrez Back to you, Mr. Kraut.

Jeff Kraut Aye.

Jeff Kraut I have a motion.

Jeff Kraut May I have a second?

Jeff Kraut I have a second by Dr. Torres.

Jeff Kraut Go ahead.

Jeff Kraut I don't know if we need to have another presentation of it.

Jeff Kraut Does any of the council members have any additional comments they wish to make or clarifications they wish to request?

Jeff Kraut I don't hear any in New York. I don't see any in Albany, and I don't see anything in Buffalo. And I believe Mr. La Rue is also okay.

Jeff Kraut Therefore, I'll call for a vote. All those in favor, aye.

All Aye.

Jeff Kraut I have all affirmative in New York. I have all affirmative in Albany. correct race. In Buffalo, we have everybody in affirmative, please.

Dr. Gutierrez 3 affirmative in Buffalo.

Jeff Kraut Okay.

Jeff Kraut I have the unanimous consent.

Jeff Kraut Mr. La Rue, if you raise your hand if you're in agreement. Yes he does.

Jeff Kraut We have unanimous consent of the council.

Jeff Kraut The motion passed.

Jeff Kraut If you could close the mics in the other areas. I just want to thank everybody again for coming together for this emergency meeting. It's really important given what's happening and the desires of both the Governor and the Commissioner to protect the health.

Jeff Kraut I do want to bring up one issue. Previously, you know, the whole intent here is to achieve vaccination, and we want to incent and motivate it in a variety of different ways. We had discussed the concerns that came up about unintended consequences and the Commissioner's enforcement powers and discretion. I just want to acknowledge that we received prior to this meeting, we received letters from the New York State Association of Independent Schools from Leading Age on September 1st, and from a physician, David Bauman, all expressing concern about the regulation we passed both today and the regulations we passed in the previous week. And I think we had a discussion here about enforcement and powers at the discretion of the Commissioner. Based on some of the feedback we've been hearing, and I know the department will be collecting data on the impact of the regulations that we proposed. I would encourage the department and the Commissioner that once the data is received and you've had an opportunity to weigh the the the arguments and the information that's made, if there is need to modify the regulations we passed to provide regional or industry specific discretionary powers, we would encourage the department to return as soon as practicable to grant that discretion, because our objective is maintaining access to health care services and also to protect the safety of our patients and our workforce. We know there's a balance in how to do that. We have to make sure all of those objectives are met taking into account, and we express concerned about unintended consequences. Consistent with the Governor's statement to get the right data, review it and make modifications as necessary, we would just make a

statement from the department to the department. I'd ask other council members if they feel differently or the same to please, please perfect these regulations and bring them back to us. You've seen our willingness to meet at a moment's notice. I think that will continue to given the issues that are happening. But what we also know in this council and it's been a guide to us, is good data is foundational to good policy. And as we get that data and understand it, we need to modify that policy. We stand by what we voted, but we would encourage the department to feel if it's warranted, please return to us.

Jeff Kraut Dr. Yang wants to make a statement, and then I'll ask any others.

Patsy Yang Yes, thank you.

Patsy Yang Patsy Yang from the council.

Patsy Yang At the last meeting---

Jeff Kraut Just a little closer.

Patsy Yang Patsy Yang from the council.

Patsy Yang Thank you.

Patsy Yang At the last meeting, there are a number of questions and issues that were raised and discussed regarding implementation and interpretation. The department did indicate that a dear administrator letter would be forthcoming. I would just ask that that be forthcoming sooner than later. I think we all need to know how to go about things.

Patsy Yang Thanks.

Jeff Kraut Yeah, and I want to remind everybody, Dr. Gutierrez reminded me that this regulation will be returning to us in 90 days, because it's made on an emergency basis.

Jeff Kraut Ms. Soto.

Ms. Soto I'm in agreement with you in terms of getting us good data, which will help us in terms of making further decisions in the future in terms of good policy. You somewhat labeled this as unintended outcome.

Jeff Kraut Well, I don't know if there will.

Ms. Soto No, no. I want to add that also I'd be curious as to the intended outcome. They may be, as this falls out both the last two emergency decisions, will give us more information. And overall, as you stated, our purpose is to keep New York State healthy. And that if we are now aware of that, there are areas where there is children or people volunteering or working at health facilities may have an impact. I look forward to it and hopefully maybe we'll get it before they can collect the data before the 90 days are up, because do we need to do an extension? I'm in agreement.

Jeff Kraut Thank you.

Jeff Kraut Anybody in Albany?

Jeff Kraut Oh, Mr. Lawrence, and then I'll turn it to Albany.

Mr. Lawrence Yeah, I think there's a lot of apprehension about how this will be implemented, about enforcement, about the unintended consequences, and also about the outcomes. I think among some providers, there may be some fear that at some point near the I guess the next 15 days or 20 days, that they may be staring down a significant number of their employees standing on the sideline saying no. I would ask the department, should that happen, that they put in place some sort of a contingency plan that will support those institutions, support them in either staffing or whatever release or relief they may need from the typical reporting and other regulations that they would have to adhere to. I think it's really important that someone is monitoring the impact of this mandate. At some point when we get down to the 20 yard line at the red zone that we know exactly what's happening on the ground.

Jeff Kraut Thanks.

Jeff Kraut That's great.

Jeff Kraut Mr. Holt, I saw you wanted to speak.

Tom Holt Thanks.

Tom Holt Tom Holt, member of the council.

Tom Holt Jeff, I appreciate the comments and the comments of the other council members.

Tom Holt I can speak to the concerns that we have in my part of the state, Upstate New York, particularly Western New York, where we have in my county vaccination rate of just over 50 percent. I would remind folks that pre COVID, we had a staffing crisis in Upstate New York, and these last 18 months have clearly only exacerbated that situation. Long term care, so particularly skilled nursing facilities that have faced a lot of media attention, almost all of which has been negative, which has only made the staffing situation that we have that much more critical. And while we all remain completely committed and supportive of getting all of our staff vaccinated, there are realities that we're dealing with on the ground. We're beginning to get resignations coming in in anticipation of these next 20 some odd days before the mandate takes place. We already don't have enough staff in Upstate to make the situation work. I know that those are concerns that have been expressed by other members. I think any flexibility that can be extended to on the ground circumstances would be helpful. The department is collecting data now on staffing and facilities specific basis, so there should be an awareness as to where facilities are at. There was a recent survey that came out that indicated that of all the unvaccinated long term care staff, 50 percent have said that they simply won't get vaccinated. When you look at statewide vaccination rates of facilities that are in the low 50's to the high 90's, there's a pretty substantial risk of runoff from staff happening. We just ask the department to consider that as we move forward and we'd like to have some some level of flexibility extending based on the ground experiences.

Jeff Kraut Thank you, Mr. Holt.

Jeff Kraut Anyone else?

Jeff Kraut Anne, did you raise your hand, and then Mr. La Rue.

Jeff Kraut Go ahead.

Anne Monroe I echo what we've just heard. And one of my concerns, Jeff and I agree with you, that good policy is based on good data. But that sounds like an after the fact decision. My concern is that if you're going to lose staff because this goes into effect, you're going to lose them. And then even if the department after that says we can have some flexibility, you've already lost that staff and there's no other source for staff as Tom Holt said and others. I'm really asking for a sense of urgency on this question that may have to happen. Decision may have to be made without complete data or we will be facing a disaster that's happened in our facility.

Jeff Kraut Anne, I think that's a great point. The emergency regulation goes into effect of September 27th. We do have a few weeks if in fact, it's warranted. As you said, you're right. Particularly some of the health providers in border communities that neighboring states in Pennsylvania and in Vermont and Massachusetts and Connecticut, you know, it creates options, but I appreciate that. I think you're absolutely correct.

Jeff Kraut Mr. La Rue.

Scott La Rue Scott La Rue, member of the council. I would just also concur with what's been stated here. My concern is the home care and specifically the home health aide. Our organization has about 600 home health aides. We've been extraordinarily successful in other sectors of achieving over 85 percent vaccination rate, but with home health aide that has not been the case. I've got about 144 that have indicated that they are not going to get vaccinated, which means that there will be members of the Medicaid managed long term care plan, the pace plan, etc., and our home care that potentially we're not going to be able to cover cases due to the lack of home health aides.

Jeff Kraut Okay.

Jeff Kraut I just want to thank you, everybody.

Jeff Kraut Dr. Torres.

Dr. Torres Dr. Torres, member of the council. Scott, I echo your concerns as well. I also have a licensed home care agency. This is the reality of what you just mentioned in our setting and many others as well. We're very concerned about the impact of patients not being able to have the coverage or the family supports in the community as well. It's a domino effect, although we try and really uphold the vaccine concept and the safety and protection for all.

Jeff Kraut I just want to end by reaffirming something. We stand by what we did. We believe it is the right thing to do and it's the best thing to do, not only to protect our patients, but also to protect health care workers. I don't want anything we've just said to be misinterpreted. We are absolutely 100 percent supportive of the Governor's directive, as are we, of the Commissioner's intent. We want to be absolutely clear of it. We also want to just, I guess, leave the door open that if you need to modify it, we are prepared to meet on an emergency basis before the September 27th to do so if that's required.

Jeff Kraut With that, I'm going to adjourn the meeting. We stand adjourned.

Jeff Kraut May I have a motion?

Jeff Kraut I have a second.

Jeff Kraut Thank you very much for participating.

Jeff Kraut Thanks everybody.

Jeff Kraut Bob, are we off? I just want to say something.

Bob You're off.

SUMMARY OF EXPRESS TERMS

This regulation amends Title 10 NYCRR Sections 600.1 and 600.2.

Subdivision (d) is added to section 600.1 to articulate notice requirements for nursing home establishment applications, as required by new *Subdivision 2-b* of Article 2801-a of the Public Health Law. The State Long-Term Care Ombudsman and residents, staff, and other parties affiliated with an existing nursing home, will be notified once a nursing home establishment application has been acknowledged by the Department and also, when a nursing home establishment application is placed on the Establishment and Project Review Committee agenda of the Public Health and Health Planning Council, for consideration.

Paragraph (2) of subdivision (b) of section 600.2 is amended to make the “character, competence, and standing in the community” review standard comparable for all applicants; and to include a limited liability company as an acceptable legal entity applicant, whose members are subject to the “character, competence, and standing in the community” review.

Paragraph (4) of subdivision (b) of section 600.2 is amended to include additional titles of applicant individuals, it removes a reference to outdated reporting requirements that no longer appear in statute, it clarifies establishment application review criteria, and defines the terms ‘recurrent’ and ‘prompt correction’ related to violations at article 28 facilities.

Paragraph (5) is added to subdivision (b) of section 600.2 to incorporate additional information the Public Health and Health Planning Council is required to consider when making a determination about a “consistently high level of care” rendered at a nursing home. This required information is found in the new *Subdivision 3-b* of Article 2801-a of the Public Health Law. In addition, the proposed regulation clearly sets forth five (5) occurrences that automatically render a determination that a consistently high level of care is not found, including determining the percentage of nursing homes in an applicant individual’s portfolio with a CMS star rating of two stars or less. And finally, it also includes the amendments made to paragraph (4) of subdivision (b) of section 600.2, which applies to all article 28 facilities, generally.

Altogether, the proposed regulation in paragraph (5) of subdivision (b) of section 600.2 responds to legislative actions and recommendations and sets forth uniform, transparent, and outcome-based standards to determine when a “consistently high level of care” has been delivered by applicant operators in the nursing homes that they own or have owned over the last seven years.

Together the proposed regulations in Sections 600.1 and 600.2 of Title 10 NYCRR, strengthen the establishment application review process for all article 28 facilities, generally and nursing homes, specifically. They also provide the transparency and clarity necessary to determine when a nursing home establishment application (includes changes of ownership and transfers of ownership applications) will be considered by the Establishment and Project Review Committee of the Public Health and Health Planning Council.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2803 of the Public Health Law, Sections 600.1 and 600.2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective after publication of Notice of Adoption in the New York State Register, to read as follows:

New subdivision (d) is added to section 600.1 to read as follows:

(d) Notice about an application for establishment shall be administered in the following manner:

(1) Long-term care ombudsman (LTCO)

(i) Once an application for establishment of a nursing home has been acknowledged by the Department, the Department shall notify the office of the LTCO of such application for establishment, by regular mail or email, within thirty days of acknowledgement of an application for establishment.

(ii) Once an application for establishment of a nursing home has been scheduled for consideration by a committee designated by the public health and health planning council, the Department shall notify the office of the LTCO by regular mail or email.

(2) Residents, staff, and others

(i) Once an application for establishment of an existing nursing home has been acknowledged by the Department, the current operator of the facility and the applicant, shall notify the residents and their designated

representatives and the staff, including their union representatives, if applicable, of such application for establishment. Notification shall be completed by regular mail, email, or the delivery method designated by the resident, their designated representative, the staff, and union representatives, within thirty days of the Department's acknowledgement of an application for establishment.

(a) The notification shall include the pending change of ownership, as well as the legal entity and individual name(s) of the proposed buyer; the application number; instruction on how to submit comments about the application; and a link for the general public to view the application using the New York State Electronic Certificate-of-Need (NYSE-CON) system where applications are submitted.

(ii) Once an application for establishment of an existing nursing home has been scheduled for consideration by a committee designated by the public health and health planning council, within twenty-four (24) hours, the current operator of the facility and the applicant shall notify the residents and their designated representatives and the staff, including their union representatives, if applicable by regular mail, email, or the delivery method designated by the resident, their designated representative, the staff, and union representatives.

(a) The notification shall include the date, location(s), and time of the meeting of the committee designated by the public health and health planning council.

Paragraph (2) of subdivision (b) of section 600.2 is amended to read as follows:

(2) (i) If a nonprofit corporation, that the members of the board of directors and the officers of the corporation are of such character, experience, competence and standing as to give reasonable assurance of their ability to conduct the affairs of the corporation in its best interests and in the public interest and so as to provide proper care for the patients or residents to be served by the facility or the proposed facility;

(ii) if a proprietary business, that the owner, or all the partners, if a partnership, are persons of good moral character [who are competent] with the experience, competence and standing as to give reasonable assurance of their ability to operate the business so as to provide proper care for the patients or residents to be served by the facility or the proposed facility;

(iii) if a business corporation, that the members of the board of directors, the officers and the stockholders of the corporation are of such character, experience, competence and standing as to give reasonable assurance of their ability to conduct the affairs of the corporation so as to provide proper care for the patients or residents to be served by the facility or the proposed facility;

(iv) if a limited liability company, that the members, managers, and officers of the company, are of such character, experience, competence and standing as to give reasonable assurance of their ability to conduct the affairs of the company so as to provide proper care for the patients or residents to be served by the facility or the proposed facility;

Paragraph (4) of subdivision (b) of section 600.2 is amended to read as follows:

(4) that, with respect to an applicant who is already or within the past 10 years, [has] been an incorporator, director, sponsor, stockholder, member, controlling person, principal stockholder, principal member, or operator of any facility as specified in paragraph (b) of subdivision (3) of *section 2801-a of the Public Health Law*, a substantially consistent high level of care has been rendered in each such facility [with which] the applicant is or has been affiliated [during the past 10 years or during the period of affiliation, as appropriate]. [In reaching this determination, the Public Health Council shall consider findings of facility inspections, including but not limited to the title XVIII and XIX (of the Social Security Act) and article 28 survey findings, as such pertain to violations of this Chapter, periodic medical review/independent professional review (PMR/IPR) findings, routine and patient abuse complaint investigation results, and other available information. The Public Health Council's determination that a substantially consistent high level of care has been rendered shall be made after reviewing the following criteria: the gravity of any violation, the manner in which the applicant/operator exercised supervisory responsibility over the facility

operation, and the remedial action, if any, taken after the violation was discovered.]

(i) In reaching this determination, the Public Health and Health Planning Council shall consider findings of facility inspections, including but not limited to the title XVIII and XIX (of the Social Security Act) and article 28 survey findings, as such pertain to violations of this Chapter and routine and patient abuse complaint investigation results; and other available information.

(ii) The Public Health and Health Planning Council's determination that a substantially consistent high level of care has been rendered shall be made after evaluating the aforementioned information, with the following criteria: the gravity of any violation, the manner in which the applicant/operator exercised supervisory responsibility over the facility operation, and the remedial action, if any, taken after the violation was discovered.

(a) In [reviewing] evaluating the gravity of the violation, the Public Health and Health Planning Council shall consider whether the violation threatened, or resulted in direct, significant harm to the health, safety or welfare of patients/residents.

(b) In [reviewing] evaluating the manner in which the applicant/operator exercised supervisory responsibility over the facility operation, the Public Health and Health Planning Council shall consider whether a reasonably prudent individual of the

applicant/operator should have been aware of the conditions which resulted in the violation and was notified about the conditions which resulted in the violation and whether the individual of the applicant/operator was notified about the condition(s) which resulted in the violation.

(c) In [reviewing] evaluating any remedial action taken, the Public Health and Health Planning Council shall consider whether the applicant/operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent applicant/operator would take to prevent the reoccurrence of the violation.

(iii) When violations were found which either threatened to directly affect patient/resident health, safety or welfare, or resulted in direct, significant harm to the health, safety or welfare of patients/residents, there shall not be a determination of a substantially consistent high level of care if the violations [reoccurred] were recurrent or were not promptly corrected.

(a) A violation is recurrent if it has the same root cause as a violation previously cited within the last ten (10) years.

(b) A violation is not promptly corrected if a plan of correction has not been to submitted to the Department within ten (10) calendar days of the issuance of the statement of deficiencies, Form CMS-2567 and the facility has failed to provide an acceptable date of compliance based on the violation(s) requiring correction.

New Paragraph (5) of subdivision (b) of section 600.2 is added to read as follows:

(5) that, with respect to an application to incorporate or establish a nursing home, an applicant who is already or within the past 7 years, been an incorporator, director, sponsor, stockholder, or member, has held a controlling interest or has been a controlling person, principal stockholder or principal member, or operator of a nursing home as specified in paragraph (b) of subdivision (3-b) of *section 2801-a of the Public Health Law*, has demonstrated satisfactory character, competence and standing in the community and a consistently high level of care has been rendered in each such nursing home that the applicant is or has been affiliated.

(i) In reaching this determination, the Public Health and Health Planning Council shall consider, at a minimum, the following:

(a) findings of facility inspections, including but not limited to the title XVIII and XIX (of the Social Security Act) and article 28 survey findings, as such pertain to violations of this Chapter and routine and patient abuse complaint investigation results;

(b) any instance of a facility affiliated with the applicant/operator earning a two-star rating or less by the federal centers for Medicare and Medicaid Services (CMS) (or a comparable rating under a successor CMS rating system); provided that a further consideration and mitigating factor in determining whether such star rating reflects a consistently high level of care is where an

applicant's ownership interest in the star rated facility commenced within the prior five years;

(c) any instance where there have been violations of the state or federal nursing home code, or other applicable rules and regulations, that threatened to directly affect the health, safety or welfare of any patient or resident, including but not limited to a finding of immediate jeopardy, or actual harm, and were recurrent or were not promptly corrected, including but not limited to repeat deficiencies for the same or similar violations over a three year period or during the entire duration of ownership if less than three years, or any facility which has been in receivership;

(d) any instance where a facility has closed or has closed as a result of a settlement agreement from a decertification action or licensure revocation.

(e) any instance where a health care related facility, agency, or program was the subject of a decertification action or licensure revocation;

(f) any involuntary termination from the Medicare or Medicaid program; and

(g) any instance of a nursing home being designated a Special Focus Facility or Special Focus Facility Candidate.

The applicant shall be provided with the opportunity to submit an explanation and other supporting documentation regarding any of the

aforementioned occurrences which shall be considered by the Public Health and Health Planning Council prior to reaching a determination.

(ii) The Public Health and Health Planning Council's determination that a consistently high level of care has been rendered shall be made after evaluating the aforementioned information, with the following criteria: (i) the gravity of any violation, the manner in which the applicant/operator exercised supervisory responsibility over the facility operation, and the remedial action, if any, taken after the violation was discovered and (ii) the percentage of nursing homes in a portfolio with a two-star or less rating.

(a) In evaluating the gravity of the violation, the Public Health and Health Planning Council shall consider whether the violation threatened, or resulted in direct, significant harm to the health, safety or welfare of patients/residents.

(b) In evaluating the manner in which the applicant/operator exercised supervisory responsibility over the facility operation, the Public Health and Health Planning Council shall consider whether a reasonably prudent individual of the applicant/operator should have been aware of the conditions which resulted in the violation and whether the individual of the applicant/operator was notified about the condition(s) which resulted in the violation.

(c) In evaluating any remedial action taken, the Public Health and Health Planning Council shall consider whether the

applicant/operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent applicant/operator would take to prevent the reoccurrence of the violation.

(d) In evaluating instances of a facility affiliated with the applicant/operator earning a two-star or less rating, the Public Health and Health Planning Council shall determine the percentage of nursing homes in the portfolio, that each individual of the applicant/operator has held an ownership interest for forty-eight (48) months or more and has earned a CMS star rating of two-stars or less.

(iii) When any of the following has occurred in the prior five years, there shall not be a determination of a consistently high level of care:

(a) Closure of a facility or a facility has closed as a result of a settlement agreement from a decertification action or licensure revocation.

(b) A health care related facility, agency, or program was the subject of a decertification action or licensure revocation.

(c) Involuntary termination from the Medicare or Medicaid program.

(d) Violations found, which either threatened to directly affect patient/resident health, safety or welfare, or resulted in direct, significant harm to the health, safety or welfare of

patients/residents, and were recurrent or were not promptly corrected.

(1) A violation is recurrent if it has the same root cause as a violation previously cited within the last seven (7) years.

(2) A violation is not promptly corrected if a plan of correction has not been submitted to the Department within ten (10) calendar days of the issuance of the statement of deficiencies, Form CMS-2567 and the facility has failed to provide an acceptable date of compliance based on the violation(s) requiring correction.

(iv) When any individual of the applicant/operator has greater than 40% of the nursing homes in their portfolio with a CMS star rating of two stars or less and has held an ownership interest in such nursing home for forty-eight (48) months or more, there shall not be a determination of a consistently high level of care; unless the portfolio contains fewer than five (5) facilities, then the Public Health and Health Planning Council shall make a determination on a case-by-case basis, using the criteria set forth in subparagraph (ii) of this paragraph.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 2803(2) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, including the establishment or incorporation of health care facilities.

Legislative Objectives:

The legislative objective of PHL Article 2801-a is to provide a deliberate and reasonable application process for the establishment or incorporation of health care facilities in New York. The purpose of the establishment application process is to codify an application review process that includes an assessment of character and competence, quality of care metrics, financial feasibility, and other relevant factors, for the benefit of those who seek health care services at State-regulated facilities.

Needs and Benefits:

Rulemaking was necessitated by revisions to Public Health Law section 2801-a via Chapter 102 and 141 of the Laws of 2021. Regulations are being amended to codify the procedure for the notification to the Long-term care ombudsman (LTCO), Residents, staff, and others of an application for the establishment of a nursing home operator. Notification will occur when an application has been received and acknowledged by the State Department of Health (Department) and again when the application has been

scheduled for consideration by a committee designated by the Public Health and Health Planning Council. Notification to those who may be impacted by a nursing home establishment application will allow a chance for public comment to be submitted for consideration by the Public Health and Health Planning Council (PHHPC) before PHHPC acts upon the application. Regulations are being amended to add language for limited liability corporations for character and competence, consistent with other business types. Regulations are being amended for character and competence to require PHHPC to consider, in some cases, specified information and evaluate the gravity of any violation, the manner in which the applicant/operator exercised supervisory responsibility over the facility operation, and the remedial action, if any, taken after the violation was discovered before determining that a substantially consistent or a consistently high level of care has been rendered. New language has been added to codify standards of review for nursing home character and competence, using certain quality of care metrics when evaluating and making a determination that a consistently high level of care has or has not been rendered. The changes reflect the intent of the law to provide increased transparency to those with an interest in the establishment of a nursing home operator and to codify the metrics used for evaluating character and competency of proposed operators.

Costs:

Costs to Regulated Parties:

Nominal costs may be incurred by nursing home providers to adhere to the notification requirements when the establishment of a new operator is proposed. This

cost will be incurred by the current operator of the facility and the applicant for establishment. The nominal costs will be related to postage, supplies, and staff time to prepare the notice and establish distribution lists for those to be notified. Labor, legal and consulting costs may be incurred by applicants who have previously filed an establishment application which is pending PHHPC consideration, should they feel the need to revise their application based on the rule changes.

Costs to State Government and the Department of Health:

The Office of the State Long-Term Care Ombudsman will incur costs related to the labor involved in reviewing notices filed on nursing home establishment applications and, thereafter, submitting a recommendation about the application to the Department. The Department will incur additional staff time required to re-review pending establishment applications and revise materials previously prepared during the review of such applications. Costs to the Department for notification requirements will be absorbed into current costs.

Costs to Local Governments:

There should be no local government costs unless a County operated facility is the subject of a new operator nursing home establishment application. Should this occur the County would incur the costs associated with the current operator outlined in the Cost to the Regulated Parties Section.

Local Government Mandates:

There are no local mandates in the amended regulations. However, County operated nursing homes will be required to meet the notification requirements under the amended regulations.

Paperwork:

Under the amended regulations, the current facility and the applicant for establishment will be required to prepare written notification to residents, staff and other impacted parties after a nursing home establishment application has been acknowledged by the Department. Distribution lists for notifications will be required. All other requirements are consistent with the paperwork currently required during the establishment application process.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The Department considered current standards used in character and competence review and alternative metrics, ratings, and data available. The Department also considered the impact of the use of absolute thresholds to be achieved for determining that a consistently high level of care has been rendered. The Department found that currently published ratings, such as the CMS Star rating system, take into account many of the alternative factors and data being considered. To avoid duplication and promote

transparency, the Department incorporated the CMS Star Ratings, surveillance findings and enforcements that are available to the public via the NYS Nursing Home Page of the Department's website, and CMS special focus facility designations available to the public – all information and data familiar to the health care industry, in general, and the nursing home industry, specifically, to make a determination about a consistently high level of care at facilities. This combination of information incorporates a cross section of factors relevant to assessing quality of care at nursing homes. The Department also included additional factors to supplement information that may not be apparent in the main evaluation criteria such as length of time a facility was owned, the overall number of facilities owned, revocation of a license, involuntary closure of a facility, and if severe deficiencies were recurrent or were not promptly corrected.

The amended regulations reflect a regulatory framework to evaluate the general quality of care rendered by a proposed operator historically and incentivizes improvement in quality as a condition to acquiring additional facilities in New York State.

Federal Standards:

The amended regulations do not exceed any minimum standards of the federal government.

Compliance Schedule:

The amended regulations will take effect upon a Notice of Adoption in the New York State Register.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

Local governments and small businesses will not be affected by this rule, unless they operate a nursing home and, in such cases, will be impacted by the new, statutory notification requirements defined in Section 600.1. The current number of local governments and identified-small businesses (employ less than 100 staff) that operate a nursing home are seventy-nine (79). The Department does not anticipate an increase in nursing home establishment applications by such applicants as a result of the proposed regulations.

Compliance Requirements:

Regulated parties are expected to be in compliance with the amended regulations upon adoption. The amended regulations will define new, statutory notice requirements when an application for the establishment of a nursing home has been acknowledged by the Department and when the application has been scheduled for consideration by a committee designated by the Public Health and Health Planning Council.

Professional Services:

These regulations are not expected to require any additional use of professional services.

Compliance Costs:

Nominal costs may be incurred by a nursing home operator and applicant to adhere to the notification requirements after a nursing home establishment application has been acknowledged by the Department. This cost will be incurred by the current operator of the facility and the applicant for establishment. The nominal costs will be related to postage, supplies, and staff time to prepare the notice and establish distribution lists for individuals to be notified.

Economic and Technological Feasibility:

The Department has considered feasibility and the amended regulations are economically and technically feasible.

Minimizing Adverse Impact:

Minimal flexibility exists to minimize impact since the new requirements are statutory and apply to all nursing home establishment applicants, however, an effort was made to broaden the method used for notice distribution.

Small Business and Local Government Participations:

Organizations who represent the affected parties will have several opportunities for participation. There are two opportunities to provide public comment, both written and orally, at the Public Health and Health Planning Council (PHHPC). Initially, the regulations will be presented twice in a public PHHPC meeting; first, for discussion and second, for final adoption. In both instances, the public, including any affected party, is

invited to provide comments during the PHHPC Committee on Codes, Regulations and Legislation meeting.

Second, the affected parties have the opportunity via the 60-day State Register process to provide comments and suggestions to the regulation. If substantial and material changes are made as a result of the public comments, the amended regulation will be subject to an additional 45-day comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

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

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

The following eleven counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Monroe	Orange
Broome	Niagara	Saratoga
Dutchess	Oneida	Suffolk
Erie	Onondaga	

Reporting, Record Keeping and Other Compliance Requirements and Professional Services:

Nursing home operators and applicants for establishment of new operators are expected to be in compliance with the amended regulations upon adoption. There are several licensed nursing homes in rural areas. The amended regulations will define new, statutory notice requirements when an application for the establishment of a nursing home has been acknowledged by the Department and when the application has been scheduled for consideration by a committee designated by the Public Health and Health Planning Council. There are no new reporting requirements, but record keeping will be required by nursing home operators and applicants for establishment of a new operator to ensure notification to required parties. No additional professional staff are expected to be needed as a result of the amended regulations.

Costs:

Nominal costs may be incurred by a nursing home operator and applicant to adhere to the notification requirements after a nursing home establishment application has been acknowledged by the Department. This cost will be incurred by the current operator of the facility and the applicant for establishment.

Minimizing Adverse Impact:

The amended regulations do not create any adverse effect on regulated parties.

Rural Area Impact:

Organizations who represent the affected parties and the public can obtain the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council and a copy of the proposed regulation on the Department's website. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

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

Further, the new notification requirements in Section 600.1 will only impact an employer over a limited period and can be performed by existing staff resources. The amended regulations for Section 600.2 should not cause a change to the workload of applicants for establishment of new nursing home operators and will not increase nor decrease jobs and employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and subject to the approval of the Commissioner of Health by Section 2803 of the Public Health Law, Section 405.34 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Subdivision (g) of section 405.34 is amended to read as follows:

(g) Transition Period.

- (1) Hospitals designated as stroke centers by the Department prior to the effective date of this section shall have two years from the effective date of this section to initiate the stroke center certification process with a certifying organization approved by the Department. The process is initiated when a hospital enters into a contractual agreement with a certifying organization. Once the hospital has entered into a contractual agreement with a certifying organization, the hospital shall have one year to complete the certification process.
- (2) Any hospital that does not initiate the stroke center certification process with a certifying organization within two years of the effective date of this section shall no longer maintain a stroke center designation and may no longer hold themselves out as a designated stroke center.
- (3) The Department may extend the transition period specified in paragraphs (1) and (2) of this subdivision as deemed necessary. The Department will notify all impacted hospitals of any decision to extend the transition period.

REGULATORY IMPACT STATEMENT

Statutory Authority:

PHL Section 2803 authorizes the Public Health and Health Planning Council (“PHHPC”) to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

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

Needs and Benefits:

Stroke, also known as brain attack, is a medical emergency. It occurs when a vessel in the brain is either ruptured (hemorrhagic stroke) or blocked by a clot (ischemic stroke), arresting the blood supply to the brain. Stroke is a deadly condition, and it is the fifth leading cause of death and a major cause of disability in the United States. Each year, about 795,000 people in the United States develop a stroke, producing an enormous economic and healthcare burden. It is estimated that there are almost three million survivors of stroke living with a long-term disability in the United States, with a societal cost of approximately \$34 billion.

Since stroke treatment is complex and time sensitive, advanced, expedited hospital care is critical. Evidence has shown that a standardized approach to hospital care for patients with acute stroke improves outcomes by increasing survival and decreasing disability.

The stroke regulation in 10 NYCRR section 405.34 requires hospitals that received designation as a stroke center prior to the enactment of the regulation to enter into a contractual

agreement with a certifying organization recognized by the Commissioner of Health within two years of the effective date of the regulation. Within a year after the hospital enters into a contractual agreement with the certifying organization, they must complete their certification as a stroke center and request designation as a stroke center from the Department. Thus, any hospital that does not complete the certification and designation process by March 19, 2022 would relinquish their designation as a stroke center.

Due to the COVID-19 pandemic all regular surveys and reviews scheduled by certifying organizations were temporarily suspended. Approximately 100 hospitals still need to comply with the regulation. It has become clear that the length of time the certification process can take from the time a contract between a certifying organization and a hospital is initiated to the time a hospital is surveyed and designated could force many hospitals to relinquish their stroke designations as a result of backlogs caused by the COVID-19 pandemic. This amendment will give the Department the ability to extend the transition timeline to allow hospitals to complete the stroke designation process outlined by this regulation while they maintain their stroke designation status and continue to be a destination for patients in their communities that need access to stroke services.

COSTS:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Costs to the regulated entities related to this amendment are none. There is no impact on consumers or providers.

Costs to Local and State Government:

There is no anticipated fiscal impact to State or local government as a result of this amendment.

Costs to the Department of Health:

There will be no additional costs to the Department of Health associated with this amendment.

Local Government Mandates:

Hospitals operated by State or local government will be affected and be subject to the same requirements as any other hospital licensed under PHL Article 28.

Paperwork:

There is no additional paperwork associated with this change in wording.

Duplication:

These regulations do not duplicate any State or Federal rules.

Alternative Approaches:

There are no viable alternatives. Stakeholders requested that this change be made to assure adequate time for hospitals to comply with the regulation timeline.

Federal Requirements:

Currently there are no federal requirements.

Compliance Schedule:

These regulations will take effect upon publication of a Notice of Adoption in the New York *State Register*.

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**STATEMENT IN LIEU OF
REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS**

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

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

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

JOB IMPACT STATEMENT

Pursuant to the State Administrative Procedure Act (SAPA) section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.



Project # 211079-C

Garnet Health Medical Center

Program: Hospital
Purpose: Construction

County: Orange
Acknowledged: March 15, 2021

Executive Summary

Description

Garnet Health Medical Center (GHMC or Garnet), a 383-bed, voluntary not-for-profit, Article 28 acute care hospital located at 707 East Main Street, Middletown (Orange County), requests approval to develop an adult cardiac surgery program with requisite renovations. Planning for a cardiac surgery program was included in the design and construction of the new Garnet Health Medical Center when it opened in 2011. The cardiac surgery project goals include improving patient access, providing greater patient choice, and improving the quality of care in the region. Project construction consists of renovating 2,955 square feet on the first floor of the hospital including the construction of one cardiac surgery OR and one Hybrid OR, which are currently shelled in the OR suite, and associated support spaces.

Garnet Health Medical Center proposes to develop the cardiac surgery program in affiliation with Columbia Heart Source and New York Presbyterian Hospital/Columbia University Medical Center (Columbia/NYP). Surgical leadership will be provided by the Chief of Adult Cardiac Surgery at New York Presbyterian Hospital (NYP) and operated in collaboration with Columbia/NYP. Columbia/NYP will employ the cardiac surgeons and provide quality oversight, perfusion, and data management services.

Garnet Health Medical Center defines its regional service area as 87 zip codes in Orange, Sullivan, and southwestern Ulster County. In 2019, the service area generated 504 non-TAVR cases which were performed in facilities outside of the service area. Of those cases, 146 from

the Garnet service area were performed by Columbia/NYP surgeons. It is Garnet's expectation that most of the clinically appropriate area cases will be done locally at Garnet Health Medical Center, reducing patients' need to travel. The applicant projects 356 non-TAVR cases by year five of operation.

The applicant, Garnet Health Medical Center (formerly Orange Regional Medical Center), is a member of Garnet Health (formerly Greater Hudson Valley Health System). Garnet Health also consists of Garnet Health Medical Center-Catskills (GHMC-C) (formerly Catskill Regional Medical Center), a 218-bed hospital located in Harris, NY. GHMC-C is designated as a sole community provider in Sullivan County and operates Garnet Health Medical Center - Catskills - G. Hermann Site, a 15-bed Critical Access Hospital in Callicoon, New York. Other members of Garnet Health include Garnet Health Doctors, Garnet Health Urgent Care, Garnet Health Foundation, and Garnet Health-Catskills Foundation. BFA Attachment C presents an organization chart.

OPCHSM Recommendation

Contingent Approval

Need Summary

This application is in keeping with the September 30, 2020 amendment to 10 NYCRR 709.14, which sought to promote regional access to cardiac surgery through deemphasis of volume thresholds and encouragement of collaboration through health systems and clinical affiliations. The addition of Cardiac Services at GHMC will provide patients within its service

area a local cardiac surgery option affiliated with an established program that already currently treats a significant number of patients that service area.

Program Summary

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

Financial Summary

Total project costs of \$16,837,492 will be funded with equity from the Garnet Health Medical Center. The first and third year submitted budgets for GHMC inclusive of the proposed cardiac surgery program project an operating gain of approximately \$13M and \$25M, respectively.

<u>Budget</u>	<u>First Year</u>	<u>Third Year</u>
Revenues	\$680,630,245	\$700,738,528
Expenses	<u>\$667,549,266</u>	<u>\$676,248,777</u>
Gain/(Loss))	\$13,080,979	\$24,489,751

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a written agreement that, until the applicant has reached a level of productivity consistent with the annual 300-case volume set forth in 10 NYCRR 709.14, high risk cases such as high risk angioplasty and high risk coronary artery bypass graft surgeries will be transferred to the affiliate program or another full service program experienced in handling such cases. [HSP]
3. Submission of an agreement to develop and implement a plan which provides for accurate and timely reporting of Cardiac Surgery and Percutaneous Coronary Intervention Reporting System (CSRS and PCIRS) data to the Department. The plan must ensure that relevant medical and administrative staff are trained in the use of these systems and are familiar with the specific definitions involved. In addition, the plan must provide for designated CSRS and PCIRS data managers, with clinical expertise, who are trained in specific clinical criteria used in these systems and are authorized to ensure accurate and timely reporting of data. [HSP]
4. Submission of assurances that the facility will continue to implement a hospital heart disease prevention program consistent with the recommendation of the Cardiac Advisory Committee and the Department as set forth in 10 NYCRR 709.14. A schedule of recent and planned activities should be included with the assurances. [HSP]
5. Submission of documentation that affiliation agreements are in place for hospitals within the facility's service area to ensure access for all segments of the region's population, reach patients not currently served within the planning area, ensure continuity of care for patients transferred between facilities, and ensure that cardiac surgery volumes are sufficient to support a high quality program of the applicant facility. [HSP]
6. Submission of a Quality Assurance Plan acceptable to the Department. [HSP]
7. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **May 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **March 1, 2022**, and construction must be completed by **February 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 7, 2021

Need Analysis

Project Description

Garnet Health Medical Center (GHMC), an acute care hospital certified to operate 383 beds, PCI, cardiac catheterization and EP services in Middletown, New York, is seeking approval to develop an adult cardiac surgery program and perform requisite renovations. GHMC is a member of Garnet Health (formerly Greater Hudson Valley Health System) which also consists of Garnet Health Medical Center-Catskills (GHMC-C) (formerly Catskill Regional Medical Center), a 218-bed hospital located in Harris, New York. GHMC-C is designated as a sole community provider in Sullivan County and operates Grover M. Hermann Hospital, a 15-bed Critical Access Hospital in Callicoon, New York.

Profile

Garnet Health Medical Center is authorized to operate three area hospital extension clinics. These provide outpatient care including primary medical care, ambulatory surgery, radiology, imaging, CT scanning, and linear accelerator services.

Garnet Health Medical has the following New York State designations:

- Level 2 Perinatal Center
- Stroke Center
- Level 2 Adult Trauma Center

Garnet Health Medical Center currently operates the following cardiac services:

- Cardiac Catheterization - Percutaneous Coronary Intervention
- Cardiac Catheterization - Electrophysiology
- Inpatient coronary care: 6-bed unit

Cardiac Surgery – Current Utilization

Statewide Cardiac Surgery procedures have declined slightly from 2015 to 2019.

Cardiac Surgery Procedures (non-TAVR), 2015-2019					
Year	2015	2016	2017	2018	2019
Statewide	18,636	18,987	18,442	18,315	17,956
Hudson Valley	1,925	1,990	1,862	1,929	2,093

Source: Cardiac Services Program - Excludes TAVR

Neighboring Cardiac Surgery Centers: Distance from Garnet Health Medical Center		
Hudson Valley HSA Region		
Hospital	Distance (miles)	Travel Time
Westchester Medical Center	60.2	1 hour 1 min
Good Samaritan Hospital Suffern	37.5	42 min
Vassar Brothers Medical Center	39.6	52 min
White Plains Hospital	60.6	62 min

Source: Google Maps 2021 (Travel times displayed assume average travel conditions.)

Over 56% of Hudson Valley residents in need of cardiac surgery undergo procedures at facilities outside of the region suggesting lack of local access or deliberate choice on the part of patients. Through Garnet Health's affiliation with New York Presbyterian Hospital/Columbia University Medical Center for cardiac surgery, it is expected many of its patients who currently travel to NYPH\Columbia in Manhattan will choose to receive these services at Garnet Health.

Cardiac Surgery Migration of Hudson Valley County Residents, Excludes TAVAR							
Facility	County	Health System	2016	2017	2018	2019	% of 2019 Residents
Westchester Med Ctr	Westchester	Westchester M.C. Health Network	401	411	450	458	21.88%
Vassar Bros. Med Ctr	Dutchess	Health Quest Systems / Nuvance Health	344	245	313	353	16.87%
Good Sam - Suffern	Rockland	Bon Secours Charity Health System	123	82	110	123	5.88%
Treated in the Hudson Valley Subtotal			868	738	873	934	44.62%
NYP-Columbia Presby	New York	New York -Presbyterian	469	468	473	523	24.99%
Montefiore - Moses	Bronx	Montefiore Health System	100	137	121	124	5.92%
Mount Sinai Hospital	New York	Mount Sinai Hospitals Group.	168	144	106	120	5.73%
NYP-Weill Cornell	New York	New York -Presbyterian	73	92	104	104	4.97%
Montefiore - Weiler	Bronx	Montefiore Health System	74	89	69	93	4.44%
Lenox Hill Hospital	New York	Northwell Healthcare	45	53	66	76	3.63%
NYU Hospitals Center	New York	NYU Langone Health	68	56	55	52	2.48%
Mount Sinai Morningside	New York	Mount Sinai Hospitals Group	37	9	24	23	1.10%
St. Peters Hospital	Albany	St. Peter's Health Partners / Trinity	45	41	16	12	0.57%
Albany Med Ctr	Albany	Albany Medical Center Network	13	18	8	11	0.53%
St. Francis Hospital	Nassau	Catholic Health System of Long Island	10	5	6	9	0.43%
North Shore Univ Hosp	Nassau	Northwell Healthcare	2	2	3	4	0.19%
20 Other Facilities	Statewide		18	10	5	8	0.43%
Treated Outside the Hudson Valley Subtotal			1,122	1,124	1,056	1,159	55.38%
Total Hudson Valley Residents Receiving Cardiac Surgery			1,990	1,862	1,929	2,093	100%

Source: Cardiac Services Group

Hudson Valley residents receive cardiac surgery services both in and out of the region. In 2019, 934 residents received care at facilities within the region and 1,159 residents received care outside of the Hudson Valley.

Most Hudson Valley residents undergo cardiac procedures at three facilities: New York Presbyterian, Westchester Medical Center and Vassar Brothers Medical Center. NY Presbyterian is outside of the Hudson Valley Region. The top six providers account for 80% of all procedures received by Hudson Valley residents.

Garnet Health Medical Center's Regional Service Area is particularly vulnerable to heart and other chronic diseases. The Mid-Hudson Region Community Health Assessment 2019-2021 notes that heart disease and cancer are the leading causes of death and premature death for the entire Garnet Health service area. Heart disease is the leading cause of death in Orange and Ulster Counties and the second leading cause of death in Sullivan County. Stroke is the fifth leading cause of death in all three counties. Garnet Health's service area includes ten Medically Underserved Areas (MUAs), encompassing 16 census tracts, 11 county subdivisions and 14 towns.

Residents in the Garnet Service Area Undergoing Non-TAVR Cardiac Procedures		
County	Cases 2018	Cases 2019
Orange	337	374
Sullivan	74	102
*Ulster	24	28
Total	435	504

*Garnet Health Medical Center's Regional Service Area overlaps only 2 zip codes in Southwest Ulster County

Source: OPCHSM Cardiac Services

Destination for Care of Residents in Garnet's Service Area for Non-TAVR Cardiac Procedures			
Hospital	County	2018 Cases	2019 Cases
NYP Hospital - Columbia Presbyterian	New York	125	146
Westchester Medical Center	Westchester	124	116
Vassar Brothers Medical Center	Dutchess	46	69
Montefiore Medical Center - Weiler Hosp.	Bronx	36	53
Good Samaritan Hospital of Suffern	Rockland	31	38
Montefiore Medical Center - Moses	Bronx	26	26
Mount Sinai Hospital	New York	19	18
NYP Hospital - New York Weill Cornell	New York	9	14
NYU Hospitals Center	New York	9	10
Mount Sinai Morningside	New York	3	0
Albany Medical Center	Albany	2	3
St. Francis Hospital	Nassau	2	3
Lenox Hill Hospital	New York	2	2
Ellis Hospital	Schenectady	1	0
St. Peters Hospital	Albany	0	2
UHS - Wilson Medical Center	Broome	0	2
North Shore University Hospital	Nassau	0	1
Maimonides Medical Center	Kings	0	1
Total		435	504

Source: Cardiac Services. Year 2020 is not displayed because of incomplete data and data deemed unrepresentative due to COVID19

Residents in the Garnett Health primary service area, Orange, Sullivan Counties, and two zip codes in Ulster County- a subset of the Hudson Valley Region, underwent 435 non-TAVR cardiac surgery procedures in 2018 and 504 procedures in 2019, an increase of 69 or 15.9%. By percentage, this growth is greater than that of both NY State and the Hudson Valley Region as a whole. In 2019, 146 of these procedures were performed at NY Presbyterian / Columbia Hospital in New York County.

Garnet Health Projections

To determine projected volume, GHMC contracted with Corazon, Inc. to project annual open-heart surgery volume. To project conservatively, the analysis applied population changes and age demographics, held all utilization rates constant, and assumed that market share for open heart surgery cases would mirror its overall medical cardiology market share of 52% by the fifth year of operation. First year projected volume is 148 cases. In the second year, GHMC will begin TAVR under NYP/Columbia's guidance and volume grows to 347 cases (300 non-TAVR and 47 TAVR). Volume is projected to reach 465 (356 non-TAVR and 109 TAVR) total cases by the fifth year of the program.

Hudson Valley Region Cardiac Services Expansions in progress

In October 2020, White Plains Hospital Center, WPHC, in Westchester County received departmental and PHHPC approval to establish a Cardiac Services program. White Plains Hospital Center will be operational in late 2021 and expects much of this volume will be comprised of patients WPH has had to transfer to other hospitals for lack of their own cardiac surgery program; patients from within the Montefiore system; and patients currently migrating out of their service area for surgery. The three Hudson Valley providers, Westchester, Vassar Brothers, and Good Samaritan Suffern saw Hudson Valley resident-based cardiac surgery caseload grow 8.6% from 2014-2019. Westchester Medical Center exhibited the most consistent growth, while Vassar and Good Samaritan reported growth from 2018-2019. Cardiac surgery procedures of Hudson Valley residents receiving care outside of the area grew 10.4% from 2014-2019. Total Hudson Valley resident cardiac surgery caseload grew 9.6%. Trending this growth from 2019-2024 indicates residents of the Hudson Valley will require 2,352 cases in 2024, or 204 additional surgery cases.

The applicant's projected volume assumes this trend in organic demand of Hudson Valley residents for cardiac surgery services will continue as well as market capture of cases from Hudson Valley residents leaving the area to obtain surgery at NY Presbyterian. NY Presbyterian will supply clinical and

administrative commitment and support. NY Presbyterian performed 526 cardiac surgery procedures in 2019.

Garnet Health Medical Center has established an affiliation with Columbia Heart Source and New York Presbyterian Hospital/Columbia University Medical whereby surgical leadership at Garnet Health will be provided.

Garnet Health Medical Center's goals for this project are to: Improve poor health statistics in the Hudson Valley Region.

- Reduce travel that ranges from 40-100 miles currently.
- Address the increasingly complex cases presenting from the Level II Trauma Center and STEM/PCI.
- Provide greater patient choice.
- Provide improved access for underserved communities in the area.

Conclusion

The addition of Cardiac Services at GHMC will serve an area with a growing and aging population presenting increased demand for services and is approvable per regulation 709.14. The applicant projects 148 non-TAVR cardiac surgeries in first year and 300 non-TAVR cases by the third year.

Program Analysis

Project Proposal

Garnet Health Medical Center requests approval to certify Cardiac Surgery-Adult services. The proposed program will operate in affiliation with Columbia Heart Source at New York-Presbyterian Hospital-Columbia Presbyterian Center.

GHMC is approximately 60 miles and 1.25 hours from Columbia/New York Presbyterian. GHMC has an experienced interventional cardiology program, reporting 874 PCIs performed in 2019, including 140 emergency PCI procedures. Despite the impact of COVID 19 on outpatient procedures in 2020, GHMC reports that 810 PCIs were performed including 125 emergency PCI procedures. Quality data for both GHMC's and Columbia/New York Presbyterian's current programs can be viewed in attachment XX.

Garnet believes the implementation of this project will (1) meet the demand of the growing and aging population, the high volume of cardiac surgery patients, poor health status indicators and large numbers of vulnerable populations, and strong current and projected economic growth in the service area; (2) enhance accessibility because, currently, community members requiring cardiac surgery on either an emergency or scheduled basis must travel 40-100 miles for care. The travel is required preoperatively, operatively, and post-operatively, creating stress on patients and family. A commitment to promote a culture of diversity and inclusion and to collaborate with community agencies to improve access in underserved communities; (3) utilize existing clinical infrastructure. GHMC has a track record in effectively caring for increasingly complex clinical patients including STEMI/PCI and Level II Trauma. GHMC has strong clinical outcomes and robust catheterization lab volumes combined with a new facility with existing ICU capacity and dominant market share of cardiology services.

Additionally, GHMC has clinical endorsement and support from Columbia/New York Presbyterian as well as from local cardiology groups and community agencies. Columbia Heart Source has been successful in starting eight new programs and in assisting in the turnaround of 16 other programs that had either stopped performing surgery or needed leadership assistance. Services to be provided by Columbia Heart Source pursuant to the agreement prior to the implementation of the program include (1) consultation with GHMC in the design and implementation of the cardiac surgery program, including size of the facility requirements, facility design specifics, necessary investments, quality outcomes, innovative services, clinical and professional staffing, and internal ancillary support services required to develop the program; (2) consultation regarding recruitment and evaluation of key personnel to the program; (3) conduct orientation for surgeons and staff who will operate the program including cardiac anesthesiologists, OR

staff, intensivists, physicians, surgical assistants, administrative directors, and nurse managers; (4) training and mentoring of CTICU nurses, cardiac OR nurses, and nursing leadership will be provided by New York Presbyterian at its Irving Medical Center and Queens Hospitals; (5) providing two qualified cardiac surgeons for the program, with one of the surgeons designated as the Site Director, who will supervise and manage the administrative aspects of the day to day operations of the program. (6) Assist in developing protocols related to patient flow, outpatient and inpatient cardiac anesthesia, ancillary testing, cardiac intensive care unit, and step down unit; (7) Consultation with the hospital on equipment and instrumentation; and (8) Consultation regarding program outreach, patient, physician, community education, and preparation of educational materials.

After the first surgery, the services Columbia provides to GHMC include: (1) complete integration to ensure patients receive the most appropriate care and facilitate appropriate transfer or referral to CUIMC/NYP for complex services; (2) Rapid achievement of benchmarks for establishment of a high quality TAVR program; (3) Provisions of quality and comprehensive perfusion services; (4) Data management, abstracting, registry participation, and submission to all relevant registries; (5) Quality Assurance, including quarterly morbidity and mortality conferences to review the care of the hospital's cardiac surgery patient's, including chart reviews; (6) recruitment of replacement surgeons, if necessary; (7) Consultation regarding strategic planning and capital planning processes; (8) General consultation on a 24 hour basis for pre-or-post surgery case consultation; (9) Ability to safely introduce new technologies and procedures; (10) Access to Columbia's Grand Round lectures or conferences and other educational opportunities at Columbia University Irving Medical Center; and (11) New York Presbyterian Hospital's letter indicating willingness to serve as a backup Cardiac Surgery Hospital for GHMC's cardiac surgery program.

GHMC has large, shelled in space for two cardiac surgery operating rooms and their support functions as well as the ability to expand cardiac catheterization labs and ICU capacity as needed. Project construction consists of renovating space on the first floor of the hospital including the construction of one cardiac surgery OR and one Hybrid OR and will use its endovascular suite as a second cardiac catheterization laboratory as it will construct and outfit the endovascular suite using the model of the catheterization laboratory. Staffing is expected to increase by 32.13 FTEs in the first year after completion and increase by 40.7 FTEs for the third year of operation.

The project will result in Garnet Health Medical Centers' operating certificate changing to add the following certified services:

- Cardiac Surgery-Adult

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

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.

Prevention Agenda

Garnet Health Medical Center states that the proposed project "directly relates to the treatment and prevention of heart disease by increasing access to high quality cardiac procedures and cardiac surgery," but notably does not specify how increasing access to cardiac surgery would advance the Prevention Agenda priority of preventing (rather than treating) chronic diseases.

Garnet Health Medical Center is implementing the following interventions to support goals of the 2019-2024 New York State Prevention Agenda:

1. Staff participate in farmers markets

2. Hosts the Great American Smoke Out in conjunction with the American Cancer Society
3. Hosts tobacco prevention events
4. An annual Oral and Dental Night event

The application states that Garnet Health Medical Center engaged multiple organizations in their Prevention Agenda efforts: American Heart Association, Orange County Department of Health, Orange County Chamber of Commerce, Eat Smart New York Program (Hudson Valley Region), healthlinkny, USDA Supplemental Nutrition Assistance Program (SNAP), Sullivan County Department of Health, Cornell University Cooperative Extension of Sullivan County, Sullivan 180, Sullivan County Chamber of Commerce, Tobacco Free Action Communities, Cornerstone Family Healthcare and Sun River Healthcare.

Garnet Health Medical Center cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Percentage of adults ages 18 years and older with obesity
- Percentage of adults who consume less than one fruit and vegetable per day
- Percentage of adults with perceived food security
- Percentage of adults age 18 years and older who participate in leisure-time physical activity
- Prevalence of cigarette smoking by adults ages 18 and older

In 2018 Garnet Health Medical Center spent \$183,403 on community health improvement services, representing 0.038% of its \$486,877,311 total operating expenses.

Conclusion

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

Financial Analysis

Total Project Cost and Financing

Total project costs for renovation and moveable equipment is estimated at \$16,837,492, as follows:

Renovation & Demolition	\$7,582,231
Design Contingency	758,223
Construction Contingency	758,223
Fixed Equipment	2,656,720
Planning Consultant Fees	37,911
Architect/Engineering Fees	682,401
Construction Manager Fees	242,197
Movable Equipment	3,752,628
Telecommunications	272,869
Application Fee	2,000
Additional Fee for Projects	<u>92,089</u>
Total Project Cost with Fees	\$16,837,492

The applicant will fund 100% of the project costs with equity through accumulated funds. BFA Attachments B and C show Garnet Health Medical Center's 2019 certified financial statement and December 31, 2020 internal financials, respectively, which show sufficient resources to fund the project costs.

Operating Budget

The applicant has submitted an enterprise-wide operating budget for Garnet Health Medical Center inclusive of the proposed cardiac surgery program, in 2021 dollars, for years one and three, as summarized below:

	<u>Current Year (2019)</u>		<u>First Year (2022)</u>		<u>Third Year (2024)</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
<u>Inpatient Revenues</u>						
Medicaid FFS	\$5,068	\$7,834,689	\$5,180	\$8,028,286	\$5,448	\$8,492,669
Medicaid MC	\$10,461	42,910,719	\$10,641	43,808,765	\$10,974	45,497,429
Medicare FFS	\$13,673	124,903,603	\$14,025	129,141,800	\$14,700	137,398,975
Medicare MC	\$11,690	29,528,765	\$12,056	30,718,559	\$12,770	33,061,152
Commercial FFS	0	0	\$147,324	2,209,858	\$151,938	6,685,287
Commercial MC	\$20,286	137,825,480	\$20,532	139,796,077	\$21,027	143,781,571
Private Pay	\$1,125	309,400	\$1,179	329,002	\$1,250	355,051
All Other	\$12,322	7,824,328	\$12,329	7,829,154	\$12,575	8,035,228
Charity Care		0		(92,178)		(280,770)
Bad Debt		0		(778,389)		(2,370,945)
Subtotal Inpatient		\$351,136,984		\$360,990,934		\$380,655,647
<u>Outpatient Revenues</u>	<u>Per Visits</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Medicaid FFS	\$405	\$1,931,439	\$400	\$1,939,360	\$393	\$1,951,243
Medicaid MC	\$503	20,080,582	\$500	20,114,580	\$497	20,155,373
Medicare FFS	\$780	44,327,583	\$764	44,488,212	\$744	44,691,213
Medicare MC	\$875	12,552,146	\$853	12,597,166	\$825	12,656,521
Commercial FFS		0	\$288	86,476	\$300	197,933
Commercial MC	\$1,243	86,740,703	\$1,239	86,817,607	\$1,234	86,916,727
Private Pay	\$68	597,169	\$67	597,499	\$67	597,939
All Other	\$393	3,798,363	\$393	3,800,541	\$391	3,804,898
Charity Care		0		(3,721)		(8,495)
Bad Debt		0		(72,440)		(154,502)
Subtotal Outpatient		\$170,027,985		\$170,365,280		\$170,808,850
Other Garnet Health Entities		\$149,274,031		\$149,274,031		\$149,274,031
Total Revenues		\$670,439,000		\$680,630,245		\$700,738,528
<u>Expenses</u>						
Operating		\$609,342,000		\$618,364,735		\$627,064,246
Capital		47,911,000		49,184,531		49,184,531
Total Expenses		\$657,253,000		\$667,549,266		\$676,248,777
Net Income		\$13,186,000		\$13,080,979		\$24,489,751
Inpatient Discharges		25,013		25,161		25,446
Outpatient Visits		204,086		207,046		210,706

The following is noted with respect to the cardiac surgery program operating budget:

- Corazon, Inc. was engaged to perform a market study of Garnet Health's service area and project the annual open-heart surgery volume for GHMC. Volume estimates were categorized into four sources of demand, growing and aging population, high volume in regional service area, poor health status indicators and large numbers of vulnerable populations in the region, and strong current and projected economic growth in the RSA. From 2017 to 2019 there has been an increase of 37% in cardiac surgery volume in Garnet Health's service area resulting in 625 Open Heart cases originating from the area in 2019.
- Volume projections were based on projected population and age demographics, utilization rates held constant, and the assumption that open heart surgery market share would mirror GHMC's overall medical cardiology market share of 52%.

Projected Volume by Service Type					
	Year 1	Year 2	Year 3	Year 4	Year 5
TAVR	0	47	102	106	109
Non-TAVR	148	300	331	345	356
Total	148	347	433	451	465

- GHMC expects to generate 2,960 cardiac rehabilitation visits (CRV) in Year One and 6,620 CRV in Year Three as a result of the adult cardiac surgery program.
- Revenue and rate assumptions applied GHMC-specific FY21 Medicare reimbursement factors to calculate the base Medicare payments for inpatient and outpatient technical services by Diagnostic Related Group (DRG) and Ambulatory Payment Classification (APC) codes.
- Expense assumptions include:
 - Staff salaries and wages with 3% increase.
 - Staff benefits at 37.7% of total salaries.
 - Columbia Heart Source contract (includes the yearly rates).
 - Two (2) intensivists.
 - Patient care supplies.
 - Perfusion assumed \$1,000 per coronary artery bypass graft (CABG) and surgical valve case.
 - Blood bank at average cost of \$354 per case.
 - Operating expenses include marketing; legal and consulting; maintenance contracts; training and recruitment; database participation and data management.
 - Indirect expense includes a 15% overhead rate of direct expense
 - Depreciation on capital investment included.
- The incremental change to volume (discharges and outpatient visits) as well as revenue and expenses from Current Year to Year 1 and Year 3 represent the addition of the Adult Cardiac Surgery program. In the Year 1 there is a small incremental loss of \$105,021 (inclusive of depreciation - a non-cash item). Exclusive of depreciation there is an incremental profit margin of approximately \$1,168,510 in Year 1. The incremental profit margin in Year 3 is \$11,303,751.
- Utilization by payor source is as follows:

Inpatient	Current Year		Year One		Year Three	
	Disch	%	Disch.	%	Disch.	%
Medicaid FFS	1,546	6.18%	1,550	6.15%	1,559	6.13%
Medicaid MC	4,102	16.40%	4,117	16.36%	4,146	16.29%
Medicare FFS	9,135	36.52%	9,208	36.61%	9,347	36.74%
Medicare MC	2,526	10.10%	2,548	10.13%	2,589	10.17%
Commercial FFS	0	0.0%	15	0.06%	44	0.17%
Commercial MC	6,794	27.16%	6,809	27.06%	6,838	26.87%
Private Pay	275	1.10%	279	1.11%	284	1.12%
All Other	635	2.54%	635	2.52%	639	2.51%
Total by Payor	25,013	100%	25,161	100%	25,446	100%

Outpatient	Current Year		Year One		Year Three	
	Visits	%	Visits	%	Visits	%
Medicaid FFS	4,766	2.34%	4,846	2.34%	4,966	2.36%
Medicaid MC	39,918	19.56%	40,218	19.42%	40,578	19.26%
Medicare FFS	56,806	27.84%	58,266	28.15%	60,046	28.49%
Medicare MC	14,336	7.02%	14,776	7.14%	15,336	7.28%
Commercial FFS	0	0.0%	300	0.14%	660	0.31%
Commercial MC	69,773	34.19%	70,073	33.84%	70,433	33.43%
Private Pay	8,826	4.32%	8,886	4.29%	8,966	4.26%
All Other	<u>9,661</u>	<u>4.73%</u>	<u>9,681</u>	<u>4.68%</u>	<u>9,721</u>	<u>4.61%</u>
Total by Payor	204,086	100%	207,046	100%	210,706	100%

Columbia HeartSource Services Agreement

The applicant has submitted an executed professional and programmatic service agreement regarding the operation and oversight of a Cardiothoracic Surgery Program on-site at Garnet Health Medical Center. The terms are summarized below:

Date:	July 13, 2020
Client:	Garnet Health Medical Center
Provider:	The Trustees of Columbia University in the City of New York, on behalf of its Department of Surgery, Division of Cardiac Surgery
Services:	<p><u>Consultation services prior to receipt of CON.</u></p> <ul style="list-style-type: none"> Consult regarding design and implementation of Cardiothoracic Surgery Program, facility design, necessary investments, quality outcomes, innovative services, clinical and professional staffing, and internal ancillary support services. Consult with management regarding the program operations and also in Hospital's preparation and filing of the CON. <p><u>Consultation services after receipt of CON.</u></p> <ul style="list-style-type: none"> Consult in recruitment of key personnel to the program, assist in hiring other potential personnel, and conduct orientation for surgeons and staff who will operate the program. Consult in staff development for the initiation of the program, protocol development for; patient flow, outpatient and inpatient cardiac anesthesia, operating room pre-operative testing, ancillary testing, cardiac intensive care unit, step-down unit, staffing relevant areas, and equipment and instrumentation. Consult regarding outreach, educating patient, physician, and community. Preparation of educational materials. <p><u>Consultation services after first program surgery was performed.</u></p> <ul style="list-style-type: none"> If necessary, assist in recruiting a replacement surgeon for the program. Consult in program's strategic planning, capital planning, providing oral presentations and written reports. Consult in quarterly morbidity and mortality conferences and provide quarterly external chart reviews. One (1) or more physicians shall be available within a reasonable period of time from receiving a request for general consultation on a 24-hour basis for pre-or post-surgery case consultation. Hospital's employed physicians will have access to cardiac surgery Grand Round lectures or conferences held at Columbia. Hospital physicians shall have reasonable access to new Cardiac surgery techniques and technologies offered at Columbia. Provide certain standard training onsite to physician assistants, nurses, and other allied health. Consult with Hospital to create an innovative and diversified cardiovascular program. Assist in service line development, physician strategy, and business development assessment.

	<ul style="list-style-type: none"> • Evaluate opportunities for building partnerships within the Hospital's network. • Consult regarding targeted strategic partnerships with physicians and clinically important collaborative programs. • Consult regarding new technology, technology adoption, and future recruitments in specialties that could support the cardiac program.
Term	Continue through July 12, 2025. Termination upon mutual written agreement.
Fee	Year One \$75,000, Year Two \$282,000, Year Three through Five \$460,000 per yr.

Capability and Feasibility

Total project costs of \$16,837,492 will be funded with equity from the Garnet Health Medical Center. Working capital will be provided from ongoing operations and existing cash resources.

The Garnet Health Medical Center enterprise wide submitted budget demonstrates net income of \$13,080,979 and \$24,489,751 in Year One and Year Three, respectively. The incremental change to volume (discharges and outpatient visits) as well as revenue and expenses from Current Year to Year One and Year Three represent the addition of the Adult Cardiac Surgery program. The budget appears reasonable.

As presented in BFA Attachments B Garnet Health's 2018 and 2019 Consolidated Certified Financial Statements, the entity maintained a positive average working capital position, a positive average net asset position, and an average net income of \$13,558,000 for the period. BFA Attachment C presents the December 31, 2020 Internal Financial Statements of Garnet Health and indicates a positive working capital position, positive net asset position, and a net income of \$2,601,882. The decrease in the net income from 2019 is due primarily to a reduction in volume and revenue resulting from the closure of services per the Governor's executive order in the midst of the COVID-19 pandemic. Garnet Health's positive working capital indicates that the entity has sufficient resources to fund startup costs associated with this project. The facility has maintained a strong balance sheet as of December 31, 2020 with approximately \$120M cash or approximately 80 Days Cash on Hand.

As reported on the December 2020 Garnet Health Medical Center financial statements (Financial Narrative), total revenue reported was \$577,379,363, including \$65,407,302 in CARES Act grant proceeds. The Hospital expects to apply for all appropriate COVID-19 related resources, including supplies, financial support, and other assistance made available through local, state, and federal government and community partners. Due to the rapidly evolving nature of COVID-19 response, the ultimate impact of these matters to Garnet and its financial condition is presently unknown; however, without the CARES Act grant proceeds it received, Garnet Health Medical Center would have experienced a loss in 2020. It should be noted that this loss is completely COVID-19 related. With a gradual return to normalcy following the COVID-19 crisis, coupled with anticipated additional federal support, and planned future growth strategies including the services contemplated in this application, Garnet Health Medical Center expects to continue its positive gains, even in the absence of CARES Act grant proceeds over the next several years.

Conclusion

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

Attachments

- BFA Attachment A Garnet Health organization chart
- BFA Attachment B Financial Statement certified, Garnet Health Consolidated 2018 and 2019
- BFA Attachment C Financial Statement internal, Garnet Health Medical Center December 31, 2020



Project # 211180-C
New York Community Hospital of Brooklyn, Inc.

Program: Hospital
Purpose: Construction

County: Kings
Acknowledged: May 14, 2021

Executive Summary

Description

New York Community Hospital of Brooklyn, Inc. (NYCH), a 134-bed, not-for-profit, Article 28 acute care hospital at 2525 Kings Highway, Brooklyn (Kings County), requests approval to certify Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization – Electrophysiology (EP) services. The project includes renovating space on the fourth and fifth floors of the hospital.

This application is part of a systemwide strategic plan between NYCH and Maimonides Medical Center (MMC) with funds set aside for NYCH clinical program expansion.

The strategic plan was outlined in CON 211023, in which MMC was established as the co-operator and active parent of NYCH. Both parties agreed to work collaboratively to expand the hospital's clinical programs to include cardiac catheterization and EP services. MMC, a full-service cardiac surgery provider in Kings County is 4.7 miles from NYCH and will serve as the cardiac surgery backup.

By adding EP and PCI into NYCH's clinical program and coordinating care from an integrated system perspective, NYCH will broaden access to critical cardiac services while ensuring clinical quality and outcomes.

OPCHSM Recommendation

Contingent Approval

Need Summary

In 2019, 2,419 Kings County residents were treated outside of the county for emergency PCI procedures. The applicant projects 161 PCI procedures in the first year of which 36 would be emergency and 242 procedures by the third year. MMC currently performs the most procedures in Kings County and will bring that experience to NYCH through this proposal. Nine interventional cardiologists have committed to providing services at the proposed lab.

Program Summary

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

Financial Summary

The total project cost of \$4,484,679 for renovation and equipment will be funded with cash equity from NYCH of \$448,468 and a loan from MMC to NYCH for \$4,036,211 at a rate of prime plus 2% for a five-year term. A letter of interest from MMC has been submitted.

The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Total Revenues (\$5,882,697), Total Expenses (6,574,140), Net Income (\$691,443).

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 (Department). Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a fully executed cardiac services co-sponsorship agreement, acceptable to the Department. [HSP]
3. Submission of a commitment on the part of the facility to provide regular volumes and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department and the New York State Cardiac Advisory Committee. [HSP]
4. Submission of an agreement to develop an institutional plan, which provides accurate and timely reporting of Cardiac and Percutaneous Coronary Intervention Reporting System (CSRS and PCIRS) data to the Department. The plan must ensure that medical and administrative staff are trained in the use of these systems and are familiar with the specific definition involved. In addition, the plan must provide for designated CSRS and PCIRS data managers, with clinical expertise, who are trained in specific clinical criteria use systems and authorized to ensure accurate and timely reporting of data. [HSP]
5. Submission of an agreement, acceptable to the Department, which indicates the applicant agrees to report the performance of any diagnostic or interventional cardiac catheterization conducted both on an in-patient or out-patient basis to Statewide Planning and Research Cooperative System (SPARCS). The in-patient procedures are reported in the SPARCS in-patient master file while the out-patient procedures would be reported through the ambulatory surgery file of SPARCS. [HSP]
6. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
7. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **January 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **March 1, 2022**, and construction must be completed by **October 1, 2022**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 7, 2021

Need and Program Analysis

Background

The proposed program will operate with clinical oversight from Maimonides Medical Center (MMC) per the terms of an established co-operated parent model agreement. The project will result in the following certified services being added to NYCH's operating certificate:

- Cardiac Catheterization - Electrophysiology (EP)
- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

The applicant has submitted a written plan that demonstrates their ability to comply with the standards for PCI Capable Cardiac Catheterization Laboratories and Cardiac Electrophysiology (EP) and has assured the Department that their program will meet all of the requirements of 405.29(e)(1-3) and 405.29(e)(5). Staffing is expected to increase by 12.00 FTEs in the first year up to 13.24 FTEs in the third.

Analysis

The table below shows that roughly half of Kings County Residents receiving PCI treatment in 2019 were treated outside the county.

- The number of PCIs and Emergency PCIs performed on Kings County residents.
- The county of treatment of Kings County residents receiving Emergency PCIs.

Kings County Residents Receiving PCI treatment in 2019			
	Treated In-County	Treated Out-of-County	Total
County Residents Treated for PCI	3,136	3,185	6,321
County Residents Receiving Emergency PCI Treatment	2,419	2,112	4,531

Additional factors supporting a recommendation of approval for PCI/EP services:

- Clinical oversight from MMC.
- MMC, the designated backup facility, has the highest market share of PCI cases in Kings County.
- Nine interventional cardiologists from MMC have committed to providing PCI procedures at NYCH.
- Of the eight approved PCI centers in Kings County, only Coney Island Hospital is located in the service area, and they do not offer EP services.
- Approval will support the applicant's designation as a Primary Stroke Center by the Department.

2019 Total/Emergency PCI's Performed on Kings County Residents			
Hospital Name	County	Total Cases	Emergency
Albany Medical Center	Albany	2	2
BronxCare Health System	Bronx	2	2
Montefiore Medical Center - Moses Div.	Bronx	11	7
Montefiore Medical Center - Weiler Hosp.	Bronx	5	4
St. Barnabas Hospital	Bronx	1	1
UHS - Wilson Medical Center	Broome	1	1
Vassar Brothers Medical Center	Dutchess	5	4
Brookdale Univ. Hospital Medical Ctr	Kings	227	213
Brooklyn Hospital Center - Downtown	Kings	125	79
Maimonides Medical Center	Kings	1212	1075
NYP Hospital - Brooklyn Methodist Hosp.	Kings	941	535
NYU Langone Hospital-Brooklyn	Kings	368	284
University Hospital of Brooklyn	Kings	263	233
Bellevue Hospital Center	Manhattan	129	107
Lenox Hill Hospital	Manhattan	415	332
Mount Sinai Beth Israel	Manhattan	616	534
Mount Sinai Hospital	Manhattan	497	233
Mount Sinai Morningside	Manhattan	294	212
NYP Hospital - Columbia Presbyterian	Manhattan	141	68
NYP Hospital - New York Weill Cornell	Manhattan	156	94
NYU Hospitals Center	Manhattan	647	301
Mount Sinai South Nassau Hospital	Nassau	1	1
NYU Winthrop Hospital	Nassau	3	2
North Shore University Hospital	Nassau	67	55
St. Francis Hospital	Nassau	38	21
Garnet Health Medical Center	Orange	3	3
Elmhurst Hospital Center	Queens	23	19
Jamaica Hospital Medical Center	Queens	39	39
Long Island Jewish Medical Center	Queens	31	27
NYP Hospital - Queens	Queens	12	11
Richmond University Medical Center	Richmond	3	2
Staten Island University Hospital- North	Richmond	27	18
Good Samaritan Hosp Med Center	Suffolk	4	4
South Shore University Hospital	Suffolk	1	1
Southampton Hospital	Suffolk	1	1
St. Catherine of Siena Medical Center	Suffolk	2	2
University Hospital at Stony Brook	Suffolk	5	2
Westchester Medical Center	Westchester	2	1
White Plains Hospital	Westchester	1	1

The applicant has projected 161 PCI procedures in the first year (36 emergency) and 242 procedures by the third year.

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, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys, as well as, investigations of reported incidents and complaints.

Prevention Agenda

NYCH states that the proposed project will advance local Prevention Agenda priorities by “providing local access to diagnostic cardiac catheterization, PCI and EP services in a deliberate manner, and with the assistance of Maimonides Medical Center.”

NYCH is implementing interventions to support three goals of the 2019-2024 New York State Prevention Agenda, including:

1. Promote Tobacco Use Cessation
 - Develop an inpatient evaluation system for Tobacco Cessation Support Program and identify patient materials and resources for dissemination to patients.
 - Update NYCH’s tobacco-free environment to prohibit employees from smoking; update signage and portray a more positive message for our environment of wellness.
2. Increase Access to Healthy and Affordable Foods and Beverages
 - Meet standards for Cafeterias: Remove French fries from the menu to eliminate all use of deep fryers.
 - Meet standards for purchased food for patient meals and cafeterias: Change default milk option to skim or 2% (always unsweetened).
3. Increase Early Detection of Cardiovascular Disease, Diabetes, Prediabetes and Obesity
 - Provide Events associated with Early Detection of CVD, Diabetes, Prediabetes, and Obesity
 - Provide Blood Pressure Screenings

The application states that NYCH engaged the New York City Department of Health and Mental Hygiene and other community partners in their Prevention Agenda efforts. NYCH cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- “Tobacco Treatment (TOB) National Hospital Inpatient Quality Measures”
- “Number of People served a free meal per day in the cafeteria”
- “Number of Blood Pressure Screenings”

In 2018, the applicant spent \$67,937 on community health improvement services, representing 0.063% of total operating expenses.

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility’s current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. The applicant projects 36 emergency PCI procedures in the first year, thereby satisfying Public Need requirements in 10 NYCRR §709.14.

Financial Analysis

Total Project Costs and Financing

The total project costs for renovation and moveable equipment are estimated at \$4,484,679. The costs are broken down as follows in 2021 dollars:

Renovation & Demolition	\$865,200
Design Contingency	86,520
Construction Contingency	86,520
Architect/Engineering Fees	152,590
Other Fees	92,700
Moveable Equipment	2,896,871
Telecommunications	15,450
Financing Costs	176,584
Application Fee	2,000
Processing Fee	<u>24,520</u>
Total Project Cost with fees	\$4,484,679

The project will be financed via accumulated funds of \$448,468 from NYCH and MMC will finance NYCH the residual in the amount of \$4,036,211 for a 5-year term with a rate set at prime plus 2%. A letter of interest has been provided by MMC.

Operating Budget

The applicant has submitted the Year One and Year Three operating budgets, in 2021 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
<u>Inpatient Revenues</u>	<u>Per Disch</u>	<u>Total</u>	<u>Per Disch</u>	<u>Total</u>
Commercial FFS	\$27,051	\$139,755	\$27,951	\$195,657
Commercial MC	\$23,758	118,790	\$23,758	166,306
Medicare FFS	\$21,500	752,514	\$21,500	1,247,023
Medicare MC	\$18,275	219,300	\$18,275	328,950
Medicaid FFS	\$17,200	34,400	\$17,200	34,400
Medicaid MC	\$14,620	233,920	\$14,620	350,880
Private Pay	<u>\$4,300</u>	<u>4,300</u>	<u>\$4,300</u>	<u>4,300</u>
Total Inpt Revenue		\$1,502,979		\$2,327,516
<u>Outpatient Revenues</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$10,969	\$372,946	\$10,969	\$559,419
Commercial MC	\$9,323	316,982	\$9,323	475,473
Medicare FFS	\$8,438	2,328,750	\$8,438	3,408,750
Medicare MC	\$7,172	616,792	\$7,172	910,844
Medicaid FFS	\$6,750	74,250	\$6,750	114,750
Medicaid MC	\$5,738	659,870	\$5,738	969,722
Other (Bad Debt)		<u>(10,128)</u>		<u>(13,504)</u>
Total Outpt Revenue		<u>\$4,379,718</u>		<u>\$6,452,462</u>
Total Revenues		<u>\$5,882,697</u>		<u>\$8,779,978</u>
<u>Expenses (Combined)</u>				
Operating	\$8997.44	\$5,857,333	\$7,435.34	\$7,160,228
Capital	<u>1,101.09</u>	<u>716,807</u>	<u>\$568.86</u>	<u>547,810</u>
Total Expenses	\$10,098.53	\$6,574,140	\$8,004.19	\$7,708,038
Gain/(Loss)		<u>(\$691,443)</u>		<u>\$1,071,940</u>
<u>Utilization (Procedures)</u>				
Inpatient		78		119
Outpatient		<u>573</u>		<u>844</u>
Total Procedures		651		963

The following is noted concerning the operating budget:

- Revenues and rate assumptions for inpatient and outpatient services are based on the current experience of the existing cardiac catheterization lab volume within the health system and MMC reimbursement rates and experience using current DRG and APG rates.
- Year One net loss is the result of depreciation and start-up cost. Approximately 50% is a non-cash expense, which NYCH acknowledges, and will be able to fund from operations.
- Commercial insurers are based upon a percentage of Medicare and negotiated rates.
- The base year for historical experience is 2019, given 2020 was an anomaly across several utilization financial and operational metrics, as a result of the impact of the COVID-19 pandemic.
- The payor mix is based upon the historical payor mix of MMC and NYCH in Kings County.

Utilization by payor source for inpatient and outpatient services is projected as follows:

<u>Inpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Disch</u>	<u>%</u>	<u>Disch</u>	<u>%</u>
Commercial FFS	5	6.4%	7	6.4%
Commercial MC	5	6.4%	7	6.4%
Medicare FFS	35	44.9%	58	44.9%
Medicare MC	12	15.4%	18	15.4%
Medicaid FFS	2	2.6%	2	2.6%
Medicaid MC	16	20.5%	24	20.5%
Private Pay	1	1.3%	1	1.3%
Charity	2	2.6%	2	2.6%
Total	78	100%	119	100%

<u>Outpatient</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	34	6%	51	6%
Commercial MC	34	6%	51	6%
Medicare FFS	276	48%	404	48%
Medicare MC	86	15%	127	15%
Medicaid FFS	11	2%	17	2%
Medicaid MC	115	20%	169	20%
Private Pay	6	1%	8	1%
Charity	11	2%	17	2%
Total	573	100%	844	100%

Capability and Feasibility

The total project cost of \$4,484,679 will be funded with cash equity from NYCH of \$448,468 and a loan from MMC for \$4,036,211 at a rate of prime plus 2% for a five-year term. A letter of interest has been submitted from MMC.

BFA Attachments A shows that NYCH has sufficient funds of \$10,506,551 in short-term investments and cash to fund the equity for this project. BFA Attachment C shows that MMC has \$78,278,000 in cash and cash equivalents to loan NYCH the funds needed to fund this project.

The submitted budget indicates an operating loss in the first year of \$691,443, and a positive net operating income of \$1,071,940 in the third year of operation. The budget appears reasonable. The applicant indicated that year one loss is due in part to depreciation, which is a non-cash expense, and start-up operations.

BFA Attachment A, The New York Community Hospital of Brooklyn, Inc. certified financial statements for years 2018 and 2019, shows the organization maintained positive working capital, and a positive net asset position and experienced a net operating loss of \$3,373,497 and \$5,533,740 for 2018 and 2019, respectively. NYHC has recently joined MMC through approved CON application 211023 and will be working with MMC to integrate and enhance services, grow revenue, and achieve synergies and efficiencies to improve financial performance.

BFA Attachment B, The New York Community Hospital of Brooklyn, Inc May 2021 internal draft financial statements, shows the facility maintained positive working capital and a positive net asset position. The organization experienced a net operating loss of \$1,997,000 during this time period, which was largely due to a decline in volume and revenue from the COVID-19 pandemic.

BFA Attachment C, Maimonides Medical Center's certified financial statements for years 2019 and 2020, shows the organization maintained positive working capital, a positive net asset position, and had positive excess revenues over expenses of \$16,773,000 and \$12,590,000 during 2019 and 2020, respectively.

BFA Attachment D, Maimonides Medical Center's June 2021 internal financial statements, shows the organization maintained a positive working capital and positive net asset position. The \$60,216,336 deficiency of revenue over expenses for this time period includes \$53.1M of net operating loss from the medical center and \$12.0M of net operating loss from the M2 Medical Community Practice, P.C. (M2PC), which was partially offset by a Federal Payroll Protection Plan loan of approximately \$3.5M. Despite the financial impact of the COVID-19 pandemic, MMC has positive working capital of \$300,571,000 as of the June 2021 Internal Financial Statements and the ability to make this investment in the proposed PCI/EP project.

Attachments

BFA Attachment A	NYCH 2018 and 2019 Certified Financial Statements
BFA Attachment B	NYCH May 31, 2021 Internal Financial Statements
BFA Attachment C	MMC 2018 – 2019 Certified Financial Statements
BFA Attachment D	MMC January 1, 2021 – June 30, 2021 Internal Financial Statement



Project # 211213-C
Mount Sinai Hospital - Mount Sinai Hospital of Queens

Program: Hospital
Purpose: Construction

County: Queens
Acknowledged: May 24, 2021

Executive Summary

Description

Mount Sinai Hospital of Queens (MSHQ), an existing, 228-bed, not-for-profit, acute care hospital at 25-10 30th Avenue, Long Island City (Queens County), is seeking approval for the certification of Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization – Electrophysiology (EP) services. The PCI and EP procedures will be done in the existing interventional radiology lab upon upgrading the software and no construction will be needed.

Mount Sinai Hospital (MSH), of which MSHQ is a division, will provide oversight of the proposed program. MSH is a full-service cardiac surgery provider and a leading provider of cardiac catheterization and cardiac surgery procedures in New York State. Through this project, MSH will work with MSHQ to add PCI and EP services. MSHQ is 5.4 miles and 14 minutes travel time from MSH. The project is expected to result in improved cardiac health outcomes for residents of the MSHQ service area.

OPCHSM Recommendation

Contingent Approval

Need Summary

In 2019, 3,241 Queens County residents were treated outside of the county for emergency PCI procedures. MSHQ projects 200 emergency PCI and EP services in the first year. Providing PCI and EP services at MSHQ will avoid transporting the patient to MSH and save critical time. MSH has a lower than state average mortality rate and a high-quality level of cardiac care.

Program Summary

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

Financial Summary

The total project cost of \$253,375 is for equipment and will be funded with cash equity from MSH. MSHQ is a division of MSH and the financials are consolidated to MSH. The projected incremental net income of the proposed PCI and EP services at MSHQ is positive for years one and three as listed below.

Table with 3 columns: incremental, Year One, Year Three. Rows: Total Revenues, Total Expenses, Net Income.

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 (Department). Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a commitment on the part of the facility to provide regular volume and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department and the New York State Cardiac Advisory Committee. [HSP]
3. Submission of an agreement to develop and implement an institutional plan which provides for accurate and timely reporting of Cardiac Surgery and Percutaneous Coronary Intervention Reporting System (CSRS and PCIRS) data to the Department. The plan must ensure that relevant medical and administrative staff are trained in the use of these systems and are familiar with the specific definitions involved. In addition, the plan must provide for designated CSRS and PCIRS data managers, with clinical expertise, who are trained in specific clinical criteria used in these systems and are authorized to ensure accurate and timely reporting of data. [HSP]
4. Submission of an agreement, acceptable to the Department, which indicates the applicant agrees to report the performance of any diagnostic or interventional cardiac catheterization conducted both on an in-patient and out-patient basis to SPARCS. The in-patient procedures should be reported in the SPARCS in-patient master file while the out-patient procedures would be reported through the ambulatory surgery file of SPARCS. [HSP]
5. Submission of assurances that cardiac services will be provided regardless of a patient's ability to pay or source of payment and a commitment to serve underserved populations. As part of this commitment, the facility must provide a plan outlining how the provision of cardiac services to the under and uninsured will be enhanced and monitored. Tracking of payer source information must be submitted to the Department upon request. Baseline data identifying payer source mix for patients undergoing cardiac catheterization in MSH Queens should be submitted with the plan. [HSP]
6. Submission of assurances that the applicant and affiliate will agree to fully participate in anticipated data collection initiatives to include the study of access and/or acute myocardial infarction patients. [HSP]
7. Submission of documentation that credentialing criteria includes requirements that any physician privileged to perform catheterization in the laboratory will be required to maintain a minimum volume of 50 cardiac catheterization procedures per year. In the event that less than 50 cases per physician are performed at the facility, arrangements will be made to provide outcomes data for credentialing purposes. [HSP]
8. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [DAS]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 7, 2021

Need and Program Analysis

Background

Mount Sinai Hospital of Queens (MSHQ) seeks approval for the certification of Cardiac Catheterization – Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization – Electrophysiology (EP) services with the oversight of Mount Sinai Hospital (MSH).

The applicant has submitted a written plan that demonstrates their ability to comply with all the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 10 NYCRR §405.29 and 709.14. MSHQ anticipates performing 200 emergency PCI procedures in the first year of operation.

Analysis

The following table shows that the majority of Queens County residents who received PCI treatment in 2019 were treated out of the county.

Queens County Residents Receiving PCI Treatment in 2019			
	Treated in County	Treated Out of County	Total
County Residents Receiving PCI Treatment	2,017	5,310	7,327
County Residents Receiving Emergency PCI Treatment	1,689	3,241	4,930

According to MSH/MSHQ's internal data:

- Between 2016 and 2019, 658 patients visiting the Emergency Department at MSHQ were suffering AMI and/or cardiac arrest.
- Between 2018 and 2019, 54 patients were transferred from the MSHQ Emergency Department with STEMI.
- Between 2019 and 2020, 438 patients were transferred MSHQ to MSH for PCI.

Additional factors considered for a recommendation of approval of PCI/EP services:

- Four interventional cardiologists who provide PCI services at MSH have committed to perform PCI procedures at MSHQ.
- There are currently no PCI or EP providers within the service area. There are only three PCI providers and two EP providers in Queens, which has a population of almost 2.3 million people.
- MSH, *which has a lower than state average mortality rate*, will ensure quality through their oversight of the program.

2019 Emergency PCIs Performed on Queens County Residents		
Facility	County	Procedures
Albany Medical Center	Albany	1
Montefiore Medical Center - Moses Div.	Bronx	6
Montefiore Medical Center - Weiler Hosp.	Bronx	10
St. Barnabas Hospital	Bronx	1
UHS - Wilson Medical Center	Broome	1
Vassar Brothers Medical Center	Dutchess	1
Brookdale Univ. Hospital Medical Ctr	Kings	7
Brooklyn Hospital Center - Downtown	Kings	4
Maimonides Medical Center	Kings	32
NYP Hospital - Brooklyn Methodist Hosp.	Kings	49
NYU Langone Hospital-Brooklyn	Kings	9
University Hospital of Brooklyn	Kings	6
Bellevue Hospital Center	New York	81
Lenox Hill Hospital	New York	428

2019 Emergency PCIs Performed on Queens County Residents		
Facility	County	Procedures
Mount Sinai Beth Israel	New York	191
Mount Sinai Hospital	New York	460
Mount Sinai Morningside	New York	122
NYP Hospital - Columbia Presbyterian	New York	50
NYP Hospital - New York Weill Cornell	New York	73
NYU Hospitals Center	New York	291
Mount Sinai South Nassau Hospital	Nassau	71
NYU Winthrop Hospital	Nassau	54
North Shore University Hospital	Nassau	822
St. Francis Hospital	Nassau	432
Long Island Jewish Medical Center	Nassau	449
Niagara Falls Memorial Medical Center	Niagara	1
Garnet Health Medical Center	Orange	7
Bassett Medical Center	Otsego	1
Elmhurst Hospital Center	Queens	296
Jamaica Hospital Medical Center	Queens	266
NYP Hospital - Queens	Queens	678
Staten Island University Hospital- North	Richmond	4
Good Samaritan Hospital of Suffern	Rockland	1
Good Samaritan Hosp Med Ctr- West Islip	Suffolk	7
Huntington Hospital	Suffolk	3
South Shore University Hospital	Suffolk	4
University Hospital at Stony Brook	Suffolk	7
NYP - Lawrence Hospital	Westchester	3
Westchester Medical Center	Westchester	1
Total		4,930

Mount Sinai Hospital Projected PCIs		
	Year One	Year Three
Emergency PCI	200	200
Total PCI	400	470

By providing PCI-capable Cardiac Catheterization services, MSHQ anticipates improved cardiac health outcomes for residents of the MSHQ service area. This project will also enhance MSHQ's designation as a Primary Stroke Center. All patient records will be integrated and coordinated to provide a single, accurate medical record for each patient. An EHR system is already in place that will be used for PCI-capable cardiac catheterization and EP programs.

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, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Prevention Agenda

The application states that the proposed project aligns with the New York State Prevention Agenda 2019-2024

Interventions that MSHQ is implementing to support Prevention Agenda goals include:

1. Expanding community-based outreach services on health education events related to heart health, stroke prevention, and diabetes.
2. Offering blood pressure screening, cholesterol testing, result/consultation, and nutrition/diet counseling at the annual "Go Red for Women" health fair that is sponsored system-wide by Mount Sinai Heart.
3. Expanding access to evidence-based, self-management interventions for individuals with chronic disease (cardiovascular disease, diabetes, prediabetes, and obesity).
4. Increasing awareness of diabetes prevention, good nutrition, healthy eating, benefits of exercising, weight management, and controlling stress levels.

The application states that MSHQ engaged the New York City Department of Health and Mental Hygiene, community- and faith-based leaders, elected officials, community boards, and community organizations in their Prevention Agenda efforts. MSHQ cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Number of people screened through the Mobile Mammography Van and Breast Health Programs; Number of people who participated in health education sessions and health fair events
- Number of community screenings and health education events held; number of participants enrolled in self-management classes to prevent and control their diabetes
- Response time of Mobile Crisis Team for crisis referrals
- Number of referrals to outpatient behavioral health providers and community-based services
- Number of patients on buprenorphine; number of buprenorphine waived physicians; number of naloxone kits distributed
- Number of injection drugs users <30 years old tested for HCV

In 2019, the applicant spent \$30,594,060 on community health improvement services, representing 1.032% of total operating expenses.

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. The addition of PCI and EP services will enhance access to cardiac services for the residents of the service area.

Financial Analysis

Total Project Costs and Financing

The project costs are \$253,375; broken down as follows in 2021 dollars:

Telecommunications/Software	\$250,000
Application Fee	\$2,000
Processing Fee	<u>1,375</u>
Total Project Cost with fees	\$253,375

The software will upgrade what currently exists in the interventional radiology laboratory at MSHQ to allow for PCI and EP services. The project will be financed via accumulated funds from MSH.

Operating Budget

The current year data are based on MSH financials, as MSHQ is a division of MSH and the financials are consolidated. The applicant has submitted the Year One and Year Three operating budget, in 2021 dollars, as summarized below which illustrates the projected incremental impact of the proposed PCI and EP services on MSHQ:

Inpt Revenues	Current Year		Year One (2022)		Year Three (2024)	
	Per Disch	Total	Per Disch	Total	Per Disch	Total
Commercial FFS	\$26,316	\$6,710,537	\$36,423.16	\$1,129,118	\$11,886.73	\$1,298,486
Commercial MC	\$22,658	30,656,646	\$39,825.17	1,911,608	\$13,894.49	2,198,350
Medicare FFS	\$13,744	31,060,703	\$27,228.35	2,940,662	\$11,316.79	3,381,761
Medicare MC	\$19,335	36,368,652	\$20,112.60	1,850,359	\$8,107.96	2,127,912
Medicaid FFS	\$13,476	11,778,432	\$24,021.47	1,032,923	\$4,194.15	1,187,861
Medicaid MC	\$11,562	18,857,049	\$20,840.60	1,667,248	\$3,648.79	1,917,335
Charity Care	0	0	\$1,085.73	24,188	\$1,130.94	27,816
All Other	0	0	\$1,120.40	<u>67,565</u>	\$1,167.00	<u>77,700</u>
Total IP Revenue		\$135,432,019		\$10,623,671		\$12,217,221
<u>Outpt Revenues</u>	<u>Per Visit</u>	<u>Current Year</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$809	\$5,260,634	\$11,886.75	\$142,641	\$11,886.73	\$178,301
Commercial MC	\$815	19,377,624	\$14,399.75	633,589	\$13,894.49	791,986
Medicare FFS	\$591	6,036,356	\$11,435.89	217,282	\$11,316.79	271,603
Medicare MC	\$561	6,829,699	\$7,896.48	181,619	\$8,107.96	227,023
Medicaid FFS	\$340	1,646,876	\$4,361.90	43,619	\$4,194.15	54,524
Medicaid MC	\$330	10,348,152	\$3,623.62	210,170	\$3,648.79	262,713
Charity Care	\$0	0	\$16,286	16,286	\$1,130.94	20,357
All Other	\$538	1,410,090	\$5,602	<u>5,602</u>	\$1,167.00	<u>7002</u>
Total OP Rev		\$50,909,431		\$1,450,808		\$1,813,509
*Other Revenue		\$49,970,109				
Total Revenues		<u>\$236,311,559</u>		<u>\$12,074,479</u>		<u>\$14,030,730</u>
<u>Expenses</u> <u>(Combined)</u>						
Operating		\$235,865,314	\$6,027.66	\$3,592,488	\$6,384.38	\$4,500,986
Capital		<u>\$21,808,090</u>	<u>28.34</u>	<u>16,892</u>	<u>23.96</u>	<u>16,892</u>
Total Expenses		\$257,673,404	\$6,056.00	\$3,609,380	\$6,408.34	\$4,517,878
Gain/(Loss)		<u>(\$21,361,845)</u>		<u>\$8,465,099</u>		<u>\$9,512,852</u>
<u>Utilization</u>						
Inpatient		99,349		410		472
Outpatient		<u>8,254</u>		<u>186</u>		<u>233</u>
Total		107,603		596		705

*Other Revenues include \$21,512,000 in CARES Act funds; \$19,205,109 in investment income; contributions of \$1,648,000; other revenues of \$4640,000 and \$2,965,000.

The following is noted concerning the operating budget:

- The projected utilization is based on the commitment of interventional cardiologists and electrophysiologists to bring cases to the proposed PCI-capable cardiac catheterization and EP laboratory and enhanced reach out.
- The proposed staffing mix and operating expenses are based on the experience of MSH, the backup cardiac surgery hospital, in its existing PCI-capable cardiac catheterization and EP laboratories.

- Revenues and rate assumptions for inpatient and outpatient services are based on the current experience of the existing cardiac catheterization lab volume within the health system at MSH in Manhattan.
- Years one and three indicate positive net income. Total project costs and working capital will be funded by MSHQ in equity.
- Commercial insurers are based on negotiated rates.

Utilization projections, by payor source, are depicted below:

<u>Inpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Disch</u>	<u>%</u>	<u>Disch</u>	<u>%</u>	<u>Disch</u>	<u>%</u>
Commercial-FFS	255	3.0%	31	7.6%	35	7.4%
Commercial-MC	1,353	16.3%	48	11.7%	55	11.7%
Medicare-FFS	2,260	27.3%	108	26.3%	128	27.1%
Medicare-MC	1,881	22.7%	92	22.4%	105	22.2%
Medicaid-FFS	874	11.0%	43	10.5%	49	10.4%
Medicaid-MC	1,631	19.7%	80	19.5%	91	19.3%
Charity Care	0	0%	5	1.2%	6	1.3%
All Other	0	0%	8	0.7%	3	0.6%
Total	8,254	100%	410	100%	472	100

<u>Outpatient</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial-FFS	6,503	6.5%	12	6.5%	15	6.4%
Commercial-MC	23,763	23.9%	44	23.7%	57	24.5%
Medicare-FFS	10,221	10.3%	19	10.2%	24	10.3%
Medicare-MC	12,172	12.3%	23	12.4%	28	12.0%
Medicaid-FFS	4,838	4.9%	10	5.4%	13	5.6%
Medicaid-MC	31,379	31.6%	58	31.2%	72	30.9%
Charity Care	7,853	7.9%	15	8.1%	18	7.7%
All Other	2,620	2.6%	5	2.7%	6	2.6%
Total	99,349	100%	186	100%	233	100%

Capability and Feasibility

Total project costs of \$253,375 for a software upgrade to an existing IR room will be funded via cash equity. BFA Attachment A is the 2020 and 2019 certified financial statements for MSH, which indicate sufficient accumulated funds for this project. Cash and cash equivalents show \$488,446,000 on the certified balance sheet for the year 2020.

BFA Attachment A indicates that MSH has a positive working capital position and net asset position. The hospital achieved an excess of revenue over expenses before other items of \$174,525,000 and \$201,790,000 during 2020 and 2019 respectively. MSH recognized approximately \$281.7 million in CARES Act Funding as of December 31, 2020. Review of BFA Attachment B indicates for January 1, 2021 thru March 31, 2021, the entity has a positive working capital and positive net asset position and achieved an operating income of \$39,186,000. Working capital is based on two months of third-year expenses, which is \$752,980. The applicant will meet this obligation via current operations.

The projected incremental operating budget for the proposed addition of PCI and EP services at MSHQ indicates an operating excess of revenues over expenses of \$8,465,099 and \$9,512,852 in years one and three, respectively. The budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A MSH (December 31, 2020 – December 31, 2019) Audited Financial Statements
BFA Attachment B MSH (January 1, 2021 - March 31, 2021) Internal Financial Statement



Project # 202263-C

Staten Island University Hospital-North

Program: Hospital
Purpose: Construction

County: Richmond
Acknowledged: January 12, 2021

Executive Summary

Description

Staten Island University Hospital – North (SIUH), a 472-bed not-for-profit, Article 28 hospital, requests approval to construct a new 52,000 square-foot Women and Newborn Center at the North Campus hospital site at 475 Seaview Avenue. This project is the fit-out of the third and fourth floor of a building already built under a construction notice that houses a new central utility plant for the hospital.

The SIUH North Campus labor and delivery, maternity, neonatal intensive care unit (NICU), and newborn nursery units were built as part of the original Hospital in 1979 on two separate floors, a considerable distance away from each other. There have been no major upgrades to the facility since it was originally built. The goal of this project is to create a physically contiguous, state-of-the-art, integrated labor and delivery, maternity, newborn, and neonatal unit. As part of the remodel the applicant is requesting to decertify four maternity beds.

SIUH is currently in the design stage for planned improvements to the NICU that will be addressed through a subsequent CON. Upon completion of this project, the fourth floor of the new structure will connect via a bridge directly to the new NICU in the main North Campus hospital building.

Northwell Healthcare, Inc., an integrated healthcare delivery network serving the residents of the greater New York Metropolitan Area, is the sole corporate member and the established active parent/co-operator of the entities within the health system. North Shore University Hospital, Long Island Jewish Medical Center, Plainview, Forest Hills, Glen Cove, Southside, Staten Island University Hospital, Lenox Hill Hospital, Huntington Hospital, and Northwell Health Stern Family Center for Rehabilitation are part of an Obligated Group for financing purposes. Northwell Healthcare, Inc. is itself a member of the Obligated Group.

OPCHSM Recommendation

Contingent Approval

Need Summary

The new Women and Newborn Center facility project will remedy the applicant's outdated physical plant and women and newborn treatment spaces last updated in 1979.

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, which includes construction and the acquisition of moveable equipment, is estimated at \$126,450,547. The applicant will provide equity of \$75,804,578 via accumulated funds of the hospital and \$5,000,000 in fundraising proceeds. The remainder of \$45,645,969 will be financed via a Dormitory Authority of the State of New York (DASNY) tax-exempt bond financing at an interest rate of 6.5% for a 30-year term. A letter of interest has been provided by Citigroup relative to the financing.

The Enterprise budget (in 000's) is as follows:

	<u>Current</u> <u>Year</u>	<u>Year</u> <u>One</u>	<u>Year</u> <u>Three</u>
Revenues	\$1,096,635	\$1,129,963	\$1,129,570
Expenses	<u>\$1,086,368</u>	<u>\$1,124,722</u>	<u>\$1,124,468</u>
Net Income	\$10,267	\$5,241	\$5,103

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 (Department). Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation of contributions to be used as the source of financing, acceptable to the Department. [BFA]
3. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-1.0 Required Schematic Design (SD) and Design Development (DD) Drawings, and 2.18 LSC Chapter 18 Healthcare Facilities Public Use, for review and approval. [DAS]
4. Submission of State Environmental Quality Review (SEQR) Summary of Findings pursuant to 6 NYCRR Part 617.4(b) (6), and 10 NYCRR 97.12. [SEQ]

Approval conditional upon:

1. This project must be completed by **July 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **March 1, 2022**, and construction must be completed by **April 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. This project is approved to be initially funded with Northwell Health Obligated Group equity with the prospect that the project will be 90% financed as part of a future Northwell Health Obligated Group tax-exempt bond financing through DASNY. The bond issue is expected to include a 6.5% 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 it meets approval standards. [BFA]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 7, 2021

Need and Program Analysis

Background

This project to construct a new Women and Newborn Center will consolidate services, streamline care, and modernize the unit's physical environment. The project includes a decertification of four beds not currently in use. The project includes all labor and delivery, maternity, and newborn services, except for the future planned new NICU, which is being designed and will be submitted as a separate CON project. Upon completion of this project, the fourth floor of the new structure will connect via a bridge directly to the new NICU in the main North Campus hospital building, creating a physically contiguous, modern, and integrated unit of labor and delivery, maternity, and newborn and neonatal care.

The new maternity unit will include:

- 10 labor, delivery, and recovery rooms
- 3 ORs
- 37 Maternity beds for postpartum and antepartum care
- 12 Nursery bassinets

Staffing is expected to increase as a result of this construction/expansion project by 33.2 FTEs in both Year One and Year Three of the completed project.

Analysis

Currently, SIUH sees approximately 3,000 maternity discharges annually, with volume expected to increase to 3,897 by the third year. However, the hospital already has the bed capacity to accommodate the increase, even while decertifying four maternity beds.

Certified Beds			
Bed Type	Current Beds	Bed Change	Beds After Completion
Burns	10		10
Coma Recovery	2		2
Coronary Care	32		32
Intensive Care	36		36
Maternity	41	-4	37
Medical/Surgical	268		268
Neonatal Intensive Care	2		2
Neonatal Intermediate Care	6		6
Pediatric	3		3
Pediatric ICU	21		21
Physical Medicine and Rehabilitation	4		4
Traumatic Brain Injury	29		29
Total	454	-4	450

Source: 2021 HFIS

Beds, Average Daily Census, Utilization/Occupancy							
Service line	Beds	2018		2019		2020	
		ADC	Occ.	ADC	Occ.	ADC	Occ.
Med/Surg	393	389.9	99.2%	387.7	98.7%	331.7	84.4%
Pediatric	27	9	33.2%	7.6	28.2%	5.4	19.9%
Obstetric	41	20.7	50.4%	20.9	51.0%	17.7	43.2%
High Risk Neonates	11	7.8	70.6%	8.4	76.7%	7.2	65.0%
Total	472	427.3	90.5%	424.7	90.0%	361.9	76.7%

Source: SPARCS

Declines in Average Daily Census and Occupancy experienced in the year 2020 are attributed to COVID-19 impacts.

Historical and Projected Maternity Discharges		
Year	Maternity	Newborn
2015	3,010	2,130
2016	3,096	1,930
2017	2,998	1,616
2018	2,893	1,787
2019	2,894	1,729
2020	2,901	1,624
2022	3,926	
2024	3,897	

Source: Applicant.

In 2020, the two C-Section ORs accommodated 666 procedures. The applicant projects that number will increase to 1,230 by the third year. Through this project, a third C-section OR will be added, and while obstetric procedures have remained steady over the last 5 years, the applicant expects the new, state-of-the-art unit to draw additional patients. While the number of C-sections appears to be projected to increase dramatically, the C-section rate will increase from 23% of maternity discharges to 30% by 2024, in line with the current CDC national rate of 31.7%. Based on the specific needs of a designated C-Section OR, the general planning standard of 800-1200 procedures per OR department is not applicable.

C-Sections	
Year	Procedures
2016	659
2017	666
2018	619
2019	610
2020	666
2024	1,230

Source: Applicant.

Compliance with Applicable Codes, Rules, and Regulations

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

- Dated September 11, 2017, Lenox Hill Hospital was fined \$10,000 based on an investigation of Surgical Services.
- Dated January 31, 2017, Plainview Hospital was fined \$4,000 based on an investigation of Infection Control practices. Specifically, the facility staff including physicians, podiatrists, radiologists, transporters, and physical therapists failed to use standard infection control practices.

Prevention Agenda

Staten Island University Hospital-North states that the proposed project will advance local Prevention Agenda priorities by "[... enhancing] availability of acute maternal care services and provid[ing] greater opportunities for health care providers to educate and guide women and future mothers in preparation for a healthy pregnancy. Since the project is also planned in a community that is racially and ethnically diverse, it will also advance the Prevention Agenda's goal of reducing racial, ethnic, economic, and geographic disparities in maternal outcomes, by providing high-quality maternity care that is locally accessible to patients who increasingly rely on these services."

SIUH-North is implementing and/or participating in interventions to support the Promote Healthy Women, Infants, and Children priority of the 2019-2024 New York State Prevention Agenda, including:

- SIUH Prenatal Care Services
- The Center for Women’s Health (CFWH)
- Northwell’s Katz Institute for Women’s Health (KIWH) Resource Center
- Women’s Heart Health Program
- WomenHeart: The National Coalition for Women with Heart Disease
- Go Red for Women

The application states that SIUH-North engaged federal, state, and local partners in their Prevention Agenda efforts. Northwell Health (the health system of which SIUH-North is a part) tracks data indicators to measure progress toward achieving local Prevention Agenda goals, including:

- Maternal mortality rate per 100,000 live births
- Percentage of preterm births
- Percentage of premature births: Ratio of Hispanics to White non-Hispanics
- Percentage of premature births: Ratio of Medicaid births to non-Medicaid births
- Percentage of women (aged 18-64) with health insurance

In 2018, the organization SIUH (of which SIUH-North is a part) spent \$3,111,735 on community health improvement services, representing 0.326% of total operating expenses.

Conclusion

This project will allow SIUH to continue to provide a needed service in the Kings/Richmond County areas to residents of childbearing age. The proposed improvements may increase the quality of care and patient satisfaction and allow physicians to address complicated situations more quickly. Based on the results of this review, a favorable recommendation can be made regarding the facility’s current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

Total project cost for new construction and acquisition of moveable equipment is estimated at \$126,450,547 based on a twelve-month construction period. This includes \$65,678,120 previously incurred as shell space under construction notice #2178. As a condition of approval for this CON, construction notice #2178 shall be revised to remove those costs that are now included in this CON.

New Construction	\$79,965,712
Site Development	\$2,589,632
Design Contingency	\$7,996,571
Construction Contingency	\$2,995,633
Planning Consultant Fees	\$2,194,280
Architect Engineering Fees	\$4,053,859
Construction Manager Fees	\$3,033,104
Other Fees (Consultant)	\$3,050,281
Moveable Equipment	\$8,455,196
Telecommunications	\$5,383,702
Financing Costs	\$6,038,914
CON Fee	\$2,000
Additional Processing Fee	<u>\$691,663</u>
Total Project Cost	\$126,450,547

The applicant's financing plan appears as follows:

Equity	\$75,804,578
Fundraising	5,000,000
DASNY tax-exempt bond financing at an interest rate of 6.5% for a 30-year term	45,645,969

Enterprise Operating Budget

The applicant has submitted an operating budget, in 2021 dollars, for the current year (2020), year one, and year three, summarized below:

	<u>Current Year 2020</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch or Visit</u>	<u>Total</u>	<u>Per Disch or Visit</u>	<u>Total</u>	<u>Per Disch or Visit</u>	<u>Total</u>
<u>Inpatient Revenues</u>						
Commercial MC	\$37,229	\$291,652,964	\$35,985	\$300,554,275	\$30,475	\$291,737,922
Medicare FFS	\$18,432	\$145,342,030	\$18,398	\$145,600,077	\$15,641	\$157,378,302
Medicare MC	\$17,047	\$122,687,133	\$17,047	\$122,687,133	\$16,036	\$141,021,400
Medicaid FFS	\$10,924	\$27,758,245	\$10,721	\$28,429,461	\$9,347	\$30,002,549
Medicaid MC	\$9,070	\$74,622,318	\$8,745	\$79,902,388	\$7,960	\$86,393,807
Private Pay	\$27,529	\$17,949,158	\$27,273	\$18,027,787	\$8,219	\$7,693,038
Total IP Revenues		\$680,011,848		\$695,021,119		\$706,533,980
<u>Outpatient Revenues</u>						
Commercial MC	\$1,043	\$146,523,304	\$1,043	\$146,523,304	\$1,043	\$146,523,304
Medicare FFS	\$438	\$39,493,211	\$438	\$39,493,211	\$438	\$39,493,211
Medicare MC	\$500	\$35,863,535	\$500	\$35,863,535	\$500	\$35,863,535
Medicaid FFS	\$134	\$3,191,751	\$134	\$3,191,751	\$134	\$3,191,751
Medicaid MC	\$212	\$27,612,703	\$212	\$27,612,703	\$212	\$27,612,703
Private Pay	\$90	\$4,245,970	\$90	\$4,245,970	\$90	\$4,245,970
Total OP Revenues		\$256,930,474		\$256,930,474		\$256,930,474
<u>Deductions</u>						
Revenues		(\$12,652,244)		(\$12,652,244)		(\$12,652,244)
Other Revenues		147,040,763		44,195,890		44,195,890
Revenue from 2020 impact		0		121,163,000		121,163,000
Total Revenues		\$1,096,635,329		\$1,129,962,727		\$1,129,570,174
<u>Inpatient Expenses</u>						
Operating	\$18,563	\$637,193,700	\$17,560	\$642,871,428	\$17,559	\$642,820,744
Capital	426	14,627,005	792	28,985,635	\$786	28,781,669
Total IP Expenses	\$18,989	\$651,820,705	\$18,352	\$671,857,053	\$18,345	\$671,602,413
<u>Outpatient Expenses</u>						
Operating	\$844	\$424,795,800	\$735	\$424,795,800	\$735	\$424,795,800
Capital	\$19	9,751,335	\$17	9,751,335	\$17	9,751,335
Total OP Expenses	\$863	\$434,547,135	\$752	\$434,547,135	\$752	\$434,547,135
<u>Expenses impact from 2020</u>						
Total Expenses		\$1,086,367,840		\$1,124,722,188		\$1,124,467,548
<u>Excess Revenues over Expences</u>						
		\$10,267,489		\$5,240,539		\$5,102,626

<u>Utilization</u>	<u>Current Year 2020</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch or Visit</u>	<u>Total</u>	<u>Per Disch or Visit</u>	<u>Total</u>	<u>Per Disch or Visit</u>	<u>Total</u>
Discharges		34,326		36,608		36,608
Visits		503,232		577,739		577,739

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

- Expense and utilization assumptions are based on historical experience.
- Reimbursement rate assumptions are based on historical experience.
- Other revenues consist of \$102,844,873 in COVID-19 Provider Relief Funding received in 2020. The applicant has indicated that in 2020, SIUH incurred a revenue loss of \$121,163,000 and expense savings of \$18,318,000 due to the impact of COVID-19. As volume is projected to return, the budget includes \$121,163,000 in additional revenues for years one and three that were lost in 2020. The \$18,318,000 expense savings realized in 2020 is included as an ongoing expense in years one and three.
- COVID-19 significantly impacted the 2020 inpatient and outpatient volume. In 2021, volume is slowly returning to pre-COVID-19 levels, as patients are vaccinated and start to access healthcare services. In the upcoming months, the 2022 budget process will begin, and the hospital expects continued volume improvement into 2022.
- As part of the business plan process, the Northwell Health internal cost accounting system was used to generate the revenue, expense, utilization, and payer rate assumptions based upon the Maternity and Newborn Diagnostic Related Groupings (DRGs) applicable to the program. Staffing assumptions were developed with the clinical and operational leadership using staffing models in existing programs. Revenue, expense, and utilization assumptions are based upon the current obstetrics service line experience at SIUH. The expense and utilization assumptions are based upon the DRG detail variable direct cost. Once the variable direct costs are calculated, overhead costs are developed using the experience to the clinical and management staff at the hospital. Revenue and payer assumptions are based upon the current experience of the existing obstetrics volume and payer mix at SIUH.

Utilization, broken down by payor source for inpatient services during the current year, year one, and year three, is summarized below:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	21.64%	22.05%	22.04%
Medicare FFS	23.94%	23.14%	23.17%
Medicare MC	20.98%	20.23%	20.25%
Medicaid FFS	7.44%	7.39%	7.39%
Medicaid MC	23.79%	25.03%	24.99%
Private Pay	<u>2.21%</u>	<u>2.15%</u>	<u>2.16%</u>
Total	100.00%	100.00%	100.00%

Capability and Feasibility

The total project cost of \$126,450,547 will be met with equity of \$75,804,578 via accumulated funds of the hospital, \$5,000,000 in fundraising proceeds, and the remainder of \$48,645,969 will be financed via a DASNY tax-exempt bond financing at an interest rate of 6.5% for a 30-year term. A letter of interest has been submitted by Citigroup regarding the financing.

The submitted enterprise budget indicates an excess of revenues over expenses of \$5,240,539 and \$5,102,626 during the first and third years, respectively. BFA Attachment B is the incremental inpatient budget related to this CON and projects excess (deficiency) of revenues over expenses of (\$5,027,087) and (\$5,164,988) in years one and three, respectively. The applicant has submitted a letter from Northwell Health's Chief Financial Officer indicating that Northwell Health will offset the incremental losses related to this project via operations. Revenues are based on current reimbursement methodologies. The submitted budget appears reasonable.

As shown in BFA Attachment A, Northwell Health had an average positive working capital position and an average positive net asset position from 2019 through March 31, 2021. Also, the entity achieved average excess revenues over expenses of \$308,692,333 from 2019 through March 31, 2021. The applicant has indicated that the loss in 2020 is directly related to lost revenue due to the COVID-19 pandemic.

Conclusion

Subject to the noted contingency and condition, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner.

Attachments

- | | |
|------------------|--|
| BFA Attachment A | 2019 and 2020 Certified Financial Statements and March 31, 2021 Internals of Northwell Health. |
| BFA Attachment B | Incremental Inpatient Budget Related to this Project |



Project # 211176-C Strong Memorial Hospital

Program: Hospital Purpose: Construction

County: Monroe Acknowledged: May 11, 2021

Executive Summary

Description

Strong Memorial Hospital (SMH), an 886-bed, voluntary not-for-profit, Article 28 hospital located at 601 Elmwood Avenue in Rochester (Monroe County), requests approval to certify an additional 11 physical medicine and rehabilitation (PM&R) beds (for a total of 31) and perform construction to accommodate the new beds.

The applicant reports that the primary reason for this request is their inability to admit all patients who require acute rehabilitation due to the lack of available beds. In recent years, there has been an increased demand for acute inpatient rehabilitation beds for increasingly complex patients. The lack of inpatient rehabilitation bed availability also creates capacity constraints for acute care at SMH through longer lengths of stay when occupancy is very high. The average occupancy rate for inpatient rehabilitation beds has remained at 95% despite the COVID-19 pandemic. The pre-COVID occupancy rate for SMH's total inpatient beds was 97% and is currently 93% in this post-COVID recovery period.

The proposed acute rehab unit expansion at SMH will be designed with 11 private rooms that will provide greater flexibility in accepting admissions. The current acute rehabilitation unit has six double occupancy and only eight private rooms. According to the applicant, the lack of sufficient private room capacity has limited

SMH's ability to admit patients due to compatibility considerations including gender, patients who require reduced sensory stimulation, and patients who require isolation.

OPCHSM Recommendation

Contingent Approval

Need Summary

The proposed addition of 11 physical medicine and rehabilitation beds will allow SMH to admit patients they have had to turn away and provide more private rooms. After the addition of the 11 beds, SMH will have a total of 31 physical medicine and rehabilitation beds, 19 of which will be private.

Program Summary

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

Financial Summary

Total project costs of \$6,730,000 will be met via accumulated funds from SMH's operations.

The proposed budget is as follows:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues, Expenses, Excess of Revenues.

Recommendations

Health Systems Agency

The HSA recommends approval of this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health(Department). 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 State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-01. [AER]

Approval conditional upon:

1. This project must be completed by **April 1, 2023**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **February 1, 2022**, and construction must be completed by **January 1, 2023**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 7, 2021

Need and Program Analysis

Background

Strong Memorial Hospital (SMH) located at 601 Elmwood Ave., Rochester NY 14642 seeks approval for the renovation of a medical/surgical wing, converting it to 11 physical medicine and rehabilitation beds in private rooms. As a result of this construction/expansion project, staffing is expected to increase by 48 FTEs in the first year and to a total of 111.4 FTEs by the third year.

Analysis

Beds by Service Line			
Bed Type	Current Beds	Bed Change	Beds after Approval
Burns Care	7		7
Coronary Care	8		8
Intensive Care	98		98
Maternity	45		45
Medical/Surgical	467		467
Neonatal Continuing Care	14		14
Neonatal Intensive Care	34		34
Neonatal Intermediate Care	20		20
Pediatric	60		60
Pediatric ICU	20		20
Physical Medicine and Rehabilitation	20	11	31
Psychiatric	93		93
Total	886		897

Source: 2021 HIFIS/Applicant

PM&R Bed Occupancy				
Year	Beds	Discharges	ADC	Occupancy
2016	20	405	16.8	84.00%
2017	20	374	18.3	91.50%
2018	20	381	18.9	94.50%
2019	20	339	18.3	91.50%
2020*	20	416	N/A	N/A

Source: ICR and *Applicant

N/A = Not Available Yet

The current 20 PM&R beds consist of six double and eight private rooms. The lack of more private rooms interferes with the ability to admit patients of different genders, patients who require reduced sensory stimulation, and patients who require isolation.

Occupancy of the PM&R beds has been consistently over 90%. According to the applicant, between July 1, 2019 and June 30, 2020, they turned away 80 patients due to bed availability; resulting in longer lengths of stay in hospital acute care settings. Internal analysis found limited potential for improvement by reducing length-of-stay, further suggesting the need to expand. Of the patients turned away:

- 40% went back home mostly due to the COVID-19 pandemic.
- 21% were sent to a nursing facility.
- 32% were sent to a Rochester Regional Health hospital.
- 7% went to another inpatient rehabilitation facility.

In recent years there has been an increased demand for acute inpatient rehabilitation beds for increasingly complex patients. In addition, SMH has absorbed a portion of the Geneva General Hospital inpatient referral base when the unit closed in 2018.

The lack of access to acute rehabilitation beds has also resulted in area community hospitals having little ability to transfer their patients to Strong's PM&R beds. Demand for transfers into the inpatient

rehabilitation beds is expected to continue to increase from regional hospitals and affiliates; for example, nearby F.F. Thompson Hospital reports they are opening a new Intensive Care Unit (ICU) and they anticipate a need for inpatient rehabilitation beds.

Compliance with Applicable Codes, Rules, and Regulations

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

The Department issued a Stipulation and Order (S&O) on October 30, 2018, and fined Strong Memorial Hospital \$10,000 based on findings from an allegation survey that was completed on April 30, 2018, citing deficient practice in the area of restraints. Specifically, the facility failed to follow acceptable standards of practice of patient rights in regard to the use of proper use of restraints in the behavioral health areas. The areas were utilizing law enforcement techniques, including the use of metal handcuffs, pepper gel, body strikes, and holds.

Prevention Agenda

The applicant states that the proposed project will advance local Prevention Agenda priorities by "allowing greater community-based access to care related to preventative and maintenance health services including mental/behavioral health care."

SMH is implementing interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

- Promote Well-Being and Prevent Mental and Substance Use Disorders
 - "Patients receiving [Strong Memorial Hospital] rehabilitation services take a PROMIS assessment (patient report outcome measurement information system) which focuses on physical function, pain interference, depression, and self-efficacy."

The application states SMH engaged community hospitals, the Monroe County Department of Health, and community agencies and programs in their Prevention Agenda efforts; however, it does not cite data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals.

In 2018, the applicant spent \$1,918,266 on community health improvement services, representing 0.048% of total operating expenses.

Conclusion:

The addition of the 11 private physical medicine and rehabilitation beds should alleviate the capacity issues given the demand and address the need for additional private rooms. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

The total project cost is estimated at \$6,730,000 and is based on an eleven-month construction period.

Renovation & Demolition	\$4,019,000
Asbestos Abatement Removal	35,000
Design Contingency	202,891
Construction Contingency	405,400
Architect/Engineering Fees	225,860
Construction Manager Fees	293,107
Other Fees	192,495
Movable Equipment	1,192,445
Telecommunications	125,000
Application Fee	2,000
Additional Fees	<u>36,802</u>
Total Project Cost	\$6,730,000

The applicant will fund the total project costs via accumulated funds from operations.

Operating Budget

The applicant has submitted an operating budget in 2021 dollars for the current acute care rehabilitation unit and the addition of the 11 proposed physical medicine and rehabilitation beds, summarized below:

	<u>Current (2020)</u>	<u>Year One (2023)</u>	<u>Year Three (2025)</u>
<u>Revenues</u>			
Commercial FFS	\$2,428,475	\$3,718,755	\$3,859,235
Medicare FFS	\$2,080,526	\$3,185,937	\$3,306,290
Medicare MC	\$2,947,327	\$4,513,280	\$4,683,775
Medicaid FFS	\$781,860	\$1,179,314	\$1,223,864
Medicaid MC	\$1,330,391	\$2,006,686	\$2,082,491
Private Pay	\$20,468	\$31,342	\$32,526
All Other	<u>\$644,728</u>	<u>\$987,279</u>	<u>\$1,024,575</u>
Total Revenues	\$10,233,775	\$15,622,593	\$16,212,756
<u>Expenses</u>			
Operating	\$9,605,079	\$14,721,407	\$15,175,336
Capital	<u>157,185</u>	<u>705,916</u>	<u>705,916</u>
Total Expenses	\$9,742,264	\$15,427,323	\$15,881,251
Excess of Revenues	<u>\$491,511</u>	<u>\$195,270</u>	<u>\$331,594</u>
Discharges	397	606	628

Utilization, broken down by payor source for the current year and the first and third years after the expansion is as follows:

<u>Payor</u>	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	20.65%	20.63%	20.38%
Medicare FFS	20.40%	20.30%	20.38%
Medicare MC	28.72%	28.88%	28.82%
Medicaid FFS	7.65%	7.59%	7.64%
Medicaid MC	13.10%	13.04%	13.65%
Private Pay	2.02%	1.96%	2.08%
All Other	<u>7.55%</u>	<u>7.60%</u>	<u>7.64%</u>
Total	100%	100%	100%

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

- Revenues are based on the facility’s current reimbursement methodologies for inpatient hospital rehabilitation beds.
- Expense and utilization assumptions are based on the facility’s historical experience of operating inpatient hospital rehabilitation beds.
- SMH received about \$158 million in CARES Act Provider Relief funding. These funds were or will be recognized in the period ending June 30, 2021, and December 31, 2021.

Capability and Feasibility

Project costs of \$6,730,000 will be met via accumulated funds from Strong Memorial Hospital.

The June 30, 2019 and June 30, 2020 Certified Financial Statements of SMH in BFA Attachment A indicate the entity had an average positive working capital position, an average positive net asset position, and average operating excess of revenues over expenses of \$118,824,465 for this two-year period.

The June 30, 2021 Internal Financial Statements of SMH show the hospital has positive working capital, a positive net asset position, and an operating excess of revenues over expenses of \$331,589,531 (BFA Attachment B). The hospital maintained a cash balance of \$659,080,349, which is sufficient to cover the cost of this project.

The financial results for SMH also include approximately \$158 million in CARES Act Provider Relief funding. The CARES Act funds were received between April 20, 2020, and December 16, 2020. They relate to the financial period of January 1, 2020 – June 30, 2121 (fiscal year 2020 January 1, 2020-June 30, 2020 and fiscal year 2021 July 1, 2020- June 30, 2021).

The submitted project operating budget projects an excess of revenue over expenses of \$195,270 in year one and \$331,505 in year three after project completion. The submitted budget appears reasonable.

Conclusion

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

Attachments

BFA Attachment A	June 30, 2019 and June 30, 2020 Certified Financial Statements of Strong Memorial Hospital
BFA Attachment B	June 30, 2021 Internal Financial Statements of Strong Memorial Hospital
HSA Attachment	Finger Lakes HSA Recommendation Report



Project # 211219-B
Alpha Ambulatory Project, LLC
t/b/k/a Alpha Ambulatory Surgery Center, LLC

Program: Diagnostic and Treatment Center County: New York
Purpose: Establishment and Construction Acknowledged: May 27, 2021

Executive Summary

Description

Alpha Ambulatory Project, LLC, an existing New York State limited liability company, seeks approval to establish and construct a multi-specialty freestanding ambulatory surgery center (FASC) initially specializing in vascular surgery and interventional radiology.

Alpha Ambulatory Project, LLC has two equal members: Ali Aboufares, MD (50%) and Rami Sartawi, MD (50%). Dr. Sartawi will also be the Medical Director.

The applicant submitted an executed backup and transfer agreement with emergency services with New York-Presbyterian Hospital - Columbia Presbyterian Center, which is 8.1 miles or 25 minutes from the FASC.

OPCHSM Recommendation

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

Need Summary

The proposed FASC will provide increased outpatient access to ambulatory surgery services for the residents of New York County. The Center has pledged to contract with Medicaid managed care plans and work with FQHCs in their service area.

The applicant projects 1,800 procedures in Year One and 1,910 in Year Three, with Medicaid at 5.0% and charity care at 2.0% in Year Three

Program Summary

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

Financial Summary

The total project cost of \$4,096,365 will be funded with members' equity.

The proposed budget is as follows:

Table with 3 columns: Budget, Year One, Year Three. Rows: Revenues (\$3,868,285 vs \$4,104,680), Expenses (2,311,893 vs 2,415,286), Net Income (\$1,556,391 vs \$1689,394).

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 (Department). 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 a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures.
 - b. Data displaying the breakdown of visits by payor source.
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery.
 - d. Data displaying the number of emergency transfers to a hospital.
 - e. Data displaying the percentage of charity care provided.
 - f. The number of nosocomial infections recorded during the year reported.
 - g. A list of all efforts made to secure charity cases.
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. ([RNR])
4. Submission of an executed building lease acceptable to the Department. [BFA]
5. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed First Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
7. Submission of photocopy of an amended and executed Lease, acceptable to the Department. [CSL]
8. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **December 1, 2022**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **March 1, 2022**, and construction must be completed by **September 1, 2022**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]

3. The ambulatory surgery center limiting procedures to those that meet the CMS definition of surgical services.
4. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 7, 2021

Program and Need Analysis

Program Description

Proposed Operator	Alpha Ambulatory Project, LLC t/b/k/a Alpha Ambulatory Surgery Center, LLC
Site Address	110 East 60 th Street New York, New York 11358 (New York County)
Surgical Specialties	Multi-Specialty, initially including: Vascular Surgery and Interventional Radiology
Operating Rooms	3
Procedure Rooms	0
Hours of Operation	Monday through Friday 8:00 am to 5:00 pm Saturdays 9:00 AM to 2:00 PM
Staffing (1st Year / 3rd Year)	11.82 FTEs / 12.09 FTEs
Medical Director(s)	Rami Sartawi, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Is expected to be provided by: New York-Presbyterian Hospital - Columbia Presbyterian Center 8.1 Miles / 25 minutes
On-call service	Patients who require assistance during off-hours will engage the 24-hour answering service to reach the on-call surgeon during hours when the facility is closed.

Analysis

The service area consists of New York County, which in 2010 had a population of 1,585,873 with 595,344 individuals (37.5%) who are 45 and over, which are the primary population group utilizing ambulatory surgery services. This population group (45 and over) is estimated to grow to 703,766 by 2025 and represent 41.2% of the projected population of 1,709,958.

The table below shows the number of patient visits for ambulatory surgery centers in New York County for 2017, 2018, and 2019.

Specialty	Facility Name	Patient Visits		
		2017	2018	2019
Gastro	Carnegie Hill Endo, LLC	11,718	12,280	13,862
Gastro/Pain Mgt	East Side Endoscopy	9,498	8,828	8,812
Multi	Fifth Avenue Surgery Center	1,997	4,031	3,936
Gastro	Gramercy Park Digestive Disease Center	9,863	11,972	12,335
Gastro	Gramercy Park DDC-Bennett Ave (opened 4/8/20)	N/A	N/A	N/A
Multi	Gramercy Surgery Center, Inc	3,365	3,105	4,851
Orthopedics	HSS ASC of Manhattan (opened 9/13/17)	N/A	1,895	3,603
Orthopedics	HSS West Side ASC (opened 7/16/19)	N/A	N/A	N/A
Ophthalmology	Hudson Yards Surgery Center (opened 6/30/20)	N/A	N/A	N/A
Gastro	Kips Bay Endoscopy Center, LLC	9,410	9,434	10,051
Gastro	Liberty Endoscopy Center (opened 1/13/17)	N/A	5,240	6,568
Gastro	Manhattan Endoscopy Center, LLC	14,616	11,032	12,298
Gynecology	Manhattan Reproductive Surgery Center (opened 3/27/19)	N/A	N/A	N/A
Multi	Manhattan Surgery Center	6,364	6,080	6,395
Ophthalmology	Mid-Manhattan Surgi-Center (closed 4/30/19)	3,348	3,180	426
Multi	Midtown Surgery Center	2,411	2,745	3,749
Multi	NY Center for Ambulatory Surgery (opened 12/13/19)	N/A	N/A	N/A

Specialty	Facility Name	Patient Visits		
		2017	2018	2019
Ophthalmology	Retinal Ambulatory Surgery Center of New York	4,095	4,179	4,882
Multi	SurgiCare of Manhattan, LLC	3,967	4,377	4,257
Gastro	The Endoscopy Center of New York	12,488	13,377	14,758
Gastro	West Side GI	17,802	18,694	17,894
Total Visits		110,942	120,449	128,677

The applicant projects 1,800 procedures in Year One and 1,910 in Year Three. These projections are based on the current practices of participating surgeons and are currently being performed in the participating physicians' office-based practice. One of the proposed specialties is Interventional Radiology. While many interventional radiology procedures do not fall under the definition of ambulatory surgery, the Department has reviewed the list of projected procedures the Center expects to perform and agrees they meet the definition of ambulatory surgery.

The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Commercial FFS	360	20%	382	20%
Commercial MC	756	42%	802	42%
Medicare FFS	90	5%	96	5%
Medicare MC	360	20%	382	20%
Medicaid MC	90	5%	96	5%
Private Pay	18	1%	18	1%
Charity Care	36	2%	38	2%
Other	90	5%	96	5%
Total	1,800	100.0%	1,910	100.0%

The Center initially plans to obtain contracts with the following Medicaid Managed care plans: Fidelis, HealthFirst, and Empire BCBS HealthPlus. The Center will work collaboratively with Federally Qualified Health Centers (FQHC), hospitals, family, and homeless shelters within the service area to provide service to the under-insured. The Center has developed a financial assistance policy with a sliding fee scale to be utilized when the Center is operational.

Character and Competence

The ownership of Alpha Ambulatory Surgery Center, LLC is:

Member Name	Interest
Ali Aboufares, M.D.	50%
Rami Sartawi, M.D.	50%
<i>Total</i>	100%

Dr. Rami Sartawi is the proposed Medical Director. He is a practicing Vascular Surgeon and Interventional Radiologist. He is a current Partner and Vice President of Omni Medical of New York PC, a private medical practice specializing in cardiology, vascular, and both diagnostic and interventional radiology. He is also the Director of Outpatient Lab and Imaging Services. He was the former Medical Director of Interventional Radiology at Pikeville Medical Center. He received his medical degree from Ohio State College of Medicine. He completed his residency at Vanderbilt University and his fellowship at Northwestern Memorial Hospital. He is board-certified in Interventional and Diagnostic Radiology.

Dr. Ali Aboufares is the Managing Director and Partner of Omni Medical of New York, PC, a private medical practice specializing in cardiology, vascular, and both diagnostic and interventional radiology. He was previously the Assistant Professor of Medicine and the Associate Director of Endovascular Services at the Center for Interventional Vascular Therapeutics at Columbia University Irving Medical Center. He was responsible for clinical services at the cardiac catheterization lab and education of the fellows,

residents, interns, and students. He was the previous Owner and Managing Director of Fifth Avenue Cardiovascular Medicine, a private medical practice specializing in cardiology and vascular, both diagnostic and interventional. He received his medical degree from the American University of Beirut. He completed his residency in Internal Medicine and Cardiovascular Disease at Lenox Hill Hospital. He completed his residency in Interventional Cardiology at Ochsner Clinic Foundation.

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

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

Integration with Community Resources

For those patients who do not identify a primary care provider (PCP), the applicant plans to work closely with them to educate them regarding the availability of primary care services offered by local providers, including New York-Presbyterian Hospital, which is the applicant's backup hospital. Through this program, each patient will be provided information concerning the local availability of primary care services.

The Center will develop a formal outreach program that will be directed to members of the local community. A core component of the outreach program is working collaboratively with federally qualified health centers (FQHC) within the Center's service area. The Center will participate as a provider with the FQHC to develop referral and collaborative agreements to enhance access to ambulatory surgery services to Medicaid and charity care patients. The applicant has reached out to Harlem United, the operator of Upper Room AIDS Ministry, Inc., which operates two clinics and two mobile vans in Manhattan. The applicant will explore future partnerships with Settlement Health and Medical Services, Damian Family Care Centers, Project Renewal, Sunset Park Health Council, William F. Ryan Community Health Center, Hudson River Healthcare, Community Healthcare Network, and The Institute for Family Health. The Applicant has begun reaching out to multiple physicians in Washington Heights and Uptown Manhattan. The applicant plans to enter into Medicaid Managed Care Plans contracts, which would include but not be limited to OMNY Vein & Cardiovascular, whom they currently contract with, 1199 SEIU, AARP Medicare Complete, AETNA, Cigna, Empire BCBS, Empire Plan, Fidelis, Emblem Health GHI and HIP, HealthCare Partners, HealthFirst, Magnacare, Montefiore CMO, MVP, United, Oxford, VNS, Medicare, and Medicaid.

The applicant commits to providing charity care for persons without the ability to pay and to utilize a sliding fee scale for persons who are unable to pay the full charge for services or are uninsured. The applicant has proposed a 2% charity care, reduced compensation, or uncompensated care, in addition to significant revenue being directed from the Center to State's bad debt and charity care pool. In addition, the operating budget includes a 5% Medicaid allowance, demonstrating the Center's expected outreach to typically underserved populations.

The Center intends on using an Electronic Medical Record (EMR) program and to fully integrate and exchange information with an established Regional Health Information Organization (RHIO).

Conclusion

The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval of this project will provide increased access to ambulatory surgery services for the residents of New York County.

Financial Analysis

Total Project Costs and Financing

Total project costs are estimated at \$4,096,365; broken down as follows in 2021 dollars:

New Construction	\$1,558,050
Design Contingency	155,805
Construction Contingency	155,805
Architect/Engineering Fees	124,644
Other Fees	15,300
Movable Equipment	2,062,365
CON Application Fee	2,000
Additional CON Processing Fee	22,396
Total Project Cost	\$4,096,365

The applicant's financing plan is as follows:

Landlord Contribution (Written in lease agreement) section 40.3	\$997,500
Members' Equity	\$2,000,000
Omni Medical of NY P.C. d/b/a OMNY Vein & Cardiovascular	\$1,000,000
AOA Healthcare Services, LLC	\$98,865
Total	\$4,096,365

Omni of NY P.C. and AOA Healthcare are the same proposed owners of Alpha ASC and have submitted financials indicating equity resources and documentation indicating the entities will finance the project cost. BFA Attachment A is the personal Net Worth Statement of the applicant members, which indicates sufficient liquid resources exist to fund the equity requirement for project costs equally.

Lease Rental Agreement

The applicant has submitted a draft lease for the proposed site, the terms are summarized below:

Date:	April 1, 2021
Premises:	110 East 60 th Street, New York (New York County), New York 10065
Landlord:	111 E Street JV SUB LLC
Tenant:	Alpha Ambulatory Project, LLC
Term:	15 year (Renewal option must be exercised within 12 months of expiration date)
Rent:	Fixed Rent is \$120,000 (\$10,000 per annum) 2 nd Period is \$180,000 per annum.
Provisions:	Tenant shall be responsible for repairs; excessive electricity; excessive heating and air conditioning and cleaning of demised premises.

The applicant stated the lease agreement is an arm's length arrangement and there is no relationship between the landlord and tenant. Two letters of rent reasonableness letters have been submitted from NYS Licensed realtors indicating rent reasonableness.

Operating Budget

The applicant submitted their first- and third-year operating budgets, in 2019 dollars, summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>
Commercial FFS	\$2,875	\$1,035,060	\$2,875	\$1,098,313
Commercial MC	\$2,606	1,969,848	\$2,606	2,090,228
Medicare FFS	\$1,797	161,728	\$1,788	171,611
Medicare MC	\$1,527	549,876	\$1,527	583,479
Medicaid MC	\$1,039	93,551	\$1,034	99,288
Private Pay	\$539	9,704	\$542	10,297
All Other	\$539	<u>48,518</u>	\$536	<u>51,483</u>
Total Revenues		\$3,868,285		\$4,104,680
 <u>Expenses</u>				
Operating	\$786.34	\$1,415,416	\$782.02	\$1,493,663
Capital	<u>498.04</u>	<u>896,477</u>	<u>482.53</u>	<u>921,623</u>
Total Expenses	\$1,284.38	\$2,311,893	\$1,264.55	\$2,415,286
Net Income		<u>\$1,556,391</u>		<u>\$1,689,394</u>
Utilization (Procedures)		1,800		1,910

The applicant projected first- and third-year utilization procedures based on current office-based practice experience. Projected utilization by payor is for Years One and Three are as follows.

<u>Payor</u>	<u>Utilization</u>
Commercial FFS	20%
Commercial MC	42%
Medicare FFS	5%
Medicare MC	20%
Medicaid MC	5%
Private Pay	1%
Charity Care	2%
All Other	<u>5%</u>
Total Procedures	100%

Capability and Feasibility

The total project cost of \$4,096,365 for construction and moveable equipment will be funded through members' equity of \$2,000,000, landlord lease contribution of \$997,500, member contributions of \$1,000,000 from Omni Medical of NY, P.C., and a contribution of \$98,968 from AOA Healthcare Services LLC.

Working capital requirements are estimated at \$402,548 based on two months of third-year expenses. Working capital will be funded through equity from AOA Healthcare Services LLC, which has the same ownership as the applicant. BFA Attachment C, AOA Healthcare services LLC balance sheet ending December 2020 and P&L Statement, indicates sufficient funds to meet the equity requirement.

BFA Attachment D is the proforma balance sheet for Alpha Ambulatory Surgery Center, LLC, which shows operations will start with \$4,498,913 in members' equity.

Years One and Three project a net income of \$1,556,391 and \$1,689,394, respectively. Revenues are based on the current reimbursement rates and fee schedules received from Omni Medical of NY, P.C. The budget appears reasonable.

Conclusion

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

Supplemental Information**DOH Comment**

The Department reached out to proximate hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC). None of the hospitals responded. Therefore, in the absence of comments from hospitals near the ASC, the Department finds no basis for reversal or modification of the recommendation for approval of this application based on public need, financial feasibility, and owner/operator character and competence.

Attachments

BFA Attachment A	Personal Net Worth Statement of Members of Alpha Ambulatory Project, LLC
BFA Attachment B	OMNI Medical Of NY, PC Balance Sheet
BFA Attachment C	AOA Healthcare Services, LLC Balance Sheet and P&L Statement
BFA Attachment D	ALPHA Ambulatory Surgery Center, LLC Pro Forma Balance Sheet
BHFP Attachment	Map

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of October 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a free standing multi-specialty ambulatory surgery center initially specializing in vascular surgery and interventional radiology to be located at 110 East 60th Street, New York, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

211219 B

FACILITY/APPLICANT:

Alpha Ambulatory Project, LLC t/b/k/a Alpha Ambulatory Surgery Center, LLC

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (Department). 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 a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
 - a. Data displaying actual utilization including procedures.
 - b. Data displaying the breakdown of visits by payor source.
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery.
 - d. Data displaying the number of emergency transfers to a hospital.
 - e. Data displaying the percentage of charity care provided.
 - f. The number of nosocomial infections recorded during the year reported.
 - g. A list of all efforts made to secure charity cases.
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. ([RNR])
4. Submission of an executed building lease acceptable to the Department. [BFA]
5. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed First Amended and Restated Operating Agreement, acceptable to the Department. [CSL]
7. Submission of photocopy of an amended and executed Lease, acceptable to the Department. [CSL]
8. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **December 1, 2022**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. Construction must start on or before **March 1, 2022**, and construction must be completed by **September 1, 2022**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The ambulatory surgery center limiting procedures to those that meet the CMS definition of surgical services.
4. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospitals/docs/hcs_access_forms_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]
7. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 211042-B
Rockwell Health LLC

Program: Diagnostic and Treatment Center County: Kings
Purpose: Establishment and Construction Acknowledged: March 2, 2021

Executive Summary

Description

Rockwell Health LLC, an existing New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) at 17 West 9th Street, Brooklyn (Kings County). The D&TC will be housed in approximately 4,678 square feet on the first floor of an existing building, which will be renovated to be compliant with Article 28 requirements. The building is owned by Kings 55, LLC, a non-related entity, which will lease the clinic space to Rockwell Health LLC. The applicant requests certification for primary care and other medical specialties (including radiology, cardiology, pulmonology, and endocrinology) and will also provide podiatry, to serve the Red Hook neighborhood in Brooklyn.

Ownership of the Center is as follows:

Table with 2 columns: Members, Ownership Percentage. Includes Proposed Operator Rockwell Health LLC and members Samuel Schlesinger (50%) and Wolf Eisenbach (50%).

Seth Kurtz, MD., who specializes in internal medicine will serve as Medical Director. As of February 3, 2021, Rockwell Health LLC entered into a transfer agreement for emergency and backup medical services with Maimonides Medical Center located 3.7 miles (18 minutes travel time) from the proposed D&TC.

OPCHSM Recommendation
Contingent Approval

Need Summary

The D&TC will be located in a medically underserved area, improving access to primary and specialty care in Red Hook and its neighboring Kings County communities.

The applicant projects 16,041 visits in the first year and 27,124 by the third, with 76% Medicaid and 4% charity care.

Program Summary

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

Financial Summary

The projected costs of \$1,764,900 will be met via equity of \$879,911 from the proposed members' resources and financing of \$884,989 at an interest rate of 3% for 15 years.

The submitted budget projects an excess of expenses over revenues of (\$6,891) and \$528,675 in the first and third years respectively. The submitted budget appears reasonable and is as follows:

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

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 (Department). 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 lease agreement, acceptable to the Department. [BFA]
3. Submission of loan financing that is acceptable to the Department. [BFA]
4. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. The project must be completed by December 1, 2022. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the approval expiration date. [PMU]
2. Construction must start on or before March 1, 2022, and construction must be completed by September 1, 2022, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]
5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 7, 2021

Need and Program Analysis

Program Description

Proposed Operator	Rockwell Health LLC
Site Address	17 West 9 th Street Brooklyn, New York 11231 (Kings County)
Services	Medical Services – Primary Care Medical Services-Other Medical Specialties Radiology Services (x-ray) Cardiology Cardiovascular Endocrinology Pulmonology Podiatry
Hours of Operation	Sunday through Friday 9:00 am to 6:00 pm Saturday 9:00 am to 4:00 pm
Staffing (1st Year / 3rd Year)	10.2 FTEs / 13.2 FTEs
Medical Director(s)	Seth D. Kurtz, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Maimonides Medical Center 4.1 miles / 16 minutes away

Analysis

The primary service area is the Red Hook neighborhood in Kings County. The Health Resources & Services Administration (HRSA) has designated Kings County a Medically Underserved Area/Population. The population of Kings County in 2010 was 2,504,700 and is estimated to grow to 2,810,876 by 2025, an increase of 12.2%.

The applicant projects 16,041 visits in first year and 27,124 by the third and is committed to serving all persons in need without regard to the ability to pay or source of payment. The applicant is projecting Medicaid utilization of 76% and 4 % Charity Care.

Character and Competence

The members of Rockwell Health LLC are:

<u>Name</u>	<u>Interest</u>
Wolf Eisenbach	50.00%
Samuel Schlesinger	50.00%
Total	100.00%

Wolf Eisenbach has been the Senior Healthcare Recruiter for Diamond Health Associates for over three years. He is responsible for communicating with hiring managers to obtain a deep understanding of their needs; assisting with the development of job descriptions; sourcing, screening, and interviewing candidates against job descriptions; presenting candidates in a personal, meaningful, and knowledgeable format; has continuous candidate contact before, during, and after the interview/hiring process, and; establishes and maintains positive rapport with all candidates and hiring managers. He has also been the Chief Operating Officer of Ptex Group, a healthcare branding, and marketing company, for 14 years. He is responsible for managing the operations of the different services the facility provided including overseeing the ongoing operations; creating and overseeing the procedures of the company; integrating the different company functions; ensuring all projects are running according to plan; and designing a framework to implement strategy into execution.

Samuel Schlesinger has been the Chief Executive Officer of Diamond Health Associates for three years. He is responsible for overseeing provider staffing and management in healthcare facilities. He has been a Trustee of Milenia Health Benefit Trust for over five years. He is responsible for overseeing the payments

of health and insurance benefits for employees and their dependents of various participant facilities. He has been the Chief Executive Officer of Eagle Risk Services LLC for over four years. He is a licensed insurance broker for property and casualty, providing risk management services and loss control safeguards against damage for clients. He has been the Chief Executive Officer of All State Administrators LLC for approximately 12 years. He provides risk management assessments and administrative management to many types of corporations with a focus on the health care industry.

Dr. Seth Kurz is the proposed Medical Director. He has been the current Medical Director of Gold Crest Care Center for over six months. He has been the CEO and Medical Director of KAHN Health, LLC for over eight months. He has been the Medical Director of New Franklin Center for Rehabilitation and Nursing and Fort Tryon Center for Rehabilitation and Nursing for one year and Split Rock Rehabilitation and Health Care Center for two years. He has been an Emergency Medical Attending Physician for Schumacher Group at Orange Regional Medical Center for over eight years. He has been the President, Medical Director, and Attending Physician of Elite Healthcare for over nine years. He has been the President, Medical Director, and Attending Physician of QHC Upstate Medical, P.C. for over 11 years. He has been the President of Crown Heights Medical, P.C. for over 14 years. He has been the President, Medical Director, and Attending Physician of Park Avenue Pediatrics, P.C. for over 14 years. He has been a member of the Board of Directors of Congregation of Sha'ar Hashmayim for over ten years. He has been a member and Physician Advisor on the Hudson Valley Health Coalition for over five years where he works on projects to improve care access and primary care for the local underserved population. He has been a Surgeon for the Fraternal Order of Police for over 14 years. He earned his medical degree from the State University of New York Downstate College of Medicine in Brooklyn. He completed his residency in Emergency Medicine at Lincoln Medical and Mental Health Center and a General Pediatric Residency at Infant and Children's Hospital of Brooklyn at Maimonides Medical Center. He is board-certified in Pediatrics and Emergency Medicine.

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

Additionally, the staff from the DHDTTC reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department. 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. Schlesinger was named in a civil RICO case on August 28, 2018 (Oriska Insurance Company versus Avalon Gardens Rehabilitation & Health Care Center, LLC - 6:2018cv-01030; US District Court for the Northern District of New York) resulting from over 50 legal actions previously brought between 2015 and 2018 in New York State Court, pertaining to a dispute over premiums owed as to insureds (skilled nursing facilities). Mr. Schlesinger is not an insurance broker but administers loss control and insurance procurement services for clients. The legal actions of which Mr. Schlesinger is a party, allege a scheme to divert millions of dollars in insurance premiums from certain trust funds set up to receive those payments. The RICO case was dismissed on September 4, 2019 as the judge found that the action was essentially a breach of contract action that plaintiff tried to characterize as a federal RICO case. The other related actions have been dismissed.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval for this project will improve access to a variety of medical services for the residents of the Red Hook neighborhood and the surrounding communities in Kings County.

Financial Analysis

Total Project Cost and Financing

The total project cost of \$1,764,900 for leasehold improvements, renovations, moveable equipment, and CON fees.

Renovation & Demolition	\$1,229,488
Design Contingency	122,949
Construction Contingency	122,949
Architect /Engineering Fees	51,250
Other Fees	46,125
Moveable Equipment	180,496
CON Fee	2,000
Additional Processing Fee	<u>9,643</u>
Total Project Cost	\$1,764,900

The applicant's financing plan is as follows:

Equity	\$879,911
Loan (term and payout period of 15 years at 3% interest)	<u>884,989</u>
	\$1,764,900

Lease Agreement

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

Date:	August 2020
Premises:	4,678 square feet of space at 17 West 9th Street, Brooklyn, New York 11219
Landlord:	Kings 55, LLC
Tenant:	Rockwell Health LLC
Term:	10 years
Rent:	Year 1 \$108,000 annually (\$9,000 per month) Year 2 \$180,000 annually (\$15,000 per month) Year 3 – Year 10 (3% annual increase)
Provisions:	Tenant is responsible for insurance, maintenance, repairs, utilities, and property taxes.

The applicant has submitted an affidavit that this lease is an arm's length agreement, as there is no relationship between the landlord and the tenant. However, the property is in contract to be sold to 17 West 9th Realty LLC (new landlord), whose members have an identical ownership interest as members of Rockwell Health LLC. The applicant has submitted letters from two New York realtors attesting to the rent reasonableness.

Operating Budget

The applicant has provided an operating budget, in 2021 dollars, for the first and third year, after the change of ownership. The budget is summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial-FFS	\$108.88	\$17,421	\$108.70	\$29,458
Commercial MC	\$97.95	62,881	\$98.00	106,330
Medicare-FFS	\$97.98	141,482	\$98.01	239,243
Medicare MC	\$83.26	66,771	\$83.27	112,908
Medicaid-MC	\$102.00	1,243,498	\$102.00	2,102,730
Private Pay	<u>\$150.38</u>	<u>24,062</u>	<u>\$150.14</u>	<u>40,687</u>
Total Revenue		\$1,556,113		\$2,631,356
 <u>Expenses</u>				
Operating	\$79.38	\$1,273,260	\$63.83	\$1,731,300
Capital	<u>\$16.41</u>	<u>289,744</u>	<u>\$12.82</u>	<u>371,381</u>
Total	\$95.79	\$1,563,004	\$76.65	\$2,102,681
Excess Revenues		<u>(\$6,891)</u>		<u>\$528,675</u>
Visits		16,041		27,124

Utilization by payor source is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial-FFS	1.00%	1.00%
Commercial MC	4.00%	4.00%
Medicare-FFS	9.00%	9.00%
Medicare MC	5.00%	5.00%
Medicaid-MC	76.00%	76.00%
Private Pay	1.00%	1.00%
Charity Care	<u>4.00%</u>	<u>4.00%</u>
Total	100.0%	100.0%

The following is noted regarding the first and third year budgets:

- The managing member Samuel Schlesinger has indicated that he will fund the Year One deficit.
- Effective April 2, 2020, Medicaid payments have been reduced by 1.5% in accordance with the FY 2020 Enacted State Budget, therefore reducing the Medicaid Revenues in years one and three. This reduction has been reflected within the budgets.
- The projected number of visits in Year One and Year Three is based on the capacity of the physical space, the amount of service hours available, and the applicant's assessment of community needs.
- The proposed D&TC will address health difficulties faced by individuals living in the proposed service area (PSA) by:
 - Providing cardiology and endocrinology, in addition to primary care medical services
 - Implementing a comprehensive outreach program to the local community.
 - Providing more hours to patients than currently available in the PSA.
 - Hiring linguistically appropriate staff to accommodate all patients (31% of the PSA are Spanish speaking).
- The applicant used a conservative approach to this assumption and based on the statistic that an average patient visits their primary care provider four times per year, which translates into approximately 4,785 distinct patients in Year One and 7,940 distinct patients in Year Three. Year One and Three projections include projected primary care and specialty care visits.

- The rent in the draft lease provided by the applicant is supported by rent reasonableness letters. The utility cost and other costs associated with the site are based on the experience of similar facilities within the region.
- Salary assumptions are based on average regional rates based on the experience of similar facilities and publicly available information.

Capability and Feasibility

Total project costs of \$1,764,900 will be met via the proposed members' equity of \$879,911 and the remaining \$884,989 will be financed via a term and payout period of 15 years at 3% interest. Juda Deutsch has provided a letter of interest for the financing at the terms stated. Aside from financing for this project, Juda Deutsch has no further financial interest in this project. BFA Attachment A is the net worth statement of the proposed members which reveals sufficient resources for the equity contribution.

The working capital requirement is estimated at \$350,447 based on two months of third-year expenses and will be funded via the proposed members' equity. BFA Attachment C is Rockwell Health LLC's Pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$350,447.

The submitted budget projects a net loss of \$6,891 for the first year and a net income of \$528,675 for the third year. Samuel Schlesinger, the managing member of Rockwell Health LLC, has submitted an affidavit attesting that he will provide additional funding to cover any operating losses. The submitted budget appears reasonable.

Conclusion

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

Attachments

- | | |
|------------------|---|
| BFA Attachment A | Net Worth Statement of Proposed New Members |
| BFA Attachment B | Pro Forma Balance Sheet |
| BHFP Attachment | Map |

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of October 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 17 West 9th Street, Brooklyn for primary care and other medical specialties including radiology, cardiology, pulmonology and endocrinology, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

211042 B

Rockwell Health, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (Department). 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 lease agreement, acceptable to the Department. [BFA]
3. Submission of loan financing that is acceptable to the Department. [BFA]
4. Submission of a photocopy of an amended and executed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of an executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
7. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

APPROVAL CONDITIONAL UPON:

1. The project must be completed by December 1, 2022. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for an extension to the approval expiration date. [PMU]
2. Construction must start on or before March 1, 2022, and construction must be completed by September 1, 2022, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [PMU]
3. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
4. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

5. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction.
[AER]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 211251-B
Allhealth D&T Center-Brooklyn2

Program: Diagnostic and Treatment Center
Purpose: Establishment and Construction
County: Kings
Acknowledged: June 25, 2021

Executive Summary

Description

B & L Health, Inc. d/b/a Allhealth D&T Center-Brooklyn2 (Allhealth D&TC) is an existing Article 28 diagnostic and treatment center (D&TC) at 1655 East 13th Street, Brooklyn (Kings County). B&L Health, Inc. proposes to transfer 100% ownership interest from two existing and withdrawing members to two new members. In addition, the applicant requests to certify Medical Services - Other Medical Specialties at their main site and an existing extension clinic, located at 1100 Coney Island Avenue, Brooklyn.

The facility will continue the current lease agreements with SV E. 13TH ST. LLC, which were modified on June 1, 2021, and extended through December 31, 2030, and with Coney Island Properties LLC which on March 16, 2021 granted a ten (10) year extension through October 31, 2031.

Ownership of the D&TC before and after the requested change is as follows:

Current Ownership

Table with 2 columns: Stockholders, %
Albert Shimunov 91%
David Shimunov 9%
Total 100%

Proposed Ownership

Table with 2 columns: Stockholders, %
Gagandeep Singh 50%
Ahmad Masoud 50%
Total 100%

Terry-Jan Blackett-Bonnett, M.D., who is Board-certified in Internal Medicine, will serve as Medical Director. B & L Health, Inc. has a

transfer agreement for emergency care, inpatient care, specialty consults, and diagnostic services with Coney Island Hospital, 2.1 miles (5 minutes travel time) from the center.

OPCHSM Recommendation

Contingent Approval

Need Summary

Allhealth D&TC operates in a Federal Health Resources & Services Administration (HRSA) designated Health Professional Shortage Area for Primary Care and Dental Services.

The applicant projects total visits for both clinic sites will be 20,440 in the first year and 22,815 by the third with Medicaid utilization at 54% and charity care at 4%.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

The total purchase price for the 100% ownership interest is \$800,000 and will be funded via the proposed new members' personal equity. BFA Attachment A is the proposed members' net worth, which indicates sufficient resources to fund the total purchase price.

The submitted budget projects a positive income of \$294,679 and \$637,320 in the first and third

years, respectively. The submitted budget appears reasonable and is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,930,725	\$3,415,250
Expenses	<u>2,636,046</u>	<u>2,777,930</u>
Net Income	\$294,679	\$637,320

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 pro forma balance sheet that demonstrates an equity position sufficient enough to meet the working capital requirements. [BFA]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department of Health (Department), with a local acute care hospital. [HSP]
3. Submission of a photocopy of a stock share certificate acceptable to the Department. [CSL]
4. Submission of documentation of an approved closure plan for the mobile van extension clinic. The closure plan must be submitted to the appropriate Regional Office for review and approval. [HSP]

Approval conditional upon:

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

Council Action Date

October 7, 2021

Need and Program Analysis

Background

Allhealth is requesting approval to transfer 100 % ownership to two new members and certify Medical Services-Other Medical Specialties at their main site located at 1655 East 13th Street, Brooklyn, 11229 and an extension clinic located at 1100 Coney Island Avenue, Brooklyn, 11230, in Kings County.

Allhealth D&TC began operations in August 1996 and currently provides Primary Care, Dental, Podiatry, Audiology, Optometry, Psychology, Physical Therapy, and Speech-Language Pathology services as well as a variety of other medical specialties. As part of this CON, the applicant requests to update their operating certificates to specifically list Medical Services-Other Medical Specialties, to include the following services: Cardiology, Dermatology, Gastroenterology, Urology, Otolaryngology, Nephrology, Neurology, Ophthalmology, Orthopedics, Pain Management, Physical Medicine and Rehabilitation, Pulmonology, and Rheumatology.

Analysis

Allhealth D&TC operates in a Federal Health Resources & Services Administration (HRSA) designated Health Professional Shortage Area for Primary Care and Dental Services.

The applicant is projecting 20,440 visits for the main and extension sites combined in the first year and 22,815 in the third and is committed to serving all persons in need without regard to the ability to pay or source of payment.

Character and Competence

The proposed new B&L Health, Inc. membership is provided in the chart below.

Name	Current	Proposed
Albert Shimunov	91%	0%
David Shimunov	9%	0%
Ahmad Masoud*	0%	50%
Gagnadeep Singh*	0%	50%
Total	100%	100%

**Members Subject to Character and Competence*

The proposed Medical Director, **Dr. Terry-Jan Blackett-Bonnett**, is a Doctor of Internal Medical and Pediatrician. She is an Affiliate Site Director at St. John's School of Medicine and an Attending Physician at Kingsbrook Jewish Medical Center. In addition, she has been the Medical Director of Berean Community and Family Life Center, a physician for T. Bonnett Medical Service, P.C, and an Attending Physician at Interfaith Medical Center. She was previously an Attending Physician at Brooklyn Hospital, an Affiliate Site Director at Mount Sinai School of Medicine, and an Attending Physician at Brownsville Multi-Service Family Health Center. She received her medical degree at The American University of the Caribbean. She completed her residency in Internal Medicine and Pediatrics and University of Medicine and Dentistry. She is board-eligible.

Ahmad Masoud is the Founder and CEO of IRCM, Inc., a boutique firm comprised of healthcare coders, billing professionals, and practice management consultants, for over seven years. He works with practices to optimize business operations, improve profitability, strengthen compliance, eliminate administrative burdens, and better adapt to industry change. He was the previous Managing Director of IRCM, Inc as a consultant and Patient Centered Medical Home (PCMH) Vendor. As a consultant, he provided practice transparency and technical assistance services for the New York State Primary Care Program. As the Managing Director, he led the practice transformation of more than 36 primary care practices to NYS PCMH recognition. He helped the practices develop and implement comprehensive workflows consistent with NYS Patient-Centered Medical Homes Milestones, develop and implement team-based care delivery practice model with high functioning care management and care coordination capabilities. He is the President and Co-founder of Strategic Level Consulting Group, LLC and designs

simple and secure cloud-based software that helps primary care physicians and clinical coordinators proactively monitor their high-risk chronically ill patients, document and track services, and receive claims reimbursement. He was previously a Senior Consultant for PCI/NYC REACH where he worked with primary care medical practices and community health centers to improve coding, documentation, and reimbursement process; implement clinical quality improvement via implementation of alternative payment models; provide workflow redesign and training; provide EHR customization and training; and provide educational presentations to provider and administrative staff. Mr. Masoud has declared ownership interest for affiliation with the following pharmacies:

AM RX, Inc	04/10/2019-present
Jasmine RX, Inc	02/15/2020-present

Gangnadeep Singh is the Chief Operating Officer and Chief Financial Officer of All Care Family Medicine, P.C. where he provides leadership and change management to promote a reputation for quality, innovation, and clinical excellence. He shapes strategic direction, controls the budget, and has built a team of over 25 professional staff and five physicians. He has functioned as the Ethics and Compliance Officer and minimized risk through developing policies and procedures; has planned and managed construction of \$400k capital project of a new medical office; managed financial planning and budget for the medical professional corporation with annual revenue of approximately \$3M; managed accounts receivable, accounts payable, and payroll functions, and is responsible for cash management, investments and maintenance of the financial books and accounts; and is responsible for the human resource functions, staffing, and procurement and negotiation of health insurance contracts with major HMOs and payers.

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

Additionally, the staff from the DHDTTC 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

Approval for this project will provide for the continued access to a variety of medical services for the residents of the neighborhood of Flatbush and the surrounding communities in Kings County. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Operating Budget

The applicant has provided the latest current year operations and an operating budget, in 2021 dollars, for the first and third year after the change of ownership. The budget is summarized below:

<u>Revenues</u>	<u>Current Year (2020)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Commercial FFS	\$150.63	\$35,849	\$150.37	\$45,862	\$156.24	\$57,808
Commercial MC	\$144.11	75,657	\$145.61	101,198	\$147.50	122,425
Medicare FFS	\$136.16	285,255	\$138.62	311,895	\$142.83	349,933
Medicare MC	\$134.03	628,332	\$136.07	714,367	\$138.74	776,944
Medicaid FFS	\$159.40	395,630	\$162.45	471,105	\$168.05	546,162
Medicaid MC	\$154.70	814,495	\$158.30	1,250,570	\$165.45	1,505,595
Private Pay	\$150.62	5,874	\$152.48	15,248	\$154.02	23,103
All Other	\$512.00	18,944	\$512.00	<u>\$20,480</u>	\$512.00	<u>33,280</u>
Total Revenue		\$2,260,036		\$2,930,725		\$3,415,250
 <u>Expenses</u>						
Operating	\$137.92	\$2,255,271	\$114.11	\$2,332,500	\$107.96	\$2,463,200
Capital	<u>\$18.45</u>	<u>301,568</u>	<u>\$14.85</u>	<u>303,546</u>	<u>\$13.79</u>	<u>314,730</u>
Total	\$156.37	\$2,556,839	\$128.97	\$2,636,046	\$121.75	\$2,777,930
 Excess Revenues		<u>(\$296,803)</u>		<u>\$294,679</u>		<u>\$637,320</u>

Visits 16,352 20,440 22,815

**Note: The \$67,649 variance between the net patient services revenue on the 2020 Independent Accountants Compilation Report shown on BFA Attachment C and the total current year revenue in the preceding operating budget is attributable to Medicare stimulus supplement and incentive payments from HMOs. The one-time Medicare stimulus payment, required to be used prior to December 31, 2021, was provided to reimburse healthcare items, expenses, and lost revenue directly related to the COVID-19 outbreak. This is not expected to be a recurring revenue stream.*

Utilization by payor source is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	1.45%	1.49%	1.62%
Commercial MC	3.21%	3.40%	3.64%
Medicare FFS	12.81%	11.01%	10.74%
Medicare MC	28.67%	25.68%	24.55%
Medicaid FFS	15.18%	14.19%	14.24%
Medicaid MC	32.20%	38.65%	39.89%
Private Pay	0.24%	0.49%	0.66%
Charity Care	6.01%	4.89%	4.38%
All Other	<u>0.23%</u>	<u>0.20%</u>	<u>0.28%</u>
Total	100.00%	100.00%	100.00%

The following is noted regarding the first- and third-year budgets:

- Utilization assumptions are based on projections that include the full engagement of primary care and medical specialties, which the facility currently provides and plans to expand.
- Reimbursement rate assumptions are based on prior years' actual operations, as well as, several Article 28 D&TCs operating in the same geographical service area with similar square footage, specialties, projected patient volume, and contractual rates negotiated with commercial carriers.
- The Medicaid rate is based on the downstate region's Medicaid APG base rate.
- As of August 26, 2021, there are no outstanding Medicaid liabilities.
- Charity care is based on the historical experience of the applicant.

- All Other includes Workers Compensation and revenue from the Refugee Medical Screening Program.
- The number and mix of staff were determined based on the forecasted volume.
- Expenses are based predominantly on the labor costs for the staffing model that includes: Medical Staff (27 FTE by year 3), Management (2 FTE by year 3) and Clerical and Other (11 FTE by year 3), as well as, medical supplies, purchased services, and rent expense, as documented per the lease assignment agreement.
- The applicant provided an executed employment agreement between the B & L Health Inc., d/b/a Allhealth D&TC, and David Shimunov, who will provide administrative and marketing services which may include the development and implementation of marketing programs. The agreement commenced on February 1, 2020, with a term of 5 years and annual compensation of \$200,000.

The applicant plans to improve the facility's financial position by:

- Negotiating new managed care contracts with Metroplus Health Plan, UnitedHealthcare Community Plan, and Emblem Health.
- Implementing the Patient-Centered Medical Home (PCMH) model and aligning workflows with managed care pay-for-performance quality bonuses.
- Restructuring staff, provider compensation, and workflows to improve productivity.
- Evaluating operations and updating billing software, along with assigning professional coding and billing staff to improve overall collections.
- Introducing primary care, cardiology, neurology, and other subspecialties to the extension clinic.
- Expanding access and hours of operation to seven days a week.

Lease Agreements

The applicant has submitted three executed lease agreements for the main site located at 1655 East 13th Street in Brooklyn (for upper and lower levels) and the extension clinic located at 1100 Coney Island Avenue in Brooklyn, the terms of which are summarized below:

Date:	June 1, 2021
Premises:	1655 East 13 th Street, Brooklyn, New York 11229 – Upper Level
Landlord:	SV E. 13TH ST. LLC
Tenant:	B&L Health, Inc., d/b/a All Health Diagnostic and Treatment Center
Term:	10 Years
Rent:	Base rent for leased space is \$99,372 per year (\$8,281.00 monthly) for the first year, rent will increase at 2.0% for years
Provisions:	Tenant is responsible for Insurance, maintenance, repairs, utilities and property taxes.

Date:	June 1, 2021
Premises:	1655 East 13 th Street, Brooklyn, New York 11229 – Lower Level
Landlord:	SV E. 13TH ST. LLC
Tenant:	B&L Health, Inc., d/b/a All Health Diagnostic and Treatment Center
Term:	10 Years
Rent:	Base rent for leased space is \$99,372 per year (\$8,281.00 monthly) for the first year, rent will increase at 2.0% for years
Provisions:	Tenant is responsible for Insurance, maintenance, repairs, utilities and property taxes.

Date:	March 26, 2021
Premises:	1100 Coney Island Avenue, Brooklyn, New York 11230
Landlord:	Coney Island Properties LLC
Tenant:	B&L Health, Inc., d/b/a All Health Diagnostic and Treatment Center
Term:	10 Years
Rent:	Base rent for leased space is \$92,128.05 per year (\$7,677.33) rent will increase at 3% at the end of each year following the first-year term.
Provisions:	Tenant is responsible for Insurance, maintenance, repairs, utilities and property taxes.

The applicant has submitted an affidavit stating that each of the leases is an arm's length agreement, as there is no relationship between the landlord and applicant.

Stock Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement (MIPA), to be effectuated upon PHHPC approval, summarized as follows:

Date:	December 22, 2020
Buyers:	Ahmad Masoud and Gagandeep Singh
Sellers:	Albert Shimunov and David Shimunov
Purchase:	100% Membership Interest
Buyer Deliverables at Closing:	Purchase Price
Purchase Price:	\$800,000
Payment of Purchase Price	\$100,000 deposit upon execution of the Stock Purchase Agreement \$700,000 at closing.

The purchase price will be funded via the proposed new members' personal equity. BFA Attachment A is the proposed members' net worth, which indicates sufficient resources to fund the total purchase price.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the 100% ownership interest is \$800,000 and will be funded via the proposed new members' personal equity. BFA Attachment A is the proposed members' net worth summary, which indicates sufficient equity overall to fund the total purchase price. BFA Attachment B is the Pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$401,551.

The working capital requirement is estimated at \$439,341 based on two months of first-year expenses and the applicant has indicated it will be funded via the proposed new members' personal equity. Submission of a pro forma balance sheet that demonstrates sufficient equity position to meet the working capital requirements is still outstanding from the applicant.

BFA Attachment C is a summary of the 2020 Compiled Financial Statements for Allhealth, which shows a positive working capital position, a positive net asset position, and a negative income from operations of \$229,154. This was offset by the retention of the PPP funds of \$276,200 and a \$10,000 Economic Injury grant resulting in a net income of \$54,546.

BFA Attachment D is a summary of the June 2021 Internal Financial Statements for Allhealth, which shows a positive working capital position, a positive net asset position, and a positive net income of \$182,005.

Conclusion

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

Attachments

- BFA Attachment A Net Worth Statements for the proposed members of operations for Allhealth D&T Center - Brooklyn2
- BFA Attachment B Pro Forma Balance Sheet for Allhealth D&T Center
- BFA Attachment C B&L Health Inc. d/b/a Allhealth Diagnostic & Treatment Center – Compiled Financial Statements for the year ended December 31, 2020
- BFA Attachment D B&L Health Inc. d/b/a Allhealth Diagnostic & Treatment Center – Internal Financial Statements for period ended June 30, 2021

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of October 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 100% ownership interest from two (2) withdrawing members to two (2) new members and certify Medical Services - Other Medical Specialties at the main site and at an existing extension clinic located at 1100 Coney Island Avenue, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

211251 B

Allhealth D&T Center-Brooklyn2

APPROVAL CONTINGENT UPON:

1. Submission of a pro forma balance sheet that demonstrates an equity position sufficient enough to meet the working capital requirements. [BFA]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department of Health (Department), with a local acute care hospital. [HSP]
3. Submission of a photocopy of a stock share certificate acceptable to the Department. [CSL]
4. Submission of documentation of an approved closure plan for the mobile van extension clinic. The closure plan must be submitted to the appropriate Regional Office for review and approval. [HSP]

APPROVAL CONDITIONAL UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



Project # 201230-E
VNA Home Health

Program: Certified Home Health Agency
Purpose: Establishment

County: Albany
Acknowledged: October 8, 2020

Executive Summary

Description

The Visiting Nurse Association of Albany, Inc. d/b/a VNA Home Health (VNA Home Health), an existing not-for-profit Article 36 certified home health agency (CHHA) located at 35 Colvin Avenue, Albany (Albany County), requests approval to establish Albany Visiting Nurse Home Care Services Group, Inc. (VNA Group) as the parent and Albany Medical Center (AMC) as the grandparent of the CHHA. VNA Home Health is currently affiliated with several organizations including the Visiting Nurse Association of Albany Home Care Corporation (VNHC), a licensed home care services agency; the Visiting Nurse Foundation, Inc., a 501(c)(3) not-for-profit foundation servicing the medically indigent population; the VNA Group, a 501(c)(3) not for profit whose sole purpose is to provide resources and assistance to aid the VNA Home Health; and with AMC. VNA Group and affiliates will retain their own distinct board of directors, executive leadership, and staff.

OPCHSM Recommendation

Contingent Approval

Need Summary

The change of ownership at the parent and grandparent level will not result in any changes to the counties being served or to the CHHA's operating certificate. VNA Home Health's inclusion in the Albany Medical Center's regional system will provide for enhanced coordination and service delivery for the existing CHHA.

Program Summary

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

Financial Summary

There are no project costs or budgets associated with this proposal.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of an amended and executed Affiliation Agreement, acceptable to the Department of Health (Department). [CSL]
2. Submission of a photocopy of amended bylaws of Visiting Nurse Association of Albany Home Care Corporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of amended bylaws of Albany Visiting Nurse Home Care Services Group, Inc. (VNA Group), acceptable to the Department. [CSL]
4. Submission of a photocopy of amended bylaws of Visiting Nurse Association of Albany, Inc. (VNA), acceptable to the Department. [CSL]
5. Submission of a photocopy of amended bylaws of Visiting Nurses Foundation, Inc. (VNF), acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Restated Certificate of Incorporation for VNA Group, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Restated Certificate of Incorporation for VNA, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Restated Certificate of Incorporation for VNF, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

October 7, 2021

Need and Program Analysis

Proposal

The Visiting Nurse Association of Albany, Inc. d/b/a VNA Home Health (VNA), an existing not-for-profit Article 36 certified home health agency, requests approval to establish Albany Visiting Nurse Home Care Services Group, Inc. (VNA Group) as the parent and Albany Medical Center (AMC) as the grandparent of the CHHA. .

AMC is an established regional health care system across 25 counties, which includes Albany Medical Center Hospital, Columbia Memorial Hospital, Saratoga Hospital, and Glens Falls Hospital.

The applicant states that both VNA and AMC believe this affiliation will enable them to create a comprehensive, cost-effective, and efficient delivery system in the communities they serve. The applicant also states that the regional system of care allows for improvements in the quality of care through standardized protocols, easier transfer of information, and coordination of care.

The active powers, as described in the VNA Group Bylaws will allow AMC to do the following;

- Appoint individuals to serve on the Board;
- Approve VNA Home Health's annual and long-term capital and operating budgets and strategic plan, each of which shall first be approved by the Board;
- Develop and approve contingency plans should actual results from operations of VNA be significantly unfavorable to the budgeted plan;
- Amend, repeal or replace VNA Home Health's Certificate of Incorporation or Bylaws which shall first be approved by the Board;
- Appointment and removal of the President and Chief Executive Officer of VNA, after consultation with the Board;
- Approve unbudgeted capital expenditures or substitution of budgeted capital expenditures by VNA that are in excess of \$100,000;
- Approve any modifications to the terms, conditions and outstanding balance of any VNA Home Health's existing debt (other than routine payments of debt service as required);
- Approve any application by VNA to the New York Department of Health for any certificate of need or other matters affecting its licensure;
- Approve litigation settlements in excess of insurance coverage, or settlements or other dispositions of state or federal governmental administrative proceedings to which VNA is a party.

Background

VNA currently serves Albany, Rensselaer, Saratoga, Columbia, Fulton, Greene, Montgomery, Schenectady, Schoharie, Warren, and Washington Counties. Approximately 85% of Albany Medical Center Hospital's discharges are from these eleven counties. Additionally, Columbia Memorial Hospital, Saratoga Hospital, and Glens Falls Hospital discharge to these counties.

VNA currently provides Home Health Aide, Medical Social Services, Medical Supplies Equipment and Appliances, Nursing, Nutritional, Therapy – Occupational, Therapy – Physical, and Therapy – Speech-Language Pathology.

There will be no change to the services or counties as a result of this application.

Character and Competence Review

Albany Visiting Nurse Home Care Services Group, Inc. (VNA Group) board:

Dr. Steven Frisch, MD

Senior Executive Vice President, Albany Medical Center

Affiliations:

- Columbia Memorial Hospital (January 1, 2016 – Present)
- Saratoga Hospital (January 1, 2017 – Present)
- Glens Falls Hospital (July 1, 2020 – Present)
- Health Care Partners of Saratoga (May 2011 – Present)
- Better Health Northeastern NY (February 2016 – Present)
- Visiting Nurses Home Care Services Group, Inc.

Frances S. Albert, CPA

Chief Financial Officer, Executive Vice President & Chief Operating Officer, Albany Medical Center

Affiliation:

- Visiting Nurse Association of Albany, Inc. d/b/a VNA Home Health (June 1, 2012 – Present)

Vickey Masta

Vice President of Risk Management, Albany Medical Center

Anthony Durante – Board President

Chief Financial Officer, DMN Management Services, LLC

Affiliations:

- The Capital Living Nursing & Rehabilitation (October 2003 – August 2017)
- The Springs Nursing & Rehabilitation Center (October 2003 – August 2017)
- The Stanten Nursing & Rehabilitation Center (October 2003 – August 2017)
- The Crossings Nursing & Rehabilitation Center (October 2003 – August 2017)
- The Orchard Nursing & Rehabilitation Center (October 2003 – August 2017)
- The County Manor Nursing & Rehabilitation Center (October 2003 – August 2017)
- The Mountain View Nursing & Rehabilitation Center (October 2003 – August 2017)
- Visiting Nurse of Albany, Inc. (2017 – Present)
- Visiting Nurse Association of Albany Homecare Corp. (2017 – Present)

Fred Hinrichsen

Nationwide Public Safety Broadband Network Consultant, AT&T Mobility Services

Joan M. Hart – Board Treasurer

Retired

John M. Conroy

Office Management, MiniCo Insurance Underwriters

Theodore M. DeConno, Jr.

Commercial Relationship Manager, Pioneer Savings Bank

Albany Medical Center (AMC) board:

Raimundo C. Archibold - Vice Chair

Managing Director, Schwartz Heslin Group, Inc.

James J. Barba

Retired

Mary Gail Biebel, Ph.D

Management Consultant, Carwile Biebel Consulting, Inc.

Affiliation:

- Columbia Memorial Hospital (2005 – Present)

Robert T. Cushing – Chair

Retired

Affiliation:

- Saratoga Hospital (January 2017 – December 2019)

R. Wayne Diesel

Retired

Sharon M. Duker

Interim Head of School, The Doane Stuart School

President, Westco, Inc.

Anthony Durante

Disclosed above

Peter H. Elitzer

Peter Harris Clothes

Margaret Gillis, Vice Chair

Retired

David Golub

President, Golub Consulting Solutions

Douglas M. Hamlin

Retired

Peter H. Heerwagen, Esq.

Retired

Michael H. Iacolucci

Retired

Affiliation:

- Saratoga Hospital (January 1, 2010 – Present)

James O. Jackson, Ph. D

Retired

Ruth Mahoney

Market President & Regional Retail Executive, Key Bank

Morris Massry

Project Manager, Director of IT & Communications, Tri City Rentals

Dennis McKenna, M.D.

President, CEO, Albany Medical Center

Lillian M. Moy

Executive Director, Legal Aid Society of NENY

John J. Nigro
President, Nigro Companies

John B. O'Connor
Executive Vice President, Mohawk Fine Papers

Steven M. Parnes, M.D.
Professor of Surgery, Staff Physician, Albany Medical College

Daniel T. Pickett III
Retired

Theresa M. Skaine, Esq.
Attorney, Skaine & Associates LLC

Affiliation:

- Saratoga Hospital (January 2011 – December 2020)

Janice Smith
Self-Employed

Jeffrey Sperry
Retired

Carolyn Stefanco, Ph. D.
Lindauer Global

Jeffrey Stone – Secretary & Vice Chair
Senior Vice President, Berkshire Bank

Todd M. Tidgewell, Esq. (NY, MD)
Partner, Nixon Peabody LLP

Candace King Weir
President, CL King & Associates, Inc.
President & Chief Investment Officer, Paradigm Capital Management, Inc.

Janice White, Ed. D.
Associate Professor, The Sage Colleges

Affiliation:

- Saratoga Hospital (January 1, 2009 – Present)

Candace Weir disclosed an administrative proceeding with the Securities and Exchange Commission which occurred on June 16, 2014. As part of the settlement, she agreed to cease and desist from violating Section 203(6) of the Investment Advisers Act, which relates to requisite disclosures and consents regarding certain related-party transactions.

James J. Barba was the Director of University Heights, a not-for-profit that declared bankruptcy. The matter was settled with full payment to the creditor.

John Conroy disclosed a civil suit in Albany County on April 10, 2020, in which suits were made against his company PRM on behalf of members of various trusts that were administered by PRM. PRM made payments to facilitate the settlement and matters were closed.

Lillian Moy disclosed that the Legal Aid Society of Northeastern New York (LASNNY) has responded to and resolved administrative complaints brought against her.

Steven Parnes disclosed suits brought against him. The first suit relating to complications of procedure/treatment/test was closed with a settlement on July 10, 2018. Mr. Parnes was discontinued from the second suit regarding an error related to procedure/treatment/test on November 11, 2017.

A search of the individuals named above on the New York State Unified Court System revealed that the individuals are currently registered and have no disciplinary actions taken against them.

The Office of the Professions of the State Education Department, the New York State Physician Profile, and the Office of Professional Medical Conduct indicate no issues with the licensure of the health professionals associated with this application.

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

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.

Facility Compliance/Enforcement

In addition to the healthcare affiliations listed above, the following hospitals were reviewed as part of this project:

- Albany Medical Center Hospital
- Albany Medical Center – South Clinical Campus
- Columbia Memorial Hospital
- Saratoga Hospital
- Glens Falls Hospital

The information provided by the Department's Division of Home and Community Based Services, Bureau of Quality and Surveillance, and Division of Hospitals and Diagnostic and Treatment Centers has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of residents and to prevent recurrent code violations.

The applicant has indicated that VNA Home Health's current level of charity care is extremely minimal as nearly all of the CHHAs patients are covered by Medicare, Medicaid or other insurance.

CHHA Quality of Patient Care Star Ratings as of August 23, 2021	
CHHA Name	Quality of Care Rating
Visiting Nurse Association of Albany, Inc. d/b/a VNA Home Health	3.5 out of 5 stars

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). The proposed change at the parent and grandparent level of ownership will result in no changes to the services being provided by the CHHA and is expected to improve coordination and service delivery.

Financial Analysis

Capability and Feasibility

There are no project costs or budgets associated with this application. BFA Attachment B (VNA Group, Inc. and Affiliates) is the 2020 certified financial statements of VNA Group, which shows the entity had negative working capital of \$266,596 and a positive net asset position of \$748,726. The applicant indicated the negative working capital was a result of funding for a defined benefit plan and funding reserved for third-party liabilities. Although this is an old reserve with no designated item, it may be removed at management's discretion in any year. The internal financial statements for VNHC services as of June 30, 2021, are presented as BFA Attachment C. The entity had a positive working capital position, a positive net asset position and achieved a net income of \$127,599 through June 30, 2021.

BFA Attachment D is the December 31, 2020 certified financial statements of AMC and related entities, which shows the entity maintained positive working capital and net asset positions in 2020 and experienced an operating gain of \$66,078,000 in 2020.

Conclusion

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

Attachments

BFA Attachment A	VNA Home Health Current and Proposed Organizational Chart
BFA Attachment B	VNA Group, Inc. and Affiliates- 2020 Certified Financial Statements
BFA Attachment C	VNHC June 30, 2021 Internals.
BFA Attachment D	2020 Certified Financial Statements of Albany Medical Health System)

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3606 of the Public Health Law, on this 7th day of October 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council, and after due deliberation, hereby approves the following application to establish Albany Visiting Nurse Home Care Services Group (VNA Group) as the parent and Albany Medical Center as the grandparent of Visiting Nurse Association of Albany, Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER

APPLICANT/FACILITY

201230 E

VNA Home Health

APPROVAL CONTINGENT UPON:

1. Submission of a photocopy of an amended and executed Affiliation Agreement, acceptable to the Department of Health (Department). [CSL]
2. Submission of a photocopy of amended bylaws of Visiting Nurse Association of Albany Home Care Corporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of amended bylaws of Albany Visiting Nurse Home Care Services Group, Inc. (VNA Group), acceptable to the Department. [CSL]
4. Submission of a photocopy of amended bylaws of Visiting Nurse Association of Albany, Inc. (VNA), acceptable to the Department. [CSL]
5. Submission of a photocopy of amended bylaws of Visiting Nurses Foundation, Inc. (VNF), acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Restated Certificate of Incorporation for VNA Group, acceptable to the Department. [CSL]
7. Submission of a photocopy of an amended and executed Restated Certificate of Incorporation for VNA, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Restated Certificate of Incorporation for VNF, acceptable to the Department. [CSL]

APPROVAL CONDITIONED UPON:

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

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



MEMORANDUM

To: Lisa Thomson
Division of Health Facility Planning and Development

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Kerri Tily, Senior Attorney
Bureau of Health Facility Planning and Development, Division of Legal Affairs

Date: July 27, 2021

Subject: Proposed Dissolution of The C.M.H. Group, Inc.

Please include this matter on the next Establishment and Project Review Public Health and Health Planning Council agenda.

The attachments relating to the matter include the following:

- 1) A Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) Letters from applicant's legal counsel Stevens & Lee, requesting approval of the proposed Certificate of Dissolution of The C.M.H. Group, Inc.;
- 3) An executed, proposed Certificate of Dissolution and Plan of Dissolution of The C.M.H. Group, Inc.
- 4) The Unanimous Written Consent of the Board of Directors of The C.M.H. Group, Inc. approving and authorizing the dissolution;
- 5) The Unanimous Written Consent of the Board of Directors of The Guthrie Clinic, the sole member of The C.M.H. Group, Inc., approving and authorizing the dissolution;
- 6) The Amended and Restated Certificate of Incorporation of The C.M.H. Group, Inc., dated January 1, 2019.
- 7) The Amended and Restated Bylaws of The C.M.H. Group, Inc., adopted November 16, 2018.
- 8) A proposed verified petition seeking the Attorney General's approval of the filing of the Certificate of Dissolution of The C.M.H. Group, Inc.

Attachments.

cc: B. DelCogliano
C. Jolicoeur

Attachment 1



MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel *Kathy Marks*

Date: July 27, 2021

Subject: Proposed Dissolution of The C.M.H. Group, Inc.

The C.M.H Group, Inc. ("CMHG") requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002(c) and § 1003, as well as 10 NYCRR Part 650.

CMHG is a New York not-for-profit corporation incorporated on June 30, 1988. CMHG was the sole member and passive parent of Cortland Regional Medical Center, Inc.—now named Guthrie Cortland Medical Center—until The Guthrie Clinic became the PHHPC-approved active parent and co-operator of Guthrie Cortland Medical Center, f/k/a Cortland Regional Medical Center, Inc. in December 2018 as part of Certificate of Need Application # 181279. Guthrie Cortland Medical Center operates an Article 28 hospital and residential health care facility at 134 Homer Avenue in Cortland, New York and two hospital extension clinics. Because The Guthrie Clinic has replaced CMHG as the parent of the Guthrie Cortland Medical Center, CMHG is now seeking permission to dissolve.

The Board of Directors of CMHG approved and authorized dissolution and authorized the filing of the Certificate of Dissolution by unanimous written consent dated July 20, 2020. The Board of Directors of The Guthrie Clinic, as sole corporate member of CMHG, approved and authorized the dissolution of CMHG by unanimous written consent dated February 23, 2018.

CMHG has no assets or liabilities.

The required documents: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, and a proposed Certificate of Dissolution, with supporting organizational documents of CMHG and resolution of the board of directors of CMHG and its sole member, authorizing the dissolution, are included for PHHPC's review. A letter from CMHG's counsel, Stevens & Lee, advocating for dissolution, is also enclosed.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, and the Certificate of Dissolution.

Attachments.

Attachment 2

STEVENS & LEE
LAWYERS & CONSULTANTS

620 Freedom Business Center, Suite 200
King of Prussia, PA 19406
(610) 205-6000 Fax (610) 337-4374
www.stevenslee.com

Direct Dial: (610) 205-6041
Email: srd@stevenslee.com
Direct Fax: (610) 988-0871

August 19, 2020

VIA ELECTRONIC MAIL (colleen.leonard@health.ny.gov)

New York State Department of Health
Public Health and Health Planning Council
Attn: Colleen Leonard

Re: Request to Consent to Dissolution of The C.M.H. Group

Dear Colleen,

This letter serves as notice that The C.M.H. Group, Inc. ("CMHG") is seeking to formally dissolve and is hereby respectfully requesting the consent of the New York Public Health and Health Planning Council ("PHHPC"). CMHG is a New York not-for-profit corporation whose Restated Certificate of Incorporation was approved by the Public Health and Health Planning Council on December 6, 2018. CMHG is an inactive former parent of a health system. CMHG currently has no assets or liabilities and has effectively been financially dormant for a number of years. Specifically, the CMHG has not had any income or receipts, and has owned assets with a total market value of less than \$25,000, during each of the last nine (9) completed fiscal years (calendar years 2011 – 2019). CMHG hopes to formally dissolve as soon as possible.

Please find attached an executed and dated copy of CMHG's Certificate of Dissolution and a copy of CMHG's most recent Restated Certificate of Incorporation, as filed with the Department of State.

If you have any questions or need anything else in connection with this dissolution consent request, please feel free to contact me. Thank you in advance for your consideration of this request.

Sincerely,

STEVENS & LEE


Samantha Dalmass

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New York • Philadelphia • Princeton • Reading • Rochester • Scranton • Valley Forge • Wilkes-Barre • Wilmington
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STEVENS & LEE
LAWYERS & CONSULTANTS

620 Freedom Business Center, Suite 200
King of Prussia, PA 19406
(610) 205-6000 Fax (610) 337-4374
www.stevenslee.com

Direct Dial: (610) 205-6041
Email: srd@stevenslee.com
Direct Fax: (610) 988-0871

August 19, 2020

Attachments

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www.stevenslee.com

Direct Dial: (610) 205-6041
Email: srd@stevenslee.com
Direct Fax: (610) 988-0871

November 9, 2020

BY EMAIL (John.Walters@health.ny.gov)

John M. Walters
Senior Attorney
Bureau of Health Facility Planning and Development
Division of Legal Affairs
New York State Department of Health
Corning Tower - Empire State Plaza
Albany, NY 1223

Re: Dissolution of The C.M.H. Group, Inc. (Case No. 1001757)

Dear Mr. Walters:

In response to your request and in connection with the proposed dissolution of The C.M.H. Group, Inc. ("CMHG"), below is a brief explanation of why CMHG is now seeking to dissolve.

CMHG is an inactive New York nonprofit, nonmember corporation and tax-exempt organization recognized under Section 501(c)(3) of the Internal Revenue Code (the "Code"). CMHG previously served as the ultimate parent entity of a nonprofit health system, which included Cortland Regional Medical Center, Inc., CMH Services, Inc., Cortland Memorial Properties, Inc., Regional Medical Practice, P.C., and Cortland Regional Medical Center Auxiliary, Inc. (collectively, the "Cortland Entities").

Facing certain economic and other challenges, the Cortland Entities determined that it was in their best interests to undertake an affiliation (the "Affiliation") with The Guthrie Clinic ("Guthrie"), a nonprofit corporation and tax-exempt organization recognized under Section 501(c)(3) of the Code that acts as the parent of The Guthrie Clinic system, a fully-integrated nonprofit healthcare delivery system that provides services in North Central Pennsylvania and the Southern Tier of New York. Specifically, the Cortland Entities and Guthrie determined that an affiliation of their respective healthcare systems and operations would enhance the availability and delivery of healthcare services to patients in the communities that they serve, would lead to significant quality enhancements and financial and operational efficiencies, would more effectively preserve a sustainable healthcare system in the region and allow the parties to participate in healthcare reform initiatives and other opportunities aimed at improving patient outcomes and managing the health

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Princeton • Reading • Rochester • Scranton • Valley Forge • Wilkes-Barre • Wilmington
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STEVENS & LEE
LAWYERS & CONSULTANTS

John M. Waters
November 9, 2020
Page 2

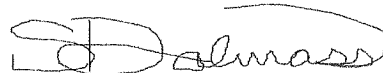
and wellness of the communities they serve, and would advance their respective Section 501(c)(3) charitable purposes. In addition, the parties determined that, due to certain financial challenges facing the Cortland Entities as a small stand-alone system, the Affiliation was necessary to provide needed financial resources, capital investments, clinical enhancements and efficiencies as to ensure mission sustainability going forward.

The parties entered into an Affiliation Agreement, dated July 20, 2018, and consummated the Affiliation effective on January 1, 2019, pursuant to which Affiliation Guthrie generally became the sole member or ultimate parent entity of each of the Cortland Entities, including CMHG. Recognizing that Guthrie would take over CMHG's historic oversight role with respect to the other Cortland Entities post-Affiliation, the parties agreed in the Affiliation Agreement that Guthrie would use its reasonable best efforts to formally dissolve CMHG within eighteen months of closing. Therefore, CMHG seeks the New York Public Health and Health Planning Commission's consent to dissolve.

Thank you for your consideration of this matter. If any additional information is required to approve the dissolution, please do not hesitate to contact me.

Sincerely,

STEVENS & LEE

A handwritten signature in black ink, appearing to read "S. Dalmass", written over a horizontal line.

Samantha R. Dalmass

Attachment 3



CERTIFICATE OF DISSOLUTION
OF

The C.M.H. Group, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

The C.M.H. Group, Inc.

If the name of the corporation has been changed, the name under which it was formed is

SECOND: The certificate of incorporation was filed with the Department of State on

June 30, 1988

THIRD: The name and address of each officer and director of the corporation is:

Joseph A. Scopelliti, M.D., Board Member/Chief Executive Officer
1 Guthrie Square, Sayre, PA 18840

Paul G. VerValin, MBA, FACME Board Member/Chief Operating Officer
1 Guthrie Square, Sayre, PA 18840

Philip C. Ryan, CPA Board Member/Chief Financial Officer
1 Guthrie Square, Sayre, PA 18840

FOURTH: The corporation is a *(check the appropriate box)*

charitable corporation non-charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law §1002, the corporation holds

(Check the appropriate statement)

assets which are legally required to be used for a particular purpose.
 no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

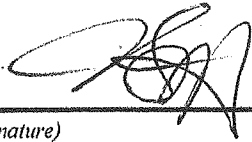
SEVENTH: *(Check the appropriate statement)* The dissolution was authorized by

- a vote of a majority of the board of directors. The corporation has no members.
- the majority vote of the board of directors, followed by two-thirds vote of the members.

EIGHTH: *(Check the appropriate statement)*

- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the approval of the Attorney General is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing the Plan of Dissolution and Distribution of Assets was approved by a Justice of the Supreme Court. A copy of the Court's Order is attached.
- Prior to the delivery of the Certificate of Dissolution to the Department of State for filing a copy of the Plan of Dissolution which contains the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law, has been duly filed with the Attorney General.
- The corporation is a non-charitable corporation. The corporation's Plan of Dissolution is not required to contain the statement prescribed by paragraph (b) of Section 1001 of the Not-for-Profit Corporation Law and is not required to be filed with Attorney General.

X



(Signature)

Joseph A. Scopelliti, M.D.

(Print or Type Name of Signer)

Chief Executive Officer

(Capacity of Signer)



**Division of Corporations,
State Records and
Uniform Commercial Code**

New York State
Department of State
Division of Corporations,
State Records and
Uniform Commercial Code
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

**CERTIFICATE OF DISSOLUTION
OF**

The C.M.H. Group, Inc.

(Name of Corporation)

Under Section 1003 of the Not-for-Profit Corporation Law

Filer's Name: Daniel J. Hennessey, Esq.
Address: 620 Freedom Business Center Drive, Suite 200
City, State and Zip Code: King of Prussia, PA 19406

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This Certificate of Dissolution must be signed by an officer, director or duly authorized person.
3. Attach the consent of the New York State Department of Taxation and Finance.
4. Attach the consent of the New York City Department of Finance, if required.
5. Attach a copy of the approval of the Attorney General or Order of the Supreme Court, if required.
6. The Certificate of Dissolution must include the approval of the Attorney General if the corporation is a charitable corporation or if the corporation is a non-charitable corporation and holds assets at the time of dissolution legally required to be used for a particular purpose.
7. Attach any other consent or approval required by law.
8. The fee for filing this certificate is \$30, made payable to the Department of State.

For DOS Use Only

**PLAN OF DISSOLUTION
OF
THE C.M.H. GROUP, INC.
a New York Not-for-Profit Corporation**

The Board of Directors (the "Board") of The C.M.H. Group, Inc. (the "Corporation"), has considered the advisability of voluntarily dissolving the Corporation, and has determined that dissolution is advisable and in the best interests of the Corporation and that the Corporation be dissolved in accordance with the following plan.

1. The Board has adopted this Plan of Dissolution, and the Board has submitted this Plan to The Guthrie Clinic, its sole member, for approval.
2. The Corporation has no assets or liabilities.
3. Other than the approval of the Attorney General, no approval of the dissolution of the Corporation by any governmental body or officer is required.
4. A certified copy of the Plan shall be filed with the Attorney General of the State of New York Pursuant to N-PCL § 1002(d).
5. A Certificate of Dissolution shall be signed by an authorized director or officer and all required approvals shall be attached thereto.
6. The Officers of the Corporation shall execute and consummate the Plan.



Joseph A. Scopelliti, M.D.
Chief Executive Officer

July 20, 2020
(Date)

Attachment 4

**UNANIMOUS WRITTEN CONSENT OF THE BOARD OF DIRECTORS OF
THE C.M.H. GROUP, INC.**

The undersigned, being all of the members of the Board of Directors of The C.M.H. Group, Inc. ("CMHG") hereby adopt the following resolutions, effective July 20, 2020 with the intent that the same shall be as valid corporate action as though adopted at a regular meeting of CMHG's Board of Directors and waiving any notice requirements with respect thereto.

WHEREAS, The Guthrie Clinic (the "Clinic") is the sole corporate member of CMHG, a New York not-for-profit corporation;

WHEREAS, CMHG is an inactive corporation that currently owns no assets and is not subject to any known liabilities; and

WHEREAS, the Board of Directors of CMHG desires to approve the voluntary dissolution of CMHG as described herein and to propose and recommend these Resolutions to the Clinic for adoption as the sole member of CMHG.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The proposed voluntary dissolution of CMHG as described herein is hereby authorized, adopted, and approved by CMHG, in accordance with the Plan of Dissolution attached hereto as Exhibit A.
2. These Resolutions, the Plan of Dissolution and the proposed voluntary dissolution of CMHG as described herein are hereby proposed and recommended to the Clinic for adoption, authorization and approval as the sole member of CMHG.
3. Upon obtaining adoption, authorization and approval from the Clinic, the officers and directors of CMHG, together with counsel, are hereby authorized and directed to take such other actions and to execute and file such other documents, instruments and agreements as may be necessary or appropriate, in the opinion of the officers and directors, with the advice of counsel, to accomplish the actions contemplated by the foregoing Resolutions.
4. All actions heretofore taken by CMHG officers and directors in connection with the foregoing matters and consistent with these Resolutions are hereby approved, ratified and confirmed in all respects.

IN WITNESS WHEREOF, the undersigned have adopted the foregoing resolutions and executed this Unanimous Written Consent as of the date first written above.



Joseph A Scopelliti, M.D.
Board Member/ Chief Executive Officer



Paul G. Vervalin, MBA, FACMPE
Board Member/ Chief Operating Officer

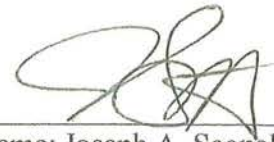


Philip J. Ryan, CPA
Board Member/ Chief Financial Officer

Acknowledged and approved:

The Guthrie Clinic, in its capacity as
sole member of The C.M.H. Group

By: _____



Name: Joseph A. Scopelliti, MD
Title: President and CEO

EXHIBIT A
PLAN OF DISSOLUTION

See attached.

Attachment 5

RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE GUTHRIE CLINIC

February 23, 2018

WHEREAS, The Guthrie Clinic (“Guthrie”) is a nonprofit corporation and tax-exempt organization recognized under Section 501(c)(3) of the Internal Revenue Code (the “Code”) that acts as the parent of The Guthrie Clinic system, a fully-integrated nonprofit healthcare delivery system that provides services in North Central Pennsylvania and the Southern Tier of New York, and that includes the following acute care hospitals: Robert Packer Hospital, Corning Hospital, Guthrie Towanda Memorial Hospital and Troy Community Hospital, as well as related healthcare facilities and a multi-specialty Section 501(c)(3) group medical practice; and

WHEREAS, The C.M.H. Group, Inc. is a New York nonprofit, nonmember corporation that serves as the ultimate parent of an integrated health system, which includes the following entities (collectively referred to herein as the “Cortland Entities”): Cortland Regional Medical Center, Inc., a New York nonprofit corporation that operates a general acute care hospital; Cortland Memorial Foundation, Inc., a New York nonprofit corporation; CMH Services, Inc., a New York business corporation; Cortland Memorial Properties, Inc., a New York business corporation; Regional Medical Practice, P.C., a New York professional corporation; and Cortland Regional Medical Center Auxiliary, Inc., a New York nonprofit corporation; and

WHEREAS, Guthrie and the Cortland Entities have determined that undertaking an affiliation of their respective healthcare systems and operations (“Affiliation”) will enhance the availability and delivery of healthcare services to patients in the communities that they serve, will lead to significant quality enhancements and financial and operational efficiencies, will more effectively preserve a sustainable healthcare system in the region and allow the parties to participate in healthcare reform initiatives and other opportunities aimed at improving patient outcomes and managing the health and wellness of the communities they serve, and will advance their respective Section 501(c)(3) charitable purposes; and

WHEREAS, due to certain financial challenges currently facing the Cortland Entities as a small stand-alone system, the parties believe that the Affiliation is necessary to provide needed financial resources, capital investments, clinical enhancements and efficiencies as to ensure mission sustainability going forward; and

WHEREAS, Guthrie and the Cortland Entities have been negotiating the terms and conditions of a proposed transaction (“Transaction”) whereby the Cortland Entities would become affiliated with and integrated into the Guthrie system with Guthrie becoming the sole corporate member of Cortland Regional Medical Center and the ultimate parent of the Cortland Entities, and whereby The C.M.H. Group would merge into Cortland Regional Medical Center or otherwise go out of existence by dissolution or merger into another Cortland nonprofit entity; and

WHEREAS, in pursuit of such Transaction, the parties have entered into a Letter of Intent, dated September 29, 2017, setting forth many of the proposed terms and conditions related to the Transaction; and

WHEREAS, in order to set forth the definitive terms and conditions of the Transaction, Guthrie and the Cortland Entities are currently working together to develop a mutually agreed upon affiliation agreement (“Affiliation Agreement”); and

WHEREAS, the current draft of the Affiliation Agreement has been presented and described to this Board for consideration and discussion, and has been attached hereto as Exhibit A.

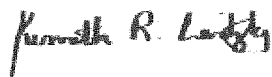
NOW THEREFORE BE IT RESOLVED that the Board of Directors hereby approves the Affiliation Agreement in substantially the form attached hereto as Exhibit A with the Affiliation to be effective upon the closing of the Transaction; and

FURTHER RESOLVED that the Board of Directors hereby authorizes, empowers, and directs the President/Chief Executive Officer (“President”), in the name and on behalf of Guthrie, to execute and deliver the aforementioned Affiliation Agreement, with such changes, modifications and additions as may be approved by the President, such approval to be conclusively evidenced by his execution or delivery thereof; and

FURTHER RESOLVED that the Board of Directors authorizes the President and the other officers of the corporation, within the scope of their authority, to take all other actions, and to execute and deliver such other agreements, documents and instruments, on behalf of Guthrie, as are deemed necessary or appropriate in order to carry out the intent of the resolutions contained herein and to consummate the Transaction as described in the aforementioned Affiliation Agreement, the taking of any such action and the execution and delivery of any such agreement, document or instrument to be conclusive evidence of the approval thereof by the Board of Directors of Guthrie; and

FURTHER RESOLVED that Board of Directors hereby directs the corporate Secretary of Guthrie to record this Resolution in the minutes of this meeting and certify the same.

The above resolutions were duly adopted by the Board of Directors of Guthrie at a meeting held on February 23, 2018.



February 23, 2018 10:33 AM

Corporate Secretary

Attachment 6

FILING RECEIPT

=====

ENTITY NAME: THE C.M.H. GROUP, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PURPOSES PROVISIONS RESTATED

COUNTY: CORT

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FILED:01/09/2019 DURATION:***** CASH#:190109000818 FILM #:190109000790

FILER:

HANCOCK ESTABROOK, LLP
1500 AXA TOWER
100 MADISON STREET
SYRACUSE, NY 13202

ADDRESS FOR PROCESS:

REGISTERED AGENT:

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SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37

FEEs 190.00

FILING 30.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 150.00

PAYMENTS 190.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 190.00
OPAL 0.00
REFUND 0.00

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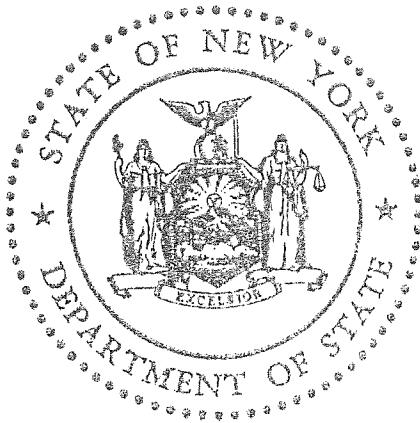
SAMCH09378

DOS-1025 (04/2007)

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 January 10, 2019.

A handwritten signature in cursive script, appearing to read "Whitney Clark".

Whitney Clark
Deputy Secretary of State

190109000 790
1

RESTATED
CERTIFICATE OF INCORPORATION
OF
THE C.M.H. GROUP, INC.

Under Section 805 of the New York Not-For-Profit Corporation Law

The undersigned, being the President of The C.M.H. Group, Inc., hereby certifies:

FIRST: The name of the Corporation is THE C.M.H. GROUP, INC.

SECOND: The original Certificate of Incorporation was filed by the Department of State on JUNE 30, 1988, under the Not-for-Profit Corporation Law ("NPCL").

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.

FOURTH: This amended and restated Certificate of Incorporation was duly authorized by the Board of Directors of the Corporation.

FIFTH: The Certificate of Incorporation is amended to effect the following amendments pursuant to the NPCL:

(1) Paragraph "2", related to the definition of the Corporation, is amended to read in full as follows:

"2. The Corporation is a corporation as defined in sub-paragraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a charitable corporation."

(2) Paragraph "3", related to the purposes of the Corporation, is amended to read in full as follows:

"3. The purpose for which the corporation is formed is to serve in an advisory and consultative capacity to Cortland Regional Medical Center, Inc.; Regional Medical Practice, P.C.; Cortland Memorial Foundation, Inc.; Cortland Memorial Properties, Inc.; Cortland Regional Medical Center Auxiliary, Inc., and CMH Services, Inc. (collectively the "Cortland Affiliates"), and all other affiliate or support organizations of Cortland Memorial Hospital, Inc. currently existing or hereafter formed, with regard to planning, development, marketing, executive management, advertising, promotion, personnel and financial matters."

- (3) Paragraph "7", listing the initial directors of the Corporation, is hereby omitted in its entirety.
- (4) Paragraphs "8" and "9" are hereby renumbered to Paragraphs "7" and "8", respectively.
- (5) A new Paragraph "9", related to the Sole Member of the Corporation, is hereby added to read in full as follows:

"9. The Sole Member of the Corporation is The Guthrie Clinic, a Pennsylvania non-profit corporation. The rights and powers of the Sole Member are set forth in the bylaws of the Corporation."

SIXTH: The Certificate of Incorporation of the Corporation is restated as amended to read in its entirety as follows:

[REMAINDER OF PAGE BLANK]

CERTIFICATE OF INCORPORATION
OF
THE C.M.H. GROUP, INC.

1. The name of Corporation shall be: THE C.M.H. GROUP, INC.
2. The Corporation is a corporation as defined in sub-paragraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law and is a charitable corporation.
3. The purpose for which the corporation is formed is to serve in an advisory and consultative capacity to Cortland Regional Medical Center, Inc.; Regional Medical Practice, P.C.; Cortland Memorial Foundation, Inc.; Cortland Memorial Properties, Inc.; Cortland Regional Medical Center Auxillary, Inc., and CMH Services, Inc. (collectively the "Cortland Affiliates"), and all other affiliate or support organizations of Cortland Memorial Hospital, Inc. currently existing or hereafter formed, with regard to planning, development, marketing, executive management, advertising, promotion, personnel and financial matters.
4. 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 (except that reasonable compensation may be paid for services rendered to or for the Corporation), and no member, trustee, or officer shall be entitled to share in the distribution of any of the Corporate assets upon dissolution of the Corporation.
5. No part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise 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.
6. The office of the Corporation shall be located in the County of Cortland and State of New York.
7. The Corporation hereby designates the New York Secretary of State as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

134 Homer Avenue
Cortland, New York 13045
Attention: President
8. In the event of dissolution, all of the remaining assets and property of the Corporation shall, after payment of necessary expenses thereof, be distributed to such organizations as shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1986, 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.

9. The Sole Member of the Corporation is The Guthrie Clinic, a Pennsylvania non-profit corporation. The rights and powers of the Sole Member are set forth in the bylaws of the Corporation."

IN WITNESS WHEREAS, I have made and subscribed this certificate and hereby affirm that its contents are true this 19th day of November, 2018.

THE C.M.H. GROUP, INC.

By: Mark Webster
Name: Mark Webster
Title: President and CEO

ATTORNEY GENERAL OF THE STATE OF NEW YORK
CORTLAND COUNTY

In the Matter of the Application of

C.M.H. GROUP, Inc.

ATTORNEY GENERAL
APPROVAL

For approval of a Restated Certificate of
Incorporation pursuant to Article 8 of the Not-
for-Profit Corporation Law ("N-PCL").

OAG No.: 18-034043-O

1. By petition dated December 13, 2018, C.M.H. Group, Inc. (the "Corporation") applied to the Attorney General pursuant to Article 8, of the Not-for-Profit Corporation Law for approval of a Restated Certificate of Incorporation of the Corporation.

2. The purpose for which the Corporation was organized is, in relevant part, as follows:

"To serve in an advisory and consultative capacity to Cortland Memorial Hospital, Inc., ... with regard to planning, development, marketing, executive management, advertising, promotion, personnel and financial matters."

3. The Corporation seeks approval under Article 8 of the N-PCL for the Corporation to, inter alia, restate its charitable purposes applicable to the Guilford Cortland Medical Center as set forth in the proposed Restated Certificate of Incorporation, attached to the Petition, which was approved by the unanimous vote of the Board of Directors on November 19, 2018:

"The purpose for which the corporation is formed is to serve in an advisory and consultative capacity to Cortland Regional Medical Center, Inc.; Regional Medical Practice, P.C.; Cortland Memorial Foundation, Inc.; Cortland Memorial Properties, Inc.; Cortland Regional Medical Center Auxiliary, Inc., and CMH Services, Inc. (collectively the "Cortland Affiliates"), and all other affiliate or support organizations of Cortland Memorial Hospital, Inc. currently existing or hereafter formed, with regard to planning, development, marketing, executive management, advertising, promotion, personnel and financial matters."

The resolutions of the Board of Directors was attached to the Petition.

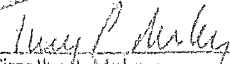
4. The reason for the change in the Corporation's initial filing and subsequent amendments, is reorganization in conjunction with Cortland Memorial Foundation, Inc.; Cortland Regional Medical Center, Auxiliary, Inc.; and, The C.M.H. Group, Inc.

5. Based on a review of the Petition and the exhibits thereto, the Restated Certificate of Incorporation of the Corporation is hereby approved.

6. Petitioner is hereby authorized to file with the Secretary of State the Restated Certificate of Incorporation in the form attached to the Petition and upon filing of the Certificate of Amendment Petitioner shall have the effect provided by Section 805 of the Not-For-Profit Corporation Law of the State of New York.

7. Petitioner shall provide a copy of the certified copy and filing receipt of the Restated Certificate of Incorporation to the Attorney General within 30 days of its receipt.

Date: January 8, 2019
Syracuse, New York

LETITIA JAMES
Attorney General of the State of New York
by: 
Timothy P. Mulvey
Assistant Attorney General

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

December 6, 2018

Patricia Smyth
Cicero Consulting Associates
701 Westchester Avenue, Suite 210W
White Plains, New York 10604

Re: Restated Certificate of Incorporation of The C.M.H. Group, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health and Health Planning Council held on the 11th day of October 2018, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Restated Certificate of Incorporation of The C.M.H. Group, Inc., dated November 19, 2018.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at HEISmyth@health.ny.gov

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/cl

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FILED

RESTATED

CERTIFICATE OF INCORPORATION

DRAWDOWN

OF

THE C.M.H. GROUP, INC.

Under Section 805 of the New York Not-For-Profit Corporation Law

KUA (C)

100

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED JAN 09 2019
TAXS _____
BY: KUA

FILED
LOS
2019 JAN -9 PM 3:07
NYC 6107

Filed by:

Hancock Estabrook, LLP
1500 AXA Tower
100 Madison Street
Syracuse, New York 13202

CUST REF SAMCH09378

66-117-1517899-00410
04/11/2018 5:11 PM

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2019 JAN -9 PM 1:59

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Attachment 7

**RESOLUTIONS OF THE DIRECTORS OF
THE C.M.H. GROUP, INC.**

WHEREAS, on July 20, 2018, The C.M.H. Group, Inc. ("CMHG"); Cortland Regional Medical Center, Inc. ("CRMC"); Regional Medical Practice, P.C. ("RMP"); Cortland Memorial Foundation, Inc. ("Foundation"); Cortland Memorial Properties, Inc. ("CMP"); Cortland Regional Medical Center Auxiliary, Inc. ("Auxiliary") and CMH Services, Inc. ("CSF") (collectively the "Cortland Affiliates"):

(1) approved execution of a binding Affiliation Agreement between the Cortland Affiliates and The Guthrie Clinic; and

(2) directed senior management to

- (a) undertake any and all reasonable, necessary and useful steps to implement the terms of the Affiliation Agreement;
- (b) report back on the status of such efforts; and
- (c) as appropriate, schedule the Cortland Affiliates, to undertake all actions necessary to proceed immediately to the Closing; and

WHEREAS, the Affiliation Agreement was executed by all parties, effective as of July 20, 2018; and

WHEREAS, senior management reports that:

(1) it has successfully concluded the tasks set to it pursuant to the Cortland Affiliates' directions contained in the July 20, 2018 resolutions; and

(2) it has successfully concluded the due diligence directive in the Affiliation Agreement, conferred with legal counsel and the accountants and auditors of the Cortland Affiliates and has determined that proceeding with the proposed affiliation with The Guthrie Clinic is in the best interest of the Cortland Affiliates and the local community they serve; and, therefore,

(3) it recommends that the Cortland Affiliates approve consummating the Affiliation Agreement as set forth in the Affiliation Agreement and these Resolutions; and

WHEREAS, one of the pre-requisites of the Closing, as stated in the Affiliation Agreement, is the adoption of various amended governing documents (i.e. bylaws, certificates of incorporation, etc.) by certain of the Cortland Affiliates, in the form attached to the Affiliation Agreement and the transfer of certain assets of, and equity and/or controlling interests in, certain Cortland Affiliates as directed in the Affiliation Agreement, to accomplish the contemplated Affiliation; and

WHEREAS, on October 11, 2018, the Public Health and Health Planning Council of the New York State Department of Health (“PHHPC”) gave its contingent approval of the Affiliation related to The Guthrie Clinic replacing CMHG as the sole corporate member of CRMC and the reservation of the powers contemplated in the Affiliation Agreement to The Guthrie Clinic with respect to CRMC, and such contingencies include, among other things, the submission of approved and executed revised corporate documents and resolutions by CRMC and CMHG; and

WHEREAS, it is anticipated that the Guthrie Clinic has or will shortly approve implementing the Affiliation as set forth in the Affiliation Agreement; and

WHEREAS, the Directors/Members/Shareholders of the various Cortland Affiliates have considered the reports and recommendations of senior management, legal counsel, their auditors and accountants; and

WHEREAS, the Directors/Members/Shareholders of the various Cortland Affiliates have determined that implementing the Affiliation is in the best interests of the Cortland Affiliates and the communities and individuals they serve, and therefore wish to (i) undertake any and all actions required to satisfy the PHHPC contingencies and (ii) direct that any and all action be undertaken to otherwise implement the Affiliation transaction as stated in the Affiliation Agreement and proceed as soon as possible to the Closing as described in Section 1.3 of the Affiliation Agreement;

NOW THEREFORE BE IT;

RESOLVED, that the Directors of CMHG do hereby via unanimous written consent as evidenced by their signatures below, (i) waive any and all notice requirements set forth in the applicable governance document that would otherwise preclude these actions and (ii) evidence their unanimous written consent to the Resolutions stated herein; and be it further;

RESOLVED, in accordance with the Affiliation Agreement and the Bylaws and Certificate of Incorporation of CMHG, the Board of CMHG does hereby amend and restate the Certificate of Incorporation and the Bylaws of CMHG in the forms attached hereto as Exhibits I and J, pursuant to which, as of the Closing Date and among other things, The Guthrie Clinic shall become the sole member of CMHG with such reserved powers as specified therein and be it further;

RESOLVED, that should any applicable regulatory agencies including, without limitation, the New York State Department of Health and/or PHHPC, the New York State Attorney General, a justice of the New York State Supreme Court, and/or the New York State Secretary of State require modifications to any of the foregoing resolutions and/or documents which do not materially change the intent hereof or of the Affiliation Agreement, and/or should any non-substantive modifications to any of the foregoing documents be otherwise deemed necessary and appropriate, upon the consent of Mark Webster (“Authorized Officer”), in consultation with the Chairs of the applicable Cortland Affiliates and with the advice of counsel, said Authorized Officer be, and hereby is, authorized to approve or reject such modifications in his sole discretion, and shall report such action to the Cortland Affiliates at the next opportunity

at which time such changes shall be incorporated into such documents and shall be deemed authorized by the applicable Cortland Affiliate; and be it further

RESOLVED, that the corporate officers of the Cortland Affiliates be, and hereby are, authorized and directed, on behalf of the Cortland Affiliates to execute and deliver any and all other certificates, instruments, and other documents and agreements of any kind, necessary or required to effectuate the purposes of the foregoing resolutions within the scope of their authority as officers; and be it further

RESOLVED, that upon the successful Closing and the Closing Date, both as specified in the Agreement, the Authorized Officer is directed to execute all necessary documents related to, and to timely file or cause to be filed, the amended and restated certificates of incorporation for the Cortland Affiliates, as applicable, with the New York Secretary of State; and be it further

RESOLVED, that should the Closing not successfully occur, the approvals, actions and directions of the Cortland Affiliates, as herein noted, are revoked and made null and void.

By my signature below, I hereby affirm that the above resolutions were adopted by the Board of Directors of The C.M.H. Group, Inc. via unanimous written consent as evidenced by the signatures of all the Directors affixed thereto, effective as of November 16, 2018.



Mark Webster
President and CEO

Sworn to before me this
20th day of November, 2018.



Notary Public

ANNE E. FARRELL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01FA6117677
Qualified in Cortland County
My Commission Expires 11-01-2020

Exhibit J
AMENDED AND RESTATED BYLAWS
OF THE
C.M.H. GROUP, INC.

ARTICLE ONE
OFFICES, PURPOSES AND POWERS

SECTION 1.1 OFFICES.

The C.M.H. Group, Inc. is a corporation organized and existing under the Not-For-Profit Corporation Law of the State of New York. The principal office of the corporation shall be located in Cortland County, New York.

SECTION 1.2 PURPOSES AND POWERS.

The purpose for which the Corporation is formed is any purpose for which a corporation may be organized under the Not-for-Profit Corporation Law as a charitable corporation, and provided such purpose has been authorized by the sole member.

ARTICLE TWO
MEMBERSHIP

SECTION 2.1 SOLE MEMBER

The Guthrie Clinic (the "Clinic" or the "sole member"), a Pennsylvania nonprofit corporation, shall be the sole member of the corporation.

SECTION 2.2 RESERVED POWERS

Notwithstanding anything to the contrary herein, the Board of Directors of the Clinic, acting as sole member of the corporation, shall have the following reserved powers and shall have and exercise final authority with respect thereto, to the fullest extent permitted by applicable law with respect the corporation:

(a) Appointment, reappointment and removal of all individuals who serve as members of the corporation's board of directors and/or committees;

(b) Approval of financial matters including the corporation's: annual operating and capital budget (and any material changes thereto); strategic and operating plans (and any changes thereto); incurrence of debt; executive compensation and physician compensation; transfer of assets; selection, retention, and termination of external auditors; and participation in key strategic alliances, affiliations, and other key relationships with third parties;

(c) Establish the corporation's mission, purpose, vision and values or any changes thereto;

(d) Approval of any amendment to the certificate of incorporation, bylaws or other governing instruments, merger, consolidation, division, liquidation, dissolution, conversion, disposition of substantially all assets, and all other fundamental transactions involving the corporation, including, without limitation, those transactions described in the New York Not-for-Profit Corporation Law, N-PCL § 101 *et seq.*;

(e) Approval of investment advisors, financial institutions, investment banks and outside counsel of the corporation;

(f) Appointment and removal of the President (or comparable officer) of the corporation;

(g) Approval, modification, relocation, transfer or discontinuance of any patient care or diagnostic program or health care service, license or accreditation of the corporation;

(h) Any change or transfer of any membership interest, shares or other ownership or beneficial interests in the corporation, or the creation or issuance of any additional membership interests, shares or other ownership or beneficial interests in the corporation, as applicable;

(i) The investment of the corporation's assets other than in accordance with the Clinic's current investment policy or any investment other than in the ordinary course of business, which shall consist of federally-insured interest-bearing bank accounts, short-term direct U.S. obligations, short-term certificates of deposit of domestic banks, or highly-rated money market funds;

(j) The incurrence by the corporation of indebtedness in excess of such amounts as may be reasonably designated by the Clinic from time to time, except pursuant to a budget approved by the Clinic;

(k) The conveyance, transfer, lease, or sale of any of the corporation's assets with a fair market value in excess of such aggregate amount as may be designated by the Clinic from time to time, except pursuant to a budget approved by the Clinic, or the conveyance, transfer, lease or sale of any of the corporation's assets to the Clinic or another entity directly or indirectly controlled by the Clinic through membership or share ownership;

(l) The making of any capital expenditure or the incurrence of any capital obligations by or on behalf of the Corporation in excess of such annual aggregate amount as may be designated by the Clinic from time to time, except pursuant to a budget approved the Clinic;

(m) The incurrence of any obligation (whether actual or contingent) by the corporation to guarantee or be responsible for the debts or obligations of any person in excess of such amounts as may be designated by the Clinic from time to time, except pursuant to a budget approved by the Clinic;

(n) The voluntary granting of any lien or encumbrance (including a confession of judgment) with respect to the corporation's assets, except in the ordinary course of business;

(o) Requiring that the Clinic or any other person make any capital contribution to the corporation;

(p) The creation by the corporation of any new lines of business, sites of business, subsidiary entities, or partnerships or other joint ventures, or any material changes in existing services, or participation in any key strategic relationship with unrelated third parties;

(q) The approval of loans or transfers to any unaffiliated entity or party involving the corporation; and

(r) All health care services contracting by the corporation that could materially impact the Clinic.

ARTICLE THREE BOARD OF DIRECTORS

SECTION 3.1 POWERS.

Except as otherwise provided by law, by the certificate of incorporation or by these By-laws including the reserve powers of the sole member, the Board of Directors shall have and exercise full power and authority to do all things deemed necessary and expedient in the governance, management and control of the business and affairs of the corporation.

SECTION 3.2 COMPOSITION.

The Board shall consist of the Chief Executive Officer, the Chief Operating Officer and the Chief Financial Officer of the sole member. These individuals shall hold the same officer positions for the corporation as they have with the sole member.

SECTION 3.3 VOTING.

A majority of the total Board shall constitute a quorum at any meeting of the Board. Each director is entitled to one vote on any matter before the Board. Unless otherwise required by law, the certificate of incorporation or these Bylaws, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board or a committee thereof as the case may be. Members of the Board of Directors may participate in a meeting of the Board of Directors by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Such participation in a meeting shall constitute presence in person at the meeting for purposes of establishing quorum.

**ARTICLE FOUR
GENERAL PROVISIONS**

SECTION 4.1 INDEMNIFICATION AND INSURANCE.

The corporation shall indemnify and save harmless any Director or officer against the reasonable expense, including attorneys' fees, actually and necessarily incurred in connection with the defense of any action, or threatened action, in which such Director or officer is made a party, or threatened to be made a party, by reason of (1) acting as such Director or officer of the corporation, or (2) serving another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, providing such person was a Director or officer of the corporation and so served said other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise at the request of the corporation.

Indemnification shall likewise apply to any sums actually paid by way of settlement of any actual or threatened action, or in satisfaction of any judgment rendered against such Director or officer. Indemnification in any case, however, shall apply only when such Director or officer acted in good faith for a purpose which he or she reasonably believed to be in the best interests of the corporation or, in the case of service for any other corporation, partnership, joint venture, trust, employee benefit plan or otherwise enterprise, not opposed to the best interests of the corporation, and in the case of criminal actions or proceedings, in addition had no reasonable cause to believe the conduct was unlawful. Indemnification shall not apply when a judgment or other final adjudication adverse to the Director or officer establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. The corporation is authorized to purchase insurance for indemnification of its Directors and officers to the maximum extent permitted by the laws of the State of New York.

SECTION 4.2 CONFLICTS OF INTEREST.

Each member of the Board of Directors shall disclose any potential or actual conflicts of interest, in accordance with conflict of interest policies adopted by the sole member. In addition, each member of the Board of Directors shall execute a written statement disclosing any potential or actual conflicts of interest. A potential or actual conflict of interest may exist if a Board member has, directly or indirectly, through business, investment or family:

(a) An ownership or investment in any entity with which the Clinic and/or its subsidiaries has a contract or may solicit in the future, or

(b) An employment or independent contractor relationship with the Clinic and/or any of its subsidiaries or with any entity or individual who has a contract or may seek to solicit a contract in the future with the Clinic and/or any of its subsidiaries, or

(c) A potential ownership, investment or employment with any entity or individual with which the Clinic and/or any of its subsidiaries is negotiating a contract.

The Board of Directors shall conduct an evaluation of its own performance and shall prepare a plan of development, based on the results of such evaluation.

SECTION 4.3 CONSTRUCTION OF TERMS AND HEADINGS.

Words used in these Bylaws shall be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions or headings in these Bylaws are for convenience only and are not intended to limit or define the scope or effect of any provision of these Bylaws.

SECTION 4.4 FISCAL YEAR.

The fiscal year of the corporation shall be January 1 to December 31 of each calendar year.

ARTICLE FIVE AMENDMENTS

These Bylaws may only be adopted, amended or repealed by the

-----X

In the Matter of the Application of :
The C.M.H. Group, 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
SYRACUSE REGIONAL OFFICE
615 Erie Blvd. West, Suite 102
Syracuse, NY 13204

Petitioner, The C.M.H. Group, Inc. (the "Corporation"), by Joseph A. Scopelliti, M.D., Chief Executive Officer of the Corporation, for its Verified Petition alleges:

1. The C.M.H. Group, Inc., whose principal address is P.O. Box 2010, Cortland, New York 13045, was incorporated pursuant to New York's Not-for-Profit Corporation Law on June 30, 1988. A copy of the Certificate of Incorporation (and all amendments) and the complete and current By-laws are attached as Exhibit A.

2. The names, addresses and titles of the Corporation's officers and directors are as follows:

Board Member/Chief Executive Officer:

Joseph A. Scopelliti, M.D.
1 Guthrie Square
Sayre, PA 18840

Board Member/Chief Operating Officer:

Paul G. VerValin, MBA, FACMPE
1 Guthrie Square
Sayre, PA 18840

Board Member/Chief Financial Officer:

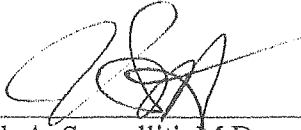
Philip J. Ryan, CPA
1 Guthrie Square
Sayre, PA 18840

Attachment 8

3. The purpose for which the Corporation was organized is set forth in its Amended and Restated Certificate of Incorporation and reads as follows:
 - (a) any purpose for which a corporation may be organized under the Not-for-Profit Corporation Law as a charitable corporation, and provided that such purpose has been authorized by the Sole Member.
4. The Corporation is a Type B Charitable Corporation.
5. The Corporation plans to dissolve in accordance with the Plan of Dissolution attached hereto as Exhibit B (the "Plan").
6. The Corporation is dissolving because its purposes of overseeing charitable healthcare operations of certain affiliated charitable organizations is no longer necessary or desirable.
7. The Board of Directors by unanimous written consent dated July 20, 2020 approved resolutions adopting the Plan, and authorizing the filing of a Certificate of Dissolution. Such written consent is attached hereto as Exhibit C.
8. After the Board of Directors approved the Plan, the sole member of the Corporation, The Guthrie Clinic, received and reviewed it and by unanimous written consent voted in favor of adoption of the Plan by executing the unanimous written consent of the Board of Directors attached hereto as Exhibit C.
9. The Corporation has no assets or liabilities as of the date hereof.
10. The Corporation is submitting herewith as Exhibit D a final financial report on form CHAR500 as well as form CHAR500 for the two (2) preceding years, with all required attachments, with the Charities Bureau and attaching the appropriate filing fees, if any.
11. For final financial reporting purposes, the Corporation certifies that it has not had any income or receipts, and has owned assets with a total market value of less than \$25,000, during each of the last six (6) completed fiscal years (calendar years 2014 – 2019) and has not had any financial activity since then.
12. Other than the approval of the Attorney General, no approval of the dissolution of the Corporation is required by any government agency or officer.
13. 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 The C.M.H. Group, 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 20th day of July, 2020 by



Joseph A. Scopelliti, M.D.
Chief Executive Officer


Verification

~~STATE OF NEW YORK~~
Pennsylvania

~~COUNTY OF CORTLAND~~
Bradford :SS.:
COUNTY OF CORTLAND)

Joseph A. Scopelliti, M.D., being duly sworn, deposes and says:

I am the Chief Executive Officer of The C.M.H. Group, 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 (i) know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true and (ii) I hereby certify under penalties of perjury that the Plan was duly authorized and adopted on behalf of the Corporation by the Board of Directors of the Corporation's Sole Member.



Sworn to before me this 20th day of
July, 2020.

Lori South
Notary Public

Commonwealth of Pennsylvania - Notary Seal
Lori South, Notary Public
Bradford County
My commission expires April 14, 2024
Commission number 1297593
Member, Pennsylvania Association of Notaries

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of October 2021, approves the filing of the Certificate of Dissolution of The C.M.H. Group, Inc. dated as attached.



MEMORANDUM

TO: Lisa Thomson
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

FROM: Kerri Tily, Senior Attorney
Division of Legal Affairs, Bureau of Health Facility Planning and Development

DATE: July 27, 2021

SUBJECT: Wheel Chair Home Care, Inc.; Name Change Pursuant to NY N-PCL §804(a)(i)
and 10 NYCRR § 600.11(a)(1)

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) Letters from David Lockwood, the Chief Financial Officer of the applicant, dated March 11, 2020 and October 1, 2020, explaining the nature and reasons for the requested change;
- 3) A copy of the executed Certificate of Amendment of the Certificate of Incorporation of Wheel Chair Home, Inc.
- 4) A copy of the Certificate of Amendment of the Certificate of Incorporation of Wheel Chair Home, dated August 14, 2009.
- 5) A copy of the Certificate of Incorporation of Wheel Chair Home of Incurables, dated June 4, 1915.
- 6) A copy of the Bylaws of Wheel Chair Home, Inc., dated December 11, 2009; and
- 7) A copy of the Unanimous Written Consent of the Board of Directors of Wheel Chair Home, Inc, dated January 7, 2020, consenting to the corporate name change.

Attachments

cc: C. Jolicoeur, B. DelCogliano, M. Ngwashi

Attachment 1



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *Kathy Marks*
General Counsel

Date: July 27, 2021

Subject: Wheel Chair Home Care, Inc.; Name Change Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(1)

Wheel Chair Home, Inc., a New York not-for-profit corporation and established operator of Schofield Residence, an Article 28 Residential Health Care Facility, and its offsite Adult Day Health Care Program, is requesting approval to change its corporate name to "Schofield Residence, Inc."

Wheel Chair Home, Inc. is requesting the name change to better reflect its affiliation with the assumed name, Schofield Residence, under which it currently operates.

Approval of the Public Health and Health Planning Council (PHHPC) is required under the Not-for-Profit Corporation Law § 804(a)(i) and 10 NYCRR § 600.11(a)(1).

There is no legal objection to the corporate name change and the Certificate of Amendment of the Certificate of Incorporation of Wheel Chair Home, Inc. is legally acceptable.

Attachments.

Attachment 2



3333 Elmwood Avenue
Kenmore NY 14217
Tel: 716.874.1566
Fax: 716.874.6942
SchofieldCare.org
Info@SchofieldCare.org

10/1/2020

Bureau of Health Facility Planning and Development
Division of Legal Affairs
New York State Department of Health
Corning Tower - Empire State Plaza
Albany, NY 12237

To whom it may concern –

Our organization operates Schofield Residence skilled nursing facility, Schofield Certified Home Health Care, and Schofield Adult Day Health Care Program. These 3 programs previously operated as DBAs under the umbrella of Wheel Chair Home, Inc. But in February of this year, our Board of Directors filed an Amended Certificate of Incorporation with the NYS Department of State, changing the corporate name to Schofield Residence Inc.

Due to COVID, there was a 6 month delay, but we finally received our determination letter from the IRS, which confirms the name Schofield Residence Inc is associated with our Federal Employer Identification Number.

With all of this information, we now need to recredential with numerous managed care and MLTC insurances. In order to do so, the company name on our Operating Certificates for each of those programs needs to match our other documentation. Therefore, we have requested that new Operating Certificates be issued, changing the name on each from Wheel Chair Home Inc to Schofield Residence Inc. We need the following Op Certs issued, with the Operator changed to Schofield Residence Inc.:

Cert. #1404300N	Schofield Residence
Cert. #1404300N	Schofield Adult Day Home Health Care Program
Cert. #1404600N	Schofield Certified Home Care

If you need any other information, please let me know.

Sincerely,

David A Lockwood

David A Lockwood
CFO

*Schofield Residence—Short Term Rehabilitation & Nursing Facility
Adult Day Health Care Program
Home Health Care Services
Schofield Foundation*



3333 Elmwood Avenue
Kenmore NY 14217
Tel: 716.874.1565
Fax: 716.874.0942
SchofieldCare.org
info@SchofieldCare.org

SCHOFIELDCARE

A Legacy of Caring

3/11/2020

Colleen Leonard
Executive Secretary, Public Health and Health Planning Council
Center for Health Care Facility Planning, Licensure and Finance
Corning Tower, Room 1805
Albany, NY 12237

Dear Ms. Leonard –

I am writing you today as our not for profit corporation, Wheel Chair Home Inc., has officially changed it's name to Schofield Residence Inc. Schofield Residence Inc. operates a skilled nursing facility (Schofield Residence), an adult day health care program (Schofield Adult Day Health Care Program), and a CHHA (Schofield Certified Home Care). The associated operating certificates for these programs show the operator as Wheel Chair Home Inc, and I am writing you today to ask that these be reissued with the operator changed to Schofield Residence Inc. I have included copies of the operating certificates, and the amended Certificate of Incorporation, showing the name change.

The revised operating certificates can be sent to:

Schofield Residence
Attn: David Lockwood, CFO
3333 Elmwood Ave
Kenmore NY 14217

Thank you for your time.

Sincerely,

David A. Lockwood
CFO

Attachment 3

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 February 5, 2020.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

200204000 567

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
WHEEL CHAIR HOME, INC.

Under Section 803 of the Not-For-Profit Corporation Law

FIRST: The name of the corporation is WHEEL CHAIR HOME, INC. (the "Corporation"). The under which the Corporation was formed is Wheel Chair Home for Incurables.

SECOND: The date of filing of the Certificate of Incorporation of the Corporation with the Department of State is June 4, 1915.

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-For-Profit Corporation Law.

FOURTH: The amendment effected by this Certificate of Amendment is as follows:

Paragraph First of the Certificate of Incorporation relating to the name of the Corporation is hereby amended to read as follows:

"FIRST: The name of the corporation is SCHOFIELD RESIDENCE, INC."

FIFTH: This Certificate of Amendment was authorized by the unanimous written consent of the Corporation's Board of Directors. The Corporation has no members.

SIXTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation that may be served upon him is:

c/o the Corporation
3333 Elmwood Avenue
Kenmore, New York 14217

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the 7th day of January 2020.


Name: James Phillips

Title: Authorized Officer

15274585.1

200204000567

200204000

UNI-37567

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
WHEEL CHAIR HOME, INC.

Under Section 803 of the Not-For-Profit Corporation Law

FILED

2020 FEB -4 PM 2:31

RECEIVED

2020 FEB -4 PM 2:06

RECEIVED

2020 FEB -3 PM 2:13

1 cc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED FEB - 4 2020

TAXES
BY:

BARCLAY DAMON LLP
200 Delaware Avenue, Suite 1200
Buffalo, New York 14202-2150

Re: Sch of 63012

DRAWDOWN

152745851

606

Attachment 4

FILING RECEIPT

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ENTITY NAME: WHEEL CHAIR HOME, INC.

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)
PROCESS NAME

COUNTY: ERIE

=====

FILED:08/17/2009 DURATION:***** CASH#:090817000540 FILM #:090817000476

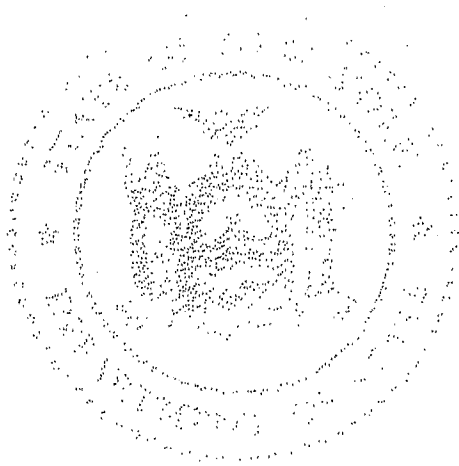
FILER:

DAMON & MOREY LLP
AVANT BUILDING - SUITE 1200
200 DELAWARE AVENUE
BUFFALO, NY 14202

ADDRESS FOR PROCESS:

THE CORPORATION
3333 ELMWOOD AVENUE
KENMORE, NY 14217

REGISTERED AGENT:



=====

SERVICE COMPANY: UNITED CORPORATE SERVICES - 37

SERVICE CODE: 37

FEEES 140.00

FILING 30.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 100.00

PAYMENTS 140.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 140.00
 OPAL 0.00
REFUND 0.00

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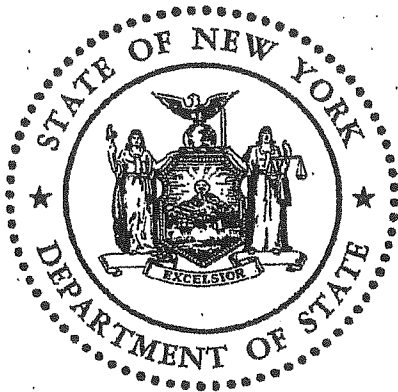
WHEEL01355

DOS-1025 (04/2007)

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on August 18, 2009.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State

090817000 476

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
WHEEL CHAIR HOME**

Under Section 803 Of The Not-For-Profit Corporation Law

THE UNDERSIGNED, being the President of Wheel Chair Home (the "Corporation"), hereby certifies as follows:

FIRST: The name of the Corporation is Wheel Chair Home. The name under which it was formed was "Wheel Chair Home for Incurables."

SECOND: The original Certificate of Incorporation of the Corporation, dated December 10, 1914, was filed by the Department of State on June 4, 1915. The law under which the Corporation was formed was Chapter 40 of the Laws of the State of New York, enacted February 17, 1909, known as the Membership Corporation Law.

THIRD. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and it is and shall hereafter continue to be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.

FOURTH: The Certificate of Incorporation is hereby amended to change the name of the Corporation to Wheel Chair Home, Inc.

To reflect such amendment, Paragraph First of the Certificate of Incorporation is hereby amended to read as follows:

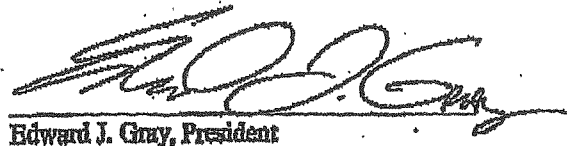
"FIRST: The name of the corporation is Wheel Chair Home, Inc."

FIFTH: The foregoing amendment to the Certificate of Incorporation of the Corporation was duly authorized by the unanimous written consent of the Board of Directors of the Corporation. The Corporation has no members.

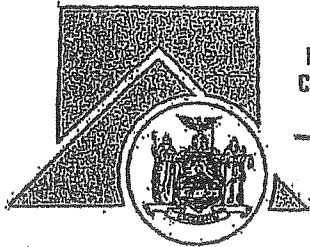
SIXTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against Company that may be served upon him is:

c/o The Corporation
3333 Elmwood Avenue
Kenmore, New York 14217

IN WITNESS WHEREOF, the undersigned has executed this Certificate and affirms that the statements made herein are true, under penalties of perjury, this 14th day of August, 2009.


Edward J. Gray, President

#1358662



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

August 14, 2009

Robert J. Portin, Esq.
Damon & Morey LLP
298 Main Street
Buffalo, New York 14202-4096

Re: Wheel Chair Home, Inc.

Dear Mr. Portin:

This is in response to your request for the Public Health Council's consent to the filing of the Certificate of Amendment of the Certificate of Incorporation of Wheel Chair Home, dated August 14, 2009, which would change the name of the corporation to Wheel Chair Home, Inc. Please note that, pursuant to a letter dated September 25, 1978, in which the Public Health Council approved a Certificate of Amendment of the Certificate of Incorporation, dated October 13, 1978, the Public Health Council identified the corporation as "Wheel Chair Home, Inc." It is clear, then, that it was the Public Health Council's understanding that the name of the corporation is Wheel Chair Home, Inc., which is also the name that is reflected in the Operating Certificate issued to the corporation by the Department of Health. The current Certificate of Amendment of the Certificate of Incorporation makes the name of the corporation consistent with what the Public Health Council approved through its letter dated September 25, 1978, as well as with the name of the corporation as identified on the Operating Certificate. Therefore, the Public Health Council has no objection to the filing of the Certificate of Amendment dated August 14, 2009 as it has already approved the name "Wheel Chair Home, Inc."

Sincerely,


Colleen M. Frost
Executive Secretary

UNI-37

090817000 476

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
WHEEL CHAIR HOME

Under Section 803 of the Not-for-Profit Corporation
Law of the State of New York

FILED
2009 AUG 17 PM 1:22

ICC
STATE OF NEW YORK
DEPARTMENT OF STATE

Damon & Morey LLP
Avant Building - Suite 1200
200 Delaware Avenue
Buffalo, NY 14202

FILED AUG 17 2009
TAXS _____
BY: JCH
ERIE

JCH

Customer Reference # WHEEL01355

570

2009 AUG 17 PM 12:05

RECEIVED

DRAWDOWN

Attachment 5

June 4, 1915

Certificate

JUNE 4, 1910
CERTIFICATE 1915?

STATE OF NEW YORK
DEPARTMENT OF STATE

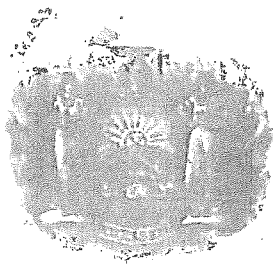
I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of
the Department of State, at the City of
Albany, on August 4, 2009.



A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro
First Deputy Secretary of State



State of New York
State Board of Charities

The Capitol at Albany

In the Matter of the Incorporation
of

Wheel Chair Home for Incurables

Whereas Application has been made to the State Board of Charities for its approval of the incorporation of *Wheel Chair Home for Incurables* and
Whereas On due inquiry and investigation it appears to said Board desirable and proper that such Home shall be so incorporated.

Now Therefore In pursuance of and in conformity with the provisions of Chapter forty of the Laws of the State of New York enacted February 17 1909 the said State Board of Charities hereby certifies that it approves of the incorporation of the said *Wheel Chair Home for Incurables* located at Buffalo N. Y. the certificate of incorporation of which is herewith annexed.

In Witness Whereof the said Board has this 10th day of March 1915 caused these presents to be subscribed by its President and attested by its Secretary and its official seal to be hereunto affixed.

William R Stewart

PRESIDENT

ATTEST:

Reuben A. ...

SECRETARY

Isaiah S. Wheeler Justice of the Supreme Court
of the State of New York, in and for the County of Erie, for the
Eighth Judicial District, do hereby approve of the within certificate
of incorporation and consent that the same be filed.

Dated, Buffalo, N.Y.

December 10th 1914.

Isaiah S. Wheeler

Justice of Supreme Court.

53

2

CERTIFICATE OF INCORPORATION

--OF--

WHEEL CHAIR HOME FOR INCURABLES.

WE, the undersigned, all being persons of full age and at least two-thirds of whom are citizens of the United States and all being residents of the City of Buffalo, County of Erie and State of New York, desiring to form a membership corporation pursuant to Chapter ~~3~~ ^{XXXV} of the Consolidated Laws of the State of New York, known as Membership Corporation Law, do hereby make, sign, acknowledge and file this certificate for such purpose as follows:

FIRST: The name of the proposed corporation is

"WHEEL CHAIR HOME FOR INCURABLES."

SECOND: That the object of the corporation shall be to provide, erect, establish and maintain a home for incurables and chronic invalids; to furnish them with gratuitous medical and surgical treatments for their infirmities and afflictions if they are unable to pay for the same; to furnish wheel-chairs to the needy poor of the City of Buffalo so that they can be wheeled about their homes and through the streets for the benefit of their health and happiness.

THIRD: The office of the corporation is to be located at No. 344 Hudson Street, in the City of Buffalo, County of Erie and State of New York. The territory in which the corporation shall operate is the City of Buffalo, County of Erie and State of New York.

FOURTH: The number of its directors shall be five.

FIFTH: The names and residences of the persons to be its directors until the first annual meeting are as follows:

3

<u>Name.</u>	<u>Address.</u>
Elizabeth R. Bidwell,	700 Auburn Avenue, Buffalo, N.Y.
Jennie K. Schofield,	159 Lodge Avenue, Buffalo, N.Y.
Alice R. Thomas,	681 West Avenue, ..., Buffalo, N.Y.
<u>Flora E. Klopp,</u>	100 Dorchester Road, Buffalo, N.Y.
Harriet B. Pierce,	573 Potomac Avenue, Buffalo, N.Y.

SIXTH: That the date for holding its annual meeting shall be the second Monday in October of each year.

IN WITNESS WHEREOF, we have made, signed, acknowledged and filed this certificate in duplicate.



Elizabeth R. Bidwell (L.S.)

Jennie K. Schofield (L.S.)

Alice R. Thomas (L.S.)

Flora E. Klopp (L.S.)

Harriet B. Pierce (L.S.)

4

STATE OF NEW YORK.)
COUNTY OF ERIE.) SS.
CITY OF BUFFALO.)

On this 9th day of December, 1914 before me personally appeared Elizabeth R. Bidwell, Jennie H. Schofield, Flora E. Klopp, and Harriett B. Pierce, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and that they duly acknowledged to me that they executed the same for the purposes therein set forth.

Alice M. Hart

COMMISSIONER OF DEEDS,
BUFFALO, N. Y.

STATE OF NEW YORK.)
COUNTY OF ERIE.) SS.
CITY OF BUFFALO.)

On this 10th day of December, 1914 before me personally appeared Alice R. Thomas, to me known and known to me to be the individual described in and who executed the foregoing instrument, and that she duly acknowledged to me that she executed the same for the purposes therein set forth.

Alice M. Hart

COMMISSIONER OF DEEDS,
BUFFALO, N. Y.

5

EM Book 100 Page 678 B8

CERTIFICATE OF INCORPORATION

1914

WHEREOF CERTAIN SHARES FOR

INCORPORATED

Dated, December 10th 1914.

STATE OF NEW YORK
OFFICE OF SECRETARY OF STATE

Filed
December 4 1915

Thomas E. White
SECRETARY OF STATE

HULL AND WHITE
COUNSELLORS AT LAW
MARINE NATIONAL BANK BUILDING
BUFFALO, N.Y.

RECEIVED AT THE OFFICE OF THE SECRETARY OF STATE

116

491

Attachment 6

Wheel Chair Home, Inc., dba Schofield Residence

BY-LAWS

Article I
Name and Location

Section 1. The name of the Corporation is the Wheel Chair Home, Inc., dba Schofield Residence (hereinafter called the "Corporation").

Section 2. The location of the principal office of the Corporation is 3333 Elmwood Avenue, Kenmore, New York, 14217.

Article II
Corporate Seal

Section 1. The Corporation shall have a corporate seal and shall use such seal personally, but the use of same shall be necessary only as required by law. The seal of the Corporation shall be in such form as the Board of Directors shall determine.

Article III
Object

Section 1. The object of the Corporation, as defined in the Certificate of Incorporation, is as follows:

"The object of the Corporation shall be to provide, erect, establish, and maintain the Wheel Chair Home, hereinafter referred to as the Home, a Skilled Nursing Facility and Health Related Facility.

The Corporation shall also establish, provide, and maintain Residential Health Care Facility programs and other related services, provided that each such service is established and operated, the prior written approval of the State Department of Health, and other appropriate state agency, if any, shall be obtained."

Article IV
No Members

Section 1. The Wheel Chair Home, Inc., dba Schofield Residence is a Type B, not-for-profit Corporation with no members.

Article V
Board of Directors

Section 1. NUMBER OF DIRECTORS. The Board of Directors of the Corporation shall consist of not less than seven (7) nor more than thirteen (13) members. The number of Directors may be increased or decreased by a vote of the Board of Directors. However, in no case shall the entire Board of Directors consist of less than three (3) directors. All directors must be at least 18 years of age.

Section 2. TERMS. Each director shall serve a term of three (3) years. A director's term shall begin on July 1st and end on June 30th of subsequent years, unless otherwise specified by the Board of Directors. No director shall serve more than three (3) consecutive full terms and a year shall elapse before a former director may be eligible for re-election.

Section 3. NOMINATION. Director nominations shall be recommended by a committee of the Corporation prior to the annual meeting or at such time as is necessary to replace a director position due to a vacancy.

Section 4. ELECTION. At the annual meeting of the Board of Directors, directors shall be elected by the incumbent board members. The newly elected directors shall begin their terms on July 1st and will there upon replace the members of the board whose terms shall expire on June 30th.

Section 5. MID-YEAR ELECTION. If a new board member is elected at any time during the board year, other than July 1st, their partial first year will be considered an interim period. If subsequently elected, their first full, three (3) year term will begin July 1st of the following board year.

Section 6. RESIGNATION. Any Director of the Corporation may resign at any time by giving a written letter of resignation to the Chairman. A resignation shall take effect at the time specified herein and if no time is specified herein the resignation shall be effective upon receipt by the Chairman.

Section 7. REMOVAL OF DIRECTOR. Any director may be removed either with or without cause by the vote in person or by proxy of at least two-thirds (2/3) of the elected directors.

Section 8. VACANCIES. If, at any time, a director does not desire to serve or resigns or is unable to serve for any reason, then such vacancy on the board may be filled by the directors then in office. The name of the person to fill this vacancy shall be presented as a recommendation by the Nominating Committee. Vacancies occurring during the year may be filled by the Board of Directors for the duration of the term of the vacant position.

Section 9. DIRECTOR COMPENSATION. No individual serving on the Board of Directors shall receive remuneration for service as a director. Expenses incidental to attendance at Board of Director and committee meetings, conferences and conventions designed to develop the skills of the Board of Directors in understanding and executing their tasks, and any reasonable expenses incurred on behalf of the Corporation, may be paid to individuals serving on the board with board approval.

Section 10. AUTHORITY. The Board of Directors shall have and exercise full power and authority to do any and all things deemed necessary or expedient in the government, management, and control of the business and affairs of the Corporation.

Section 11. EX-OFFICIO. The President shall be an ex-officio member at all meetings of the Board of Directors. At the discretion of the Board of Directors, certain management employees may attend board meetings.

Section 12. OTHER. The rules contained in *Robert's Rules of Order* shall govern the Board of Directors in all cases to which they are applicable and to which they are not inconsistent with the By-Laws.

Article VI

Officers

Section 1. OFFICERS. The officers of the Corporation shall consist of the Chairman, Vice Chairman, Secretary, and Treasurer, all of whom shall be members of the Board of Directors.

Section 2. TERM OF OFFICE. The term for any officer shall consist of one (1) year. An officer's term shall begin on July 1st and end on June 30th of the subsequent year, unless otherwise specified by the Board of Directors. No officer shall serve more than three (3) consecutive full terms in the same office. An officer, however may be removed at any time, with or without cause, by the affirmative vote of two-thirds (2/3) of the elected Board of Directors. If an office becomes vacant for any reason, the vacancy shall be filled by the Board of Directors.

Section 3. NOMINATIONS. Officer nominations shall be presented by the Nominating Committee.

Section 4. ELECTION. Officers shall be elected at the annual meeting of the Board of Directors. The newly elected officers shall begin their terms on July 1st and will there upon replace the officers whose terms shall expire on June 30th.

Section 5. CHAIRMAN. The Chairman shall preside at meetings of the Board of Directors, shall be a member ex-officio of all committees, shall appoint standing and special committees, shall serve on the Schofield Foundation, Inc. Board of Trustees, and shall perform other duties as required by the directors. All committees appointed by the Chairman shall be submitted to the directors for approval. The Chairman shall have the power, acting with the authority granted, to sign and execute all instruments sealed and unsealed.

Section 6. VICE CHAIRMAN. The Vice Chairman shall perform such duties as delegated by the Chairman. In the absence of the Chairman, or in case of a vacancy in that office, all duties and powers shall devolve first upon the Vice Chairman.

Section 7. SECRETARY. The Secretary shall be responsible to record and file or cause to be recorded and filed minutes of all meetings. The Secretary shall attest the execution by the Corporation of all official documents and shall attend to the serving of all notices of corporate meetings and shall perform such other duties as may be required or directed by the Board of Directors from time to time.

Section 8. TREASURER. The Treasurer shall have the care and custody of all monies and securities of the Corporation. The Treasurer shall keep full and accurate records of all monies received and paid on account of the Corporation. The Treasurer shall make and sign such reports, statements, and instruments that may be required by the Board of Directors or by the laws of the United States or of any

State in which the Corporation operates, and shall perform such other duties as usually pertains to the office or as are properly required by the Board of Directors.

Section 9. REMOVAL. A board officer may be removed from office with or without cause by two-thirds (2/3) vote of the Board of Directors at a meeting called for the purpose with due notice.

Section 10. RESIGNATION. Any board officer may resign at any time by giving a written letter of resignation to the Chairman of the Board. A resignation shall take effect at the time specified in the resignation notice and if no time is specified, the resignation shall be effective upon receipt by the Chairman of the Board of Directors.

Section 11. OFFICER COMPENSATION. The officers of the Corporation shall not receive any compensation for their services but may be reimbursed, with board approval, for any reasonable expenses incurred on behalf of the Corporation.

Article VII **Conflict of Interest**

A conflict of interest exists when an individual's obligation to further the organization's charitable purposes is at odds with their own financial interests.

Section 1. NO PERSONAL GAIN. No Director of the Corporation or any of its committees, shall derive any personal profit or gain, real or potential, directly or indirectly, by reason of their participation with the Corporation.

Section 2. DISCLOSURE OF CONFLICT OF INTEREST. Each Director shall disclose, to the Board, any personal interest which they may have in any matter pending before the Corporation. The governing Board will then evaluate if such a conflict exists. If a conflict is found to exist, that Director shall abstain from participation in the decision and/or vote on such matters. Disclosed conflicts and abstentions will be noted in the board minutes.

Section 3. ANNUAL CONFLICT OF INTEREST STATEMENT. On an annual basis, each Director must sign a statement which affirms that they have reviewed and understand the By-Laws Article regarding Conflict of Interest and agree to comply with the policy.

Section 4. PROCEDURE FOR ADDRESSING A CONFLICT OF INTEREST.

- a. An interested person may make a presentation at a governing board or committee meeting, but after presentation, that director shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairman of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the organization can obtain, with reasonable efforts, a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under the circumstances of not producing a conflict of interest, the governing board or committee shall determine, by a majority vote of the disinterested directors, whether the transaction or arrangement is in the organization's best interest, for its benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.
- e. Board Minutes shall contain the names of the directors who disclosed or otherwise were found to have actual or potential conflicts of interest, the nature of the conflict, any action taken to investigate, and the governing board's decision as to whether a conflict existed. The names of the persons present for the discussion, the content of the discussion, alternatives proposed, and any votes taken, will be recorded.

Section 5. VIOLATIONS OF THE CONFLICTS OF INTEREST POLICY. If the governing board or committee has reasonable cause to believe a director has failed to disclose actual or potential conflicts of interest, it shall inform that director of the basis for such belief and afford the director an opportunity to explain the alleged failure to disclose.

If, after hearing the director's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the director has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Article VIII
Schofield Foundation Board of Trustees

Section 1. At least two (2) of the Board of Trustees of the Schofield Foundation, Inc. shall consist of members of the Board of Directors of the Wheel Chair Home, Inc., dba Schofield Residence. They will be:

- ◆ Current Chairman of the Wheel Chair Home, Inc., dba Schofield Residence
- ◆ Another current member or board members of the Board of Directors of the Wheel Chair Home, Inc., dba Schofield Residence as selected by the Board of Directors of the Wheel Chair Home, Inc., dba Schofield Residence. Said selection will be made annually.

Article IX
Schofield Home Health Care Services, Inc.

Section 1. The Wheel Chair Home, Inc., dba Schofield Residence shall be the sole member of Schofield Home Health Care Services, Inc. (hereinafter referred to as SHHCS). The rights and responsibilities of the Wheel Chair Home, Inc., dba Schofield Residence, as the sole member of SHHCS, are identified in the Certificate of Incorporation and By-Laws of SHHCS.

Article X
Meetings

Section 1. **REGULAR MEETINGS.** Regular meetings of the Board of Directors shall be held periodically at such times and such places as the Board of Directors may determine. The order of business for a regular meeting of the Board of Directors shall be:

- a) Call to order
- b) Reading of minutes of last meeting
- c) Correspondence
- d) Committee reports
- e) President's reports
- f) Unfinished business
- g) New business
- h) Adjournment

Section 2. SPECIAL MEETINGS. Special meetings of the board may be called by the Chairman or Vice Chairman with three (3) days notice to all directors, in writing, personally, or by telephone. Only the subjects specified in the notice of the meeting to the directors for the special meeting shall be acted upon or discussed.

Section 3. ANNUAL MEETING. The annual meeting of the Board of Directors shall be held at such time in the month of June in each year as the Board of Directors may determine for the purposes of receiving the annual report, electing directors and officers, and transacting such other business as may properly come before the meeting. The order of business for the annual meeting shall be as follows:

- a) Call to order
- b) Reading of minutes of last annual meeting
- c) Report of Board of Directors and officers
- d) Report of committees
- e) Unfinished business
- f) Communications
- g) Election and installation of officers
- h) General business
- i) Adjournment

Section 4. NOTICE OF REGULAR AND ANNUAL MEETING. Notice of the time and place of each regular and annual meeting of the Board of Directors shall be given by the Chairman or the Secretary to each member of the board not less than three (3) days before the meeting by mailing the notice, postage pre-paid, addressed to each member of the board at his or her residence or usual place of business.

Section 5. TELEPHONIC PARTICIPATION. Any one (1) or more directors may participate in the meeting of the Board of Directors or any committee thereof by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence at the meeting.

Section 6. INVITATION TO MEETING. One or more of the individuals serving on the Board of Directors of SHHCS or the Board of Trustees of the Schofield Foundation, Inc., or its successor, may be invited to attend each regular meeting and the annual meeting of the Board of Directors.

Article XI

Quorum, Voting and Action Without Meeting

Section 1. QUORUM. The presence of a simple majority of the individuals currently sitting on the Board of Directors shall constitute a quorum. Except as otherwise required by law or by these By-Laws, the act of a simple majority of the directors present, at a board meeting, in which a quorum is present, rules when voting.

Section 2. VOTING. Each director shall be entitled to one (1) vote. There shall be no voting by proxy. Except as otherwise provided by law, or by these By-Laws, all actions shall be decided by a majority vote of the directors present in person.

Section 3. WRITTEN CONSENT OF DIRECTORS FOR ACTION WITHOUT A MEETING. Whenever, under the Not-for-Profit Corporation Law, directors are required or permitted to take action by vote, such action may be taken without a meeting on written consent, setting forth the actions so taken, signed by all of the directors entitled to vote thereon.

Article XII

Administration

Section 1. The President will be charged with the duty of carrying out the directives and policies of the Board of Directors.

Article XIII
Financial

Section 1. FISCAL YEAR. The fiscal year of the Corporation shall begin on January 1 and end on December 31 in each year.

Section 2. AGENTS. The Board of Directors may employ and pay the reasonable compensation of staff, accountants, legal counsel, professional, clerical and other help as it may deem necessary and proper.

Section 3. SECURITY. The funds of the Corporation shall be deposited in its name to such banks, trust companies, or other financial intermediaries as the Board of Directors shall designate. The number and names of all accounts and authorized signatures for withdrawals from all accounts will be designated by the Board of Directors. No part of the assets of the Corporation shall be distributed to the Board of Directors or other private persons.

Section 4. INVESTMENT SERVICES. The Board of Directors may contract with any independent investment advisor, investment council, or manager, or federally insured national or state bank or trust company to act in place of said board in investment and re-investment of funds of the Corporation or to provide security custodial services. The Board of Directors is further authorized to pay a reasonable compensation for such investment advisory management or security custodial services.

Section 5. LOANS/REAL ESTATE. Loans and guarantees shall be contracted on behalf of the Corporation only if authorized by the Board of Directors. Purchase, sale, lease, and other acquisition or disposition of real estate shall require the approval of the Board of Directors.

Article XIV
Indemnification of Officers and Directors

Section 1. Except as prohibited or restricted by applicable law, this Corporation shall indemnify any person made a party to any action, suit, or proceeding by reason of the fact that he or she is or was a member of the Board of Directors or board officer of this Corporation or that his or her testator or intestate was a member of the Board of Directors or board officer of this Corporation, against judgements, fines, amounts paid in settlement, and reasonable expenses, including

attorney's fees actually and necessarily incurred as a result of such actions, suits or proceedings, or repeals therein, if such persons acted in good faith for a purpose which he or she reasonably believed to be in the best interest of the Corporation, and, in criminal actions or proceedings, in addition, had no reasonable cause to believe that his or her conduct was unlawful.

No director or board officer of the Corporation shall be indemnified if a judgement or other final adjudication of a civil or criminal action or proceeding is adverse to said director or board officer and establishes that his or her acts were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated, or that he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled.

Article XV **Committees**

Section 1. **COMMITTEES.** The Board of Directors, upon the recommendation of the Chairman, may appoint committees as it determines to be advisable to conduct the affairs of the Corporation.

Section 2. **STANDING COMMITTEES.** Standing Committees shall comprise the following:

Executive - The Executive Committee of the Corporation shall consist of the elected officers. The Chairman of this committee shall be the Chairman of the Board. The Executive Committee shall act ad interim for the Board of Directors except as otherwise specified in these By-Laws.

Finance - The Finance Committee shall consist of the Chairman, Treasurer, Secretary, and two other board members. The Committee Chairman shall be the Treasurer. It shall be the duty of the Finance Committee to review the financial resources and affairs of the Corporation and review the annual budget. This committee shall hold necessary meetings to check expenditures, annual income, and other financial related matters.

Nominating - The Nominating Committee shall be comprised of three (3) board members appointed by the Chairman of the Board and approved by the Board of Directors. One (1) of the three (3) Nominating Committee members shall be appointed Committee Chairman by the Chairman of the Board with the approval of the Board of Directors.

The Nominating Committee shall present to the board, before its Annual Meeting, or at any such other time in order to fill a vacancy, a slate of nominee(s) for election as officer(s) and/or to the Board of Directors.

Long Range Planning - The Long Range Planning Committee shall consist of at least three (3) board members who will review and recommend on matters dealing with long range or strategic plans for the Corporation.

Community Relations - The Community Relations Committee shall consist of at least three (3) directors and will be responsible for matters dealing with and relating to public and community relations of the organization.

Section 3. SPECIAL COMMITTEES. The Board of Directors, by resolution adopted by a majority of the entire board, may create such special committees that it deems advisable. Individuals serving on such special committees shall be recommended by the Chairman of the Board of Directors. Any special committee created hereby shall have such purposes, functions, duties and authorities as the directors so determine and none others. A special committee created hereby shall serve at the pleasure of the Board of Directors.

Section 4. COMMITTEES - GENERAL GUIDELINES.

- A) Committee Size - Each committee shall consist of not less than three (3) directors. Individuals of each committee shall be recommended by the Chairman of the Board of Directors with the approval of the board.
- B) Quorum - A majority of each committee shall constitute a quorum for the transaction of all business that may properly come before it. Except as otherwise required by

law or under these By-Laws, the act of the majority of the individuals of a committee, present at a meeting at which a quorum is present, shall be the act of that committee.

For the purpose of Executive Committee meetings, a quorum shall represent a majority of committee members.

- C) Voting - Each individual of a committee shall be entitled to one (1) vote. There shall be no voting by proxy.
- D) Term of Office - The term of office of each individual of a committee shall be for one (1) year unless the directors, at the time of the committee assignment, shall affix a shorter period. Any individual of a committee, who shall cease to be a director of the Corporation, shall automatically cease to serve on that committee.
- E) Vacancies - Vacancies in any committee shall be filled by the Chairman of the Board of Directors.
- F) Service at Pleasure of Board of Directors - Committees shall serve at the pleasure of the Board of Directors.

Section 5. EX-OFFICIO. The President will be an ex-officio member of the committees. At the discretion of the Board of Directors, certain management individuals may attend committee meetings.

Article XVI

Disposition on Dissolution

Section 1. In the event of dissolution, all the remaining assets and property of the Corporation shall, after necessary expenses thereof be distributed to such organization or organizations that shall qualify under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, as the Board of Directors shall determine. Any such assets not so disposed of shall be disposed of by the Supreme Court of the State of New York, exclusively for such purposes or to such other organization or organizations as said Court shall determine, which are organized and operated exclusively for such purposes.

Article XVII
Amendments

Section 1. The power to amend the Certificate of Incorporation and the By-Laws of the Corporation is hereby vested in the Board of Directors. Amendments may be proposed in writing at a regular meeting of the directors and may be acted upon at the next regular meeting or at a special meeting called by written notice at least one (1) week before the proposed date of such meeting. The amendments shall be adopted upon concurrence of a majority of the elected members. The vote on each amendment shall be recorded in the minutes.

Approved by the Board of Directors: December 11, 2009

Effective Date: December 11, 2009

Attachment 7

**UNANIMOUS WRITTEN CONSENT
OF THE
BOARD OF DIRECTORS
OF
WHEEL CHAIR HOME, INC.**

January 7, 2020

THE UNDERSIGNED, being all of the members of the board of directors (the "Board") of Wheel Chair Home, Inc., a New York not-for-profit corporation (the "Corporation"), hereby take the following actions and consent to the adoption of the following resolutions without a meeting pursuant to the New York Not-for-Profit Corporation Law:

WHEREAS, the Corporation currently has no corporate members; and

WHEREAS, the Board has proposed a reorganization whereby the Corporation, Schofield Foundation, Inc., and Schofield Home Health Care Services, Inc., each of which are affiliates of the Corporation (together "Affiliates"), would amend their bylaws to add a sole corporate member, which would be Schofield Care, Inc., a New York not-for-profit corporation (the "Sole Member"), which Sole Member will act as the passive parent of the Corporation and the Affiliates; and

WHEREAS, the terms and details of the foregoing reorganization would be set forth in an Agreement and Plan of Reorganization (the "Plan"), which Plan would be adopted by the Corporation and the Affiliates. A copy of the proposed Plan is attached as Exhibit A; and

WHEREAS, pursuant to the Plan, the Corporation would adopt new bylaws to reflect the addition of the Sole Member and the implementation of the Plan (the "New Bylaws"), a copy of which are attached as Exhibit B; and

WHEREAS, the Plan and addition of the Sole Member will require the approval of either the New York State Department of Health ("DOH") or the Public Health Council ("PHC"); and

WHEREAS, pursuant to the Plan, the Corporation would change its name from Wheel Chair Home, Inc. to Schofield Care, Inc. (the "Name Change"); and

WHEREAS, the Corporation conducts business under the assumed names of "Schofield Residence" and "Schofield Certified Home Care" (together, the "Assumed Names"), and, pursuant to the Plan, the Corporation must amend the filings for the Assumed Names filed with the New York Department of State ("DOS") to reflect the Name Change; and

WHEREAS, the Name Change and the amendments related to the Assumed Names will require the consent of either DOH or PHC; and

WHEREAS, the Board believes the reorganization described above, including the adoption and execution of the Plan, the addition of the Sole Member, and the adoption of the New

Bylaws, are in the best interests of the Corporation, and the Board desires to authorize the Corporation's officers to execute the Plan in the name of and on behalf of the Corporation; and

WHEREAS, the Board believes Name Change to be in the best interests of the Corporation and desires to authorize the Corporation's officers to: (a) obtain the consent of DOH or PHC to the Name Change and the amendments to the Assumed Name filings; (b) file a Certificate of Amendment to the Corporation's Certificate of Incorporation with DOS to complete the Name Change; and (c) make all filings with DOS required after the Name Change to update the Assumed Name filings; and

NOW, THEREFORE, be it:

RESOLVED, that the Plan be, and it hereby is, approved in its entirety; and each officer of the Corporation (each, an "**Authorized Officer**") be, and each of them hereby is, authorized and empowered to execute and deliver the Plan in the name of and on behalf of the Corporation, such execution to be conclusive proof of the Corporation's acceptance of the terms thereof; and be it further

RESOLVED, that the New Bylaws adding the Sole Member be, and they hereby are, adopted by the Corporation as of the Effective Date (as defined in the Plan), at which time all previous bylaws adopted by the Corporation shall be terminated; and be it further

RESOLVED, that the Name Change to Schofield Care, Inc. and the related amendments to the filings relating to the Assumed Names be, and they hereby are, approved; and be it further

RESOLVED, that each Authorized Officer be, and each of them hereby is, authorized and empowered to make such filings with DOS as are necessary to complete the Name Change; and be it further

RESOLVED, that each Authorized Officer be, and each of them hereby is, authorized and empowered to obtain the consent of either DOH or PHC to: (a) the addition of the Sole Member and approval of the Plan; and (b) the Name Change and amendments to the Assumed Names filings; and be it further

RESOLVED, that each Authorized Officer be, and each of them hereby is, authorized and empowered to make such filings with DOS relating to the Corporation's Assumed Names as necessary in such Authorized Officer's sole discretion to reflect the Name Change; and be it further

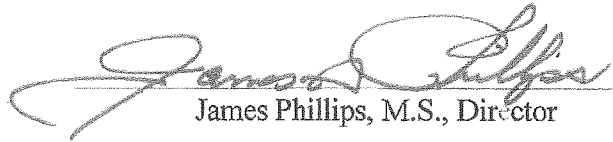
RESOLVED, that each Authorized Officer be, and each of them hereby is, authorized and empowered to do or cause to be done all

such acts, deeds and things and to make, execute and deliver or cause to be made, executed or delivered, all such agreements, undertakings, documents, instruments or certificates, in the name and on behalf of the Corporation otherwise, as such Authorized Officer may deem necessary, advisable or appropriate to effectuate or fulfill the purposes and intent of the foregoing resolutions.


This Consent may be executed and delivered by electronic or facsimile signature and/or in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, notwithstanding that each of the parties hereto are not a signatory to the original or the same counterpart.

(signature page follows)

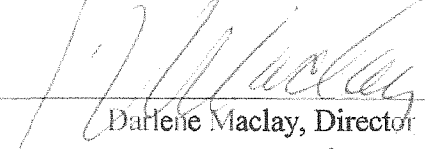
IN WITNESS WHEREOF, the undersigned have duly executed this Unanimous Written Consent as of the date first written above.



James Phillips, M.S., Director


James Campbell, Director


Patricia Watson, L.M.S.W., Director


Christopher Kempton, Director


Darlene Maclay, Director


Lawrence DiGiulio, Esq., Director

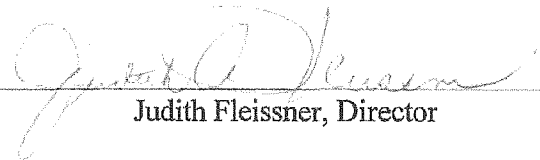

Judith Fleissner, Director

Exhibit A

Agreement and Plan of Reorganization

See attached.

Exhibit B

New Bylaws

See attached.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of October 2021 approves the filing of the Certificate of Amendment of Certificate of Incorporation of Wheel Chair Home, Inc., dated January 7, 2020.



Project # 212013-E
Long Island Center for Digestive Health, LLC

Program: Diagnostic and Treatment Center
Purpose: Establishment
County: Nassau
Acknowledged: July 23, 2021

Executive Summary

Description

Long Island Center for Digestive Health, LLC (Center), the operator of an existing Article 28 diagnostic and treatment center (D&TC) at 106 Charles Lindbergh Boulevard, Uniondale (Nassau County), requests approval to transfer 51% ownership interest in the Center to new member, Northwell LICDH Ventures, LLC from seven existing members. The Center is certified as a single-specialty (gastroenterology) freestanding ambulatory surgery center (ASC).

The sole member of Northwell LICDH Ventures, LLC is North Shore University Hospital, a New York State not-for-profit corporation. The sole member of North Shore University Hospital is Northwell Healthcare, Inc, a New York State not-for-profit corporation. The Sole member of Northwell Healthcare, Inc. is Northwell Health, Inc. a New York State not-for-profit corporation.

The ASC is currently owned by the seven individual physicians who are transferring portions of their memberships to Northwell LICDH and three individuals who are also members of PE Healthcare Associates, LLC, which helps develop ambulatory surgery centers. The proposed Administrative Services provider, Physicians Endoscopy, LLC, is an affiliated entity of PE Healthcare Associates.

The seven individual physicians are transferring a total of 51% membership interest to Northwell LICDH Ventures, LLC. After completion of the transfer, the ownership will be as follows:

Table with 2 columns: Members, Proposed Ownership Percent. Lists 11 members and their ownership percentages, totaling 100%.

Leonard B. Stein, MD will continue to serve as the Center's Medical Director, and the seven physicians who are selling a portion of their membership will continue to perform procedures at the FASC. The Center will have a hospital transfer agreement with North Shore University Hospital, which is located 11.4 miles and 21 minutes travel time from the Center.

In accordance with the policy adopted by the Department of Health in 2019, due to the change in ownership interest exceeding 49%, a new limited duration operating certificate will be issued with an expiration date set to three years from the date the transfer is completed and the CON is closed.

OPCHSM Recommendation

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

Need Summary

There will be no changes in provided services to residents of Nassau County as a result of this change in membership of the owner of this FASC.

The applicant projects 8,760 procedures in the first year and 8,936 in the third year after completion of the transfer, with 2.26% Medicaid and 2% charity care.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The purchase price of \$20,319,270 for the 51% membership interest will be funded via equity provided by Northwell Health, Inc. on behalf of Northwell LICDH Ventures, LLC. The projected budget (in 000's) is below:

<u>Budget</u> <u>(000's)</u>	<u>Current</u> <u>Year</u>	<u>Year</u> <u>One</u>	<u>Year</u> <u>Three</u>
Revenues	\$7,206	\$11,237	\$11,462
Expenses	<u>\$5,327</u>	<u>\$6,377</u>	<u>\$6,449</u>
Net Income	\$1,879	\$4,860	\$5,013

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 three years from the date of its issuance, contingent upon:

1. Submission of a signed agreement with an outside, independent entity satisfactory to the Department of Health (Department) to provide annual reports. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Reports should include:
 - a. Data displaying actual utilization including procedures
 - b. Data displaying the breakdown of visits by payor source
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery
 - d. Data displaying the number of emergency transfers to a hospital
 - e. Data displaying the percentage of charity care provided
 - f. The number of nosocomial infections recorded during the year reported
 - g. A list of all efforts made to secure charity cases
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of an executed building lease, acceptable to the Department. [BFA]
3. Submission of an executed Administrative Services Agreement acceptable to the Department. [BFA]
4. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Long Island Center for Digestive Health, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended executed operating agreement of Long Island Center for Digestive Health, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Northwell LICDH Ventures, LLC, acceptable to the Department. [CSL]
7. Submission of photocopy of an amended and executed operating agreement of Northwell LICDH Ventures, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of a completed and executed Third Amendment to the Lease between 106 CLB, LLC and Long Island Center for Digestive Health, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of a fully executed Attestation for Service Agreements, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

October 7, 2021

Need and Program Analysis

Program Description

The applicant indicates there will be no programmatic or staffing changes as a result of this request. The Center began operations in June 2006 and has three procedure rooms.

The service area is Nassau County, which had a population of 1,339,532 in 2010 with 594,998 individuals (44.4%) 45 years of age and over, who are the primary population group utilizing gastroenterology services. Per projection data from the Cornell Program on Applied Demographics (PAD), this population group (45 and over) is estimated to grow to 668,920 by 2025 and will be 47.4% of the projected population of 1,410,875.

The applicant reports 7,110 visits in 2017, 7,802 visits in 2018, and 8,417 visits in 2019. Their Medicaid utilization was 0.1% in 2017, 2.1% in 2018, and 2.3% in 2019, as reported in their Ambulatory Health Care Facility (AHCF) reports, and the Medicare utilization was 26% for the years 2017 through 2019.

The applicant anticipates the charity care to increase as a result of the proposed affiliation with Northwell Health. They currently have contracts with the following Medicaid managed care plans: AgeWell NY, Empire BCBS HealthPlus, FidelisCare, UNC/Oxford, and VNSNY. The Center will adopt Northwell's financial assistance policy upon approval of this transaction. The applicant indicated a commitment to serve all persons in need without regard to the ability to pay or source of payment.

In accordance with the policy adopted by the Department of Health in 2019, due to the change in ownership interest exceeding 49%, a new limited duration operating certificate will be issued with an expiration date set to three years from the date the transfer is completed and the CON is closed. The purpose of the limited duration operating certificate is to ensure the ASC makes or continues to make good-faith efforts to serve the uninsured and under-insured residents in their service area, require the submission of annual reports showing the effects of those efforts, and afford the Department, and if necessary, the Council the opportunity to assess the efforts for consideration of removing the expiration date at the end of three years.

Character and Competence

The table below details the proposed change in ownership:

<u>Member</u>	<u>Current</u>	<u>Proposed</u>
Robert Bartolomeo, M.D.	13.42510%	1.42510%
Perry Gould, M.D.	13.42510%	2.69510%
Gary Schwartz, M.D.	13.42510%	2.00010%
Leonard Stein, M.D.	13.42510%	3.00010%
Andrew Rosenberg, M.D.	13.42510%	9.01510%
Felice Mirsky-Bergman, M.D.	6.50010%	6.49010%
Eugene Sullivan, M.D.	6.50010%	4.50010%
Barry Tanner	9.29167%	9.29167%
Christina Morrison	5.29167%	5.29167%
David Young	5.29167%	5.29167%
*Northwell LICDH Ventures, LLC	0.00000%	51.0000%
Total	100%	100%

**Member subject to Character and Competence Review*

The Northwell Health, Inc. Board of Directors is as follows:

Roger Blumencranz is a licensed Insurance Broker and has been the Managing Director of BWD Group, LLC for approximately 60 years. He spearheaded the formation of the Commerce and Industry Council, devoted to raising funds for the North Shore-LIJ Health System. He chairs the Education and Insurance Committees and serves on the Finance Committee and the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell. He is also a Member of the John T. Mather Board of Directors.

Adam Boll has been the Vice President of Northwell Health Operations for approximately 13 years. He is also a Physician's Assistant. Mr. Boll discloses ownership interest/office held in the following health care facilities:

Port Washington Dialysis Center	03/2016-present
Floral Park Home Dialysis	03/2016-present
Oyster Bay Dialysis Center	11/2016-present
Julia and Israel Waldbaum Dialysis	11/2016-present
Huntington on Broadway Dialysis	11/2016-present
East Islip Dialysis	07/2017-present
Digestive Health Center of Huntington	03/2017-present
Endoscopy Center of Long Island	03/2013-present
Garden City Surgi Center	12/2014-present
Greenwich Village Ambulatory Surgery Center	12/2017-present
Melville ASC	10/2017-present
South Shore Surgery Center	02/2016-present
Suffolk Surgery Center	10/2016-present
Surgical Specialty Center of Westchester	09/2017-present

Michael Caridi has been the President of VG Enterprises Management Group for approximately 12 years. He is the chairman of Staten Island regional Executive Council, tasked with ensuring Staten Island University Hospital meets the healthcare needs of the borough. He previously served as Vice-Chair of the council.

Mark Claster has been the President of Carl Marks & Co., Inc. for 40 years. He has an advisory role in the firm's investment businesses and previously served as General Partner of the firm's two small business investment companies. He serves as the President of Carl Marks Securities LLC and Co-manager of Carl Marks Advisors. He is the Director of the Board of Staten Island University Hospital. He is the past Chairman of the Board of Trustees of Northwell Health. He serves on various health system committees and is Chair of the nominating and Governance Committee. He is a Member of the Joint Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell.

Gary Cohen is retired since 2014 from IBM where he worked for 36 years as the General Manager of the Communications Sector and Chair Africa. He was responsible for broadly supporting IT and network infrastructure. He is a member of the Northern Westchester Hospital Community Board.

Margaret Crotty is the CEO of Partnership with Children and previously ran Save the Children. She was President and CEO of AFS-USA Intercultural Programs and served as Executive Director of a workforce development agency. She is a member of the Open Medical Institute, the Inner City Scholarship Fund, Access Health, the Human Services Council, and Seachange Capital. She is a member of the Young Presidents Organization and the Council on Foreign Relations and serves as the Program Leader for Princeton AlumniCorps' Emerging Leader Program.

Michael Dowling has been the President and CEO of Northwell Health, Inc for over 19 years. Prior to becoming President and CEO, he was the health system's Executive Vice President and Chief Operating Officer. He leads a clinical, academic, and research enterprise with a workforce of more than 75,000 and annual revenue of \$14 billion.

Michael Epstein is a licensed Attorney and has been a Partner at Weil Gotshal & Manges, LLP for approximately 40 years. He practices intellectual property law as a leading attorney in the field. He has been a Board Member of Northwell's Feinstein Institute for Medical Research since 2002. He was elected as the Chair of Northwell's Board of Trustees in 2019.

Michael Feldman is a retired Attorney since June 2010. He was a Faculty Member of the New York University Tisch Center, teaching courses in legal issues. He is a former Chair of the Advisory Board of the NYU Tisch Center. He is a member of the Executive Committee, Chair of Audit and Corporate Compliance Committee, and a member of the Legal Affairs Committee of Northwell Health Inc. He is also a co-chair and a member of the Board of Directors of the New York Hospitality Council, Inc.

Michael Fisch has been the Managing Director and CEO of American Securities, LLC for over 25 years. He is also the Managing Member of the general partners of the American Securities Partners' series of private equity funds. He serves as an investment committee member of the funds managed by Ascribe Capital, an affiliate of American securities.

Catherine Foster is a Faculty Employee at Columbia University. She is a member of the Northwell Health, Inc Board of Trustees. She is vice-chair of the quality and credentials committee. She was previously employed as a Senior Executive at American Express where she led marketing, business development, and strategic planning for various divisions.

Loyd Friedlander is a licensed Attorney and Insurance Agent and has been the Managing Director of Acrisure, LLC for approximately six years. He was previously owned and operated Loyd Keith Friedlander, LLC. He is Chairman of the Board of Hunting Hospital.

Clifford Friedman has been the Chairman and CEO of Sharenett Holdings, LLC for over two years and Cold Spring Ventures for over 31 years. He is responsible for private equity, venture capital, investment management, financial, technical, and operational expertise. He has raised capital, supported strategic negotiations in a variety of countries, and created and negotiated strategic partnerships to drive revenue and profitability. He was previously Senior Vice President of Universal Studios, Vice President of NBC, and Senior Managing Director of Bear Stearns & Co. Inc.

Lloyd Goldman has been the President of BLDG Management Co. for over 21 years. He is a member of the Feinstein Institute of Medical Research Board of Directors, Northwell Health Board of Overseers, and Western Regional Executive Council.

Richard Goldstein is a licensed Attorney. He has been the Chairman and CEO of AEP Capital, LLC, a specialized investment and merchant banking firm, for over 12 years. He was previously an attorney at the firm of Paul, Weiss, Rifkind, Wharton, and Garrison, specializing in mergers and acquisitions. He served as Chairman of North shore-LIJ Health System and its constituent hospitals, including North Shore Hospital, Long Island Jewish Hospital, Lenox Hill Hospital, and Staten Island Hospital. He is a Trustee Emeritus of the Queens College Foundation.

Alan Greene has been the Managing Director of Neuberger Berman, LLC for over 12 years. He is a portfolio manager for mid and all cap strategies. He has experience in investment research, account analysis, and portfolio management. He serves as Trustee of Eisenhower Medical Center and a Trustee Emeritus of Colgate University.

Paul Guenther is retired since April 1995. He joined the Campaign Executive Committee of Northwell Health, Inc. He co-established the Paul and Diane Guenther Chair in Cardiology to support the future of teaching, healing, and research at Lenox Hill Hospital.

Douglas Hammond is a licensed Attorney and has been the Chairman and CEO of NFP Corp. for approximately eight years and held multiple roles including President, COO, and General Counsel prior to becoming Chairman and CEO. He was previously employed at Leboeuf, Lamb, Green & MacRae, a Corporate Insurance, Regulatory and Mergers and Acquisitions firm, and Gulf Group in various legal and business positions. He is an Advisor on the Madison Dearborn Capital Partners Financial Services Industry Group; a Trustee on the Fairfield University Board of Trustees; a Board Member of the Nassau

County Police Department Foundation; a former Board Member of the Kestra Financial Board of Directors; and a Trustee of the Committee for Economic Development.

Elizabeth Hammack has been the CEO of Goldman Sachs Bank for four months. She oversees the global activity of the bank, and is responsible for the day-to-day management, developing the bank strategies, and ensuring the bank is operated safely and soundly. She has been the Global Treasurer of Group, Inc., for over three years where she provides global management of Group Inc.'s liquidity, funding, balance sheet, and capital. She was previously the Global Head of Short-Term Macro and Global Repo Trading at Goldman Sachs & C. LLC, the Global Head of Short-term Interest Rates Products, and the Head of Sovereign Supranational and Agency Trading.

Saul Katz is a Certified Public Accountant and Real Estate Broker. He has been the President and COO of Sterling Equities for over 48 years. Mr. Katz played a role in the 1993 merging of Glen Cove Hospital, where he served as a trustee for 12 years, into North Shore Health System. He became the Chairman of the North Shore Health System and precipitated the 1997 merger with Long Island Jewish Medical Center. He worked with both entities to create the system originally known as North Shore-Long Island Jewish Health System and became the first Chairman of the combined board.

Laurence Kraemer is a licensed Attorney that has been the Senior Vice President, Chief General Counsel, and Assistant Secretary of Northwell Health Inc for over 13 years. He supervises a team of more than 40 lawyers and 50 compliance professionals who provide legal services and compliance oversight to all Northwell hospitals, clinical entities, and joint ventures. He is the Vice-Chair of strategic planning of the AHLA tax and Finance Group.

Cary Kravet is a retired licensed Attorney. He has been the President of Kravet, Inc., a decorative home furnishing business, for over 37 years. He has served on the Executive Committee and chaired the Committee on Quality of Northwell Health, Inc. He also serves on the Board of Directors of Hunting Hospital.

Jeffrey Lane has been a partner at York Bridge Wealth Partners for over four years where he offers investment advisory services, financial planning, portfolio, and investment management services. He was previously Chairman of the Board at Lebenthal Holdings, LLC, Chairman of Casa Columbia, and Chief Executive of Modern Bank.

Seth Lipsay is a licensed Attorney and has been the CEO of Galaxy Realty Capital, LLC for over seven years. He was previously employed as the Executive Managing Director of New World Realty Advisors LLC. And continues to serve as an Officer for the company. He was previously a Member of the Board of Overseers for the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell Health. He is a Trustee of the Board of Directors at the Feinstein Institute for Medical Research.

Richard Mack has been the CEO and Co-founder of Mack Real Estate Group for over seven years where he is responsible for raising capital, decisions involving business management, and investment decisions. He was previously the CEO-North America of Area Property Partners.

William Mack is a licensed Real Estate Broker and has been the Chairman and Founder of Mack Real Estate Group for approximately eight years where he manages institutional, high net worth, and Mack family capital by making debt and equity investments in real estate and real estate-related securities through several business lines. He specializes in domestic and international real estate investment, development, and financing opportunities with a view toward long-term performance and hands-on management. He serves as Chairman of the Board of Directors of Mack-Cali Realty Corporation. He is Chairman of the Board of the Solomon R. Guggenheim Foundation. He is Vice-Chair of Northwell Health, Inc., where he serves on the Executive Committee. He is also a Trustee and Member of the Executive Committee of Lenox Hill Hospital.

F.J. McCarthy is a licensed Real Estate Broker and has been the President of Site Selection Advisory Group, Inc., a real estate development and investment company, for over 23 years. He is a trustee of Catholic Charities for the Diocese of Rockville Center, where he served on the Executive Committee, Governance and Leadership Committee, and was the Chairman of the Development Committee. He

serves on the Executive Committee, Governance Committee, and Quality Committee, and is Co-Chair of the Committee on Community and Public Health of Northwell Health, Inc. He is also Chairman of the Southside Hospital.

Joseph McGovern has been the Senior Vice President of Finance of Northwell Health, Inc for over 10 years. He is responsible for the office held and tenure in the health care industry contributes to the competency for management for the subject facility. He discloses the following ownership interest/offices held in the following healthcare facilities:

Port Washington Dialysis Center	03/2016-present
Floral Park Home Dialysis	03/2016-present
Oyster Bay Dialysis Center	11/2016-present
Julia and Israel Waldbaum Dialysis	11/2016-present
Huntington on Broadway Dialysis	11/2016-present
East Islip Dialysis	07/2017-present
Digestive Health Center of Huntington	03/2017-present
Endoscopy Center of Long Island	03/2013-present
Garden City Surgi Center	12/2014-present
Greenwich Village Ambulatory Surgery Center	12/2017-present
Melville ASC	10/2017-present
South Shore Surgery Center	02/2016-present
Suffolk Surgery Center	10/2016-present
Surgical Specialty Center of Westchester	09/2017-present

Ralph Nappi has been the Executive Vice Chairman of Northwell Health, Inc for over seven years. He was previously the President of North Shore LIJ Health System and has served on multiple committees and councils.

Sharon Patterson has been a licensed Real Estate Broker at Edwin Fisher Tuccio Real Estate for over 13 years. She has been Board Chair for the Peconic Bay Medical Center for ten years. She was previously Vice-Chair for the Peconic Bay Medical Center. She also serves on the Board of trustees of the East End Health Alliance.

Lewis Ranieri has been the Chairman and Senior Managing Partner of Ranieri Partners Management LLC for over 13 years where he is an investment manager focused on financial services opportunities. He has served on the Board of Directors of Computer Associates, overseeing the restructuring and turnaround during that period. He has served on the National Association of Home Builders Mortgage Roundtable since 1989. He is the Chair of the Feinstein Institute for Medical Research for Northwell Health.

Scott Rechler has been the Chairman and CEO of RXR Realty LLC for over 14 years. He is an owner, manager, and developer of real estate in the New York Tri-State area. In 2011, he was appointed by the governor to the Board of Commissioners of the Port Authority of New York and New Jersey. In 2017, the governor nominated him to the Metropolitan Transportation Authority. He is the Chairman of the Regional Plan Association and on the Board of Governors of the Real Estate Board of New York. He serves as a Board Member of the Feinstein Institute for Medical Research for Northwell Health.

Robert Rosenthal has been the Chairman and CEO of First Long Island Investors, LLC, a boutique wealth management firm, for over 37 years. He serves as Treasurer and a member of the Executive Committee of Northwell Health, Inc. He is Co-Chairman of the Investment Committee and Chairman of the Advisory Board for North Shore University Hospital.

Barry Rubenstein has been the Managing Partner of Wheatley Partners, a venture capital firm, for over 28 years. He has been active on the Finance, Compensation, and Executive Committees of Northwell Health, Inc. He was a leader in the New Century Campaign Committee and sits on the Strategic Planning Committee. He was previously a Board Member of the Feinstein Institutes for Medical Research.

Michael Smith has been the Chairman and CEO of Freeport LNG Development, L.P., which is one of four liquification and export terminals in the U.S., for over 18 years. He was a Trustee for the National Jewish Health and was formerly a member of the Board of Directors.

Leo Sternlicht has been the President of Riverhead Manor, Inc for over 38 years where his responsibilities include all the financial, managerial, and legal aspects of the facility. He was the Director of John T. Mather Memorial Hospital for approximately nine years and is the current Board Chair.

Kenneth Tabar is a licensed Attorney and has been a Partner in the Pillsbury Winthrop Shaw Pittman, LLP for over 18 years. His areas of practice are Employment Law, Products Liability and Mass Torts Defense, Trade Secrets Counseling and Litigation, and Financial Services Litigation. He is the Chairman of the Board of Phelps Hospital. He is on the Legal Affairs Committee and the Committee on Quality of Northwell Health, Inc.

Emmett Walker, Jr. has been the CEO of Walker SCM LLC for approximately 33 years where he is involved in global transportation, logistics optimization, and supply chain integration. He is a Member of the Board of Southside Hospital and Northwell's Community Outreach and Health Education Council

Donald Zucker is a licensed Real Estate Broker and has been the Chairman of the Board of Donald Zucker Company, for over 43 years. He oversees the company that builds, buys, and manages apartment and retail properties. He is a member of the Campaign Executive Committee of Northwell Health, Inc.

Roy Zuckerberg retired as the Senior Director of the Goldman Sachs Group, Inc. in 2000. He is a former Chairman of the North Shore-LIJ Board where he played an integral role in the merger of Long Island Jewish Medical Center with North Shore University Hospital.

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

Northwell Health Legal Disclosures

Northwell Health Care, Inc. ("Northwell") (formerly known as "North Shore-Long Island Jewish Health Care, Inc.") and/or its affiliates and/or its employees has received inquiries from governmental agencies concerning various federal and/or state laws regarding issues involving, among other things, claim submissions to government insurance plans such as Medicare or Medicaid. In many instances, Northwell has been informed that it is viewed by the government as witnesses in these investigations. In other instances, the investigations were concluded without any findings against Northwell, its affiliates, and/or its employees. Any remaining closed investigations would have been resolved through settlement, consent decree, or similar mechanisms. Concerning any open investigations, Northwell, its affiliates, and/or their managerial employees have either denied wrongdoing or are in the process of reviewing the relevant issues, and when warranted, submitting a response. Below are examples of such matters.

On or about November 18, 2010, North Shore University Hospital ("NSUH"), the Health System and certain of their current and former employees received Civil Investigative Demands ("CIDs") issued by the United States Attorney for the Southern District of New York ("USAO/SDNY"). The CIDs sought documents, interviews, and other information relating to a clinical documentation improvement program undertaken by NSUH and certain other Health System hospitals. The matter is now closed.

On or about December 1, 2010, the Health System received a letter from the Civil Division of the United States Department of Justice ("DOJ") alleging that, since 2003, certain Health System hospitals may have submitted claims to Medicare for payment for the implantation of implantable cardioverter defibrillators ("ICD") and related services for which Medicare does not provide coverage, and further alleging potential liability under the federal False Claims Act. Numerous other hospitals throughout the country received similar inquiries. This matter was resolved in 2016 by a settlement agreement with DOJ, and the matter is

now closed. In a press release, DOJ announced that it resolved allegations concerning ICDs with approximately 500 hospitals throughout the country.

On or about October 2011, Southside Hospital ("SH") learned that the U.S. Attorney's Office for the Western District of New York ("USAO/WDNY") was conducting a review of inpatient admissions for atherectomy procedures, a minimally invasive surgical method used to treat the peripheral arterial disease of the lower extremities. It is the applicant's understanding that similar requests were made of other hospitals at the time. The USAO/WDNY initially requested that SH provide information concerning such procedures (but did not issue a subpoena for such information), and SH cooperated with the request. Since the initial request for information, SH has had no further contact from the USAO/WDNY, and at no time has the USAO/WDNY indicated that it believes SH has any potential liability in this matter.

In June 2012, Staten Island University Hospital ("SIUH") received a subpoena from the OIG and the U.S. Attorney's Office for the Eastern District of New York ("USAO/EDNY") requesting documentation relating to services rendered at SIUH's inpatient specialized bum unit since 2005. The requested documentation was provided in the summer of 2012. In June 2013, the USAO/EDNY contacted SIUH with follow-up questions regarding the material provided, and SIUH provided the requested information. SIUH has had no further contact from the USAO/EDNY regarding this matter, and at no time has the USAO/EDNY indicated that it believes SIUH has any potential liability in this matter.

In July 2012, NSUH received a letter from the Office for Civil Rights ("OCR") of the United States Department of Health and Human Services indicating that it had opened a compliance review of certain incidents of identity theft that were alleged to have occurred at NSUH. In 2016, OCR closed its review by issuing a technical assistance letter and did not impose penalties or other sanctions.

In September 2012, a laptop computer containing research data was stolen from the car of an employee of The Feinstein Institute for Medical Research ("The Feinstein Institute"). The Feinstein Institute investigated the theft and reported it to law enforcement authorities. The research participants whose personal information may have been contained on the laptop were notified, and The Feinstein Institute cooperated with authorities concerning the matter. In 2016, this investigation was resolved by agreement with OCR.

On or about August 2015, Northwell received requests for documents from two law enforcement agencies and a court-appointed examiner focusing on gifts made to it by a Long Island-based charitable foundation and its court-appointed receiver. In particular, Northwell received document requests from (1) the New York Attorney General's Office; (2) the USAO /EDNY (issued to an employee); and (3) an examiner appointed by the Surrogate's Court to investigate the receiver's conduct. Northwell cooperated fully in these inquiries and produced documents in response to the requests. Northwell has not received any communication from either of the law enforcement agencies or the court-appointed examiner since 2016.

In November 2015 and months thereafter, the Northwell responded to various grand jury subpoenas and other information requests issued by the U.S. Attorney's Office for the Southern District of New York seeking, among other records and information, documents relating to cardiac catheterization procedures performed by a non-employed physician who held medical staff privileges at two Northwell Health hospitals. It is our understanding that Northwell and its employees were witnesses in this investigation, and the investigation is now closed.

In September 2015, Staten Island University Hospital ("SIUH") made a voluntary self-disclosure to OIG-HHS and the New York State Office of the Medicaid Inspector General ("OMIG") in which it identified potential overpayments to Medicare and Medicaid relating to a certain type of documentation issues at one of its laboratory patient service centers. SIUH entered into a settlement agreement with OIG-HHS in January 2017 that resolved the OIG-HHS self-disclosure.

In April 2017, Northwell made a voluntary self-disclosure to OIG-HHS relating to overpayments that it determined had been received by ten Northwell hospitals relating to certain inpatient percutaneous vertebral augmentation procedures performed at those hospitals. Northwell entered into a settlement agreement with OIG-HHS in February 2018 that settled the self-disclosure.

In a Stipulation and Order (S&O) dated November 21, 2016, Long Island Jewish Medical Center was fined \$4,000 based on an infection control investigation. The facility had 21 ORs running. It was observed that in 12 of the ORs a total of 24 staff members were not following acceptable standards of practice for Infection Control in the Surgical Area.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). There will be no changes in services as a result of this transfer of membership interest.

Financial Analysis

Operating Budget

The applicant has submitted an operating budget, in 2021 dollars, for the current year (2020) and the first and third year after the transfer of ownership interest, summarized below:

	<u>Current 2020</u>		<u>Year One (2022)</u>		<u>Year Three (2024)</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>						
Medicaid FFS	\$140.00	\$420	\$142.93	\$2,001	\$136.07	\$2,041
Medicaid MC	\$773.20	78,866	\$775.00	142,600	\$777.82	145,452
Medicare FFS	\$783.88	986,119	\$784.50	1,424,652	\$784.64	1,453,145
Medicare MC	\$719.27	166,871	\$722.04	283,318	\$723.53	287,964
Commercial FFS	\$1,543.19	5,921,217	\$1,535.91	9,326,064	\$1,535.77	9,512,585
All Other	<u>\$547.41</u>	<u>52,551</u>	<u>\$548.02</u>	<u>59,186</u>	<u>\$548.81</u>	<u>60,369</u>
Total Revenues		\$7,206,044		\$11,236,821		\$11,461,556
<u>Expenses</u>						
Operating	\$771.40	\$4,265,074	\$603.66	\$5,288,078	\$599.81	\$5,359,884
Capital	<u>\$192.12</u>	<u>1,062,244</u>	<u>\$124.33</u>	<u>1,089,140</u>	<u>\$121.88</u>	<u>1,089,140</u>
Total Expenses	\$963.52	\$5,327,318	\$727.99	\$6,377,218	\$721.69	\$6,449,024
Net Income		<u>\$1,878,726</u>		<u>\$4,859,603</u>		<u>\$5,012,532</u>
Procedures		5,529		8,760		8,936

- Revenues, expenses, and utilization are based on the experience at the facility, as well as the experiences of the similar-sized facilities affiliated with Northwell Health, Inc.
- Current Year payor rates are consistent with year one and year three forecasts.
- The applicant states that the reason for the increase in procedures between the Current Year (2020) and Year One is due to elective surgeries being canceled during 2020, as a result of the COVID-19 pandemic. The Center's Year One and Year Three forecasted utilization reflects the Center's forecasted return to normalized operations.

Utilization, broken down by payor, is as follows:

<u>Payor</u>	<u>Current Year 2020</u>	<u>Years One and Three</u>
Medicaid FFS	0.05%	0.16%
Medicaid MC	1.84%	2.10%
Medicare FFS	22.75%	20.73%
Medicare MC	4.20%	4.46%
Commercial FFS	69.40%	69.32%
Other	1.74%	1.23%
Charity Care	<u>0.02%</u>	<u>2.00%</u>
Total	100.00%	100.00%

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement for the transfer of 51% membership interest in the Center, the terms of which are summarized below:

Date:	March 9, 2021
Purpose:	Sale of 51% membership interests of Long Island Center for Digestive Health, LLC
Sellers:	Seven Physician Members of Long Island Center for Digestive Health, LLC
Purchaser:	Northwell LICDH Ventures, LLC
Purchase Price:	\$20,319,270
Payment of Purchase Price:	To be paid at closing

Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement, summarized below:

Service Provider:	Physicians Endoscopy, LLC
Facility Operator:	Long Island Center for Digestive Health, LLC
Services Provided:	Finance and Accounting; Billing and Collection; Administrative Services, and Human Resources support services
Exclusions:	Clerical Services
Term:	1 year with automatic 1-year renewals
Compensation:	\$306,141 per year payable in equal monthly installments of \$25,511.75 with a 9% increase after 3 years.

Lease Agreement

The applicant has submitted a draft Lease Amendment, the terms of which are summarized below:

Date:	TBD
Premises:	12,320 sq. ft. located at 106 Charles Lindbergh Boulevard, Uniondale, NY 11553
Landlord:	106 CLB, LLC
Lessee:	Long Island Center for Digestive Health, LLC
Term:	Ten years with tenant option for additional two successive terms of 5 years
Rental:	\$369,000 per year/\$30,800 per month. 2% increase each year after year one
Provisions:	Tenant shall occupy and use the premises only as an ambulatory surgery center and ancillary services related hereto, and for no other purpose

The Center (as tenant) will enter into a Third Amendment to the Lease Agreement with 106 CLB, LLC (as landlord). There is common ownership between the Center and 106 CLB, LLC.

Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$20,319,270 for the 51% membership interest transfer will be funded via equity provided by Northwell Health, Inc. BFA Attachment A is the 2019-2020 Certified Financial Statements for Northwell Health, Inc. As shown, the entity had an average positive net asset and working capital positions, and an average net income of \$740,820,500 for the period 2019-2020. Northwell Health, Inc. also had \$830,955,000 in cash which indicates the availability of sufficient resources to fund the transfer.

BFA Attachment B is the 2019 and 2020 Certified Financial Statements of Long Island Center for Digestive Health, LLC, and a summary of their Internal Financial Statements as of June 30, 2021. As shown, the entity maintained positive working capital and positive members' equity and achieved an average net income of \$3,585,844 for the period 2019-2020. For the period 01/01/2021 to 06/30/2021 Long Island Center for Digestive Health, LLC indicates the entity achieved a positive working capital position, positive member equity, and a net income of \$2,636,424.

The submitted budget projects a net income of \$4,859,603 and \$5,012,532 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for freestanding ambulatory surgery services. The submitted budget appears reasonable.

Conclusion

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

Attachments

- BFA Attachment A 2019-2020 Certified Financial Statements & Summary for Northwell Health, Inc.
- BFA Attachment B 2019 & 2020 Certified Financial Statements and the June 30, 2021 Internal Financial Statements & Summary for Long Island Center for Digestive Health, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 7th day of October 2021, having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 51% membership interest in the Long Island Center for Digestive Health, LLC from existing members to Northwell LICDH Ventures, LLC, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

RESOLVED, that upon fulfillment by the applicant of the conditions and contingencies specified for the application in a manner satisfactory to the Public Health and Health Planning Council and the New York State Department of Health, the Secretary of the Council is hereby authorized to issue the approval of the Council of the application, and be it further

RESOLVED, that any approval of this application is not to be construed as in any manner releasing or relieving any transferor (of any interest in the facility that is the subject of the application) of responsibility and liability for any Medicaid (Medicaid Assistance Program -- Title XIX of the Social Security Act) or other State fund overpayments made to the facility covering the period during which any such transferor was an operator of the facility, regardless of whether the applicant or any other entity or individual is also responsible and liable for such overpayments, and the State of New York shall continue to hold any such transferor responsible and liable for any such overpayments, and be it further

RESOLVED, that upon the failure, neglect or refusal of the applicant to submit documentation or information in order to satisfy a contingency specified with reference to the application, within the stated time frame, the application will be deemed abandoned or withdrawn by the applicant without the need for further action by the Council, and be it further

RESOLVED, that upon submission of documentation or information to satisfy a contingency specified with reference to the application, within the stated time frame, which documentation or information is not deemed sufficient by Department of Health staff, to satisfy the contingency, the application shall be returned to the Council for whatever action the Council deems appropriate.

NUMBER:

FACILITY/APPLICANT:

212013 E

Long island Center for Digestive Health, LLC

APPROVAL CONTINGENT UPON:

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

1. Submission of a signed agreement with an outside, independent entity satisfactory to the Department of Health (Department) to provide annual reports. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Reports should include:
 - a. Data displaying actual utilization including procedures
 - b. Data displaying the breakdown of visits by payor source
 - c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery
 - d. Data displaying the number of emergency transfers to a hospital
 - e. Data displaying the percentage of charity care provided
 - f. The number of nosocomial infections recorded during the year reported
 - g. A list of all efforts made to secure charity cases
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of an executed building lease, acceptable to the Department. [BFA]
3. Submission of an executed Administrative Services Agreement acceptable to the Department. [BFA]
4. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Long Island Center for Digestive Health, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of an amended executed operating agreement of Long Island Center for Digestive Health, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amended and executed Certificate of Amendment of the Articles of Organization of Northwell LICDH Ventures, LLC, acceptable to the Department. [CSL]
7. Submission of photocopy of an amended and executed operating agreement of Northwell LICDH Ventures, LLC, acceptable to the Department. [CSL]
8. Submission of a photocopy of a completed and executed Third Amendment to the Lease between 106 CLB, LLC and Long Island Center for Digestive Health, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an amended and executed Administrative Services Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of a fully executed Attestation for Service Agreements, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **one year from the date of the recommendation letter**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and an expiration of the approval. It is the responsibility of the applicant to request prior approval for any extension to the project approval expiration date. [PMU]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]

Documentation submitted to satisfy the above-referenced contingencies shall be submitted within sixty (60) days. Enter a **complete** response to each **individual** contingency via the New York State Electronic Certificate of Need (NYSE-CON) system by the due date(s) reflected in the *Contingencies Tab in NYSE-CON*.



MEMORANDUM

TO: Lisa Thomson
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

FROM: Kerri Tily, Senior Attorney
Division of Legal Affairs, Bureau of Health Facility Planning and Development

DATE: July 27, 2021

SUBJECT: Massena Memorial Hospital Auxiliary, Inc.; Name Change Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(2)

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council meetings.

The attachments relating to this matter include the following:

- 1) Memorandum to the Public Health and Health Planning Council from Kathy Marks, General Counsel;
- 2) Letters from Daniel S. Pease, attorney to the applicant, explaining the nature and reasons for the requested change, dated April 13, 2021 and June 9, 2021;
- 3) A copy of the resolution of the Board of Directors of Massena Memorial Hospital Auxiliary, Inc., dated June 10, 2021;
- 4) A copy of the Certificate of Incorporation of Massena Memorial Hospital Auxiliary, Inc., dated April 7, 1964; and
- 5) A copy of the executed proposed Certificate of Amendment of the Certificate of Incorporation of Massena Memorial Hospital Auxiliary, Inc.

Attachments

cc: C. Jolicoeur, B. DelCogliano, M. Ngwashi

Attachment 1



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *Kathy Marks*
General Counsel

Date: July 27, 2021

Subject: Massena Memorial Hospital Auxiliary, Inc.; Name Change Pursuant to NY N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(2)

Massena Memorial Hospital Auxiliary, Inc., a New York not-for-profit corporation that provides financial support to Massena Hospital, is requesting approval to change its corporate name to "Massena Hospital Auxiliary, Inc."

Massena Memorial Hospital Auxiliary, Inc. is requesting the name change to better reflect its affiliation with and support of Massena Hospital.

Approval of the Public Health and Health Planning Council (PHHPC) is required under the Not-for-Profit Corporation Law § 804(a)(i) and 10 NYCRR § 600.11(a)(2).

There is no legal objection to the corporate name change and the Certificate of Amendment of the Certificate of Incorporation of Massena Memorial Hospital Auxiliary, Inc. is legally acceptable.

Attachments.

Attachment 2



PEASE AND
GUSTAFSON
LLP

Please respond to:
40 Main St
Massena NY 13662

April 13, 2021

Colleen M. Leonard
Public Health and Health Planning Council
Empire State Plaza, Corning Tower, Room 1805
Albany, NY 12237

Deanna R. Nelson, AAGIC
NYS Office of the Attorney General
317 Washington Street
Watertown, NY 13601

RE: Certificate of Amendment of the Certificate of Incorporation of Massena Memorial Hospital Auxiliary, Inc.

Dear Ms. Leonard and Ms. Nelson,

As you may likely recall, your offices worked with the Massena Memorial Hospital Foundation, Inc. last year on its change of name in connection with the privatization of the Massena Hospital. I write today on behalf of the Hospital Auxiliary, who also request that their name be changed to drop the moniker "Memorial". Enclosed please find a copy of the signed Certificate of Amendment of the Certificate of Incorporation which I submit to your offices for review and approval.

Should either of you require any additional documentation, please do not hesitate to give my office a call. You may also email me direct at Dpease@pgnylaw.com.

Thank you for your time and attention to this matter.

Very truly yours,

Daniel S. Pease
Pease & Gustafson, LLP

DSP/lem

Attorneys at Law
40 Main St., Massena NY 13662 | 33 Main St., Potsdam NY 13676
Office: (315) 769-3898 | Office: (315) 274-9184
Fax: (315) 769-5018 | Fax: (315) 769-5018

www.pgnylaw.com



Please respond to:
40 Main St
Massena NY 13662

June 9, 2021

Kerri A. Tily, Senior Attorney
Bureau of Health Facility Planning and Development
Division of Legal Affairs, NYS DOH
Empire State Plaza, Corning Tower
Albany, NY 12237

RE: Massena Memorial Hospital Auxiliary, Inc.

Dear Ms. Tily,

Pursuant to your email of April 20, 2021, enclosed please find the following documents:

1. A full copy of the filed Certificate of Incorporation of the Auxiliary. There have been no previous amendments to the same.
2. A copy of the Resolution approving the Certificate of Amendment.
3. Reason for the change. The Massena Memorial Hospital Auxiliary, Inc. was incorporated in 1964 for the purpose of sustaining the interest of the general public in the Massena Memorial Hospital and to render service to the same. Over the past 3 years, the Massena Memorial Hospital was engaged in the process of divesting itself from ownership by the Town of Massena and forming a new not for profit as a private entity. That process has now been complete, and a new entity was formed for the Hospital under the name simply Massena Hospital. That entity is owned by St. Lawrence Health Systems, Inc.

The Auxiliary felt it important to change its name to correspond with the change in name of the hospital it serves. It has filed this application for a Certificate of Amendment to both delete the word "Memorial" from its corporate name as well as from its stated corporate purposes. The structure of the Corporation remains a not for profit servicing the new hospital entity.

Please advise if this explanation is sufficient for your purposes and if any additional documentation is required by your office.

Attorneys at Law
40 Main St., Massena NY 13662 | 33 Main St., Potsdam NY 13676
Office: (315) 769-3898 | Office: (315) 274-9184
Fax: (315) 769-5018 | Fax: (315) 769-5018

www.pgnylaw.com

Thank you for your time and attention to this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Daniel S. Pease". The signature is stylized, with the first name being more prominent and the last name written in a cursive-like script.

Daniel S. Pease
Pease & Gustafson, LLP

DSP/lem

Attorneys at Law
40 Main St., Massena NY 13662 | 33 Main St., Potsdam NY 13676
Office: (315) 769-3898 | Office: (315) 274-9184
Fax: (315) 769-5018 | Fax: (315) 769-5018

www.pgnylaw.com

Attachment 3

CORPORATE RESOLUTION TO CHANGE NAME

The undersigned, being the Secretary of the Massena Memorial Hospital Auxiliary, Inc., a New York corporation, does hereby certify that at a meeting of the Board of Directors of said Corporation duly called and held on April 8, 2020, at which time a quorum was present, the Board of Directors adopted the following resolution, which has not been modified or rescinded:


RESOLVED, that consistent with the change of name of the Massena Hospital, pursuant to its privatization, and to which this Corporation provides support, the Corporation shall take the necessary steps to change its name to Massena Hospital Auxiliary, Inc., and to amend the purposes as set forth in the original Certificate of Incorporation to delete the word "Memorial" as contained therein with respect to both the name of the hospital the Corporation shall serve and the name of the Corporation itself, and it is further:

RESOLVED, that the president of the Corporation be authorized to execute and deliver any and all such documents consistent with this corporate purpose.

Amendments to the Articles of Incorporation require a simple majority vote of its members. 54 positive votes were obtained prior to the Resolution of the Board of Directors. Therefor this amendment complies with the internal rules and regulations of the Auxiliary.

Massena Memorial Hospital Auxiliary, Inc.

Dated: June 10, 2021


By: Carla Premo, Secretary

Attachment 4

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on September 5, 2019.

Brendan C. Hughes

Brendan C. Hughes
Executive Deputy Secretary of State

CERTIFICATE OF INCORPORATION

OF

MASSENA MEMORIAL HOSPITAL AUXILIARY, INC.

Pursuant to the Membership Corporation Law

WE, the undersigned, a Committee of the Hospital Auxiliary of Massena Memorial Hospital, an unorganized association, not organized for pecuniary profit, having been duly authorized to incorporate the association, and all being of full age, and all being citizens of the United States, and all being residents of the State of New York, desiring to form a corporation pursuant to Section 10 of the Membership Corporations Law of the State of New York, do hereby make, subscribe, and acknowledge this Certificate as follows:

43003A

1. The name of the proposed corporation shall be

MASSENA MEMORIAL HOSPITAL AUXILIARY, INC.

2. The purposes for which it is to be formed are:

- a. To sustain the interest of the general public in Massena Memorial Hospital and to render service to the hospital patients and staff, subject to the approval of the Board of Managers of the said Massena Memorial Hospital.
- b. To establish a meeting place for its Members for social purposes; to promote a spirit of friendship among its members and to assist the welfare of one another; to voluntarily render aid or assistance to patients of the Massena Memorial Hospital or others in need thereof, particularly if they have suffered loss or injuries or disease through accident or epidemic or otherwise; to assist and aid at all times in the welfare of the patients in the Massena Memorial Hospital and to do any and all things necessary, appropriate and lawful for the accomplishment of these purposes.

CRAPSER & KIRSCH
ATTORNEYS AT LAW
CENTRAL BUILDING
MASSENA, N. Y.

- c. To manage; promote, encourage, supervise, conduct and otherwise carry on a cradle picture service in said Massena Memorial Hospital; and to generally engage in all lawful fund raising activities incidental thereto.
- d. To administer, invest, expend and handle funds consisting of dues, gifts, legacies, or otherwise subject to the approval and supervision of the Board of Managers of the Massena Memorial Hospital.
- e. That the activities of this corporation shall be so conducted so as to be non-profit in nature and this corporation is not organized for pecuniary benefit nor shall it function for that purpose, nor shall it have any power to issue certificates of stock or declare dividends and no part of its net earnings shall inure to the benefit of any member, director or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all debts and obligations of the corporation of whatever kind and nature, shall be used exclusively for the promotional civic purposes as aforesaid.
- f. This corporation may purchase, lease or otherwise acquire and may sell, mortgage or lease, real property whether improved or unimproved, or any interest therein in any amount in the State of New York or in any State or territory of the United States or a foreign country.
- g. To do any and all lawful acts and things and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable and proper for the furtherance, accomplishment, fostering or attainment of any or all of the foregoing purposes, directly or indirectly, alone or in conjunction or cooperation with others, whether such others be persons or organizations of any sort or nature, such as, partnerships, associations, corporations or governmental bureaus or agencies.

3. The territory in which the operations of the corporation will be principally conducted is St. Lawrence County, and Franklin County, in whole or in part.

4. The principal office of the corporation is to be located in the Town and Village of Massena, County of St. Lawrence, and the mailing address of the corporation shall be Maple Street Road, Massena, New York.

5. The number of directors shall be not less than five nor more than twenty.

6. The names and residences of the Directors until the first annual meeting are as follows:

<u>NAME</u>	<u>RESIDENCE</u>
Helen Olsen	49 Churchill Avenue, Massena, New York
Maefred Hartford	49 Bridges Avenue, Massena, New York
Jean Moore	42 Dover Street, Massena, New York
Nell Dutcher	Wilson Hill Road, Massena, New York
Una Daniels	109 Water Street, Massena, New York

7. That all of the subscribers hereto are of full age; that all of them are citizens of the United States; that all of them are residents of the State of New York, and that of the persons named as Directors, all of them are citizens of the United States and residents of the State of New York.

IN WITNESS WHEREOF, we have made, signed and

acknowledged this certificate in duplicate, on this 24th day of
March, 1964.

Helen Olsen
Helen Olsen

Maefred Hartford
Maefred Hartford

Jean Moore
Jean Moore

Neil Dutcher
Neil Dutcher

Una Daniels
Una Daniels

CRAPSER & KIRSCH
ATTORNEYS AT LAW
CENTRAL BUILDING
HASSOCK, N. Y.

4

STATE OF NEW YORK)
) ss.
COUNTY OF ST. LAWRENCE)

On this 24th day of March, 1964, before me, the
subscriber personally appeared:

HELEN OLSEN

MAEFRED HARTFORD

JEAN MOORE

NELL DUTCHER

UNA DANIELS

to me known and known to me to be the persons described in, and
who executed the foregoing Certificate of Incorporation, and they
duly severally acknowledged to me that they executed the same.


Notary Public

VINCENT F. KIRSCH
NOTARY PUBLIC IN THE STATE OF NEW YORK
RESIDING IN ST. LAWRENCE COUNTY
MY COMMISSION EXPIRES MARCH 30, 1966

CRAPSER & KIRSCH
ATTORNEYS AT LAW
CENTRAL BUILDING
HASSEN, N. Y.

STATE OF NEW YORK)
)ss.
COUNTY OF ST. LAWRENCE)

HELEN OLSEN, MAEFRED HARTFORD, JEAN MOORE, NELL DUTCHER
and UNA DANIELS, each for herself, being duly sworn, does depose
and say:

That she is one of the subscribers of the foregoing
Certificate of Incorporation of MASSENA MEMORIAL HOSPITAL
AUXILIARY, INC.; that the said Certificate of Incorporation is
the incorporation of an existing unincorporated club, namely,
The Hospital Auxiliary of the Massena Memorial Hospital, Massena,
New York; that the purposes set forth in the Certificate of In-
corporation are the same as those of the unincorporated club; that
the subscribers of such Certificate of Incorporation constituted
all of the members of a committee authorized to incorporate such
club, by vote, as required by the organic law of the club, for the
amendment of such organic law.

That no previous application for the approval of the
foregoing Certificate of Incorporation has been made.

Helen Olsen
Helen Olsen

Mae Fred Hartford
Mae Fred Hartford

Jean Moore
Jean Moore

Nell Dutcher
Nell Dutcher

Una Daniels
Una Daniels

Sworn to before me this
24th day of March, 1964

Vincent F. Kirsch
Vincent F. Kirsch
VINCENT F. KIRSCH
NOTARY PUBLIC IN THE STATE OF NEW YORK
RESIDING IN ST. LAWRENCE COUNTY
MY COMMISSION EXPIRES MARCH 30, 1965

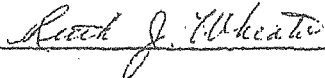
CRAPSER & KIRSCH
ATTORNEYS AT LAW
CENTRAL BUILDING
MASSENA, N. Y.

STATE OF NEW YORK)
)
) ss.
COUNTY OF ST. LAWRENCE)

VINCENT F. KIRSCH, being duly sworn, deposes and says:
That he is a duly licensed attorney, practicing in the
State of New York and that he is Attorney for the subscribers
to the annexed Certificate of Incorporation of Massena Memorial
Hospital Auxiliary, Inc. and that no previous application for
the approval of said certificate by any Justice of the Supreme
Court has ever been made.


Vincent F. Kirsch

Sworn to before me this
20th day of March, 1964.



RUTH J. WREATER
NOTARY PUBLIC IN THE STATE OF NEW YORK
RESIDING IN ST. LAWRENCE COUNTY
MY COMMISSION EXPIRES MARCH 30, 1965.

CRAPSER & KIRSCH
ATTORNEYS AT LAW
CENTRAL BUILDING
MASSENA, N. Y.

APPROVAL OF SUPREME COURT JUSTICE

I, ROBERT G. MAIN, Justice of the Supreme Court of
the State of New York, do hereby approve of the foregoing
Certificate of Incorporation of MASSENA MEMORIAL HOSPITAL
AUXILIARY, INC. and I hereby approve of the filing thereof.



Robert G. Main, Justice

March 26, 1909

CRAPSER & KIRSCH
ATTORNEYS AT LAW
CENTRAL BUILDING
MASSENA, N. Y.

J

Do not *St. Lawrence*
paid *2/23*

CERTIFICATE OF INCORPORATION
OF *2/23*
MASSENA MEMORIAL
HOSPITAL AUXILIARY, INC.

430034

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED APR 7 - 1964
TAX \$ *None*
FILING FEE \$ *50*

9

John P. Linnings
Secretary of State
By *Blaron*

Dated: March 24, 1964

CRAPSER & KIRSCH
ATTORNEYS AND COUNSELLORS AT LAW
CENTRAL BUILDING
MASSENA, NEW YORK

Q

Attachment 5

New York State
Department of State
Division of Corporations, State Records and Uniform Commercial Code
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231
www.dos.ny.gov

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

Massena Memorial Hospital Auxiliary, Inc.

(Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is

Massena Memorial Hospital Auxiliary, Inc.

If the name of the corporation has been changed, the name under which it was formed is

SECOND: The certificate of incorporation was filed by the Department of State on

April 7, 1964

THIRD: The law the corporation was formed under is

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.

Paragraph Two of the Certificate of Incorporation regarding

The purposes for which it is formed

is hereby [*check the appropriate box*] added amended to read in its entirety as follows:

2. The purposes for which it is to be formed are:

a. To sustain the interest of the general public in Massena Hospital and to render service to the hospital patients and staff, subject to the approval of the Board of Managers of the said Massena Hospital.

b. To establish a meeting place for its Members for social purposes; to promote a spirit of friendship among its members and to assist the welfare of one another; to voluntarily render aid or assistance to patients of the Massena Hospital or others in need thereof, particularly if they have suffered loss or injuries or disease through accident or epidemic or otherwise; to assist and aid at all times in the welfare of the patients in the Massena Hospital and to do any and all things necessary, appropriate and lawful for the accomplishment of these purposes.

c. Intentionally omitted.

d. To administer, invest, expend and handle funds consisting of dues, gifts, legacies or otherwise, subject to the approval and supervision of the Board of Managers of the Massena Hospital.

e. That the activities of this corporation shall be so conducted so as to be non-profit in nature and this corporation is not organized for pecuniary benefit nor shall it function for that purpose, nor shall it have any power to issue certificates of stock or declare dividends and no part of its net earnings shall inure to the benefit of any member, director or individual. The balance, if any, of all money received by the corporation from its operations, after payment in full of all debts and obligations of the corporation of whatever kind and nature, shall be used exclusively for the promotional civic purposes as aforesaid.

f. This corporation may purchase, lease or otherwise acquire and may sell, mortgage or lease, real property whether improved or unimproved, or any interest therein in any amount in the State of New York or in any State or territory of the United States or a foreign country.

g. To do any and all lawful acts and things and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable and proper for the furtherance, accomplishment, fostering or attainment of any or all of the foregoing purposes, directly or indirectly, alone or in conjunction or cooperation with others, whether such others be persons or organizations of any sort or nature, such as, partnerships, associations, corporations or governmental bureaus or agencies.

(Remove this page if not needed)

FIFTH: The certificate of incorporation is amended as follows:

Paragraph One of the Certificate of Incorporation regarding
The name of the Corporation

is hereby [check the appropriate box] added amended to read in its entirety as follows:

1. The name of the Corporation shall be Massena Hospital Auxiliary, 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

Massena Hospital Auxiliary, Inc.
1 Hospital Drive
Massena, NY 13662

SEVENTH: The certificate of amendment was authorized by *(Check the appropriate box)*

- a vote of a majority of the members at a meeting.
 the unanimous written consent of the members entitled to vote thereon.
 a vote of a majority of the entire board of directors. The corporation has no members.



(Signature)

President

(Capacity of Signer)

Debra Willer

(Print or Type Signer's Name)

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

Massena Memorial Hospital Auxilliary, Inc.

(Name of Domestic Corporation)

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name Pease & Gustafson, LLP

Address 40 Main Street

City, State and Zip Code Massena, NY 13662

NOTE: The certificate must be submitted with a \$30 filing fee. This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.

For Office Use Only

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 7th day of October 2021 approves the filing of the Certificate of Amendment of Certificate of Incorporation of Massena Memorial Hospital Auxiliary, Inc., dated as attached.