

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

April 5, 2022

*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

February 10, 2022 Meeting Minutes

March 2, 2022 Special Meeting Minutes

March 17, 2022 Special Meeting Minutes

III. 2020 and 2021 ANNUAL REPORT

2020 Public Health and Health Planning Council Annual Report

2021 Public Health and Health Planning Council Annual Report

IV. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

Mary T. Bassett, M.D., M.P.H., Commissioner of Health

B. Report of the Office of Public Health

Ursula Bauer, Ph.D., MPH, Deputy Commissioner, Office of Public Health

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

John Morley, M.D., Deputy Commissioner, Office of Primary Care and Health Systems Management

V. PUBLIC HEALTH SERVICES AND HEALTH POLICY

Report on the Activities of the Public Health Committee and Health Planning Committee

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

John Ruge, M.D., Chair of Health Planning Committee

VI. REGULATION

Report of the Committee on Codes, Regulations, and Legislation

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

For Emergency Adoption

- 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 Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR
(Face Coverings for COVID-19 Prevention)
- 20-22 Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR
(Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements)
- 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)
- 21-06 Addition of Subpart 66-4 to Title 10 NYCRR
(COVID-19 Vaccinations of Nursing Home and Adult Care Facility
Residents and Personnel)
- 21-15 Addition of Sections 2.9 and 2.62 to Title 10 NYCRR
(COVID-19 Reporting and Testing)

VII. 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 - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212259 C	Sisters of Charity Hospital - St. Joseph Campus (Erie County)	Contingent Approval

Ambulatory Surgery Centers – Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212177 C	Buffalo Surgery Center, LLC (Erie County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212223 C	New York-Presbyterian Hospital - New York Weill Cornell Center (New York County) Dr. Lim – Interest/Abstaining	Contingent Approval

Hospice Services - Construction

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212251 C	Hospice Care Network d/b/a Hospice Care of Long Island, Queens South Shore (Nassau County) Mr. Kraut – Recusal Dr. Strange - 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.	212079 E	Ambulatory Surgery Center of Western New York LLC (Erie County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212057 B	NY Med South Bronx, LLC (Bronx County)	Contingent Approval
2.	212182 E	Main Street Radiology at Bayside LLC (Queens County)	Approval
3.	212208 B	World Health Clinicians, Inc. d/b/a Circle Care Center – Westchester (Westchester County)	Contingent Approval
4.	212213 B	East 180 Operating, LLC d/b/a East 180th Street Health and Treatment Center (Bronx County)	Contingent Approval
5.	212219 B	Bronx Community Health Network, Inc. (Bronx County)	Contingent Approval

Certificate of Amendment of the Certificate of Incorporation

Applicant

NYP Community Programs, Inc.

E.P.R.C. Recommendation

Approval

Restated Certificate of Incorporation

Applicant

The Northeast Health Foundation, Inc.

E.P.R.C. Recommendation

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

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212176 B	Columbia/New York-Presbyterian Advanced Imaging, Inc. (New York County) Dr. Lim – Interest/Abstaining	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

CON Applications

Diagnostic and Treatment Centers – Establish/Construct

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	212242 B	NY PACE Care Facility, LLC (Kings County) Dr. Berliner – Opposed at EPRC Mr. LaRue – Opposed at EPRC	Contingent Approval

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

VIII. NEXT MEETING

May 19, 2022
June 2, 2022

IX. ADJOURNMENT

State of New York
Annual Public Health and Health Planning Council

Minutes
February 10, 2022

The meeting of the Annual Public Health and Health Planning Council was held on Thursday, February 10, 2022 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York and Zoom. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. John Bennett - A	Ms. Ann Monroe – Zoom
Dr. Howard Berliner – Zoom	Dr. Mario Ortiz – Zoom
Dr. Jo Boufford - Zoom	Ms. Ellen Rautenberg - Zoom
Dr. Angel Gutiérrez – Zoom	Mr. Peter Robinson – Albany
Mr. Thomas Holt – Albany	Dr. John Ruge - Albany
Dr. Gary Kalkut – Zoom	Dr. Theodore Strange – Zoom
Mr. Jeffrey Kraut – Zoom	Mr. Hugh Thomas - Albany
Mr. Scott LaRue – Zoom	Dr. Anderson Torres - Zoom
Mr. Harvey Lawrence - Zoom	Dr. Kevin Watkins – Zoom
Dr. Roxanne Lewin - Zoom	Dr. Patsy Yang – Zoom
Dr. Sabina Lim – Zoom	

DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|-----------------------------|-------------------------------|
| Ms. Udo Ammon - Zoom | Ms. Karen Madden – Zoom |
| Mr. Brian Backenson - Zoom | Ms. Kathy Marks – Zoom |
| Ms. Lynn Baniak - Zoom | Ms. Marthe Ngwashi - Albany |
| Mr. Mark Furnish – Albany | Mr. Travis O’Donnell - Zoom |
| Ms. Shelly Glock – Albany | Mr. Jason Riegert - Albany |
| Mr. Brian Gallagher - Zoom | Dr. Eli Rosenberg - Albany |
| Mr. Michael Heeran – Albany | Mr. Michael Stelluti - Albany |
| Mr. Adam Herbst – Zoom | Ms. Lisa Thomson - Albany |
| Dr Eugene Heslin – Albany | Ms. Jennifer Treacy - Albany |
| Ms. Colleen Leonard- Albany | Mr. William Sacks - Albany |

INTRODUCTION

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

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Activities of the Office of Public Health

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

Dr. Bassett began her report by introducing herself to the members. Noting that she served as the Health Commissioner of New York City from 2014 to 2018, and during that time, New York City confronted the Ebola outbreak in West Africa, Legionnaire's disease, which is not communicable, but was a large bacterial disease outbreak in New York City, as well as Zika, which had its main impact in the Caribbean and South America. Earlier in her career, she began her working life in Southern Africa, which was the hardest hit region with the HIV AIDS epidemic. Commissioner Bassett worked for nearly 20 years on the faculty at the University of Zimbabwe, in a way her work as State Commissioner and confronting a once in a century pandemic has also been bookended at the beginning of my working life as a physician in a very hard hit area of HIV epidemic. Prior to being appointed Commissioner, she worked at the Harvard Chan School of Public Health, where she directed a university wide center called the Francois-Xavier Center for Health and Human Rights. Dr. Bassett stated that she is very impressed by the caliber of the staff at the Health Department.

Dr. Bassett advised that she began her role on December 1, 2021 and on December 2, 2022 is when New York State detected the first case of Omicron, and she was swept up as we all were with the response to the surge, where we hit a peak of 1,500 new admissions to hospitals every day and we were up to 380 cases per 100 per day. New York has gone down to about 37/38, by 90 percent. This has been a real focus of Dr. Bassett's work. The Department focused on getting people vaccinated and has achieved very high vaccination rates among adults. 95 percent of all New York adults have received at least one dose. We have been making slower progress with boosters for adults, which we encourage because they protect people against serious illness and hospitalization. The Department has also been focusing on kids. The 5 to 11 year olds remain largely unvaccinated, 70 percent of them have not been fully vaccinated, and the Department has been focused on making sure that vaccination access was not an issue for New Yorkers that New Yorkers had places to get vaccinated, get tested. The number of acute cases plummet sort of almost as quickly, not quite as quickly, but almost as quickly as they rose. Conversations have begun about what the role of the state Health Department should be in addressing more long term effects of COVID. We had a meeting a week ago on Long COVID. It is available online if any of you are interested with convening clinical researchers, clinicians and as well as advocates, lawyers, people living with Long COVID to get recommendations from the panel on how the department might engage with this issue. It is clear that we will work on physician education on establishing guidance for the diagnosis and identification of people with Long COVID, and that we will also look at ways in which we can influence the insurance market.

Next Dr. Bassett spoke on how the Department has a wonderful role in overseeing the Medicaid program, which insures nearly a third of all New Yorkers, actually a little over a third of New Yorkers. Dr. Bassett noted that earlier in the week she was presenting the budget for as proposed by the Governor to the legislation and Legislature joint hearing that was public both the finance and health committees of both houses. This is a really good budget for the Health Department. For a Department that for nearly a decade has seen annual reductions in its budget and annual reductions in staffing levels escalating vacancies. There is a lot of good news in this budget, including the addition of 560 new lines and substantial increase to the budget across the agency. Not just to the Medicaid budget, but also to the Public Health Agency, the Office of Primary Care and Health Systems Management. The Department We got capital funds. That is important, particularly for the Wadsworth Lab, which has been such a critical part of the pandemic response. The Department proudly is able to continue the work in ending the epidemic, which has been such a pioneering program. New York has had the opportunity to end the AIDS epidemic without a vaccine, and that's within our reach, but was disrupted by the COVID pandemic.

Dr. Bassett announced the end of what was known in shorthand as the mask or vax mandate. Governor Hochul explained the reasons that underlay that decision and you heard earlier about the kinds of metrics of the department looks at. The Department will continue to look at the numbers of new cases each day, the percent positive, the number of hospitalizations. We look at the number of people in intensive care units, the number of pediatric hospitalizations, and we look at measures of our hospital capacity, principally bed occupancy, as well as what's going on in the world. Omicron really burst on the scene around Thanksgiving and had reached dozens of countries by early December. The rest is history. New York has have lifted the mask or vax mandate tomorrow. It will no longer be in effect. The Department's requirement that people either be masked or vaccinated in public indoor spaces will lapse. Dr. Bassett stated that the holiday mandate, which is now ended, although I continue to recommend masking and anyone who wishes to wear a mask should understand that there is no barrier to doing so. There were no decisions on masks in schools. The Department continues to distribute masks and tests. The Department has acquired meaning entered into agreements to purchase not necessarily taken delivery of over 90 million tests, which are being distributed mainly to schools but also to nursing homes and to local health departments. 14.2 million of these test kits were distributed, distributing better quality masks and recommending that people wear these rather than cloth masks. The Department is going to send kids home for the Mid-Winter break, which in most of the New York Public Schools, begins on February 21st with two tests. She also noted that the Department is then going to, as they return, assess the situation and make a determination regarding masking in schools using all of the metrics. The Department has not established a point for metrics, mainly because we use all of them together. She expressed why she is so optimistic about the situation in which we find ourselves now is because they're all together going down consistently day by day. We are seeing fewer and fewer people hospitalized, found to be infected. Our percent positivity rate is now running below 4 percent when it had one at one point hit 23 percent. We use all of these together. There is no one rule, and there probably will never be a one rule that we use for determining where we stand with the pandemic. We are in a very good place. She expressed she is grateful to all New Yorkers who have cooperated with the measures that we've put in place. That been her goal is to put in to see the end of the pandemic, to see that as we go forward, we use the tools that are at our disposal as equitably as possible,

including the access to COVID therapeutics, which New York State now has inadequate amounts to treat anybody who doctors recommend that they receive it. We have witnessed big variations during the pandemic by race ethnicity in terms of risk and outcome. The Commissioner noted that she does not want to see these repeated in terms of access to treatment or in access to treatment for Long COVID, as we learn more about how it should be managed. The Department is committed to seeing that all New Yorkers have access to high quality health care, that they have access to the conditions and environments that allow them to be healthy. Dr. Bassett stated that this means that sometimes she will speak about things that aren't under the direct purview of the Health Department, but nonetheless have a bearing on health. She stated that she is very grateful to the Health Department who have really worked and redefined what it means to work tirelessly during this pandemic and is sure that's true of health departments across the country. She stated she is very grateful to all of you who gave us your time and helping us make these determinations and looks forward to getting to know you all better. The first two months have been ones in which I was unexpectedly, we all were unexpectedly called into service to mobilize everything we had to beat back the surge. Dr. Bassett said she is confident that we are towards the end of it and grateful for the Council's service and contributions as we work to end the pandemic and make sure all New Yorkers have access to a lot of health possible.

Dr. Bassett concluded her report. To review the complete report and members questions and comments please see pages 1 through 7 of the transcript.

RESOLUTION OF APPRECIATION FOR KATHLEEN CARVER-CHENEY

Mr. Kraut extended his appreciation for Mr. Carver Cheney's 8 years she served on the Council. On behalf of the Council a Resolution of Appreciation for Ms. Carver-Cheney was signed by Mr. Kraut and Dr. Boufford. Please see page 7 of the transcript.

APPROVAL OF THE MEETING MINUTES OF DECEMBER 9, 2021 AND JANUARY 11, 2022 MEETINGS

Mr. Kraut asked for a motion to approve the December 9, 2021 Minutes of the Public Health and Health Planning Council meeting. Dr. Torres motioned for approval. Mr. Thomas seconded the motion. The minutes were unanimously adopted. Please refer to page 7 of the attached transcript.

Mr. Kraut asked for a motion to approve the January 11, 2022 Minutes of the Special Public Health and Health Planning Council meeting. Dr. Torres motioned for approval. Dr. Ortiz seconded the motion. The minutes were unanimously adopted. Please refer to page 8 of the attached transcript.

2022 ANNUAL MEETING

Mr. Kraut called the annual meeting portion of the meeting.

ELECTION OF OFFICERS

Election of Vice Chairperson

Mr. Kraut nominated Dr. Jo Ivey Boufford to serve as the Council's Vice Chair. The motion was seconded by Dr. Berliner. The motion passed. Please see page 8 of the attached transcript.

Standing Committee

M. Kraut announced the standing committee's chair and vice chairs. He stated that Mr. Thomas has appointed to serve as the Chair of the Health Professional and Interprofessional Relations Committee. Mr. Kraut also announced that Mr. Holt has been assumed the Chair of the Codes Committee and Dr. Gutiérrez will be serve as the Vice Chair and thanked him for his 10 years he served as Chair. Mr. Kraut thanked the Council members for their continued dedication. Please see pages 8 and 9 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Activities of the Office of Public Health

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

Dr. Rosenberg shared a few updates on new COVID-19 studies and data. The Department has been striving to lead the global conversation with evidence related to the COVID-19 pandemic. He displayed screenshots of four recent publications particularly focused on COVID-19 vaccination, in which we have leveraged the very complete data systems here in the Office of Public Health and throughout the department to track the pandemic and really demonstrate the effectiveness of COVID-19 vaccines at a number of different ways. Starting with the first report issued at the end of the Summer showing very high vaccine effectiveness against COVID-19 cases and hospitalizations. That really set the national template for this kind of analysis, leading to very shortly, followed by CDC coordinating a large many jurisdictions system for doing such. On the left is another publication that we followed up with going deeper into detail, published in the New England Journal of Medicine, showing for each of the vaccine products, and when they were administered how they were performing during the Delta Wave and really became a very essential component to conversations around boosters. The one that's on the right, which is being obscured. A coordinated effort with the state of California, with the CDC to demonstrate the role of both having a prior COVID infection and having vaccination and in providing protection during the Delta wave as well. Published in MNWR. There was most recently had another publication looking at the uptake of vaccination among persons with HIV diagnosed HIV in New York state and demonstrated disparities in a number of concerning ways in terms of lower uptake among this most leading population and then racial disparities within that population. These are just some examples of the work that we're doing here to bring the science forward, to bring the data forward and also really show the world that we can lead with evidence.

Dr. Rosenberg noted that they build out the evidence in the scientific literature, and also sure to be providing our data to the public. The Department has worked to bring together many different data sources that were earlier on different websites are not available on websites at all into a common COVID-19 data hub and dashboard area. All centralized on this one page here called the COVID-19 Data in New York Page. If you scroll through this page. You'll see that there's very little tiles, each addressing many different issues, some of which have been talked about today in terms of tracking cases, vaccinations, hospitalizations, different aspects of hospitalizations, deaths and so forth. This is to show you at one of these looks like. He mentioned a study that was done with in conjunction with California and CDC looking at infections among people who had had COVID before, that is really what we call reinfection. It is really an emerging issue of importance, particularly during the Omicron wave, where the Omicron variant is more likely to reinfect somebody. As the Department did this kind of work in the scientific literature, we were sure to launch a new dashboard that really highlighted the issue and brought the data out to the public so that we could really be speaking in both ways at the same time and to really show in real time what's going on here in New York. That's just one example. A number of different data sources have been brought together, this shows an addition. The text is small, I just want to show you a variety of ways to look at vaccine data around the state and in different groups and in different settings. There are data sources specific to schools, long term care facilities. If you bring up each of these, there's data different displays. Many of the data sets are downloadable so that people can perform their own analyses and get a better understanding of the nature of the pandemic. The Department has some special reports and in the end of December issued an advisory alerting to an uptick in pediatric hospitalizations owing to COVID-19. The Department followed up on that advisory with several in-depth reports documenting the rise in hospitalizations among children and various aspects related to that. This is an area of major concern. Those reports are available as well. Dr. Rosenberg mentioned there is a link to the Department's open data page where it is a repository of many data sets underlying this dashboard and others as well.

Dr. Rosenberg concluded her report thanking the members for the opportunity to introduce herself and looks forward to working with the Council. To view the complete report and Members comments and questions, please see pages 9 through 12 of the transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

20-06 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 Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention)

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

Mr. Holt began his report by introducing 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. Dr. Torres seconded the motion. The motion carried. Please see page 12 of the transcript.

Mr. Holt introduced Amendment of Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention) and motioned for emergency adoption. Dr. Berliner seconded the motion. The motion carried. Please see pages 12 and 13 of the transcript.

Mr. Holt introduced Addition of Sections 2.9 and 2.62 to Title 10 NYCRR (COVID-19 Reporting and Testing) and motioned for emergency adoption. Dr. Berliner seconded the motion. The motion carried. Please see page 13 of the transcript.

For Adoption

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)

Mr. Holt lastly introduced Amendment of Sections 600.1 and 600.2 of Title 10 NYCRR (Article 28 Nursing Homes; Establishment; Notice and Character and Competence Requirements) and motioned for adoption. Dr. Torres seconded the motion. The motion carried. Please see page 13 of the transcript.

Mr. Holt concluded his report

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Gary Kalkut, M.D., Vice 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>
212135 C	University Hospital SUNY Health Science Center (Onondaga County)	Contingent Approval

Hospice Services - Construction

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
212149 C	Hospice of Jefferson County/Palliative Care of Jefferson County (Jefferson County)	Contingent Approval

Dr. Kalkut called applications 212135 and 212149 and motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries. Please see page 14 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>
212113 C	North Shore University Hospital (Nassau County) Mr. Kraut – Recusal Dr. Strange – Recusal	Contingent Approval

Dr. Kalkut called applications 212113 and notes for the record the Mr. Kraut and Dr. Strange have a conflict and have exited the Zoom session. Dr. Kalkut motions for approval. Dr. Gutiérrez seconds the motion. The motion to approve carries with the noted recusals. Mr. Kraut and Dr. Strange re-enter the Zoom session. Please see pages 14 and 15 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

Ambulatory Surgery Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
201004 B	Pelham Parkway SC, LLC d/b/a Pelham Parkway Surgery Center (Bronx County)	Contingent Approval

Dr. Kalkut called application 201004 and motions for approval. Dr. Berliner seconds the motion. The motion to approve carries. Please see pages 15 and 16 of the transcript.

Diagnostic and Treatment Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
192211 B	Beach Channel D&TC, LLC d/b/a Beach Channel Diagnostic and Treatment Center (Queens County)	Contingent Approval
211085 B	KD Hudson Ventures, LLC d/b/a Avalon Medical Group (Orange County)	Contingent Approval

Dr. Kalkut called applications 192211 and 211085 and motions for approval. Dr. Berliner seconds the motion. The motion to approve carries. Please see page 16 of the transcript.

Dialysis Services – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211201 E	MVNY Partners I, LLC d/b/a U.S. Renal Care Faxton Dialysis (Oneida County)	Contingent Approval
211202 B	MVNY Partners II, LLC d/b/a U.S. Renal Care St. Luke's Home Dialysis (Oneida County)	Contingent Approval
211203 B	MVNY Partners III, LLC d/b/a U.S. Renal Care Masonic Care Community Dialysis (Oneida County)	Contingent Approval
211204 B	MVNY Partners IV, LLC d/b/a U.S. Renal Care Rome Dialysis (Oneida County)	Contingent Approval
211205 B	MVNY Partners V, LLC d/b/a U.S. Renal Care Herkimer Dialysis (Herkimer County)	Contingent Approval
211206 B	MVNY Partners VI, LLC d/b/a U.S. Renal Care Hamilton Dialysis (Madison County)	Contingent Approval

211207 B	MVNY Partners VII, LLC d/b/a U.S. Renal Care Oneida Dialysis (Madison County)	Contingent Approval
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Dr. Kalkut called applications 211201, 211202, 211203, 211204, 211205, 211206, and 211207 and motions for approval. Dr. Berliner seconds the motion. The motion to approve carries. Please see pages 16 through 19 of the transcript to see the members discussion.

Certified Home Health Agencies – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
202185 E	Wellbound II LLC (Westchester County)	Contingent Approval

Dr. Kalkut called applications 202185 and motions for approval. Dr. Berliner seconds the motion. The motion to approve carries. Please see pages 19 and 20 of the transcript to see the members discussion.

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>
202057 B	Premier SC, LLC t/b/k/a Premier Ambulatory Surgery Center of New York, LLC (Queens County) Dr. Lim – Interest/Abstaining	Contingent Approval

Dr. Kalkut called applications 202057 and notes for the record an interest and abstention from Dr. Lim. Dr. Kalkut motions for approval. Dr. Torres seconds the motion. The motion to approve carries with one member opposing. Please see page 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

CON Applications

Diagnostic and Treatment Centers – Establish/Construct

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
211151 B	W Medical, LLC d/b/a W Health Center (Kings County) Dr. Gutierrez – Opposed at EPRC	Contingent Approval
211226 E	Perry Avenue Family Medical, Inc. (Bronx County) Dr. Bennett – Abstained at EPRC	Contingent Approval

Dr. Kalkut called application 211151 and motions for approval. Dr. Berliner seconds the motion. The motion to approve carries with one member opposing.. Please see page 21 of the transcript to see the members discussion.

Dr. Kalkut called application 211226 and motions for approval. Dr. Berliner seconds the motion. The motion to approve carries. Please see pages 21 and of the transcript.

CATEGORY 4: Applications Recommended for Approval with the following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

. NO APPLICATIONS

Dr. Kalkut concluded his report.

ADJOURNMENT:

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

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
ANNUAL FULL COUNCIL MEETING
FEBRUARY 10, 2022
IMMEDIATELY FOLLOWING COMMITTEE ON CODES, REGULATIONS
AND LEGISLATION (10:15 AM)
ESP, CONCOURSE LEVEL, MEETING ROOM 6, ALBANY

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Jeffrey Kraut I'm Jeff Kraut. I have the privilege to call to order the meeting of The Annual Meeting of the Public Health and Health Planning Council. I want a member participants and observers and members of the council on this day, February 10th, 2022. I want to just suspend my opening remarks, and I want to welcome Dr. Bassett, who, as you know, serving as our newly appointed Commissioner of Health and welcome her. We know this meeting ran a little longer than what we normally anticipate. You got a good sense of us in action and we'd like to turn it over to you. And as long as you're able to spend time with us, we'd appreciate it.

Dr. Bassett Thank you very much.

Dr. Bassett I have been looking forward to attending these meetings and apologize that I am pressed for time. As you might have seen, I was able to listen to the meeting today and to the questions offered by the council. I have some prepared remarks which I will go through for you and I will look forward to talking with you, Jeff about what types of presentations would be useful to the council in the future. I got several ideas in the course of today's discussion, but today I thought I would give you a brief overview of what the department has been doing. I thought I would begin by introducing myself. I know some of you who serve on the council, many of you I haven't known before. You all probably know that I served as the Health Commissioner of New York City from 2014 to 2018, and during that time, New York City confronted the Ebola outbreak in West Africa, Legionnaires disease, which is not communicable, but was a large bacterial disease outbreak in New York City, as well as Zika, which had its main impact in the Caribbean and South America. I also, earlier in my career, began my working life in Southern Africa, which was the hardest hit region with the HIV AIDS epidemic. I worked for nearly 20 years and the faculty at the University of Zimbabwe, so in a way I work here as a state commissioner and confronting a once in a century pandemic has also been bookended at the beginning of my working life as a physician in a very hard hit area of HIV epidemic. And before taking this position, which I was very proud to be offered and had the pleasure of accepting from Governor Hochul, I worked at the Harvard Chan School of Public Health, where I directed a university wide center called the Francois-Xavier Center for Health and Human Rights. Here I am back in New York, where I've had the real pleasure of getting to know people in the state health department. Because of issues that many of you may be well aware of, the City Health Department that I led and the state health department at that time, at least at commissioner level, didn't have much interaction. I didn't get to know the people I now know. I've been very, very, very impressed by the caliber of the staff at the Health Department. I want to now start out by talking a little bit about what I've been doing in the two months. I began on December 1st, December 2nd was when New York State detected the first case of Omicron, and I was swept up as we all were with the response to the surge, where we hit a peak of 1,500 new admissions to hospitals every day and we were

up to 380 cases per 100 per day. We're now down to about 37/38. We've gone down by 90 percent. This has been a real focus of my work. We focused on getting people vaccinated, and as you all know, we have achieved very high vaccination rates among adults. We have 95 percent of all New York adults have received at least one dose. We have been making slower progress with boosters for adults, which we encourage because they protect people against serious illness and hospitalization. We've also been focusing on kids. The 5 to 11 year olds remain largely unvaccinated, 70 percent of them have not been fully vaccinated, and we've been focused on making sure that vaccination access was not an issue for New Yorkers that New Yorkers had places to get vaccinated, get tested. As we've seen the number of acute cases plummet sort of almost as quickly, not quite as quickly, but almost as quickly as they rose. We've begun conversations about what the role of the state Health Department should be in addressing more long term effects of COVID. We had a meeting a week ago on Long COVID. It's available online if any of you are interested with convening clinical researchers, clinicians and as well as advocates, lawyers, people living with Long COVID to get recommendations from the panel on how the department might engage with this issue. It's clear that we will work on physician education on establishing guidance for the diagnosis and identification of people with Long COVID, and that we will also look at ways in which we can influence the insurance market. As you know, we have a wonderful role as a Health Department in overseeing the Medicaid program, which insures nearly a third of all New Yorkers, actually a little over a third of New Yorkers. My time earlier this week was taken up with presenting the budget for as proposed by the Governor to the legislation and Legislature joint hearing that was public both the finance and health committees of both houses. This is a really good budget for the Health Department. For a department that for nearly a decade has seen annual reductions in its budget and annual reductions in staffing levels escalating vacancies. We have got a lot of good news in this budget, including the addition of 560 new lines and substantial increase to the budget across the agency. Not just to the Medicaid budget, but also to the Public Health Agency, the Office of Primary Care and Health Systems Management. We got capital funds. That is important, particularly for the Wadsworth Lab, which has been such a critical part of the pandemic response. We are proudly able to continue the work in ending the epidemic, which has been such a pioneering program. We have the opportunity to end the AIDS epidemic without a vaccine, and that's within our reach, but was disrupted by the COVID pandemic. We, as you know, yesterday announced the end of what was known in shorthand as the mask or vax mandate. Governor Hochul explained the reasons that underlay that decision and you heard earlier about the kinds of metrics of the department looks at. That we look at the numbers of new cases each day, the percent positive, the number of hospitalizations. We look at the number of people in intensive care units, the number of pediatric hospitalizations, and we look at measures of our hospital capacity, principally bed occupancy, as well as what's going on in the world. As you know, Omicron really burst on the scene around Thanksgiving and had reached dozens of countries by early December. The rest is history. We have lifted the mask or vax mandate tomorrow. It will no longer be in effect. The departments requirement that people either be masked or vaccinated in public indoor spaces will lapse. This was a holiday mandate, which is now ended, although I continue to recommend masking and anyone who wishes to wear a mask should understand that there is no barrier to doing so. We have not made a decision on masks in schools. I would like to point out that we have continued to distribute masks and tests. The department has acquired meaning entered into agreements to purchase not necessarily taken delivery of over 90 million tests, which are being distributed mainly to schools but also to nursing homes and to local health departments. We have distributed 14.2 million of these test kits, and we're distributing better quality masks and recommending that people wear these rather than cloth masks. We are going to send kids home for the Mid-Winter break, which

in most of the New York Public Schools, begins on February 21st with two tests. And we are then going to, as they return, assess the situation and make a determination regarding masking in schools using all of the metrics that I mentioned. We have not established a point for metrics, mainly because we use all of them together. The reason I'm so optimistic about the situation in which we find ourselves now is because they're all together going down consistently day by day. I'm seeing fewer and fewer people hospitalized, found to be infected. Our percent positivity rate is now running below 4 percent when it had one at one point hit 23 percent. We use all of these together. There is no one rule, and there probably will never be a one rule that we use for determining where we stand with the pandemic. We are in a very good place. I am grateful to all New Yorkers who have cooperated with the measures that we've put in place. That's been my goal is to put in to see the end of the pandemic, to see that as we go forward, we use the tools that are at our disposal as equitably as possible, including the access to COVID therapeutics, which New York State now has inadequate amounts to treat anybody who doctors recommend that they receive it. We have, of course, witnessed big variations during the pandemic by race ethnicity in terms of risk and outcome. I don't want to see these repeated in terms of access to treatment or in access to treatment for Long COVID, as we learn more about how it should be managed. That's where we are. We're committed to seeing that all New Yorkers have access to high quality health care, that they have access to the conditions and environments that allow them to be healthy. This means that I sometimes will speak about things that aren't under the direct purview of the Health Department, but nonetheless have a bearing on health. I'm very grateful to the Health Department who have really worked and redefined what it means to work tirelessly during this pandemic. I'm sure that's true of health departments across the country. I am very grateful to all of you who gave us your time and helping us make these determinations. I look forward to getting to know you all better. The first two months have been ones in which I was unexpectedly, we all were unexpectedly called into service to mobilize everything we had to beat back the surge. I am confident that we're towards the end of it and grateful for your service and contributions as we work to end the pandemic and make sure all New Yorkers have access to a lot of health possible.

Dr. Bassett And that ends my prepared remarks.

Dr. Bassett I don't know how it works and whether the members of the council ask me questions, but I'm at your disposal for another few minutes.

Jeffrey Kraut Thank you, Dr. Bassett.

Jeffrey Kraut We will be mindful of the time, but it's not unlike ask the prime minister. We open up the council to ask you of any questions. We do look forward to working on an agenda that's kind of aligned with promoting the health of New York.

Dr. Bassett Absolutely.

Dr. Bassett I would have loved to share with you somehow against all odds, the Health Department has continued to do really top tier science during this period. I would have loved to share with you some of the findings that we published in top tier journals. You should all be proud of the capacity that has survived a very difficult period in this department.

Jeffrey Kraut Let me turn to I have Dr. Watkins, Mr. Lawrence and then Mr. La Rue.

Dr. Watkins Good afternoon, Commissioner Bassett, and congratulations on your new appointment. As we move towards the off ramp of COVID-19, it is still concerning to me that the oral therapeutics for COVID-19 has not been widely available, especially in the rural communities here in New York State. Has there been any progress in acquiring more of these therapeutics for New York residents, specifically for the rural communities?

Dr. Bassett Let me just tell you how it's worked. At the moment, New York State is receiving four different drugs. Some of the monoclonal were not effective, so we stopped receipt of those because we didn't see any point in having them distributed. I'm going to have trouble pronouncing these. The third one that can be used for preventive treatment, which is just more recently become available. The name of it escapes me at the moment. When we receive these, the amount that we get has been determined by the federal government and we distribute it across the state and we distribute it according to the disease burden in the state. Early in the pandemic, we were sending more to New York than New York City, because Omicron entered there and the initial surge was there. We have recalibrated. We're getting something like 20,000 treatment courses every two weeks from the federal government, and we provide it in every county to at least two or three pharmacies. We asked the local health departments to help us identify those pharmacies, and if they don't, we pick them. New York City chose to have a single pharmacy. At first, we really felt that we had to prioritize the treatment of people, which is directed to anyone who has mild or moderate disease, who is at risk for a worse outcome. And that includes anybody whose over 65. Anybody who has another disease. Anybody who's immunocompromised. It's a fair number of people. We now have enough for everyone. I think if people don't know about this and we broadcast it through all of our provider networks. We keep rebroadcasting that now everybody who is eligible should receive it. I do think that patients and some of their doctors don't know that much about it, but we've been using every available channel except mass media to notify people about it. It goes to every county. That was a long winded response, but I hope that answered your question.

Jeffrey Kraut Thank you.

Jeffrey Kraut We have two more. Mr. Lawrence, then Mr. LaRue.

Mr. Lawrence Welcome back, Commissioner to New York. Happy that you're here. You referenced health equity. I know you've been a champion and a proponent of health equity. One of my concerns is that, you know, the pandemic has exposed the disparities, the inequities in not only the access, but an outcome, as you referenced. I'm afraid that at some point, as this pandemic sort of fades into our rearview mirror, that that we'll go back to business as usual and a lot of the disparities that we were highlighted are going to sort of also fade. And that also some of the organizations, namely community health centers that have been at the champions for the underserved communities and during this pandemic, doing testing, providing vaccines that again will get back to a more decentralized system in which, you know, in patient care is front and center. We're no longer looking at sort of an integrated delivery system where everyone has a role to play. What are your plans or what are your thoughts about how you're going to pull this system and keep the lessons learned during the pandemic front and center as you move through your tenure?

Dr. Bassett First of all, I obviously agree with your analysis and share your concerns. I would say this. Part of the reason that I was interested in this position is because this department has the unusual role of overseeing both the health care delivery system and what we traditionally consider public health. I think one of the challenges to advancing

population health is that we've too rarely crosswalked these and made sure that we maximize benefit and coordinate them. That's been and the role of primary care is obviously the frontline link with public health. The budget mostly does this with increasing then the Medicaid rate, as you know, which should help everyone, providing support to financially distressed hospitals, which should help everyone and providing capital funding. The philosophy that you've espoused that we need to make sure that primary care is not the stepchild of the clinical care system is one that I absolutely share. It's very longstanding that the reimbursement rates favor high end, high tech procedures. I can't tell you that this will be simple to rejigger, but it is absolutely a long term goal that I share.

Jeffrey Kraut Thank you.

Jeffrey Kraut Mr. La Rue.

Jeffrey Kraut And then Dr. Kalkut and Dr. Boufford.

Mr. La Rue Good afternoon, Doctor, and congratulations. I appreciate your comments on the state budget. I do agree that your team and the Governor has put together one of the most significant budgets to support health care in New York in many, many years. I truly appreciate the recognition of the importance of long term care in the budget and the recognition of the work that we need to do at the state level in developing a strategy for long term care services. The one item in the budget that I take this opportunity to comment on is that procurement proposal for managed care. One of the things that concerns me with it is hoping there's recognition that many of the smaller nonprofit plans support niche populations or retired religious or individuals in congregate settings that I'm not sure national insurance companies are going to be particularly interested in the nuances of or the necessity of a perhaps a different approach to care management to successfully care for those individuals. I appreciate the opportunity to share that thought with you, congratulate you, and I look forward to working with you on finally putting together a strategic long term plan for New York's elders.

Dr. Bassett Thank you for that comment.

Dr. Bassett If I could just add, the state did include the Governor's call for a master plan on aging for the state, and additionally that the competitive procurement of managed care plans will include language that gives points effectively to sort of homegrown nonprofit plans, which we understand our plans that have been more likely to reinvest in their communities as well as serve populations as you've outlined.

Jeffrey Kraut Thanks.

Jeffrey Kraut Dr. Kalkut, then Dr. Boufford.

Dr. Kalkut Thanks, Jeff.

Dr. Kalkut Dr. Bassett, welcome back to New York. It's great to have you here. I think we all look forward to working with you. You mentioned some of the uptake of the anti-viral drugs has not been what we expected and the same is true of the ---, which is the pre-exposure.

Dr. Bassett Thank you.

Dr. Kalkut The purpose really or the aim of that drug is to provide some protection against getting infected or certainly getting seriously ill for people who don't respond to vaccine or can't take the vaccine for some reason, but the uptake has been poor and I think more education about the benefits and why it is important for people because of their condition or medication they're on don't respond effectively to the vaccine.

Dr. Bassett I agree with you. I would welcome additional ideas. We've been holding webinars. We've sent out blasts through the provider networks. I agree with you that there are not enough people know about any of these therapeutics. Obviously, I want people to get vaccinated.

Dr. Kalkut You say it on TV yourself, so.

Jeffrey Kraut That's right.

Dr. Kalkut Thank you.

Jeffrey Kraut Dr. Boufford, I'll give you the final question.

Dr. Boufford Thanks, Dr. Bassett. It's a pleasure to have you to work with directly again. I enjoyed working with you in the city and we're delighted you're back with us at the state level. I just wanted to say that we're very much hoping under your leadership to really reactivate the Public Health Committee of this council, as well as the planning committee in relation to the issues that you just articulated around the role of primary care and local health departments really in an integrated response to emergencies, but also in the future shape of the health care system so they can join their colleagues in the hospital industry and really have a strong voice to think about that integrated system. We're also very eager to reactivate the council's attention, too, because they've been incredibly supportive of the prevention agenda for the last several years. I know local health departments are continuing to report their progress even in the face of COVID. As you said, everybody's been quite heroic. We're really looking forward to actually supporting the department's public health activities, attention to social determinants of health and the state of health in all policies work that has been made possible in some ways by the multi-agency executive order that was issued and the Governor has supported. Just to say welcome and we look forward to being able to shine light, bright lights on the issues in the public health and primary care as part of the council's work.

Dr. Boufford Thanks.

Dr. Kalkut Thanks very much. Thanks for the warm welcome. We have so much work to do. I look forward to working with all of you.

Jeffrey Kraut Well, we do thank you for the time you've given us. As Dr. Boufford said, we understood what the priority was for the next two years and we had to deal with the urgent. Now, we want to get onto the other important issues we have.

Dr. Bassett In many ways they are more important.

Jeffrey Kraut Yes.

Dr. Boufford Thank you.

Jeffrey Kraut Thank you very much, Dr. Bassett.

Dr. Bassett Thank you.

Dr. Bassett Bye bye.

Jeffrey Kraut I'm going to now return to our annual meeting of the council. Before I kind of go into some of the details, I just want to make sure everybody is aware that Ms. Carver Cheney has decided to resign her position on the council. On behalf of the council, I want to extend our deep appreciation to her. She had served on the council for 8 years, was dedicated to our work and the role that we've tried to do. We want to wish her well on behalf of the council, Dr. Boufford and myself signed a resolution of our appreciation for her recognizing her 7 years service, which spanned June of 2014 through 2021. Ms. Carver Cheney served on the Codes and Regulations Committee legislation that Health Planning Committee and the Health Personnel and Professional Relations Committee. She certainly was committed to our mission of improving and enhancing New York State's health care delivery system for all the citizens of New York State and its residents. We're going to give her this certificate and just thanked her and wish her well for the many years in her future of professional and personal achievements.

Jeffrey Kraut As Mr. Holt had indicated when we began today's meetings, we do require a record of appearance form to be completed as part of the Joint Commission on Public Ethics. That form can be found on the Health Department's website, www.NYHealthCare.Gov under Certificate of Need or mail the completed forms to Colleen Leonard as well. We are continuing today to webcast the meeting. You've heard the suggestions on how to improve that for Mr. Holt, so just make sure again, as we do this portion of the meeting, you do identify yourself as you begin to speak and as you look at our agenda, particularly for the sections where we're dealing with the certificate of need, we just remind the members of the public that they should be joining the department's Certificate of Need listserv. We regularly send out a very important council information and meeting notices such as our agenda, the meeting dates, the policy matters, how to download and review all the material that the council members receive. Again, if you need any assistance, please speak to Colleen. Today, I'm going to vote on going to ask for your vote on the Vice Chair of the council. We've obviously received the report from Dr. Bassett. Rosenberg will provide us a report on the Office of Public Health, followed by Mr. Holt providing regulations for our adoption. Dr. Kalkut will provide recommendations for the establishment actions. We already, as you know, we have an agenda set. If there's any certificate of need that's in a batch that Dr. Kalkut will be providing. If you've taken a look at it, if you want to exclude or move any items around, please let us know.

Jeffrey Kraut My next agenda item is adoption of our minutes. May I have a motion for the adoption of the December 9th, 2021 minutes?

Jeffrey Kraut Dr. Torres.

Jeffrey Kraut Mr. Thomas, thank you for a second.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Motion carries.

Jeffrey Kraut I'd like a motion for the adoption of the January 11, 2022 minutes.

Jeffrey Kraut I have Dr. Torres.

Jeffrey Kraut A second by Dr. Ortiz.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Thank you.

Jeffrey Kraut The motion carries.

Jeffrey Kraut I'm now going to move to the election of the Vice Chair. Thankfully Dr. Boufford has continued to agree to serve in that capacity. I'd like now to move the election of Dr. Boufford to serve as the council's Vice Chair.

Jeffrey Kraut May I have a motion to do so?

Jeffrey Kraut Mr. Thomas.

Jeffrey Kraut A second by Mr. Berliner.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut The motion carries.

Jeffrey Kraut Dr. Boufford, thank you very much again.

Dr. Boufford Thank you all very much.

Jeffrey Kraut I just want to repeat the committee membership for everybody and who's leading those committees. For Establishment and Project Review, it will be Chaired by Mr. Robinson and Dr. Kalkut will continue to serve as Vice Chair. Dr. Boufford will Chair of the Public Health Committee. Dr. Torres will serve as its Vice Chair. The Health Planning Committee is going to be Chaired by Dr. Ruggie. Mr. Thomas has assumed the new Chair of the Health Personnel and Into Professional Relations Committee and the Ad Hoc Committee to lead the State Health Improvement Plan will also be Chaired by Dr. Boufford. On the Committee on Codes, Regulation and Legislation, Dr. Gutierrez Has asked to step out of the Chair. He will do so and serve as the Vice Chair. And as we saw this morning, the very capable and well-run meeting. Mr. Holt will now be serving as Chair, where he had formerly served as Vice Chair. I just want to say something about Dr. Gutierrez. There's many things we can say about Dr. Gutierrez. All of them wonderful and laudatory. Dr. Gutierrez has been the only Co-Chair serving in that capacity since formed

in 2011. For over 10 years, Dr. Gutierrez navigated us through some very challenging meetings where his thoughtfulness, his fairness, his hard work and diligence really was of tremendous benefit to the work of the council and frankly, to serve the state. half. I just want to thank you. We've know no other Chair since we merged Public Health and the State Hospital Review and Planning Council. I think you we do know that his successor has big shoes, but I think they are somewhat of the similar size. I want to thank you again, Dr. Gutierrez for all the the 10 years plus you've served us. Those are applause if you're not hearing it in the public. Thank you again.

Jeffrey Kraut I just want to thank everybody for all the work. These have been a tough year and frankly, two years with us. We're looking forward to coming back. I'll talk a little about that at the end of the meeting. We're certainly looking forward to get back on track, as we just discussed with Dr. Bassett about creating an agenda that's aligned with the department where she wants to take it and the work that we would like to do with our goal of service in maintaining and improving the health of anybody who calls themself a New Yorker.

Jeffrey Kraut Now, I'd like to introduce Dr. Rosenberg, who is newly appointed to serve as the department's deputy commissioner in the Office of Public Health to give us a meeting of the activities of our office. I welcome you to the council meeting.

Dr. Rosenberg Hold on one second. We're getting the screen share to work.

Jeffrey Kraut It's showing up on Zoom. It's fine. We see it. You don't see it in the room, I guess.

Dr. Rosenberg Yeah.

Dr. Rosenberg Can you just fix it? It's presenting to the wrong screen.

Jeffrey Kraut Dr. Rosenberg, while they do that, do you want to tell us a little about your background.

Dr. Rosenberg Hi. I'm Dr. Rosenberg. I'm the Deputy Director for Science of the Office of Public Health, the Deputy Commissioner for Public Health is not here today, but I'm happy to represent the office and just give a few updates particularly focused on data and studies related to COVID-19.

Dr. Rosenberg Is it working now? .

Dr. Rosenberg No.

Dr. Rosenberg I just wanted to just share, just like I said, a few updates on new COVID-19 studies and data. And I thank the council for their time and also the members of the public who joined us today and shared their honest views. This was supposed to be animated. As Dr. Bassett mentioned, we've really been striving to lead the global conversation with evidence related to the COVID-19 pandemic. These are screenshots of four recent publications particularly focused on COVID-19 vaccination, in which we have leveraged the very complete data systems here in the Office of Public Health and throughout the department to track the pandemic and really demonstrate the effectiveness of COVID-19 vaccines at a number of different ways. Starting with our first report issued at the end of the Summer showing very high vaccine effectiveness against COVID-19 cases

and hospitalizations. That really set the national template for this kind of analysis, leading to very shortly, followed by CDC coordinating a large many jurisdictions system for doing such. On the left is another publication that we followed up with going deeper into detail, published in the New England Journal of Medicine, showing for each of the vaccine products, and when they were administered how they were performing during the Delta Wave and really became a very essential component to conversations around boosters. The one that's on the right, which is being obscured. Sorry, we're having these Power Point issues, was a coordinated effort with the state of California, with the CDC to demonstrate the role of both having a prior COVID infection and having vaccination and in providing protection during the Delta wave as well. Published in MNWR. We most recently had another publication looking at the uptake of vaccination among persons with HIV diagnosed HIV in New York state and demonstrated disparities in a number of concerning ways in terms of lower uptake among this most leading population and then racial disparities within that population. These are just some examples of the work that we're doing here to bring the science forward, to bring the data forward and also really show the world that we can lead with evidence. Speaking of our data, as we build out the evidence in the scientific literature, we're also sure to be providing our data to the public. We've worked to bring together many different data sources that were earlier on different websites are not available on websites at all into a common COVID-19 data hub and dashboard area. All centralized on this one page here called the COVID-19 Data in New York Page. If you scroll through this page. I'll just go jump here for a moment. You'll see that there's very little tiles, each addressing many different issues, some of which have been talked about today in terms of tracking cases, vaccinations, hospitalizations, different aspects of hospitalizations, deaths and so forth. Just to show you at one of these looks like. I mentioned a study that was done with in conjunction with California and CDC looking at infections among people who had had COVID before. That's really what we call reinfection. It's really an emerging issue of importance, particularly during the Omicron wave, where the Omicron variant is more likely to reinfect somebody. As we did this kind of work in the scientific literature, we were sure to launch a new dashboard that really highlighted the issue and brought the data out to the public so that we could really be speaking in both ways at the same time and to really show in real time what's going on here in New York. That's just one example. As I said, a number of different data sources have been brought together. This shows an addition. The text is small, I just want to show you a variety of ways to look at vaccine data around the state and in different groups and in different settings. We have data sources specific to schools, long term care facilities. If you bring up each of these, there's data different displays. Many of the data sets are downloadable so that people can perform their own analyses and get a better understanding of the nature of the pandemic. We have some special reports. We department in the end of December issued an advisory alerting to an uptick in pediatric hospitalizations owing to COVID-19. And we followed up on that advisory with several in-depth reports documenting the rise in hospitalizations among children and various aspects related to that. This is an area of major concern. Those reports are available as well. And as I mentioned at the bottom, we have a link to our open data page where it is a repository of many data sets underlying this dashboard and others as well.

Dr. Rosenberg That's really my brief update, really, as it pertains to data and science.

Dr. Rosenberg Thank you all for having me.

Jeffrey Kraut Thank you so much, Dr. Rosenberg. I'm so pleased to see the kind of data sources that we have available. We are going to look forward and take advantage of probably your interest in your knowledge base, particularly in public health and our health

planning committee, because we always want to include and invite in the data, good data driven policy discussions. We've been challenged in the past about getting that information. It looks like we are going to have an advocate and a colleague who will probably help us. We look forward to many more returned to the council.

Jeffrey Kraut Dr. Boufford and then Mr. Lawrence.

Dr. Boufford Hi, Dr. Rosenberg. Thank you. And just to emphasize Jeff's comments, this is going to be very exciting and also the ability to sort of integrate displays around these emergent important emergency responses with some of the core business of public health that we are very interested in ourselves. I do want to integrate and just ask if you might speak to your colleagues. We are hoping very much to have a meeting of the Public Health Committee before the end of this month or the first week in March. I've discussed it before and I know you all are under pressure with COVID and other things, but I think the council can be very helpful to the department and its focus on the prevention agenda on public health and with the Planning Committee on Primary Care. We're eager to begin work in these other areas in addition to our ongoing work on the CON and process and regulatory process. Thank you for carrying that message.

Jeffrey Kraut Mr. Lawrence.

Mr. Lawrence Thank you, Doctor, for the presentation and the data. Maybe this question is a little misplaced, but I will ask it anyway. You know, at some point, I appreciate that Dr. Gutierrez history lesson this morning regarding George Washington actually instituting the first vaccine mandate with smallpox. I also felt at some point this morning that I was living in a different universe where, in fact, you know, more than 65,000 New Yorkers have died from COVID. And that's more than, American soldiers that were lost in the Korean War, in the Vietnam War. And then also when you look at Americans lost in World War Two, almost 418,000 and we're nearly 911,000 Americans lost, I guess, year to date in terms of COVID. Yet in the public discourse, at some point there seems to be this sense that, well, this is really not much of a variant of a virus and the impact is not that great. We are debating yet still wearing a mask and we're debating vaccines. I guess my question is at what point is there that communication not from a public health perspective to the greater community so that we have people that are much more informed about these impacts? And so that data, in fact has an impact in their thinking and in their lives and in the decisions that they're making at school board meetings at that level, because I think if we fail to do that, then it does create a void that can be that weaponized. Maybe it's an unfair question for you. Maybe it's more of a policy question, but it is one that I think is a little troubling for me.

Dr. Rosenberg Thanks for raising that.

Dr. Rosenberg I think we've had a lot of discussion over the months and particularly before the Omicron wave really became very front of mind around what the future of COVID would look like in New York State and how to really engage in a process where we involve health, local health departments, communities in a conversation around sort of building that. I think that's a really great way to integrate some of the educational opportunities or educational needs that you're describing. I agree with your concerns over the data. In the first year of the pandemic, COVID was the third leading cause of death in the United States. And during the recent wave of Omicron wave, it was very likely the number one cause of death for many weeks. I think that these are startling numbers that need to be communicated and put into the appropriate context. I agree it's a huge

challenge, obviously much bigger than one scientific officers, but it's really important to keep discussing.

Jeffrey Kraut Thank you, Dr. Rosenberg, and we look forward to working with you, just echoing both Mr. Lawrence and Dr. Boufford's comments. We want to spend more time as a council focusing on the public health portion of our name and our mission. And to the end, what Dr. Boufford said, we do expect to reinstitute meetings of the public health and the health planning committees, for that matter effective the first week of March. We hope to see you back at that committee meeting with your colleagues.

Dr. Rosenberg I'll bring that back. Thank you. We're excited for this partnership as well.

Jeffrey Kraut Thank you.

Jeffrey Kraut I'm going to turn to Mr. Holt to give the report on the Codes Regulations and Legislation Committee.

Tom Holt Good afternoon. At today's meeting of the Codes, Regulations and Legislation, the committee reviewed and voted to recommend for adoption the filing four Regulations for approval to the full council, for Emergency Adoption Investigation of Communicable Disease Isolation and Quarantine. Mr. Jason from the Department is present should there be any questions of the members?

Tom Holt Can I have a motion to accept?

Tom Holt Dr. Berliner.

Jeffrey Kraut We're going to take each one of these individually, right?

Tom Holt Yes.

Jeffrey Kraut I have a motion.

Jeffrey Kraut Do I have a second?

Jeffrey Kraut Motion made by Mr. Holt, a second by Dr. Torres.

Jeffrey Kraut Any questions for the department?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Tom Holt For emergency adoption, face coverings for COVID-19 prevention.

Tom Holt I shall move.

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

Jeffrey Kraut Any questions for the department.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Any abstention?

Jeffrey Kraut Motion carries.

Tom Holt Also for emergency adoption, COVID-19 reporting and testing.

Tom Holt I so move

Jeffrey Kraut Motion for Mr Holt, to second by Dr. Berliner.

Jeffrey Kraut Are there any questions, comments?

Jeffrey Kraut Mr. Thomas.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut The motion carries.

Tom Holt And finally, for regular adoption, Article 28 nursing homes, establishment notice and character and competency requirements.

Tom Holt I so move.

Jeffrey Kraut I have a motion. I have a second by Dr. Berliner.

Jeffrey Kraut Any comments or questions?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Tom Holt And this completes the agenda of the Codes, Regulations and Legislation Committee.

Jeffrey Kraut Thank you very much, Mr. Holt, and thank you, the committee members for this morning's meeting as well. I'm now going to turn to Dr. Kalkut to give a report on the actions of the establishment and Project Review Committee.

Dr. Kalkut Good afternoon. I'm going to present the establishment of Project Review Committee from January 27th. This is University Hospitals SUNY Health Science Center of Onondaga County, and this creates a new division to be called Upstate University Hospital and Hutchings to provide inpatient behavioral health services to adolescents and children to be located at 620 Madison Avenue, Syracuse, and certified 29 inpatient psychiatric beds. The department and the committee recommended approval with conditions and contingencies. Second is two one two one four nine S. Hospice of Jefferson County Palliative Care of Jefferson County in Jefferson County. This is to certify for additional residents beds and certify certified to inpatient certified beds for a total certified capacity of 12 resident beds and perform requisite renovations to accommodate the new beds. The department and the committee recommend approval with conditions and contingencies.

Dr. Kalkut I so move.

Jeffrey Kraut I have a motion by Dr. Kalkut.

Jeffrey Kraut I have a second by Dr. Gutierrez.

Jeffrey Kraut Are there any questions about these applications? The department is available to respond.

Jeffrey Kraut Yes, Ms. Monroe.

Jeffrey Kraut You're on mute.

Ann Monroe I just want to clarify, because I saw there was a response from the Hospice of Jefferson to my question last time, and I would just like to clarify with the department. As I understand it, the hospice can have up to 16 beds without coming before us. My question was why are they coming before us? And what I heard was that it was because they decertified two other beds. I just I think the applicant was concerned that I had questions about them expanding their hospice beds. I just want to make sure that we're clear this was coming before us only because of the decertification. Is that accurate?

Shelly Glock I think under 700.2B, a hospice residents can have up to 16 beds. But in answer to your specific question, under 791.2, a full review of an application is required when you have the addition of any Article 40 certified hospice, inpatient or hospice residents beds, so the addition of the beds requires it to be full review.

Ann Monroe Thank you for clarifying that. I just want to be clear I don't have a problem with this application. It was just confusing to me.

Shelly Glock Any other questions?

Dr. Ortiz Should I be recused myself from anything SUNY or that's related to me?

Shelly Glock SUNY at Binghamton right now. I think that that would be appropriate. Unless they pressured you, then you got to get out of the room anyway.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Dr. Kalkut This is North Shore University Hospital in Nassau County. There's a conflict in recusal by Mr. Kraut and Dr. Strange, who have left the the Zoom meeting. This is to construct an eight story addition to include new surgical suites and intensive care units, and certifies 38 additional ICU beds, 20 via an intra network edit transferred from LIJ Valley Stream. This CON is a companion to two one two one two seven and amends and supersedes one seven two two one two. Both the department and the committee recommended approval with conditions and contingencies.

Dr. Kalkut I so move.

Dr. Boufford Motion for approval, second from Dr. Berliner.

Dr. Boufford Any questions from the council members?

Dr. Boufford All in favor?

All Aye.

Dr. Boufford All opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Motion carries.

Dr. Boufford I think we can invite Mr. Kraut and Dr. Strange back.

Dr. Kalkut SC LLC doing business as Pelham Parkway Surgery Center in Bronx County. This is to establish construct the new Multi-specialty Ambulatory Surgery Center to be located at one thousand Pelham Parkway South in the Bronx. A currently vacant space in a multi-use building that includes Morningside Nursing Home and Rehabilitation Center. The department recommends approval with conditions and contingencies with expiration of the operating certificate five years from the date of issuance. The committee recommends the same with approval with conditions contingency with the operating certificate expiration five years from the date of issuance.

Dr. Kalkut I so move.

Shelly Glock Dr. Kalkut, are you doing each one separately or you doing them as a batch?

Dr. Kalkut I was going to do the next two as a batch. We'll do each section.

Jeffrey Kraut I have a motion. I have a second by Mr. Dr. Berliner. Any questions? All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstention?

Jeffrey Kraut The motion carries.

Dr Kalkut Doing business as B Channel Diagnostic and Treatment Center in Queens County. This is to establish and construct a diagnostic and treatment center to be located at 50/50 Beach Cattle Drive in Far Rockaway in the Peninsula Nursing and Rehabilitation Center. The department and the committee recommend approval with conditions and contingencies.

Dr Kalkut Doing business Avalon Medical Group in Orange County. This is just to establish a construct to diagnose and treatment center to be located at 121 Executive Drive in New Windsor for primary and specialty care. Through the relocation, consolidation and conversion of multiple private practices. Department of the Committee recommend approval with conditions and contingencies.

Dr Kalkut I so move.

Jeffrey Kraut I have a motion. I have a second by Dr. Berliner. Any questions on these two applications? Hearing none, all those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions? The motion carries.

Dr Kalkut I'm going to batch the next seven applications for applications for dialysis centers, . This is envy and why Partners LLC doing business as US renal care from fax to dialysis Oneida County. This is to establish MVMY Partners One LLC as the new operator

of the 36 patient Chronic Renal Dialysis Center, located at 1676 Sunset Avenue in Utica, currently operated by St. Luke's. MVNY Partners two LLC doing business as US Renal Care St. Luke's Home Dialysis is in Oneida County. This is to establish MVNY Partners two LLC is the operator of the Station Dialysis Center, located at 1650 Champlain Avenue in Utica, currently operated by St. Luke's, and certify home chemo and home peritoneal dialysis training and support services. Doing business as U.S. Renal Care Masonic Community Dialysis in Oneida County. This is to establish MVNY Partners three LLC is the operator of the 2s0 Station Dialysis Center, located at 21 50 Bleecker Street at Utica, operated currently by St. Luke's and to certify home, hemo and home peritoneal dialysis training and support services. Doing business as U.S. Renal Home Dialysis. This is to establish MVNY Partners for LLC is the operator of the 16 Station Dialysis Center located at 91 Perimeter Road in Rome, currently operated by St. Luke's, and certified home hemo and Home Perineal dialysis training and support services. MVNY Partners five LLC doing business as U.S. Renal Dialysis. MVNY Partners Five LLC is the operator of the 8 station dialysis center, located at 201 East St. St. in her currently operated by Faxon St. Luke's and certified home hemo and home peritoneal dialysis training and support services. MVNYPartners six LLC doing business as US Renal Care at Hamilton Dialysis in Madison County. Establish MVNY Partners Six LLC is the operator of the Station Dialysis Center, located 10 East St. Hamilton, currently operated by St. Luke's and Certified dialysis training and support services. MVNY Partners seven LLC doing business as US Renal Care Oneida Dialysis in Madison County established MVNY Partners Seven LLC is the operator of the 8 station Dialysis Center, located at 131 Main Street in Oneida, currently operated by St. Luke's, and certified home hemo and perineal dialysis training and support services. For each of these applications, both the Department and the committee recommended approval with conditions and contingencies.

Dr Kalkut I so move.

Jeffrey Kraut I have a motion from Dr. Kalkut.

Jeffrey Kraut May I have a second?

Jeffrey Kraut Dr. Berliner.

Shelly Glock Any questions on these seven applications?

Dr. Boufford I'm not on the committee, I was obviously a little. I was interested. Let's see, just sort of a significant, if you will, sort of, if you will, corporate takeover of a whole set of services in these two counties. I was wondering, could you just talk a little bit about the MVNY Partners and the conversation that occurred in the committee? I'm sure you all were doing due diligence on them and they're meeting the various criteria for assuming responsibility for this an array of dialysis services.

I'd ask Shelly to also comment on it. But the discussion was about St. Luke's getting away for the dialysis business. This is a subsidiary of US Renal Care and the discussion really was about control and physician participation, as we have had in the past about dialysis centers. I don't think there was a specific issue with US Renal. Shelly, can I ask you to comment?

Shelly Glock Yes.

Shelly Glock Thank you.

Shelly Glock That's correct that we had representatives of U.S. Renal Care, Tom Weinberg, who was their executive Vice President and general counsel, was here, as well as the two local physicians who will be part of this membership entity. It's really a partnership with US Renal Care and the two local physicians. And as Dr. Kalkut highlighted, there was a very robust conversation around, you know, control of things about medication dosing, formulary, quality, standard staffing, and I believe answered most of the committee's questions at that time. I don't know if Dr. Gutierrez I saw his hand up had an additional question or had something to add to that.

Jeffrey Kraut Dr. Gutierrez, would you like to add your comment as well?

Dr. Gutierrez Yes. I must say that I took a special time in questioning many of the areas that I has shown concern about this takeover by corporate dialysis groups. The questions were answered satisfactorily. I remain with concern about the fact that those areas of corporate dialysis have been an issue in the past. But for this specific seven applications, the answers given to me were satisfactory and I at that point I voted for to move forward with the applications. Let me repeat what the concerns were. Number one is, who has control over formulary. Number two had to do with what kind of dosage and vials they were using for the administration of a research project like substances that had been in one of the allegations in the article several years ago, which, by the way, has never been answered, to my knowledge. They were using the content of the vial to bill differently and throw away a lot of throughput yesterday because it was more convenient to bill. The other prominent one has to do with corporate dialysis failing to make a point at telling the patients receiving dialysis that the cure for renal failure is renal transplantation. I was reassured that that was high on the list of things that they did and repeatedly do with the patients, so I was satisfied, as I said, and I voted to pass the applications.

Jeffrey Kraut Mr. Lawrence.

Mr. Lawrence Dr. Boufford, you will be proud of me. I ask about prevention and what that plans were on the way and what we're proposing to prevent kidney failure and or to educate people about the things that they can be. They could be doing in the community and whether they were working with local community partners around that. They do not present or provide a satisfactory response. I did not also want to hold that this particular application hostage to a more general public policy concern.

Jeffrey Kraut Thank you.

Jeffrey Kraut Any other questions?

Dr. Boufford Sorry. Relating to Mr. Lawrence's comment. I think we had talked about extending our CON condition about acute care facilities, hospitals basically addressing prevention agenda into these specialty ambulatory care settings sites. I hope we can revisit that issue because it might have at least it sends a signal. I think potentially going forward can hope hope to get more community engagement by these facilities in the prevention space. I appreciate, Harvey, you're raising that question.

Jeffrey Kraut Thanks.

Jeffrey Kraut Dr. Torres, and then I'd like to call a vote.

Dr. Torres I want to echo Dr. Boufford just mentioned, and I ask that anybody that's interested in doing meaningful work in the community and building these amazing facilities to not forget about the community resources that are out there to address the social determinants of health and patient and client and family education. Because there is a tremendous disconnect and it's disheartening to see, you know, fancy places, fancy lobby, fancy everything. Again, they're not really engaged in a grassroots type of empowerment model of education. I'm hoping to be able to just continue to echo that and for that to be integrated into our prevention agenda.

Dr. Torres Thank you.

Jeffrey Kraut Any other questions?

Jeffrey Kraut Dr. Gutierrez.

Jeffrey Kraut You're on mute. You're on mute. We don't hear you.

Dr. Gutierrez I'm sorry. My apologies. The article that I was referring to, you can find that is in the quarterly Journal of Economics Volume 135, Issue 1 from February of 2020 Page 221 to 227. It was published on November 19th, 2019. Go to that article and you will see what my concerns were. And if you cannot find it, I'll send it to you.

Dr. Gutierrez Thank you.

Jeffrey Kraut Honestly, I think it's helpful if we do send it around. Colleen, if you can get that from Dr. Gutierrez.

Dr. Gutierrez My copy shows the areas that I highlighted. Those are the things that I reacted to.

Dr. Gutierrez Thank you.

Jeffrey Kraut Thank you.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Jeffrey Kraut Dr. Kalkut.

Dr. Kalkut 2 0 2 1 8 5 E, as the new operator of the Battle Nursing Home Company Certified Home Health Agency. Both the department and the committee recommended approval with a condition and contingencies.

Jeffrey Kraut I have a motion.

Jeffrey Kraut May I have a second?

Jeffrey Kraut Dr. Berliner.

Jeffrey Kraut Any questions?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut The motion carries.

Dr. Kalkut 2 0 2 0 5 7B Premier SC LLC doing business as Premier Ambulatory Surgery Center of New York LLC in Queens County. This is to establish and construct a new multi-specialty, freestanding ambulatory surgery center with four operating rooms to be located at 176 60 Union Turnpike and Fresh Meadows. Both the department and the committee recommend approval and contingencies with an expiration of the operating certificate five years from the date of issuance.

Jeffrey Kraut I have a motion by Dr. Kalkut. I have a second by Dr. Torres.

Jeffrey Kraut Any questions?

Jeffrey Kraut Yes, Ms. Monroe.

Ann Monroe Just for those who weren't at the committee meeting, we did have a discussion with this applicant and we hope it carries with others about our concern about titles that imply a certain level of quality. Has such a title for itself and how much we would like to see different names for organizations. It shouldn't hold this up, but it is a concern of the committee and certainly the council that when you have excellent and premier clinic that you could be misleading in your communication. For those who weren't at the committee, I just wanted you to know we raised that.

Jeffrey Kraut Thank you for reminding us. Wwe did ask the department to look at what actions we can or can't take, although I guess the only way to send that message is to turn one down with that name in the future. We'll see what the department comes back with.

Jeffrey Kraut Any other questions?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut I have opposed Dr. Torres.

Jeffrey Kraut Dr. Lim is abstaining.

Jeffrey Kraut The motion carries.

Dr. Kalkut 2 1 1 1 5 B, W Medical LLC doing business as W Health center Kings County. To establish a constructed diagnostic and treatment center. Located at 70 Lee Avenue in Brooklyn. Both the department recommended approval with conditions and contingencies. The committee recommended approval with conditions and contingencies with one member opposing.

Dr. Kalkut I was going to batch them, yes. I think because we had a member opposing let's not batch. I so move.

Jeffrey Kraut May I have a second?

Jeffrey Kraut I have a second.

Jeffrey Kraut Any questions?

Jeffrey Kraut Yes, Dr. Boufford.

Jeffrey Kraut I'd just like to hear Dr. Gutierrez's concerns.

Jeffrey Kraut You had cast a no vote at EPRC on West Medical LLC, doing business as W Health center, not West Medical.

Dr. Gutierrez I had concerns about the in the character and competence area. I don't remember the name of the individual who was at the I believe the purchasing company. Based on that, I'd decided that I was not voting for it.

Jeffrey Kraut And the department, just to be clear, the department did review character and competence and found no issue.

Jeffrey Kraut Any other questions?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Dr. Gutierrez.

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Dr. Kalkut E Perry Avenue, Family Medical Corporation in Bronx County. This is the transfer 100 percent ownership from the existing members to two new members at eighty five percent and 15 percent, respectively. The department recommended approval with

conditions and contingencies. The committee recommended approval with a condition and continued with one member abstaining. I so move.

Jeffrey Kraut I have a motion from Dr. Kalkut.

Jeffrey Kraut May I have a second?

Jeffrey Kraut Thank you, Dr. Berliner.

Jeffrey Kraut Are there any questions?

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut Abstentions?

Jeffrey Kraut The motion carries.

Jeffrey Kraut That concludes my report.

Jeffrey Kraut Thank you very much, Dr. Kalkut and members of the council and the staff,. The public portion of the Public Health and Health Planning Council meeting of February 10th, 2022 is now adjourned. Our next regularly scheduled committee day will be on March 24th and the full council will convene on Tuesday, April 5th. As you heard us discuss, we are asking for a Public Health and Health Planning meeting to be scheduled on or about March 1st. That will be confirmed in the next day. We are going to probably be required to have a special Establishment and Project Review Committee to be held on the second, followed by a full council meeting, so we'll be sending out notifications as to that and the particulars. I suspect certainly by the March 24th date, we're hopeful we're going to resume in-person meetings. If you could just accommodate your schedule. I will know what the rules will be by that time about people who are unable to travel. I think it's in Albany on that day or might be in New York City. I'm not sure, but we will confirm all those dates. Just monitor your calendar. But again, I thank you. Thank the staff. Long day. another day for the council.

Jeffrey Kraut Thank you very much.

Jeffrey Kraut We're adjourned.

State of New York
Special Public Health and Health Planning Council

Minutes
March 2, 2022

The meeting of the Public Health and Health Planning Council was held on Wednesday, March 2, 2022 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner – Zoom	Mr. Peter Robinson – Albany
Mr. Thomas Holt – Albany	Ms. Nilda Soto – Zoom
Dr. Gary Kalkut – Zoom	Dr. Theodore Strange – Zoom
Mr. Jeffrey Kraut – Zoom	Mr. Hugh Thomas - Zoom
Mr. Scott LaRue – Zoom	Dr. Anderson Torres - Zoom
Mr. Harvey Lawrence - Zoom	Dr. Patsy Yang – Zoom
Dr. Sabina Lim – Zoom	
Ms. Ann Monroe – Zoom	
Dr. Mario Ortiz – Zoom	

DEPARTMENT OF HEALTH STAFF PRESENT

- | | |
|-----------------------------|-------------------------------|
| Mr. Udo Ammon - Zoom | Mr. George Macko - Albany |
| Ms. Lynn Baniak - Zoom | Ms. Kathy Marks – Albany |
| Mr. Jason Corvino – Zoom | Ms. Marthe Ngwashi - Albany |
| Ms. Shelly Glock – Albany | Mr. Michael Stelluti - Albany |
| Mr. Brian Gallagher - Zoom | Ms. Lisa Thomson - Albany |
| Mr. Michael Heeran – Albany | Ms. Jennifer Treacy - Albany |
| Mr. Adam Herbst - Zoom | |
| Dr Eugene Heslin – Albany | |
| Ms. Colleen Leonard- Albany | |

INTRODUCTION

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

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 ESTABLISHMENT OF HEALTH CARE FACILITIES

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

CON Applications

Residential Health Care Facilities – Establishment

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	202054 E	Forest View Center for Rehabilitation & Nursing (Queens County)	Approval
2.	211233 E	Glen Island Center for Nursing and Rehabilitation (Westchester County)	Approval
3.	211276 E	J&H Operations, LLC d/b/a Swan Lake Nursing & Rehabilitation (Suffolk County)	Contingent Approval
4.	202203 E	Kingsway Arms Nursing Center, Inc. (Schenectady County)	Contingent Approval
5.	202084 E	Lawrence Nursing Care Center, Inc. (Queens County)	Contingent Approval
6.	202066 E	New Vanderbilt Rehabilitation and Care Center, Inc. (Richmond County)	Approval
7.	201024 E	Optima Care Brentwood, LLC d/b/a Maria Regina Rehabilitation and Nursing (Suffolk County)	Contingent Approval
8.	192228 E	Betsy Ross Operations, LLC d/b/a Betsy Ross Rehabilitation and Nursing (Oneida County)	Contingent Approval

Mr. Robinson introduced applications 202054, 211233, 211576, 202203, 202084, 202066, 201024, and 192228. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried. Please see pages 1 through 3 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

NO APPLICATIONS

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.

ADJOURNMENT:

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

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
SPECIAL FULL COUNCIL
TRANSCRIPT
MARCH 2, 2022
ALBANY

Jeffrey Kraut I'm Jeff Kraut. I have the privilege to call to order the meeting of the Special Public Health and Health Planning Council of March 2nd, 2022. I want to welcome members, participants and observers. This meeting was scheduled in light of the new regulations and process that the council was going to engage in with respect to nursing home ownership, character and competence, and the role of the Ombudsman in evaluating and providing information for our consideration with respect to the character and competence of potential applicants. As a consequence of those regulations, we thought it prudent and the council was in agreement to hold this special meeting in order to give us ample time to review those applications during the Establishment and Project Review Committee and for the Council then to subsequently review the recommendations of that committee. In order to have a meeting today, I want to remind our council members, staff that we're subject to the open meeting law that's broadcast over the internet. We use synchronized captioning. It's important that we don't speak over each other. When you do speak, please identify yourself as a council member or a staff member. This will be helpful. And for those of you in the audience, we remind you that there's a form that should be filled out before you enter our meeting room, which records your attendance at the meeting.

Jeffrey Kraut I now turn over the meeting for presentation by Mr. Robinson to give the results and recommendations of the Project Review and Establishment Committee.

Peter Robinson Thank you, Mr. Kraut.

Peter Robinson In the interests of trying to maintain a quorum and we do expect that members have to leave quickly, we are going to batch these applications in order to kind of move through this as quickly as possible while that quorum still exists.

Jeffrey Kraut I just want to make sure that if anybody has any objection to the batching, please indicate now and then we'll take any application you want out of the batch.

Jeffrey Kraut Hearing, there's none.

Peter Robinson Thank you.

Jeffrey Kraut Peter, please proceed.

Peter Robinson Thank you.

Peter Robinson This is a batch for applications for residential health care facilities. Application 2 0 2 0 5 4 E, Forest View Centre for Nursing and Rehabilitation The department recommends approval with a condition. Application 2 1 1 2 3 3 E, Glenn Island Centre for Nursing and Rehabilitation in Westchester County. Department and the committee recommend approval with a condition. Application 2 1 1 2 7 6 E, J and H Operations LLC doing business as Swan Lake Nursing and Rehabilitation in Suffolk

County. The department is recommending approval with a condition and contingencies. Application 2 0 2 2 0 3 E, Kingsway Arms Nursing Center Inc in Schenectady County. Department recommending approval for a condition and contingencies. Application 2 0 2 0 8 4 E, Lawrence Nursing Care Center Inc in Queens County Just making again the clarification that in the exhibit, it states approval, but should state contingent approval. The department is recommending approval with a condition and contingencies. Application 2 0 2 0 6 6 E, New Vanderbilt Rehabilitation and Care Center Inc in Richmond County. Department recommending approval with a condition. Application 2 0 1 0 2 4 E, Brentwood LLC doing business as Maria Regina Rehabilitation and Nursing in Suffolk County. The department is recommending approval with a condition and contingencies. Application 1 9 2 2 2 8 E, Betsy Ross Operations LLC doing business as Betsy Ross Rehabilitation and Nursing in Oneida County. The department recommended approval with a condition and contingencies.

Peter Robinson On behalf of the Establishment Committee, I move those applications for approval.

Jeffrey Kraut I have a motion from Mr. Robinson of a batch of eight applications. Before I move the batch and if there's questions, I want to ask again if you would like to remove any one of those applications out of the batch for consideration.

Jeffrey Kraut Howard, I know I saw your hand up. Do you want to remove any item?

Jeffrey Kraut Not yet.

Dr. Berliner That was a second.

Jeffrey Kraut Okay.

Jeffrey Kraut May I have a motion?

Jeffrey Kraut Hearing none that we're okay to move this as a badge. I have a motion for Mr. Robinson. I have a second from Dr. Berliner.

Jeffrey Kraut Thank you very much.

Jeffrey Kraut Are there any comments from the Department of Health?

Jeffrey Kraut Any questions from the council members?

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 It's unanimous.

Jeffrey Kraut Thank you very much for participating in this special council meeting.

Jeffrey Kraut I'm now going to have a motion to adjourn the full meeting of the Public Health and Health Planning Council.

Jeffrey Kraut Was so moved.

Jeffrey Kraut We're now adjourned.

Jeffrey Kraut I want to make you aware that the next committee day is going to be on March 24th and on Tuesday, April 5th, we'll have the next full council meeting where we will report out on yesterday's Public Health and Health Planning Committee meeting as well. I thank you all. Appreciate the effort you made to hold this special meeting. I think it was helpful just to take this out of cycle in case there were any questions and look forward to seeing you on the 24th of March and April 5th again.

Jeffrey Kraut Take care, everybody.

Jeffrey Kraut Thank you.

State of New York
Special Public Health and Health Planning Council

Minutes
March 17, 2022

The meeting of the Public Health and Health Planning Council was held on Thursday, March 17, 2022 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany and via Zoom. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner – Zoom	Mr. Peter Robinson – Zoom
Dr. Angel Gutiérrez – Zoom	Dr. John Rugge - Zoom
Mr. Thomas Holt – Albany	Ms. Nilda Soto – Zoom
Mr. Jeffrey Kraut – Zoom	Dr. Theodore Strange – Zoom
Mr. Scott LaRue – Zoom	Mr. Hugh Thomas - Zoom
Mr. Harvey Lawrence - Zoom	Dr. Anderson Torres - Zoom
Dr. Roxanne Lewin - Zoom	Dr. Kevin Watkins – Zoom
Ms. Ann Monroe – Zoom	Dr. Patsy Yang – Zoom
Dr. Mario Ortiz – Zoom	
Ms. Ellen Rautenberg - Zoom	

DEPARTMENT OF HEALTH STAFF PRESENT

Mr. Mark Furnish – Zoom	Ms. Kathy Marks – Zoom
Mr. Michael Heeran – Albany	Dr John Morley - Albany
Mr. Jonathan Karmel - Albany	Ms. Marthe Ngwashi - Albany
Ms. Colleen Leonard- Albany	Mr. Jason Riegert – Albany
Ms. Emily Lutterloh - Albany	Mr. Michael Stelluti - Albany
Ms. Karen Madden - Zoom	Ms. Lisa Thomson - Albany

INTRODUCTION

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

REGULATION

Mr. Kraut introduced Mr. Holt 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 Addition of Section 2.61 to Title 10 NYCRR, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 NYCRR & Sections 487.9, 488.9 and 490.9 of Title 18 NYCRR (Prevention of COVID-19 Transmission by Covered Entities)

Mr. Holt introduced for emergency adoption the Addition of Section 2.61 to Title 10 NYCRR, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 NYCRR & Sections 487.9, 488.9 and 490.9 of Title 18 NYCRR (Prevention of COVID-19 Transmission by Covered Entities). Mr. Holt motioned for emergency adoption. Dr. Gutiérrez seconded the motion. The motion for emergency adoption carried. Please see pages 1 and 2 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
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
FULL COUNCIL MEETING
MARCH 17, 2022
IMMEDIATELY FOLLOWING COMMITTEE ON CODES, REGULATIONS
AND LEGISLATION (10:15 AM)
ESP, CONCOURSE LEVEL, MEETING ROOM 6, ALBANY
MEETING TRANSCRIPT

Jeffrey Kraut My name is Jeff Kraut. I am calling to order a special meeting of the Public Health and Planning Council for March 17th, 2022. Today, we have one item on the agenda is to receive the report of a regulation for Mr. Holt, which will present for regulation for emergency adoption.

Jeffrey Kraut Mr. Holt, I turn it over to you.

Tom Holt Good morning. At today's meeting of the committee on Codes, Regulations and Legislation, the committee reviewed and voted to recommend adoption of the following emergency regulation proposal for approval for the full council. For Emergency Adoption Prevention of COVID-19 Transmission by covered entities. Mr. Jonathan Karmel and Dr. Emily Lutterloh from the department are present should there be any questions from the members. I move to accept this regulation.

Jeffrey Kraut I have a motion.

Jeffrey Kraut May I have a second?

Jeffrey Kraut I have a second, Dr. Gutierrez.

Jeffrey Kraut Are there any questions or comments that any of the council members would like to ask of the Department of Health or make with respect to this regulation?

Jeffrey Kraut Dr. Gutierrez.

Jeffrey Kraut You're on mute, Dr. Gutierrez.

Jeffrey Kraut Thank you.

Jeffrey Kraut There you go.

Dr. Gutierrez Do we have a quorum, Jeffrey?

Jeffrey Kraut Colleen? I believe we do based on my count.

Colleen Yes, we do.

Jeffrey Kraut We have a legally constituted quorum.

Jeffrey Kraut Any other questions?

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 I want to thank everybody for meeting on this emergency basis. We do have the full meeting of the Public Health and Health Planning Council is going to be going to be adjourned. Our next committee day is going to be next week on March 24th. I'd encourage everybody to try to come in person if that is possible. If not, please to maintain a quorum, we'd like you to participate via remote. Again, our full meeting will be held on Tuesday, April 5th. I just want to wish all of those who are acknowledging and celebrating. All New Yorkers acknowledge it's St. Patrick's Day. We look forward, hopefully to see you next week. Thank you very much and thank you for doing this so quickly on short notice. Take care.

Jeffrey Kraut We are adjourned.

Jeffrey Kraut Bye bye.

**Public Health and Health Planning Council
2020 Annual Report**

I. General Council Activities in 2020

The Public Health and Health Planning Council (PHHPC) held a total of 11 meetings.

<u>Meeting Dates</u>	<u>Meeting</u>	<u>PHHPC Meeting Location</u>
1/23/2020	Committee Day: Establishment and Project Review Committee	NYC
2/6/2020	Committee on Codes, Regulations and Legislation Annual Full Council	NYC
3/9/2020	Special Committee on Codes, Regulations and Legislation Special Full Council	NYC Albany Buffalo Rochester
7/16/2020	Committee Day: Establishment and Project Review Committee	Virtual
7/30/2020	Committee on Codes, Regulations and Legislation Full Council	Virtual
8/12/2020	Joint Public Health Committee and Health Planning Committee	Virtual
8/19/2020	Joint Public Health Committee and Health Planning Committee	Virtual
9/24/2020	Committee Day: Establishment and Project Review Committee	Virtual
10/8/2020	Full Council	Virtual
11/19/2020	Committee Day: Establishment and Project Review Committee	Virtual
12/9/2020	Committee on Codes, Regulations and Legislation Full Council	Virtual

II. Membership

Jeffrey Kraut, Chair

Jo Ivey Boufford, M.D., Vice Chair

Judy Baumgartner

John Bennett, Jr., M.D., F.A.C.C., F.A.C.P.

Howard Berliner, SC.D.

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

Kathleen Carver Cheney, Esq.

Angel Alfonso Gutiérrez, M.D.

Thomas Holt

Gary Kalkut, M.D.

Scott La Rue

Harvey Lawrence

Glenn Martin, M.D., D.F.A.P.A., CIP

Ann Monroe

Mario Ortiz, R.N., Ph.D., F.A.A.N.

Ellen Rautenberg, M.H.S.

Peter Robinson

John Ruge, M.D., MPP

Nilda Soto, MS Ed

Theodore Strange, M.D.

Hugh Thomas, Esq.

Anderson Torres, Ph.D., LCSW-R

Kevin Watkins, M.D., M.P.H.

Patsy Yang, Dr.P.H.

Dr. Howard Zucker, Commissioner of Health, Ex-Officio

The PHHPC consists of the following Standing Committees and Ad Hoc Committee

- Committee on Codes, Regulations and Legislation
- Committee on Establishment and Project Review
- Committee on Health Planning
- Committee on Public Health
- Ad Hoc Committee to Lead the Prevention Agenda

III. Major Accomplishments of Committees in 2020

A. **Committee on Codes, Regulations and Legislation**

Members

Angel Alfonso Gutiérrez, M.D., Chair

Thomas Holt, Vice Chair

Judy Baumgartner

Kathleen Carver Cheney

John Ruge, M.D., MPP

Kevin Watkins, M.D., M.P.H.

Patsy Yang, Dr.P.H.

Work Conducted in 2020

EMERGENCY ADOPTION

In 2020, the Codes Committee recommended, and the Council subsequently approved, the following regulatory proposals for emergency adoption. These regulatory changes addressed critical public health concerns.

Addition of Subpart 9-3 to Title 10 NYCRR – (Prohibition on the Sale of Electronic Liquids with Characterizing Flavors) This proposed emergency regulation furthers this legislative objective by prohibiting the possession, manufacture, distribution, sale or offer for sale of flavored electronic liquids (e-liquids) to discourage youth electronic cigarette (e-cigarette) use.

20-05 Amendment of Sections 2.1 and 2.5 of Title 10 NYCRR (Communicable Diseases Reporting and Control - Adding Severe or Novel Coronavirus) This emergency regulation is necessary to confirm the Commissioner’s designation and permit the Department of Health (Department) to systematically monitor for this disease and permit decisions about isolation or quarantine of suspect or confirmed cases to be made on a timely basis. The legislative objective of PHL § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to designate communicable diseases, thereby permitting enhanced disease monitoring and authorizing isolation and quarantine measures, if necessary, to prevent further transmission.

20-06 Amendment of Part 2 and Section 405.3 of Title 10 NYCRR (Investigation of Communicable Disease; Isolation and Quarantine) These emergency regulations clarify the authority and duty of the New York State Department of Health (“Department”) and local health departments to protect the public in the event of an outbreak of communicable disease, through appropriate public health orders issued to persons diagnosed with or exposed to a communicable disease. These regulations also require hospitals to report syndromic surveillance data to the Department upon direction from the Commissioner and clarify reporting requirements for clinical laboratories with respect to communicable diseases.

ADOPTION

In 2020, the Codes Committee recommended, and the Council subsequently approved, 5 regulatory proposals. These regulatory changes were designed to promote health and safety, expand access to services, and align state policies with transformative changes in health care. The following provisions of Title 10 of the New York Codes Rules and Regulations (NYCRR) were amended:

Amendments to 405.4 of Title 10 NYCRR – (Physician Limited Permit Holder Requirements) These amendments would allow an unlicensed physician to provide medical services in a “general hospital” under a limited permit to practice medicine under Education Law §6525 when the State Education Department (SED) determines that the applicant meets SED criteria for issuance of a limited permit and appropriate levels of supervision and oversight are in place. 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.

Amendments to Subpart 765-1 of Title 10 NYCRR – (Licensed Home Care Services Agencies) The proposal would amend various provisions of Part 765 of Title 10 NYCRR to implement recently enacted legislation. The proposed regulation is necessary to implement statutory changes required under Section 9-b, Part B of Chapter 57 of the Laws of 2018. The proposal will revise Part 765 of Title 10 NYCRR to include the relevant statutory requirements related to the new public need determination for licensed home care services agencies, the review of the proposed agency’s financial feasibility, and the process for reviewing applications for licensure.

19-39 Amendment of Sections 404.12, 405.3, 415.26, 751.6, 763.13, 766.11, 794.3 and 1001.11 of Title 10 NYCRR - (Reducing Annual Tuberculosis Testing of Health Care Workers) These proposed amendments would require small businesses and local governments that operate hospitals, hospices, CHHAs, LHCSAs or ALRs, to revise policies for tuberculosis testing that ensure adequate baseline assessments, and that replace serial testing with annual individual risk assessment and education, with further testing as indicated. The legislative objectives of PHL Articles 28, 36, 40, and 46-B includes the protection of the health of the residents of the State by assuring the efficient provision of health services of the highest quality by a range of providers, including hospitals, hospices, CHHAs, LHCSAs and ALRs.

19-40 Amendment of Section 709.14 of Title 10 NYCRR - (Cardiac Services) These proposed regulations would allow any facility defined as a general hospital pursuant to PHL § 2801(10), including those operated by a small business or local government, to initiate a Cardiac Surgery Center if they can demonstrate a patient base sufficient to support 300 cardiac surgery cases annually. Three hospitals that will be affected by this proposed regulation are small businesses (defined as 100 employees or less). The legislative objectives of PHL Article 28 include the protection and promotion of the health of the residents of the State by requiring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost.

19-04 Amendment of Subpart 5-1 of Title 10 NYCRR - (Maximum Contaminant Levels (MCLs)) These regulations will amend 10 NYCRR 5-1.52, Table 3, to list PFOA, PFOS and 1,4-dioxane and their proposed MCLs. In addition, these regulations will amend 10 NYCRR 5-1.52, Table 9C, to include these three contaminants in the current minimum monitoring requirements for additional organic chemicals. Table 9C was also amended to remove references to “Group 1” and “Group 2” chemicals as these groupings are outdated and no longer relevant. The MCLs apply to finished water. The legislative objective of sections 201 and 225 of the PHL is to ensure that PHHPC, in conjunction with the Commissioner of Health, protect public health by adopting drinking water sanitary standards. In accordance with that objective, this regulation amends the SSC by revising Part 5 to enhance current protections governing public water systems. Furthermore, this amendment will update the SSC in accordance with the recommendations of the Drinking Water Quality Council by establishing specific maximum contaminant levels (MCLs) for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS) and 1,4-dioxane.

REGULATORY PROPOSALS FOR INFORMATION

In 2020, the following proposals to amend provisions of Title 10 NYCRR were presented to the Codes Committee and the Council for information after they were filed in the State Register for a Notice of Proposed Rulemaking.

19-39 Amendments to Sections 404.12, 405.3, 415.26, 751.6, 763.13, 766.11, 794.3 and 1001.11 of Title 10 NYCRR – (Reducing Annual Tuberculosis Testing of Health Care Workers) These proposed amendments would require small businesses and local governments that operate hospitals, hospices, CHHAs, LHCSAs or ALRs, to revise policies for tuberculosis testing that ensure adequate baseline assessments, and that replace serial testing with annual individual risk assessment and education, with further testing as indicated. The legislative objectives of PHL Articles 28, 36, 40, and 46-B includes the protection of the health of the residents of the State by assuring the efficient provision of health services of the highest quality by a range of providers, including hospitals, hospices, CHHAs, LHCSAs and ALRs.

20-05 Amendment of Sections 2.1 and 2.5 of Title 10 NYCRR - (Communicable Diseases Reporting and Control - Adding Severe or Novel Coronavirus) These proposed amendments are necessary to confirm the Commissioner’s designation and permit the Department of Health (Department) to systematically monitor for this disease and permit decisions about isolation or quarantine of suspect or confirmed cases to be made on a timely basis. The legislative objective of PHL § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to designate communicable diseases, thereby permitting enhanced disease monitoring and authorizing isolation and quarantine measures, if necessary, to prevent further transmission.

B. Committee on Establishment and Project Review

Members

Peter Robinson, Chair	
Gary Kalkut, M.D., Vice Chair	Jeffrey Kraut
Judy Baumgartner	Scott LaRue
John Bennett, Jr., M.D.	Harvey Lawrence
Howard Berliner	Glenn Martin, M.D.
Lawrence S. Brown, Jr., M.D., M.P.H.	Ann Monroe
Angel Gutierrez, M.D.	Hugh Thomas, Esq.
Thomas Holt	Anderson Torres, Ph.D.

Project Review 2020

The following projects were reviewed by the Establishment and Project Review Committee and forwarded to the Public Health and Health Planning Council in 2020.

HOSPITALS

Hospital Active Parents / Co-Operators

- 192236 E Glens Falls Hospital
Establish Albany Medical Center as the active parent/co-operator of Glens Falls Hospital
- 202061 E Rochester Regional Health
Establish Rochester Regional Health as the second active parent/co-operator of three hospitals (Canton-Potsdam, Gouverneur, and Massena) and as a corporate parent of a certified home health agency (Northern Lights Home Health Care)

Hospital Mergers

- 202049 C Brookdale Hospital Medical Center
Merge Interfaith Medical Center and Kingsbrook Jewish Medical Center into Brookdale Hospital Medical Center and certify all sites as divisions and extension clinics of Brookdale
- 192206 C Samaritan Hospital
Merge The Burdett Care Center into Samaritan Hospital, resulting in the certification of maternity services and 15 maternity beds at Samaritan for a total of 272 certified beds

Hospital Modernizations or Expansions

- 192324 C Good Samaritan Hospital Medical Center \$ 525,230,772
Construct a six-story addition on the main hospital campus to include a new emergency department, a 16-operating room suite, 36 private rooms and shell space with no change to certified bed capacity and decertify Clinic Part-Time Services
- 192049 C Mount Sinai Beth Israel \$ 140,677,876
Certify a new 115 bed behavioral health division located at 45 Rivington Street, NY with 64 psych beds, 26 chem dependent detox beds and 25 chem depend rehab beds through the relocation of beds and services from the current Mt. Sinai Beth Israel Hosp
- 192244 C United Health Services Hospitals, Inc. - Wilson Medical Center \$ 131,242,217
Construct a six-story addition to expand the Emergency Department, add MRI services, add 30 private medical/surgical beds, and add shell space for future additional private rooms, with no change in current total beds

Cardiac Surgery

- 192008 C NYU Langone Hospitals
Certify a Pediatric Heart Transplant Program
- 142276 C White Plains Hospital Center \$ 1,663,488
Certify an adult cardiac surgery program

Cardiac Catheterization Services

182006 C	Coney Island Hospital Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) services and install requisite equipment (To be processed as Full Review)	\$ 443,172
192063 C	Jacobi Medical Center Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) and convert the existing diagnostic cardiac catheterization lab to PCI-capable cardiac catheterization laboratory (To be processed as a Full Review)	
182119 C	John T. Mather Memorial Hospital of Port Jefferson New York, Inc. Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization - Electrophysiology (EP) and perform renovations to create two cardiac catheterization labs	\$ 11,778,476
192093 C	Lenox Health Greenwich Village Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization - Electrophysiology (EP) services, with requisite construction, and transfer six medical/surgical beds from Lenox Hill Hospital	\$ 32,164,224
191308 C	Mercy Medical Center Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) service (To be processed as Full Review)	
172332 C	Plainview Hospital Certify Cardiac Catheterization-Percutaneous Coronary Intervention (PCI), and Cardiac Catheterization-Electrophysiology (EP) services, with requisite construction	\$ 17,506,164
191306 C	St. Joseph Hospital Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI), with requisite renovations	\$ 3,699,224
151185 C	Wyckoff Heights Medical Center Certify Cardiac Catheterization-Percutaneous Coronary Intervention (PCI), and convert existing diagnostic lab to PCI-capable lab (To be processed as Full Review)	

Hospital Ambulatory Surgery Centers

201236 C	Strong Memorial Hospital Certify and construct a new multi-specialty ambulatory surgery center extension clinic to be located at 10 Miracle Mile Drive, Rochester	\$ 83,487,786
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Hospital Beds and Services

202029 C	Claxton-Hepburn Medical Center Renovate vacant space on the 4th floor of the hospital to create a 12-bed Children and Adolescent Behavioral Health Inpatient Unit and certify 12 new psychiatric beds for a new total certified bed count of 127 beds (SW II)	\$ 3,198,886
201151 C	Southside Hospital Construct a new 6-story inpatient building and certify 60 net new medical/surgical beds. The building will house 60 private medical/surgical rooms, 6 operating rooms, 2 endoscopy rooms, and 49 prep and recovery PACU bays	\$ 417,531,811

Project Review 2020

201237 C	Strong Memorial Hospital Certify a new extension clinic to provide imaging and physical therapy services including therapy pools, to be located at 10 Miracle Mile Drive, Rochester	\$ 42,941,468
201161 C	Strong Memorial Hospital Certify a new oncology infusion and therapeutic radiation extension clinic to be located at Hard Road, Webster	\$ 6,635,248
202096 C	The Unity Hospital of Rochester Certify 57 medical/surgical beds (for a new certified total of 97 beds) at the St. Mary's Campus, which will operate as a Long-Term Acute Care Hospital (LTACH), and change the name of the Division to Unity Specialty Hospital	\$ 14,032,161
201268 C	The Unity Hospital of Rochester Certify Therapeutic Radiology service and install a new linear accelerator as a replacement for an old linear accelerator to be decommissioned at their affiliate, Rochester General Hospital	\$ 5,405,149
192161 C	UPSTATE University Hospital at Community General Certify therapeutic radiology services and perform renovations to create an infusion center	\$ 2,817,400

RESIDENTIAL HEALTH CARE FACILITIES

RHCF Establishments

192158 E	Congregational SNF LLC d/b/a New York Congregational Nursing Center Establish Congregational SNF LLC as the new operator of the 200-bed residential health care facility (RHCF), located at 135 Linden Boulevard, Brooklyn
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DIAGNOSTIC AND TREATMENT CENTERS

Diagnostic and Treatment Center Establishments

192223 B	Care365, LLC Establish and construct a diagnostic and treatment center to be located at 1 Main Street, Monsey	\$ 442,208
182305 B	CCH Home Care & Palliative Services, Inc. t/b/k/a Nascentia Community Care Establish and construct a diagnostic and treatment center at 1050 West Genesee Street, Syracuse	
191323 E	Century Medical & Dental Center, Inc. Transfer of 50% ownership interest from one (1) withdrawing member to one (1) new member	
201256 E	Gramercy Surgery Center, Inc. Transfer of 72.40% ownership interest from one (1) withdrawing stockholder to one (1) new stockholder and two (2) existing stockholders	

Project Review 2020

192120 B	Kerestir Health LLC d/b/a Kerestir Health Center Establish and construct a new diagnostic and treatment center for the provision of primary care and other medical specialty services to be located at 501 Route 208, Monroe		
201026 B	Latsch Dialysis, LLC d/b/a Westchester Home Training Establish Latsch Dialysis, LLC as the new operator of the existing home dialysis training diagnostic and treatment center located at 955 Yonkers Avenue, Yonkers currently operated as an extension clinic of Bronx Dialysis Center		
202025 B	New Windsor Family Care, LLC Establish and Construct a diagnostic and treatment center to be located at 377 Broadway, Newburgh	\$	153,931
192042 B	Ohel Medical, Inc. Establish and construct an Article 28 diagnostic and treatment center to be located at 1268 East 14th Street, Brooklyn	\$	130,172
202027 E	Physicare Multi-Services, Ltd Transfer of 100% ownership interest to one (1) new shareholder from the sole current shareholder		
192267 E	The Surgery Center at Orthopedic Associates, LLC Transfer 6.25 percent ownership to each of the two new members		
202020 B	Touch Stone Pavilion, Inc. Establish and construct a new diagnostic and treatment center to be located at 318 Segune Avenue, Staten Island	\$	274,752
201217 B	TOV HMC, LLC d/b/a Tov Health Medical Center Establish and construct a diagnostic and treatment center to be located at 1540 Route 202, Pomona	\$	206,561
201075 E	Upstate Orthopedics Ambulatory Surgery Center Transfer 6.2539% ownership interest, from the existing members, to one (1) new member		
192322 B	Victory Community Health Center, Inc. Establish and construct a new diagnostic and treatment center to be located at 1659 78th Street, Suite 2A, Brooklyn	\$	391,739
<u>Freestanding Ambulatory Surgery Centers</u>			
182327 B	23rd Street SC, LLC d/b/a Hudson Surgery Center Establish and construct a new multi-specialty ambulatory surgery center located at 234-238 East 23rd Street, New York, New York	\$	2,292,190
192309 B	5 East 98th Street, LLC d/b/a The Derfner Foundation Ambulatory Surgery Center Establish and construct a multi-specialty freestanding ambulatory surgery center to be located at 5 East 98th Street, New York		
201240 C	Fifth Avenue Surgery Center Certify and construct a new multi-specialty ambulatory surgery center extension clinic with six (6) operating rooms to be located at 305 East 47th Street, New York	\$	3,357,919

Project Review 2020

191283 B	NY Endovascular Center, LLC Establish and construct a single-specialty ambulatory surgery center to be located at 505 East 116th Street, New York, to perform endovascular procedures	\$ 3,010,959
201019 B	Pro-Medi Ambulatory Surgery Center Establish and construct a new multi-specialty ambulatory surgery center to be located at 190-08/10 Northern Boulevard, Flushing	\$ 4,972,922
192298 B	Renal Focus ASC, LLC d/b/a Renal Focus ASC Plainview Establish and construct a single-specialty ambulatory surgery center for vascular access services to be located at 671 Old Country Road, Plainview	
201225 B	Sunrise Surgery Center Establish and construct a new single specialty ambulatory surgery center specializing in ophthalmology to be located at 3349 Southwestern Boulevard, Orchard Park	\$ 3,798,802

Requests for Permanent Life

192320 E	Avicenna ASC, Inc. Request for indefinite life for CON #111277	
202015 E	Mark Fromer, LLC d/b/a Eye Surgery Center of New York Request for Indefinite Life for CON #102452	
201115 E	North Queens Surgical Center Request for permanent life for CON #111552	

Establishment of New Dialysis Providers with New Dialysis Stations

192048 B	USRC Hamburg, LLC d/b/a U.S. Renal Care Hamburg Dialysis Establish and construct a 13-station chronic renal dialysis center to be located at 3860 McKinley Parkway, Blasdell and certify home peritoneal dialysis training and support and home hemodialysis training and support	\$ 1,888,097
192321 B	USRC North Flushing, LLC d/b/a U.S. Renal Care North Flushing Dialysis Establish and construct a 25-station chronic renal dialysis center to be located at 2707 Francis Lewis Boulevard, Flushing	\$ 4,225,100

Diagnostic and Treatment Center Modernizations or Expansions

201062 C	Weill Cornell Imaging at New York Presbyterian Certify a new radiology imaging extension clinic to be located at 28-07 Jackson Avenue, Long Island City	\$ 36,661,727
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HOSPICES

Hospices

192159 C	Chautauqua Hospice and Palliative Care Acquire adjoining property and renovate to certify a five (5) bed hospice residential unit and supporting facilities	\$ 925,803
202021 C	Hudson Valley Hospice Construct a new 14-bed inpatient facility, to be located at 542 Violet Avenue, Hyde Park	\$ 9,930,714

HOME HEALTH AGENCIES

Certified Home Health Agencies

- 192311 E Extended Home Care
Establish Extended CHHA Acquisition, LLC as the new operator of the certified home health agency located at 360 West 31st Street, New York currently operated by Extended Nursing Personnel CHHA, LLC
- 192109 E Tender Loving Care, an Amedisys Company
Acquire Premier Home Health Care Services Inc.'s certified home health agency (CHHA) and add Bronx, New York and Westchester Counties to its existing operating certificate

Licensed Home Care Services Agencies

- 191302 E Olean Manor, Inc. d/b/a Field of Dreams Senior Living
Establish a Licensed Home Care Services Agency to serve the ALP program at Olean Manor (Exception A)
- 192179 E True Blue Care at Home, Inc.
Acquire and merge Floral Home Care and New Gloria's Manor Home Care Services (Exception B)



TABLE I

Median Processing Times
(Acknowledgement to Director Action in Days)

	Admin	Full	LHCSA	Ltd
2016	55	129		20
2017	77	131		32
2018	65	150	586	21
2019	87	148	186	28
2020	84	216	165	52

TABLE I (A)

Historical Project Volume and Values

Year	Number of Actions						Value of Actions (in thousands)					Average Value (in thousands)			
	Admin	Full	LHCSA	Ltd	Notice	Total	Admin	Full	Ltd	Notice	Total	Admin	Full	Ltd	Notice
2016	182	122		279	458	1041	804,468	1,421,246	383,646	719,674	3,329,034	4,420	11,650	1,375	1,571
2017 ¹	208	120		339	449	1116	1,313,820	2,250,447	536,739	1,939,118	6,040,124	6,316	18,754	1,583	4,319
2018 ²	148	97	35	283	332	895	759,184	2,393,107	527,475	608,464	4,288,229	5,130	24,671	1,864	1,833
2019	97	101	18	305	399	920	492,504	657,505	528,747	1,080,223	2,758,980	5,077	6,510	1,734	2,707
2020	86	56	2	189	295	628	346,232	1,561,724	359,591	586,177	2,853,724	4,026	27,888	1,903	1,987

¹ September 2017 regulatory changes:

- Review thresholds for general hospitals increased for limited and administrative reviews
- Notices for repair, maintenance, and infrastructure no longer required for projects < \$6M
- All HIT projects require a Notice instead of LRA/CON regardless of cost

² LHCSA projects not included prior to 2018

TABLE I (B)
Projects Reviewed and Related Capital Expenditures by Region
Last Two Calendar Years

2020								
Region	Number of Projects				Value of Projects (<i>in thousands</i>)			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	9	3	18	30	9,747	6,682	32,048	48,477
Finger Lakes	3	6	22	31	5,408	152,762	33,723	191,893
Central	6	4	14	24	23,414	5,997	6,263	35,674
NY Penn	0	1	2	3	0	131,242	55	131,297
Northeast	14	2	23	39	20,237	0	18,621	38,858
Hudson Valley	8	7	23	38	53,997	13,618	49,340	116,955
New York City	39	25	60	124	186,602	228,441	137,308	552,351
Long Island	7	8	27	42	46,827	1,022,982	82,232	1,152,041
Total	86	56	189	331	\$346,232	\$1,561,724	\$359,591	\$2,267,547

2019								
Region	Number of Projects				Value of Projects (<i>in thousands</i>)			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	10	10	32	52	12,848	13,208	29,937	55,993
Finger Lakes	9	8	33	50	13,318	113,076	74,741	201,136
Central	15	8	40	63	52,435	11,682	26,739	90,856
NY Penn	4	2	7	13	19,848	3,886	7,143	30,877
Northeast	11	11	32	54	6,691	15,296	52,098	74,085
Hudson Valley	8	14	50	72	29,667	40,382	68,835	138,884
New York City	29	37	83	149	280,870	274,006	220,207	775,083
Long Island	11	11	28	50	76,827	185,970	49,046	311,843
Total	97	101	305	503	\$492,504	\$657,505	\$528,747	\$1,678,757

TABLE II (A)
Disapprovals
2020

201026	Latsch Dialysis, LLC d/b/a Westchester Home Training Establish Latsch Dialysis, LLC as the new operator of the existing home dialysis training diagnostic and treatment center located at 955 Yonkers Avenue, Yonkers currently operated as an extension clinic of Bronx Dialysis Center	\$0
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TABLE II (B)
Withdrawals
2020

Withdrawals by Applicant		36
Withdrawals by Department		<u>27</u>
	Total	63

TABLE III
Bed Changes by Facility Type by Region
2020

HOSPITALS	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
Bed Category									
AIDS	0	0	0	0	0	0	0	0	0
Bone Marrow Transplant	0	0	0	0	0	0	0	0	0
Chemical Dependency, Detox	0	0	0	0	0	0	26	0	26
Chemical Dependency, Rehab	24	0	0	0	0	0	25	0	49
Coma Recovery	0	0	0	0	0	0	0	0	0
Coronary Care	0	0	0	0	0	0	0	0	0
Intensive Care	-24	0	0	0	0	0	0	12	-12
Maternity Beds	0	0	-3	0	0	0	0	0	-3
Medical/Surgical	-56	57	3	0	0	0	19	67	90
Neonatal Intensive Care	0	0	0	0	0	0	0	0	0
Neonatal Intermediate Care	0	0	0	0	0	0	0	0	0
Neonatal Continuing Care	0	0	0	0	0	0	0	0	0
Pediatric	0	0	0	0	0	0	0	0	0
Pediatric ICU	0	0	0	0	0	0	0	0	0
Physical Medicine & Rehabilitation	-35	0	0	0	0	0	0	0	-35
Prisoner	0	0	0	0	0	0	0	0	0
Psychiatric	0	-10	12	0	0	0	-10	0	-8
Traumatic Brain Injury	0	0	0	0	0	0	0	0	0
New York State Total	-91	47	12	0	0	0	60	79	107

RESIDENTIAL HEALTH CARE FACILITIES	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
Bed Category									
RHCF Beds	0	0	0	0	0	-3	0	0	-3
Behavioral Intervention	0	0	0	0	0	0	0	0	0
Neurodegenerative	0	0	0	0	0	0	0	0	0
Pediatric	0	0	0	0	0	0	0	0	0
Traumatic Brain Injury	0	0	0	0	0	0	0	0	0
Ventilator, Adult	0	0	0	0	0	0	0	0	0
Ventilator, Pediatric	0	0	0	0	0	0	0	0	0
New York State Total	0	0	0	0	0	-3	0	0	-3

TABLE IV
Projects Receiving Commissioner Action by Facility Type
2020

TABLE IV (A)

Administrative Review Projects

Region	CHHA	DTC	HOSPICE	HOSPITAL	RHCF	TOTAL
Western	0	4	0	5	0	9
Finger Lakes	0	1	0	2	0	3
Central	1	3	0	2	0	6
NY-Penn	0	0	0	0	0	0
Northeastern	0	8	0	6	0	14
Hudson Valley	0	4	0	4	0	8
New York City	0	29	0	9	1	39
Long Island	0	2	0	5	0	7
New York State Total	1	51	0	33	1	86

TABLE IV (B)

Full Review Projects

Region	CHHA	DTC	HOSPICE	HOSPITAL	LHCSA	RHCF	TOTAL
Western	0	2	1	0	1	0	4
Finger Lakes	0	0	0	6	0	0	6
Central	0	2	0	2	0	0	4
NY-Penn	0	0	0	1	0	0	1
Northeastern	0	0	0	2	0	0	2
Hudson Valley	0	5	1	1	0	0	7
New York City	1	16	0	7	1	1	26
Long Island	1	1	0	6	0	0	8
New York State Total	2	26	2	25	2	1	58

TABLE IV (C)

Limited Review Projects

Region	DTC	HOSPITAL	RHCF	TOTAL
Western	6	11	1	18
Finger Lakes	4	18	0	22
Central	3	10	1	14
NY-Penn	0	2	0	2
Northeastern	2	21	0	23
Hudson Valley	6	13	4	23
New York City	20	38	2	60
Nassau-Suffolk	3	21	3	27
New York State Total	44	134	11	189

TABLE V
Public Health and Health Planning Council
Establishment Projects Reviewed by Facility Type
2020

Facility Type	Current Year				2019	2018	2017
	Approval	Disapproval	Deferral	Total	Total	Total	Total
Hospitals	2	0	0	2	3	8	11
Residential Health Care Facilities	1	0	0	1	15	33	39
Diagnostic and Treatment Centers	24	1	0	25	40	30	37
Certified Home Health Agencies	2	0	0	2	11	11	6
Hospices	0	0	0	0	1	2	1
¹ Licensed Home Care Services Agency	2	0	0	2	18	35	
New York State Total	31	1	0	32	88	119	94

¹ LHCSA projects not included prior to 2018

C. Joint Health Planning Committee and Public Health Committee

Health Planning Committee Members

John Rugge, M.D. MPP - Chair	
Judy Baumgartner	Harvey Lawrence
John Bennett, Jr., M.D.	Glenn Martin, M.D.
Howard Berliner	Ann Monroe
Jo Ivey Boufford, M.D.	Mario Ortiz, R.N., Ph.D., F.A.A.N.
Kathleen Carver Cheney	Ellen Rautenberg
Jeffrey Kraut	Peter Robinson
Scott LaRue	

Public Health Committee Members

Jo Ivey Boufford, M.D., Chair	
Anderson Torres, Ph.D., Vice Chair	Ellen Rautenberg
John Bennett, Jr., M.D.	Nilda Soto
Lawrence S. Brown, Jr., M.D., M.P.H.	Theodore Strange, M.D.
Angel Gutiérrez, M.D.	Kevin Watkins, M.D., M.P.H.
Ann Monroe	Patsy Yang, Dr.P.H.
Mario Ortiz, R.N., Ph.D., F.A.A.N.	

Work Conducted in 2020

On August 12, 2020 and August 19, 2020 under the leadership of John Rugge, M.D., Chair, Health Planning Committee; Jo Ivey Boufford, M.D., Chair, Public Health Committee; and Ann Monroe, Council Member convened a joint meeting to gain information about experiences during the COVID-19 pandemic and the lessons learned from primary care providers and public health organizations across the state. The joint committees held a discussion to understand how best to include these sectors in preparing for the next such emergency and how what they learned can contribute to policy planning for shaping the health care delivery system going forward.

D. Committee on Health Personnel and Interprofessional Relations

Members

Glenn Martin, M.D., Chair	
Angel Gutiérrez, M.D.	Thomas Holt
Kathleen Carver-Cheney,	Mario Ortiz, R.N., Ph.D., F.A.A.N.

The Committee reviewed and decided on six health personnel cases in Executive Session.

Adopted April 5, 2022

**Public Health and Health Planning Council
2021 Annual Report**

I. General Council Activities in 2021

The Public Health and Health Planning Council (PHHPC) held a total of 13 meetings.

<u>Meeting Dates</u>	<u>Meeting</u>	<u>PHHPC Meeting Location</u>
3/18/2021	Committee Day: Establishment and Project Review Committee	Virtual
4/8/2021	Committee on Codes, Regulations and Legislation Special Establishment and Project Review Committee Full Council	Virtual
5/13/2021	Committee Day: Establishment and Project Review Committee	Virtual
6/3/2021	Committee on Codes, Regulations and Legislation Annual Full Council	Virtual
7/15/2021	Committee Day: Establishment and Project Review Committee	Albany
7/29/2021	Committee on Codes, Regulations and Legislation Full Council	Albany
8/26/2021	Special Committee on Codes, Regulations and Legislation Special Full Council	Albany Buffalo NYC
9/2/2021	Special Committee on Codes, Regulations and Legislation Special Full Council	Albany Buffalo NYC
9/23/2021	Committee Day: Committee on Codes, Regulations and Legislation Establishment and Project Review Committee	Albany

10/7/2021	Committee on Codes, Regulations and Legislation Full Council	Albany
10/26/2021	Special Committee on Codes, Regulations and Legislation Special Full Council	Albany
11/18/2021	Special Committee on Codes, Regulations and Legislation Special Full Council Committee Day: Establishment and Project Review Committee	Albany
12/9/2021	Committee on Codes, Regulations and Legislation Full Council	Albany

II. Membership

Jeffrey Kraut, Chair

Jo Ivey Boufford, M.D., Vice Chair

John Bennett, Jr., M.D., F.A.C.C., F.A.C.P.

Howard Berliner, SC.D.

Lawrence Brown, Jr., M.D., M.P.H., F.A.S.A.M.
(served until June 2021)

Kathleen Carver Cheney, Esq.

Angel Alfonso Gutiérrez, M.D.

Thomas Holt

Gary Kalkut, M.D.

Scott La Rue

Harvey Lawrence

Roxanne Lewin, M.D. (appointed June 2021)

Sabina Lim, M.D. (appointed June 2021)

Glenn Martin, M.D., D.F.A.P.A., CIP (served until June 2021)

Ann Monroe

Mario Ortiz, R.N., Ph.D., F.A.A.N.

Ellen Rautenberg, M.H.S.

Peter Robinson

John Ruge, M.D., MPP

Nilda Soto, MS Ed

Theodore Strange, M.D.

Hugh Thomas, Esq.

Anderson Torres, Ph.D., LCSW-R

Kevin Watkins, M.D., M.P.H.

Patsy Yang, Dr.P.H.

Dr. Howard Zucker, Commissioner of Health, Ex-Officio

Dr. Mary Bassett, Commissioner of Health, Ex-Officio

The PHHPC consists of the following Standing Committees and Ad Hoc Committee

- Committee on Codes, Regulations and Legislation
- Committee on Establishment and Project Review
- Committee on Health Planning
- Committee on Public Health
- Ad Hoc Committee to Lead the Prevention Agenda

III. Major Accomplishments of Committees in 2021

A. Committee on Codes, Regulations and Legislation

Members

Angel Alfonso Gutiérrez, M.D., Chair	
Thomas Holt, Vice Chair	John Rugge, M.D., MPP
Kathleen Carver Cheney	Kevin Watkins, M.D., M.P.H.
Roxanne Lewin, M.D. (June 2021)	Patsy Yang, Dr.P.H.

Work Conducted in 2021

EMERGENCY ADOPTION

In 2021, the Codes Committee recommended, and the Council subsequently approved, the following regulatory proposals for emergency adoption. These regulatory changes addressed critical public health concerns.

20-22 Amendment of Section 405.11 of Title 10 NYCRR (Hospital Personal Protective Equipment (PPE) Requirements): The proposal would require that hospital shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control guidance, for at least 60 days by August 31, 2020, and at least 90 days by September 30, 2020, at rate of usage equal the average daily rate that PPE was used between April 13, 2020 and April 27, 2020; provided, however, that upon request the Department may grant an extension of the deadline to October 30, 2020, at its sole and exclusive discretion for having at least a 90 day supply of PPE. **This proposal was on the Codes agenda for Emergency Adoption for the second time during 2021 on October 26, 2021**

21-06 Addition of Subpart 66-4 to Title 10 NYCRR (COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel): The proposed amendments are necessary to prevent the spread of COVID-19 in nursing homes and adult care facilities and to help ensure the health and life of residents of nursing homes and ACFs by requiring such congregate care facilities to offer or arrange for consenting residents and personnel to receive the COVID-19 vaccine. This requirement will help ensure residents are less likely to suffer a COVID-related death or severe illness and that fewer staff test positive for COVID-19. **This proposal was on the Codes agenda for Emergency Adoption for the second time during 2021 on October 26, 2021**

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): The new regulatory sections amend 10 NYCRR 415.3(d) to add new paragraphs (3), (4), and (5) concerning, respectively, personal caregiving visitation, additional provisions relating to compassionate caregiving, and authority for the Department of Health to review a nursing home's personal caregiving visitation policies and procedures. **This proposal was on the Codes agenda for Emergency Adoption for the second time during 2021 on November 18, 2021**

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): The proposed regulatory amendments would also require hospitals to: develop disaster emergency response plans; maintain a 90-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner. **This proposal was on the Codes agenda for Emergency Adoption for the second time during 2021 on October 26, 2021**

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): The proposed amendments will promote public health by establishing minimum standards for clinical laboratory testing and reporting of test results, including to the Department for purposes of taking prompt action to address outbreaks of disease. **This proposal was on the Codes agenda for Emergency Adoption for the second time during 2021 on November 18, 2021**

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): The proposed amendments would allow New York State to more fully assess the number of COVID-19 cases and conduct contact tracing, testing of hospital patients and nursing home residents must be mandatory, where such patients or residents are or were suspected, but not known, to have been suffering from COVID-19. **This proposal was on the Codes agenda for Emergency Adoption for the second time during 2021 on October 26, 2021**

20-07 Amendment of Part 66 of Title 10 NYCRR (Enforcement of Social Distancing Measures): The proposed amendments would allow the Department of Health (“Department”) to control and promote the control of communicable diseases to reduce their spread.

21-14 Adding Section 2.61 Title 10 NYCRR (Prevention of COVID-19 Transmission by Covered Entities): These proposed amendments will require covered entities to ensure that personnel are fully vaccinated against COVID-19 and document such vaccination in personnel or other appropriate records. Covered entities must also review and make determinations on requests for medical and religious exemptions, which must also be documented in personnel or other appropriate records along with any reasonable accommodations. **This proposal was on the Codes agenda for Emergency Adoption for the second time during 2021 on November 18, 2021**

21-15 Addition of Sections 2.9 and 2.62 to Title 10 NYCRR (COVID-19 Reporting and Testing): These proposed amendments to the regulation will require the immediate implementation of heightened COVID-19 testing protocols for population segments that may be at increased risk of transmission and the reporting of positive COVID-19 test results to public health authorities. **This proposal was on the Codes agenda for Emergency Adoption for the second time during 2021 on November 18, 2021**

20-07 Amendment of Section 2.60 of Title 10 NYCRR & Repeal of Subpart 66-3 of Title 10 NYCRR (Face Coverings for COVID-19 Prevention): The proposed amend the SSC will address public health issues related to communicable disease.

ADOPTION

In 2021, the Codes Committee recommended, and the Council subsequently approved, 4 regulatory proposals. These regulatory changes were designed to promote health and safety, expand access to services, and align state policies with transformative changes in health care. The following provisions of Title 10 of the New York Codes Rules and Regulations (NYCRR) were amended:

20-33 Amendment of Parts 11, 46 and 85 of Title 10 NYCRR (Name Change for the Physically Handicapped Children’s Program): The proposed regulatory change is non-substantive and non-controversial. It changes the name of the “Physically Handicapped Children’s Program” (PHCP) to the “Children and Youth with Special Health Care Needs Support Services” program, in recognition of the fact that the term “physically handicapped” is outdated and limiting, as it refers to the loss of or failure to develop a specific bodily function or functions.

21-08 Amendment of Section 756.3 and Repeal of Section 756.4 of Title 10 NYCRR (Abortion Services): The proposed regulatory changes are necessary to protect and promote the health of New Yorkers seeking to access abortion services, consistent with PHL § 2800. The proposed amendments will better enable abortion service clinics, as PHL Article 28 diagnostic and treatment centers, to provide safe, high-quality services by aligning the regulations with current clinical standards for providing abortion care.

20-25 Amendment of Section 405.34(g) of Title 10 NYCRR (Stroke Services): The proposed amendments would require that hospitals that received designation as a stroke center prior to the enactment of the regulation to enter into a contractual 3 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.

19-33 Amendment of Subpart 5-1 of Title 10 NYCRR (Public Water Systems): The proposed amendment of 10 NYCRR Subpart 5-1 "Public Water Systems" of the State Sanitary code will correct typographic errors, update references and make minor technical revisions to conform the regulation with federal requirements to obtain primacy for the implementation and enforcement of federal drinking water regulations from U.S. Environmental Protection Agency.

REGULATORY PROPOSALS FOR INFORMATION

In 2021, the following proposals to amend provisions of Title 10 NYCRR were presented to the Codes Committee and the Council for information after they were filed in the State Register for a Notice of Proposed Rulemaking.

20-22 Amendment of Section 405.11 of Title 10 NYCRR (Hospital Personal Protective Equipment (PPE) Requirements): The proposal would require that hospital shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control guidance, for at least 60 days by August 31, 2020, and at least 90 days by September 30, 2020, at rate of usage equal the average daily rate that PPE was used between April 13, 2020 and April 27, 2020; provided, however, that upon request the Department may grant an extension of the deadline to October 30, 2020, at its sole and exclusive discretion for having at least a 90 day supply of PPE.

20-23 Amendment of Section 415.19 of Title 10 NYCRR (Nursing Home Personal Protective Equipment (PPE) Requirements): The proposal would require that hospital shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control guidance, for at least 60 days by August 31, 2020, and at least 90 days by September 30, 2020, at rate of usage equal the average daily rate that PPE was used between April 13, 2020 and April 27, 2020; provided, however, that upon request the Department may grant an extension of the deadline to October 30, 2020, at its sole and exclusive discretion for having at least a 90 day supply of PPE.

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): The proposed regulatory amendments would also require hospitals to: develop disaster emergency response plans; maintain a 90-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner.

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): The proposed amendments would allow New York State to more fully assess the number of COVID-19 cases and conduct contact tracing, testing of hospital patients and nursing home residents must be mandatory, where such patients or residents are or were suspected, but not known, to have been suffering from COVID-19.

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): The proposed amendments will promote public health by establishing minimum standards for clinical laboratory testing and reporting of test results, including to the Department for purposes of taking prompt action to address outbreaks of disease.

21-06 Addition of Subpart 66-4 to Title 10 NYCRR (COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel): The proposed amendments are necessary to prevent the spread of COVID-19 in nursing homes and adult care facilities and to help ensure the health and life of residents of nursing homes and ACFs by requiring such congregate care facilities to offer or arrange for consenting residents and personnel to receive the COVID-19 vaccine. This requirement will help ensure residents are less likely to suffer a COVID-related death or severe illness and that fewer staff test positive for COVID-19.

20-25 Amendment of Section 405.34(g) of Title 10 NYCRR (Stroke Services): The proposed amendments would require that hospitals that received designation as a stroke center prior to the enactment of the regulation to enter into a contractual 3 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.

21-13 Addition of Section 415.34 to Title 10 NYCRR (Nursing Home Minimum Direct Resident Care Spending): The proposed amendments would govern the disposition of revenue in excess of expenses permitted under PHL § 2828 for residential health care facilities. Specifically, PHL § 2828 directs that, as of January 1, 2022, every residential health care facility shall spend a minimum of 70 percent of revenue on direct resident care and 40 percent of revenue on resident-facing staffing, wherein amounts spent on resident-facing staffing are included in the amount spent on direct resident care.

21-17 Amendment of Part 405 of Title 10 (Clinical Staffing in General Hospitals): The amended regulations implement requirements under Section 2805-t of the Public Health Law requiring every general hospital to create a clinical staffing committee made up of registered nurses, licensed practical nurses, ancillary staff members providing direct patient care, and hospital administrators, by January 1, 2022.

21-20 Amendment to Sections 415.2 and 415.13 of Title 10 NYCRR (Minimum Staffing Requirements for Nursing Homes): The amendments are being proposed to ensure safe and appropriate levels of nurse staffing in nursing homes in order to improve the care for residents of nursing homes.

21-08 Amendment of Section 756.3 and Repeal of Section 756.4 of Title 10 NYCRR (Abortion Services): The proposed regulatory changes are necessary to protect and promote the health of New Yorkers seeking to access abortion services, consistent with PHL § 2800. The proposed amendments will better enable abortion service clinics, as PHL Article 28 diagnostic and treatment centers, to provide safe, high-quality services by aligning the regulations with current clinical standards for providing abortion care.

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): The regulatory changes are being proposed 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. **This proposal was on the Codes Committee as an addendum during the September 23rd meeting and on the October 7, Full Council meeting agenda, both times “for discussion”.**

B. Committee on Establishment and Project Review

Members

Peter Robinson, Chair	Scott LaRue
Gary Kalkut, M.D., Vice Chair	Harvey Lawrence
John Bennett, Jr., M.D.	Sabina Lim, M.D. (June 2021)
Howard Berliner	Glenn Martin, M.D. (served until June 2021)
Lawrence S. Brown, Jr., M.D., M.P.H. (served until June 2021)	Ann Monroe
Angel Gutierrez, M.D.	Hugh Thomas, Esq.
Thomas Holt	Anderson Torres, Ph.D.
Jeffrey Kraut	

Project Review 2021

The following projects were reviewed by the Establishment and Project Review Committee and forwarded to the Public Health and Health Planning Council in 2021.

HOSPITALS

Hospital Active Parents / Co-Operators

- 212009 E Long Island Community Hospital and Hospice
Establish NYU Langone Health System as the active parent and co-operator of Long Island Community Hospital and Long Island Community Hospital Hospice and change the corporate name of the operator
- 211023 E The New York Community Hospital of Brooklyn, Inc.
Establish Maimonides Medical Center as the active parent and co-operator of The New York Community Hospital of Brooklyn, Inc.

Hospital Modernizations or Expansions

- 211073 C John T. Mather Memorial Hospital of Port Jefferson New York, Inc. \$ 82,397,804
Construct an addition to create a new emergency department
- 202168 C Lewis County General Hospital \$ 33,067,278
Construct a two (2) story surgical pavilion and perform renovations to existing space
- 211234 C Mount St. Mary's Hospital and Health Center \$ 65,008,773
Construct a new 10-bed hospital division to be located at 6001 Shimer Drive, Lockport
- 202263 C Staten Island University Hosp-North \$ 126,450,547
Fit out two floors of a recently constructed building attached to the hospital to house the new Women and Newborn Center and decertify four maternity beds
- 202244 C University Hospital SUNY Health Science Center \$ 19,558,975
Certify an extension clinic d/b/a UPSTATE Cancer Center at Verona to be located at 5548 State Route 31, Verona to include Therapeutic Radiology Services and the addition of a Linear Accelerator

Cardiac Surgery

- 211079 C Garnet Health Medical Center \$ 16,837,492
Certify an Adult Cardiac Surgery Program and perform requisite renovations

Certification of Cardiac Catheterization Services

- 211213 C Mount Sinai Hospital - Mount Sinai Hospital of Queens \$ 253,375
Certify Cardiac Catheterization - Percutaneous Coronary Intervention and Electrophysiology services, with no construction needed
- 211180 C New York Community Hospital of Brooklyn, Inc. \$ 4,484,679
Certify Cardiac Catheterization - Percutaneous Coronary Intervention (PCI) and Cardiac Catheterization - Electrophysiology (EP) services with requisite construction.

Project Review 2021

Hospital Beds and Services

211008 C	Roswell Park Cancer Institute Certify 22 additional medical/surgical beds and two additional ICU beds and perform requisite construction	\$	2,651,493
211176 C	Strong Memorial Hospital Certify 11 Physical Medicine and Rehabilitation beds and perform construction to accommodate the new beds.	\$	6,730,000

DIAGNOSTIC AND TREATMENT CENTERS

Diagnostic and Treatment Center Establishments

211251 B	Allhealth D&T Center-Brooklyn2 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		
211132 B	Arena Care LLC Establish and construct a Diagnostic & Treatment Center to be located at 8 Maple Avenue, Bay Shore, to provide primary and specialty medical care, behavioral health, occupational therapy, physical therapy, and speech-language pathology services	\$	2,878,501
201273 B	CFR Advance Services, LLC d/b/a Village Med & Rehabilitation Establish and construct a new diagnostic and treatment center to be located at 61-33 Woodhaven Boulevard, Rego Park	\$	1,297,111
212032 B	Emes Vision Center LLC Establish and construct a Diagnostic and Treatment Center to be located at 5202-5204 16th Avenue, Brooklyn to provide ophthalmology and optometry services	\$	616,055
211035 E	Griffiss Surgery Center Transfer two (2) percent interest from existing members to one (1) new member		
202257 E	Heritage One Day Surgery Transfer 15.66 percent interest to one (1) new member from five (5) existing members		
212013 E	Long Island Center for Digestive Health, LLC Transfer 51% membership interest in the Long Island Center for Digestive Health, LLC from existing members to Northwell LICDH Ventures, LLC.		
211262 B	Montefiore Westchester Community Corp. t/b/k/a Montefiore Einstein Advanced Care Establish Montefiore Westchester Community Corp. as the operator of the facility located at 555 Taxter Road, Elmsford that is currently operating as an extension clinic of Burke Rehabilitation Hospital and certify Other Medical Specialties services		

Project Review 2021

202005 B	New York City Health & Hospital Corporation/Gotham Health FQHC, Inc. d/b/a Roosevelt Community Health Center of Excellence Establish and construct a new diagnostic and treatment center to be located at 37-50 72nd Street, Jackson Heights - Safety Net	\$ 31,244,030
202004 B	New York City Health & Hospitals Corporation/Gotham Health FQHC, Inc. d/b/a Broadway Community Health Center of Excellence Establish and construct a new diagnostic and treatment center to be located at 815 Broadway, Brooklyn - Safety Net	\$ 77,347,207
201275 B	New York City Health & Hospitals Corporation/Gotham Health FQHC, Inc. d/b/a Tremont Community Health Center of Excellence Establish and construct a new diagnostic and treatment center to be located at 1920 Webster Avenue, Bronx - Safety Net	\$ 34,455,661
202191 E	New York Preventive Health Center Transfer 100 percent ownership interest in Ajay 28, LLC d/b/a New York Preventive Health Center to three (3) new members	
212015 B	RiverSpring Project Corp. t/b/k/a RiverSpring DTC Corp. Establish and construct a diagnostic and treatment center to be located at 673 Livonia Avenue, Brooklyn, and an extension clinic to be located at 63 Marcus Garvey Boulevard, Brooklyn, to serve the PACE Program of ElderServe Health, Inc.	\$ 1,942,643
211042 B	Rockwell Health, LLC 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	\$ 1,764,900
211270 B	Samaritan Daytop Health, Inc. Establish and construct a Diagnostic and Treatment Center to be located at 362 East 148th Street, Bronx and certify Medical Services-Primary Care - Safety Net	\$ 3,511,706
<u>Freestanding Ambulatory Surgery Centers</u>		
202273 B	147 Wellness LLC t/b/k/a Midtown Endoscopy & Surgical Center, LLC Establish and construct a three-single-specialty ambulatory surgery center for gastroenterology, gynecology, and podiatry surgery services to be located at 147 East 26th Street, New York	\$ 2,923,078
211054 B	Ainsworth Health, LLC Establish and construct a pain management single-specialty Freestanding Ambulatory Surgery Center to be located at 1103 Stewart Avenue, 3rd Floor, Garden City	
211219 B	Alpha Ambulatory Project, LLC t/b/k/a Alpha Ambulatory Surgery Center, LLC Establish and construct a free-standing multi-specialty ambulatory surgery center to be located at 110 East 60th Street, New York	\$ 4,096,365
202090 B	Intrepid Lane ASC, LLC d/b/a Intrepid Lane Endoscopy and Surgery Center Establish and construct a multi-specialty ambulatory surgery center with four operating rooms located at 190 Intrepid Lane, Syracuse	\$ 5,432,427

Project Review 2021

202093 C Richmond Pain Management ASC \$ 552,204
Certify an existing single specialty pain management ambulatory surgery center as a multi-specialty ambulatory surgery center and perform renovations to add a decontamination/sterilization suite

201113 B Syosset SASC, LLC t/b/k/a Syosset Ambulatory Surgery Center, LLC \$ 6,154,386
Establish and construct a multi-specialty ambulatory surgery center to be located at 115 Eileen Way, Syosset

Establishment of New Dialysis Providers with New Dialysis Stations

202102 B Novo Dialysis Jamaica, LLC \$ 4,350,459
Establish and construct a 36-station Chronic Renal Dialysis Center, including Home Hemodialysis Training and Support, to be located at 214-70 Jamaica Avenue, Queens

Diagnostic and Treatment Center Modernizations or Expansions

211005 C Syracuse Community Health Center, Inc. \$ 22,485,316
Relocate the main site from 819 South Salina Street, Syracuse and decertify Certified Mental Health Services. - Safety Net

CERTIFIED HOME HEALTH AGENCIES

Certified Home Health Agencies

202250 E Assured Care Home Health, LLC
Establish Assured Care Home Health, LLC as the new operator of Long Island Jewish Medical Center Home Care Department, a certified home health agency (CHHA) and relocate the CHHA to 100-04 Ditmars Boulevard, East Elmhurst serving the same counties

211039 C Guthrie Home Health
Expand the service area to include Tompkins and Cortland counties (PHL 2805-x waiver)

211107 E Northern Lights Home Health Care
Transfer 25 percent interest from one withdrawing member to the remaining members evenly

211169 E OGL Holdings, LLC d/b/a Mount Sinai at Home
Establish OGL Holdings, LLC as the new operator of an existing certified home health agency (CHHA) located at 1000 South Oyster Bay Road, Hicksville

201038 E St. Joseph's Health at Home
Establish St. Joseph's Health at Home, Inc. as the new operator of the certified home health agency currently operated by St. Joseph's Hospital Health Center with Trinity Home Health Services is the parent and Trinity Health is the grandparent

201230 E VNA Home Health
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.

Project Review 2021

Hospices

211032 C	Niagara Hospice, Inc. Certify six (6) additional Residence beds to increase to 16 Residence beds and 26 total certified beds, and perform requisite construction	\$	1,814,569
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TABLE I

Median Processing Times
(Acknowledgement to Director Action in Days)

	Admin	Full	LHCSA	Ltd
2017	77	131		32
2018	65	150	586	21
2019	87	148	186	28
2020	84	216	165	52
2021	98	152	0	62

TABLE I (A)

Historical Project Volume and Values

Year	Number of Actions						Value of Actions (in thousands)					Average Value (in thousands)			
	Admin	Full	LHCSA	Ltd	Notice	Total	Admin	Full	Ltd	Notice	Total	Admin	Full	Ltd	Notice
2017 ¹	208	120		339	449	1116	1,313,820	2,250,447	536,739	1,939,118	6,040,124	6,316	18,754	1,583	4,319
2018 ²	148	97	35	283	332	895	759,184	2,393,107	527,475	608,464	4,288,229	5,130	24,671	1,864	1,833
2019	97	101	18	305	399	920	492,504	657,505	528,747	1,080,223	2,758,980	5,077	6,510	1,734	2,707
2020	86	56	2	189	295	628	346,232	1,561,724	359,591	586,177	2,853,724	4,026	27,888	1,903	1,987
2021	101	42	0	217	359	719	433,342	562,628	404,613	414,448	1,815,031	4,291	13,396	1,865	1,154

¹ September 2017 regulatory changes:

Review thresholds for general hospitals increased for limited and administrative reviews
Notices for repair, maintenance, and infrastructure no longer required for projects < \$6M
All HIT projects require a Notice instead of LRA/CON regardless of cost

² LHCSA projects not included prior to 2018

TABLE I (B)
Projects Reviewed and Related Capital Expenditures by Region
Last Two Calendar Years

2021								
Region	Number of Projects				Value of Projects (<i>in thousands</i>)			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	17	3	13	33	69,825	70,834	18,901	159,560
Finger Lakes	10	1	29	40	20,585	6,730	47,617	74,932
Central	11	8	19	38	12,321	74,562	36,889	123,772
NY Penn	3	1	2	6	10,392	2	1,411	11,806
Northeast	9	1	15	25	8,346	0	15,267	23,614
Hudson Valley	12	2	33	47	67,073	16,837	75,341	159,252
New York City	32	18	81	131	180,734	302,232	160,072	643,037
Long Island	7	8	25	40	64,065	91,431	49,115	204,611
Total	101	42	217	360	\$433,342	\$562,628	\$404,613	\$1,400,583

2020								
Region	Number of Projects				Value of Projects (<i>in thousands</i>)			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	9	3	18	30	9,747	6,682	32,048	48,477
Finger Lakes	3	6	22	31	5,408	152,762	33,723	191,893
Central	6	4	14	24	23,414	5,997	6,263	35,674
NY Penn	0	1	2	3	0	131,242	55	131,297
Northeast	14	2	23	39	20,237	0	18,621	38,858
Hudson Valley	8	7	23	38	53,997	13,618	49,340	116,955
New York City	39	25	60	124	186,602	228,441	137,308	552,351
Long Island	7	8	27	42	46,827	1,022,982	82,232	1,152,041
Total	86	56	189	331	\$346,232	\$1,561,724	\$359,591	\$2,267,547

TABLE II (A)
Disapprovals
2021

None

TABLE II (B)
Withdrawals
2021

Withdrawals by Applicant	50
Withdrawals by Department	<u>16</u>
Total	66

TABLE III
Bed Changes by Facility Type by Region
2021

HOSPITALS	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
Bed Category									
AIDS	0	0	0	0	0	0	0	0	0
Bone Marrow Transplant	0	0	0	0	0	0	0	0	0
Chemical Dependency, Detox	0	0	0	0	0	0	0	0	0
Chemical Dependency, Rehab	0	0	0	0	0	0	0	0	0
Coma Recovery	0	0	0	0	0	0	0	0	0
Coronary Care	0	0	0	0	0	0	-10	0	-10
Intensive Care	2	0	0	0	0	12	-6	0	8
Maternity Beds	0	0	0	0	0	0	19	0	19
Medical/Surgical	32	0	0	0	0	-12	-217	-28	-225
Neonatal Intensive Care	0	0	0	0	0	0	0	0	0
Neonatal Intermediate Care	0	0	0	0	0	0	0	0	0
Neonatal Continuing Care	0	0	0	0	0	0	0	0	0
Pediatric	0	-4	0	0	0	0	-15	0	-19
Pediatric ICU	0	4	0	0	0	0	0	0	4
Physical Medicine & Rehabilitation	0	11	0	0	0	0	0	28	39
Prisoner	0	0	0	0	0	0	0	0	0
Psychiatric	-12	0	0	0	0	0	-14	0	-26
Traumatic Brain Injury	0	0	0	0	0	0	0	0	0
New York State Total	22	11	0	0	0	0	-243	0	-210

RESIDENTIAL HEALTH CARE FACILITIES	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
Bed Category									
RHCF Beds	0	0	0	0	0	-41	-92	0	-133
Behavioral Intervention	0	0	0	0	0	0	0	0	0
Neurodegenerative	0	0	0	0	0	27	0	0	27
Pediatric	0	0	0	0	0	0	0	0	0
Traumatic Brain Injury	0	0	0	0	0	0	0	0	0
Ventilator, Adult	0	0	0	0	0	0	0	0	0
Ventilator, Pediatric	0	0	0	0	0	0	0	0	0
New York State Total	0	0	0	0	0	-14	-92	0	-106

TABLE IV
Approved Projects by Facility Type
2021

TABLE IV (A)

Administrative Review Projects

Region	CHHA	DTC	HOSPICE	HOSPITAL	RHCF	TOTAL
Western	0	11	0	6	0	17
Finger Lakes	0	3	0	7	0	10
Central	0	5	0	6	0	11
NY-Penn	0	1	0	2	0	3
Northeastern	0	5	0	4	0	9
Hudson Valley	0	9	0	2	1	12
New York City	0	21	1	9	1	32
Long Island	0	1	0	6	0	7
New York State Total	0	56	1	42	2	101

TABLE IV (B)

Full Review Projects

Region	CHHA	DTC	HOSPICE	HOSPITAL	LHCSA	RHCF	TOTAL
Western	0	0	1	2	0	0	3
Finger Lakes	0	0	0	1	0	0	1
Central	2	4	0	2	0	0	8
NY-Penn	1	0	0	0	0	0	1
Northeastern	1	0	0	0	0	0	1
Hudson Valley	0	1	0	1	0	0	2
New York City	0	14	0	4	0	0	18
Long Island	2	4	0	2	0	0	8
New York State Total	6	23	1	12	0	0	42

TABLE IV (C)

Limited Review Projects

Region	DTC	HOSPITAL	RHCF	TOTAL
Western	4	8	1	13
Finger Lakes	0	27	2	29
Central	3	15	1	19
NY-Penn	0	2	0	2
Northeastern	0	14	1	15
Hudson Valley	3	25	5	33
New York City	14	47	20	81
Nassau-Suffolk	3	18	4	25
New York State Total	27	156	34	217

TABLE V
Public Health and Health Planning Council
Establishment Projects Reviewed by Facility Type
2021

Facility Type	Current Year				2020	2019	2018
	Approval	Disapproval	Deferral	Total	Total	Total	Total
Hospitals	2	0	0	2	2	3	8
Residential Health Care Facilities	0	0	0	0	1	15	33
Diagnostic and Treatment Centers	21	0	0	21	24	40	30
Certified Home Health Agencies	5	0	0	5	2	11	11
Hospices	0	0	0	0	0	1	2
Licensed Home Care Services Agency	0	0	0	0	2	18	35
New York State Total	28	0	0	28	31	88	119

Work Conducted in 2021

C. Health Planning Committee

Members

John Rugge, M.D. MPP - Chair	
John Bennett, Jr., M.D.	Roxanne Lewin, M.D. (June 2021)
Howard Berliner	Glenn Martin, M.D. (until June 2021)
Jo Ivey Boufford, M.D.	Ann Monroe
Kathleen Carver Cheney	Mario Ortiz, R.N., Ph.D., F.A.A.N.
Jeffrey Kraut	Ellen Rautenberg
Scott LaRue	Peter Robinson
Harvey Lawrence	

The Committee did not officially meet in 2021 due to the intensive, monthly regulatory work carried out by PHHPC during the COVID-19 pandemic.

D. Public Health Committee

Members

Jo Ivey Boufford, M.D., Chair	
Anderson Torres, Ph.D., Vice Chair	Mario Ortiz, R.N., Ph.D., F.A.A.N.
John Bennett, Jr., M.D.	Ellen Rautenberg
Lawrence S. Brown, Jr., M.D., M.P.H. (until June 2021)	Nilda Soto
Angel Gutiérrez, M.D.	Theodore Strange, M.D.
Sabina Lim, M.D. (June 2021)	Kevin Watkins, M.D., M.P.H.
Ann Monroe	Patsy Yang, Dr.P.H.

The Committee did not officially meet in 2021 due to the intensive, monthly regulatory work carried out by PHHPC during the COVID-19 pandemic.

Work Conducted in 2021

D. Committee on Health Personnel and Interprofessional Relations

Members

Glenn Martin, M.D., Chair (until June 2021)	Angel Gutiérrez, M.D.
Hugh Thomas, Esq. (June 2021)	Thomas Holt
Kathleen Carver-Cheney, Esq	Mario Ortiz, R.N., Ph.D., F.A.A.N.

The Committee reviewed and decided on seven health personnel cases in Executive Session.

Adopted April 5, 2022

SUMMARY OF EXPRESS TERMS

These regulations clarify the authority and duty of the New York State Department of Health (“Department”) and local health departments to protect the public in the event of an outbreak of communicable disease, through appropriate public health orders issued to persons diagnosed with or exposed to a communicable disease. These regulations also require hospitals to report syndromic and disease surveillance data to the Department upon direction from the Commissioner and clarify reporting requirements for clinical laboratories with respect to communicable diseases.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 225, 576, and 2803 of the Public Health Law, Section 2.2 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, Section 2.6 is repealed and a new Section 2.6 is added, a new Section 2.13 is added, Sections 2.25 through 2.30 are repealed, a new Section 58-1.14 is added, and Section 405.3 is amended, to be effective upon filing with the Secretary of State, to read as follows:

Subdivision (b) and (c) of Section 2.2 are amended, and new subdivisions (h) through (q) are added, to read as follows:

(b) [A *case* is defined as] Case shall mean a person who has been diagnosed [as likely to have] as having a particular disease or condition. The diagnosis may be based [solely] on clinical judgment, signs and symptoms combined with known exposure based on the best available evidence of transmissibility to a case or suspected case, [solely] and/or on laboratory evidence, [or on both criteria] as applicable.

(c) [A *suspected case* is defined as] Suspected case shall mean a person who has been [diagnosed] determined as [likely to have] possibly having a particular disease or condition. [The suspected diagnosis] A suspected case may be based [solely] on signs and symptoms, signs and symptoms combined with known exposure based on the best available evidence of transmissibility to a case or suspected case, [or solely] and/or on laboratory evidence, [or on both criteria] as applicable. The term “suspected case” shall include persons under

investigation, consistent with any guidance that the Commissioner of Health may issue with respect to a particular disease.

* * *

- (h) Contact shall mean any person known to have been sufficiently associated with a case or suspected case that, based on the best available evidence of transmissibility, such person has had the opportunity to contract a particular disease or condition.

- (i) Isolation shall mean the physical separation and confinement of an individual or group of individuals who are infected or reasonably determined by the State Commissioner of Health or local health authority to be infected with a highly contagious disease or organism, for such time as will prevent or limit the transmission of the reportable disease or organism to non-isolated individuals, in the clinical judgment of the State Commissioner of Health, or of the local health authority and consistent with any direction that the State Commissioner of Health may issue.

- (j) Quarantine shall mean the physical separation and confinement of an individual or groups of individuals who are reasonably determined by the State Commissioner of Health or local health authority to have been exposed to a highly contagious communicable disease, but who do not show signs or symptoms of such disease, for such time as will prevent transmission of the disease, in the clinical judgment of the State Commissioner of Health, or of the local

health authority and consistent with any direction that the State Commissioner of Health may issue.

- (k) Home quarantine or home isolation shall mean quarantine or isolation in a person's home, consistent with this Part and any direction that the State Commissioner of Health may issue;
- (l) Highly contagious communicable disease shall mean a communicable disease or unusual disease that the State Commissioner of Health determines may present a serious risk of harm to the public health, for which isolation or quarantine may be required to prevent its spread.
- (m) Monitor shall mean contacting a person who is the subject of an isolation or quarantine order by the State Department of Health or local health authority, to ensure compliance with the order and to determine whether such person requires a higher level of medical care, consistent with any direction that the State Commissioner of Health may issue.
- (n) Mandatory quarantine shall mean quarantine pursuant to a legal order consistent with this Part.
- (o) Voluntary quarantine shall mean quarantine pursuant to a voluntary agreement with a public health authority.
- (p) Confinement shall mean enforcement of an isolation or quarantine order through the use or possible use of law enforcement personnel.

Section 2.6 is repealed and replaced as follows:

2.6 Investigations and Response Activities.

- (a) Except where other procedures are specifically provided in law, every local health authority, either personally or through a qualified representative, shall immediately upon receiving a report of a case, suspected case, outbreak, or unusual disease, investigate the circumstances

of such report at any and all public and private places in which the local health authority has reason to believe, based on epidemiological or other relevant information available, that such places are associated with such disease. Such investigations and response activities shall, consistent with any direction that the State Commissioner of Health may issue:

- (1) Verify the existence of a disease or condition;
- (2) Ascertain the source of the disease-causing agent or condition;
- (3) Identify unreported cases;
- (4) Locate and evaluate contacts of cases and suspected cases, as well as those reasonably expected to have been exposed to the disease;
- (5) Collect and submit, or cause to be collected or submitted, for laboratory examination such specimens as may furnish necessary or appropriate information for determining the source of disease, or to assist with diagnosis; and furnish or cause to be furnished with such specimens pertinent data on forms prescribed by the State Commissioner of Health, including but not limited to the history of cases, physical findings and details of the epidemiological investigation;
- (6) Examine the processes, structures, conditions, machines, apparatus, devices, equipment, records, and material within such places that may be relevant to the investigation of disease or condition;
- (7) Instruct a responsible member of a household or entity, as applicable, to implement appropriate actions to prevent further spread of a disease; and
- (8) Take any other steps to reduce morbidity and mortality that the local health authority determines to be appropriate.

(b) When a case or suspected case of a disease, condition, outbreak, or unusual disease occurs in any business, organization, institution, or private home, the person in charge of the business, organization, institution or the home owner, as well as any individuals or entities required to report pursuant to sections 2.10 and 2.12 of this Part, shall cooperate with the State Department of Health and local health authorities in the investigation of such disease, condition, outbreak, or unusual disease.

(c) Investigation Updates and Reports.

(1) Upon request of the State Department of Health, the local health authority shall submit updates and reports on outbreak investigations to the State Department of Health. The content, timeframe, and manner of submission of such updates shall be determined by the State Department of Health.

(2) The local health authority shall complete investigation reports of outbreaks within 30 days of the conclusion of the investigation in a manner prescribed by the State Commissioner of Health, unless the State Commissioner of Health prescribes a different time period.

(d) Commissioner authority to lead investigation and response activities.

(1) The State Commissioner of Health may elect to lead investigation and response activities where:

(i) Residents of multiple jurisdictions within the State are affected by an outbreak of a reportable disease, condition, or unusual disease; or

(ii) Residents in a jurisdiction or jurisdictions within the State and in another state or states are affected by an outbreak of a reportable disease, condition, or unusual disease; or

(iii) An outbreak of an unusual disease or a reportable disease or condition involves a single jurisdiction with the high potential for statewide impact.

(2) Where the State Commissioner of Health elects to lead investigation and response activities pursuant to paragraph (1) of this subdivision, local health authorities shall take all reasonable steps to assist in such investigation and response, including supply of personnel, equipment or information. Provided further that the local health authority shall take any such action as the State Commissioner of Health deems appropriate and that is within the jurisdiction of the local health authority. Any continued investigation or response by the local health authority shall be solely pursuant to the direction of the State Commissioner of Health, and the State Commissioner of Health shall have access to any investigative materials which were heretofore created by the local health authority.

New section 2.13 is added to read as follows:

2.13 Isolation and Quarantine Procedures

(a) Duty to issue isolation and quarantine orders

(1) Whenever appropriate to control the spread of a highly contagious communicable disease, the State Commissioner of Health may issue and/or may direct the local health authority to issue isolation and/or quarantine orders, consistent with due

process of law, to all such persons as the State Commissioner of Health shall determine appropriate.

- (2) Paragraph (1) of this subdivision shall not be construed as relieving the authority and duty of local health authorities to issue isolation and quarantine orders to control the spread of a highly contagious communicable disease, consistent with due process of law, in the absence of such direction from the State Commissioner of Health.
- (3) For the purposes of isolation orders, isolation locations may include home isolation or such other residential or temporary housing location that the public health authority issuing the order determines appropriate, where symptoms or conditions indicate that medical care in a general hospital is not expected to be required, and consistent with any direction that the State Commissioner of Health may issue. Where symptoms or conditions indicate that medical care in a general hospital is expected to be required, the isolation location shall be a general hospital.
- (4) For the purposes of quarantine orders, quarantine locations may include home quarantine, other residential or temporary housing quarantine, or quarantine at such other locations as the public health authority issuing the order deems appropriate, consistent with any direction that the State Commissioner of Health may issue.

(b) Any isolation or quarantine order shall specify:

- (1) The basis for the order;
- (2) The location where the person shall remain in isolation or quarantine, unless travel is authorized by the State or local health authority, such as for medical care;

- (3) The duration of the order;
- (4) Instructions for traveling to the isolation or quarantine location, if appropriate;
- (5) Instructions for maintaining appropriate distance and taking such other actions as to prevent transmission to other persons living or working at the isolation or quarantine location, consistent with any direction that the State Commissioner of Health may issue;
- (6) If the location of isolation or quarantine is not in a general hospital, instructions for contacting the State and/or local health authority to report the subject person's health condition, consistent with any direction that the State Commissioner of Health may issue;
- (7) If the location of isolation or quarantine is a multiple dwelling structure, that the person shall remain in their specific dwelling and in no instance come within 6 feet of any other person, and consistent with any direction that the State Commissioner of Health may issue;
- (8) If the location of isolation or quarantine is a detached structure, that the person may go outside while remaining on the premise, but shall not leave the premise or come within 6 feet of any person who does not reside at the premise, or such other distance as may be appropriate for the specific disease, and consistent with any direction that the State Commissioner of Health may issue;
- (9) Such other limitations on interactions with other persons as are appropriate, consistent with any direction that the State Commissioner of Health may issue;
- (10) Notification of the right to request that the public health authority issuing the order inform a reasonable number of persons of the conditions of the isolation or quarantine order;
- (11) A statement that the person has the right to seek judicial review of the order;

(12) A statement that the person has the right to legal counsel, and that if the person is unable to afford legal counsel, counsel will be appointed upon request.

(c) Whenever a person is subject to an isolation or quarantine order, the State Department of Health or local health authority, or the local health authority at the State Department of Health's direction shall, consistent with any direction issued by the State Commissioner of Health:

- (1) monitor such person to ensure compliance with the order and determine whether such person requires a higher level of medical care;
- (2) whenever appropriate, coordinate with local law enforcement to ensure that such person comply with the order; and
- (3) the extent such items and services are not available to such person, provide or arrange for the provision of appropriate supports, supplies and services, including, but not limited to: food, laundry, medical care, and medications.

(d) If the location of an isolation or quarantine order is owned by a landlord, hotel, motel or other person or entity, no such landlord or person associated with such hotel, motel or other person or entity shall enter the isolation or quarantine location without permission of the local health authority, and consistent with any direction that the State Commissioner of Health may issue.

(e) No article that is likely to be contaminated with infective material may be removed from a premise where a person is isolated or quarantined unless the local health authority determines

that such article has been properly disinfected or protected from spreading infection, or unless the quarantine period expires and there is no risk of contamination. Such determinations shall be made pursuant to any direction that the State Commissioner of Health may issue.

(f) Any person who violates a public health order shall be subject to all civil and criminal penalties as provided for by law. For purposes of civil penalties, each day that the order is violated shall constitute a separate violation of this Part.

(g) Duty of attending physician

(1) Every attending physician shall immediately, upon discovering a case or suspected case of a highly contagious reportable communicable disease, cause the patient to be appropriately isolated and contact the State Department of Health and the local health authority where the patient is isolated and, if different, the local health authority where the patient resides.

(2) Such physician shall advise other members of the household regarding precautions to be taken to prevent further spread of the disease, consistent with any direction that the State Commissioner of Health may issue.

(3) Such physician shall furnish the patient, or caregiver of such patient where applicable, with detailed instructions regarding the disinfection and disposal of any contaminated articles, consistent with any direction that the State Commissioner of Health may issue.

Sections 2.25, 2.26, 2.27, 2.28, 2.29, and 2.30 are repealed.

Paragraph (11) of subdivision (d) of section 405.3 is amended, paragraph (12) is renumbered paragraph (13), and a new paragraph (12) is added, to read as follows:

(d) Records and reports. Any information, records or documents provided to the department shall be subject to the applicable provisions of the Public Health Law, Mental Hygiene Law, Education Law, and the Public Officers Law in relation to disclosure. The hospital shall maintain and furnish to the Department of Health, immediately upon written request, copies of all documents, including but not limited to:

* * *

(11) written minutes of each committee's proceedings. These minutes shall include at least the following:

- (i) attendance;
- (ii) date and duration of the meeting;
- (iii) synopsis of issues discussed and actions or recommendations made; [and]

(12) whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, such syndromic and disease surveillance data as the commissioner deems appropriate, which the hospital shall submit in the manner and form determined by the commissioner; and

(13) any record required to be kept by the provisions of this Part.

* * *

New section 58-1.14 is added to read as follows:

Section 58-1.14 Reporting of certain communicable diseases.

(a) The commissioner shall designate those communicable diseases, as defined by section 2.1 of the Sanitary Code, that require prompt action, and shall make available on the Department's website a list of such communicable diseases.

(b) Laboratories performing tests for screening, diagnosis or monitoring of communicable diseases requiring prompt action pursuant to subdivision (a) of this section, for New York State residents and/or New York State health care providers, shall:

(i) immediately report to the commissioner all positive results for such communicable diseases in a manner and format as prescribed by the commissioner; and

(ii) report all results, including positive, negative and indeterminate results, to the commissioner in a time and manner consistent with Public Health Law § 576-c.

* * *

Section 405.3 is amended by adding a new subdivision (g) as follows:

(g) Whenever the commissioner determines that there exists an outbreak of a highly contagious communicable disease pursuant to Part 2 of this Title or other public health emergency, the commissioner may direct general hospitals, as defined in Article 28 of the public health law, and consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA), to accept patients pursuant to such procedures and conditions as the commissioner may determine appropriate.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for the regulatory amendments to Part 2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is Section 225 of the Public Health Law (PHL), which authorizes the Public Health and Health Planning Council (PHHPC), subject to the approval of the Commissioner of Health (Commissioner), to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York. Additionally, Section 2103 of the PHL requires all local health officers to report cases of communicable disease to the New York State Department of Health (Department).

The statutory authority for the proposed new section 58-1.14 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 576 of the PHL, which authorizes the Department to adopt regulations prescribing the requirements for the proper operation of a clinical laboratory, including the methods and the manner in which testing or analyses of samples shall be performed and reports submitted.

The statutory authority for the proposed amendments to section 405.3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is section 2803 of the PHL, which authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objective of PHL § 225 is, in part, to protect the public health by authorizing PPHPC, with the approval of the Commissioner, to amend the SSC to address public health issues related to communicable disease.

The legislative objective of PHL § 576 is, in part, to promote public health by establishing minimum standards for clinical laboratory testing and reporting of test results, including to the Department for purposes of taking prompt action to address outbreaks of disease.

The legislative objective of PHL § 2803 includes among other objectives authorizing PPHPC, with the approval of the Commissioner, to adopt regulations concerning the operation of facilities licensed pursuant to Article 28 of the PHL, including general hospitals.

Needs and Benefits:

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

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

existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, two years after the first cases were identified in the United States, the COVID-19 pandemic continues to impact New York State. In light of this situation, these regulations update, clarify and strengthen the Department's authority as well as that of local health departments to take specific actions to control the spread of disease, including actions related to investigation and response to a disease outbreak, as well as the issuance of isolation and quarantine orders.

The following is a summary of the amendments to the Department's regulations:

Part 2 Amendments:

- Relocate and update definitions, and add new definitions
- Repeal and replace current section 2.6, related to investigations, to make existing clarify local health department authority.
 - Sets forth specific actions that local health departments must take to investigate a case, suspect case, outbreak, or unusual disease.
 - Requires individuals and entities subject to a public health investigation to cooperate with the Department and local health departments.
 - While the Department works collaboratively with local health departments on a variety of public health issues, including disease control, this regulation clarifies the authority for the Commissioner to lead disease investigation activities under certain circumstances (i.e., where there is potential for statewide impact, multiple jurisdictions impacted, or impact on one or more New York State

jurisdictions and another state or states), while working collaboratively with impacted local health departments. In all other situations, local health departments retain the primary authority and responsibility to control communicable disease within their respective jurisdictions, with the Department providing assistance as needed.

(i) Codifies in regulation the requirement that local health departments send reports the Department during an outbreak.

- New section 2.13 added to clarify isolation and quarantine procedures.
 - Clarify that the State Department of Health has the authority to issue isolation and quarantine orders, as do local departments of health.
 - Clarifies locations where isolation or quarantine may be appropriate.
 - Sets forth requirements for the content of isolation and quarantine orders.
 - Specifies other procedures that apply when a person is isolated or quarantined.
 - Explicitly states that violation of an order constitutes grounds for civil and/or criminal penalties
 - Relocates and updates existing regulatory requirements that require the attending physician to report cases and suspected cases to the local health authority, and to requires physicians to provide instructions concerning how to protect others.

Part 58 Amendments

- New section 58-1.14 added clarifying reporting requirements for certain communicable diseases

- Requires the Commissioner to designate those communicable disease that require prompt action, and to make available a list of such disease on the State Department of Health website.
- Requires clinical laboratories to immediately report positive test results for communicable diseases identified as requiring prompt attention, in a manner and format identified by the Commissioner.
- Requires clinical laboratories to report all test result, including negative and indeterminate results, for communicable diseases identified as requiring prompt attention, via the Electronic Clinical Laboratory Reporting System (ECLRS).

Part 405 Amendments

- Mandates hospitals to report syndromic surveillance data during an outbreak of a highly contagious communicable disease.
- Permits the Commissioner to direct hospitals to take patients during an outbreak of a highly contagious communicable disease, which is consistent with the federal Emergency Medical Treatment and Labor Act (EMTALA).

COSTS:

Costs to Regulated Parties:

The requirement that hospital submit syndromic surveillance reports when request during an outbreak is not expected to result in any substantial costs. Hospitals are already regularly and voluntarily submitting data to the Department, and nearly all of them submit such reports electronically. With regard to the Commissioner directing general hospitals to accept patients

during an outbreak of a highly contagious communicable disease, hospitals are already required to adhere to the federal Emergency Medical Treatment and Labor Act (EMTALA).

Accordingly, both of these proposed amendments will not impose any substantial additional cost to hospitals.

Clinical laboratories must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations.

Costs to Local and State Governments:

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations. Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Any clinical laboratories operated by a local government must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing

requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

To the extent that the State Department of Health and local health departments issue isolation and quarantine orders in response to COVID-19, such actions will impose costs upon the state. As the scope of any outbreak is difficult to predict, the cost to the State of issuing such orders cannot be predicted at this time.

Paperwork:

Some hospitals may be required to make additional syndromic surveillance reports that they are not already making. Otherwise, these regulations do not require any additional paperwork.

Local Government Mandates:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties.

Duplication:

There is no duplication in existing State or federal law.

Alternatives:

The alternative would be to leave in place the current regulations on disease investigation and isolation and quarantine. However, many of these regulatory provisions have not been

updated in fifty years and should be modernized to ensure appropriate response to a disease outbreak, such as COVID-19.

Federal Standards:

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within NYS.

Compliance Schedule:

These emergency regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed rulemaking for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties.

Compliance Requirements:

Under existing regulation, local health departments already have the authority and responsibility to take actions to control the spread of disease within their jurisdictions. The proposed amendments clarify these existing authorities and duties. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily. With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102. The regulation simply clarifies existing requirements and is not anticipated to impose any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

Professional Services:

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

Compliance Costs:

Although there are costs associated with disease investigation and response for any outbreak, these regulations clarify and strengthen the existing authorities and responsibilities of local governments. As such, these regulations do not impose any substantial additional costs beyond what local health departments would incur in the absence of these regulations.

Further, making explicit the Department's authority to lead investigation activities will result in increased coordination of resources, likely resulting in a cost-savings for State and local governments.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with regulated entities to ensure they are aware of the new regulations and have the information necessary to comply.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

While this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 44 counties have a population of less than 200,000 based upon 2020

United States Census data:

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

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the United States

Census estimated county populations for 2010:

Albany County
Dutchess County
Erie County

Monroe County
Niagara County
Oneida County
Onondaga County

Orange County
Saratoga County
Suffolk County

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

As the proposed regulations largely clarify existing responsibilities and duties among regulated entities and individuals, no additional recordkeeping, compliance requirements, or professional services are expected. With respect to mandating syndromic surveillance reporting during an outbreak of a highly infectious communicable disease, hospitals are already reporting syndromic surveillance data regularly and voluntarily. Additionally, the requirement for local health departments to continually report to the Department during an outbreak is historically a practice that already occurs. With respect to clinical laboratories, they must already report communicable disease testing results using the ECLRS and must also immediately report communicable diseases pursuant to PHL § 2102.

Compliance Costs:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, no initial or annual capital costs of compliance are expected above and beyond the cost of compliance for the requirements currently in Parts 2, 58 and 405.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As the proposed regulations largely clarify existing responsibility and duties among regulated entities and individuals, any adverse impacts are expected to be minimal. The Department, however, will work with local health departments to ensure they are aware of the new regulations and have the information necessary to comply.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted. If these regulations are proposed for permanent adoption, all parties will have an opportunity provided comments during the notice and comment period.

JOB IMPACT STATEMENT

The Department of Health has determined that this regulatory change will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

EMERGENCY JUSTIFICATION

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

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

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19. New York State first identified cases on March 1, 2020 and thereafter became the national epicenter of the outbreak.

Now, two years after the first cases were identified in the United States, the COVID-19 pandemic continues to impact New York State. Based on the ongoing burden COVID-19, the Department has determined that these regulations, while applicable to several diseases, are necessary to promulgate on an emergency basis to control the spread of COVID-19 in New York State. Accordingly, current circumstances necessitate immediate action, and pursuant to the State Administrative Procedure Act Section 206(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by repealing Subpart 66-3 and repealing and replacing Section 2.60, to be effective upon filing with the Secretary of State, to read as follows:

Subpart 66-3 is hereby repealed.

Section 2.60 is repealed and replaced to read as follows:

2.60. Face Coverings for COVID-19 Prevention

(a) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, any person who is over two years of age or older and able to medically tolerate a face-covering may be required to cover their nose and mouth with a mask or face-covering when: (1) in a public place and unable to maintain, or when not maintaining, physical distance; or (2) in certain settings as determined by the Commissioner, which may include schools, public transit, homeless shelters, correctional facilities, nursing homes, and health care settings, and which may distinguish between individuals who are vaccinated against COVID-19 and those that are not vaccinated. The Commissioner shall issue findings regarding the necessity of face-covering requirements at the time such requirements are announced.

(b) Businesses must provide, at their expense, face-coverings for their employees required to wear a mask or face-covering pursuant to subdivision (a) of this section.

(c) large-scale indoor event venues with more than five thousand attendees shall require patrons to wear face coverings consistent with subdivision (a) of this section; may require all patrons to wear a face covering irrespective of vaccination status; and may deny admittance to any person who fails to comply. This regulation shall be applied in a manner consistent with the federal American with Disabilities Act, New York State or New York City Human Rights Law, and any other applicable provision of law.

(d) No business owner shall deny employment or services to or discriminate against any person on the basis that such person elects to wear a face-covering that is designed to inhibit the transmission of COVID-19, but that is not designed to otherwise obscure the identity of the individual.

(e) For purposes of this section face-coverings shall include, but are not limited to, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person's nose and mouth.

(f) Penalties and enforcement.

(i) A violation of any provision of this Section is subject to all civil and criminal penalties as provided for by law. Individuals or entities that violate this Section are subject to a maximum fine of \$1,000 for each violation. For purposes of civil penalties, each day that an entity operates in a manner inconsistent with the Section shall constitute a separate violation under this Section.

(ii) All local health officers shall take such steps as may be necessary to enforce the provisions of this Section accordance with the Public Health Law and this Title.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for adding a new Section 2.60 is sections 201, 206, and 225 of the Public Health Law.

Legislative Objectives:

The legislative objective of PHL § 201 includes authorizing the New York State Department of Health (“Department”) to control and promote the control of communicable diseases to reduce their spread. Likewise, the legislative objective of PHL § 206 includes authorizing the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases. The legislative objective of Public Health Law § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to amend the State Sanitary Code to address public health issues related to communicable disease.

Needs and Benefits:

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

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, two years after the first cases were identified in the United States, the COVID-19 pandemic continues to impact New York State. Beyond the ongoing COVID-19 burden in communities, certain settings such as crowded indoor spaces, public transit, nursing homes, and health care settings, have been at increased risk for transmission. These regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. The regulations are necessary to permit flexibility to allow the Department to quickly adapt to changing circumstances related to the spread of COVID-19 and increasing transmission rates.

COSTS:

Costs to Regulated Parties:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19

within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Costs to Local and State Governments:

State and local government are authorized to enforce civil and criminal penalties related to the violation of these regulations, and there may be some cost of enforcement, however such costs are anticipated to be minimal as these provisions continue existing enforcement requirements.

Paperwork:

This regulation imposes no additional paperwork.

Local Government Mandates:

As part of ongoing efforts to address the COVID-19 pandemic, local governments have been partners in implementing and enforcing measures to limit the spread and/or mitigate the impact of COVID-19 within their jurisdictions since March of 2020. Further, local governments have separate authority and responsibilities to control disease within their jurisdictions pursuant to PHL § 2100 and Part 2 of the State Sanitary Code.

Duplication:

There is no duplication of federal law.

Alternatives:

The alternative would be to not promulgate these emergency regulations. However, this alternative was rejected, as the Department believes this regulation will facilitate the Department's ability to respond to the evolving nature of this serious and ongoing communicable disease outbreak.

Federal Standards:

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within NYS.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed ruling-making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

As part of ongoing efforts to address the COVID-19 pandemic, businesses and local government have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact on or cost to small business and local government.

Compliance Requirements:

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Professional Services:

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

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, this regulation will not have a significant impact.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, any adverse impacts are expected to be minimal.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

While this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 44 counties have an estimated population of less than 200,000 based upon the 2019 United States Census county populations projections:

Allegany County	Greene County	Schoharie County
Broome County	Hamilton County	Schuyler County
Cattaraugus County	Herkimer County	Seneca County
Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County		

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the 2019 United States Census population projections:

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

Reporting, recordkeeping, and other compliance requirements; and professional services:

These regulations update previously filed emergency regulations to provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread.

Compliance Costs:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of

COVID-19 within the state since March of 2020. Accordingly, this regulation does not impose additional costs to regulated parties.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Accordingly, adverse impacts are expected to be minimal.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

JOB IMPACT STATEMENT

The Department of Health has determined that this regulatory change is necessary to prevent further complete closure of the businesses impacted, and therefore, while there may be lost revenue for many businesses, the public health impacts of continued spread of COVID-19 are much greater.

EMERGENCY JUSTIFICATION

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

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. Thereafter, the situation rapidly evolved throughout the world, with many countries, including the United States, quickly progressing from the identification of travel-associated cases to person-to-person transmission among close contacts of travel-associated cases, and finally to widespread community transmission of COVID-19.

Now, two years after the first cases were identified in the United States, the COVID-19 pandemic continues to impact New York State. Beyond the ongoing COVID-19 burden in communities, certain settings such as crowded indoor spaces, public transit, nursing homes, and health care settings, have been at increased risk for transmission.

To that end, these regulations provide that masking may be required under certain circumstances, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. Based on the foregoing, the Department has determined that these emergency

regulations are necessary to permit flexibility to quickly adapt to changing circumstances and increasing transmission rates and control the spread of COVID-19, necessitating immediate action. Accordingly, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.

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

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

(g) (1) The hospital shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

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

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

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

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

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

(3) The Commissioner shall have discretion to increase the stockpile requirement set forth in paragraph (1) of this subdivision from 60 days to 90 days where there is a State or local public

health emergency declared pursuant to Section 24 or 28 of the Executive Law. Hospitals shall possess and maintain the necessary 90-day stockpile of PPE by the deadline set forth by the Commissioner.

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

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

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

(f) (1) The nursing home shall possess and maintain a supply of all necessary items of personal protective equipment (PPE) sufficient to protect health care personnel, consistent with federal Centers for Disease Control and Prevention guidance, for at least 60 days, by August 31, 2021.

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

(i) for single gloves, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 24;

(ii) for gowns, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 3;

(iii) for surgical masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.5;
and

(iv) for N95 respirator masks, the applicable positivity rate, multiplied by the number of certified nursing home beds as indicated on the nursing home's operating certificate, multiplied by 1.4.

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

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

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

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

(3) In order to maximize the shelf life of stockpiled inventory, providers should follow the appropriate storage conditions as outlined by manufacturers and inventory should be rotated through regular usage and replace what has been used in order to ensure a consistent readiness

level, and expired products should be disposed of when their expiration date has passed. Expired products shall not be used to comply with the stockpile requirement set forth in paragraph (1) of this subdivision.

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

REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

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

Needs and Benefits:

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

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

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

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

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

COSTS:

Costs to Regulated Parties:

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

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

Costs to Local and State Governments:

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

Costs to the Department of Health:

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

Paperwork:

This regulation imposes no addition paperwork.

Local Government Mandates:

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

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

The regulations will become effective upon filing with the Department of State. These regulations are expected to be proposed for permanent adoption at a future meeting of the Public Health and Health Planning Council.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

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

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

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

Small Business and Local Government Participation:

Small business and local governments were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department

plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking on these regulations and opportunity to submit public comments.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

Allegany County	Greene County	Schoharie County
Cattaraugus County	Hamilton County	Schuyler County
Cayuga County	Herkimer County	Seneca County
Chautauqua County	Jefferson County	St. Lawrence County
Chemung County	Lewis County	Steuben County
Chenango County	Livingston County	Sullivan County
Clinton County	Madison County	Tioga County
Columbia County	Montgomery County	Tompkins County
Cortland County	Ontario County	Ulster County
Delaware County	Orleans County	Warren County
Essex County	Oswego County	Washington County

Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

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

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

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

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

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

Compliance Costs:

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

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

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

Rural Area Participation:

Parties representing rural areas were not directly consulted given the urgent need to ensure hospital patients and nursing home residents are adequately protected in the event of a resurgence of COVID-19 or another communicable disease outbreak. However, the Department plans to issue an advisory to hospital CEOs and nursing home administrators alerting them to the anticipated proposed rulemaking and opportunity to submit public comments.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

EMERGENCY JUSTIFICATION

These regulations are needed on an emergency basis to ensure hospital and nursing home staff, as well as the patients and residents for whom they provide care, are adequately protected during the current wave and in the event of another resurgence of the 2019 Coronavirus (COVID-19) or another communicable disease outbreak. These regulations are specifically meant to address the lessons learned in New York State from 2020 to 2021 during the COVID-19 pandemic with respect to PPE.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International Concern. On a national level, the Secretary of Health and Human Services determined in January 2020 that a public health emergency existed. The federally-declared public health emergency remains in effect.

New York State first identified cases on March 1, 2020 and thereafter became the national epicenter of the outbreak. However, as a result of global PPE shortages, many hospitals and nursing homes in New York State had difficulty obtaining adequate PPE necessary to care for their patients and residents. New York State provided general hospitals, nursing homes, and other medical facilities with PPE from the State's emergency stockpile from the beginning of the COVID-19 outbreak.

These regulations are needed on an emergency basis to ensure that hospitals and nursing homes Statewide do not again find themselves in need of PPE from the State's stockpile should another communicable disease outbreak occur, COVID-19 or otherwise. It is critically important that PPE, including masks, gloves, respirators, face shields and gowns, is readily available and used when needed, as hospital and nursing home staff must don all required PPE to safely

provide care for patients and residents with communicable diseases, while ensuring that they themselves do not become infected with a communicable disease.

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

SUMMARY OF EXPRESS TERMS

Although the Governor retains authority to issue Executive Orders to temporarily suspend or modify regulations pursuant to the Executive Law, these proposed regulatory amendments would provide an expedient and coherent plan to implement quickly the relevant temporary suspensions or modifications. The proposed regulatory amendments would permit the State Commissioner of Health or designee to take specific actions, as well as to temporarily suspend or modify certain regulatory provisions (or parts thereof) in Titles 10 and 18 of the NYCRR during a state disaster emergency, where such provisions are not required by statute or federal law. These proposed amendments would also permit the Commissioner to take certain actions, where consistent with any Executive Order (EO) issued by the Governor during a declared state disaster emergency. Examples include issuing directives to authorize and require clinical laboratories or hospitals to take certain actions consistent with any such EOs, as well as the temporary suspension or modification of additional regulatory provisions when the Governor temporarily suspends or modifies a controlling state statute.

The proposed regulatory amendments would also require hospitals to: develop disaster emergency response plans; maintain a 60-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 225, 2800, and 2803 of the Public Health Law; and in the Commissioner of Health by Sections 576 and 4662 of the Public Health Law and Section 461 of the Social Services Law, Title 10 (Health) and Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective upon filing with the Secretary of State, to read as follows:

A new Part 360 is added to Title 10, to read as follows:

Part 360 Surge and Flex Health Coordination System Activation During a State Disaster

Emergency Declaration

Part 360. Surge and Flex System

Section 360.1. Administrative Purpose, Application and Scope

(a) Administrative purpose.

Hospitals across New York State, prior to the COVID-19 pandemic, rarely worked together or coordinated as a unified system. But a pandemic on the scale of the COVID-19 crisis demonstrated that hospitals could not meet the demand of the moment unless a new and innovative system was put into place requiring unprecedented coordination, cooperation, and agility. The New York State Department of Health takes note of the successful implementation of the Surge and Flex System by New York State's hospitals and offers these regulations as an additional way to strengthen the pandemic response. Surge and Flex Health Coordination System Activation has helped hospitals respond to the COVID-19 state disaster emergency, and New

York's hospitals have made commendable efforts to coordinate their response to the pandemic, to direct patients to the hospitals with the capacity to treat them, and to increase capacity as needed, during each wave of the pandemic.

The COVID-19 crisis demanded a new coordinated approach to ensure no one hospital was overwhelmed by COVID-19 patients or needed more ventilators, while a hospital nearby had capacity for more patients and excess equipment. It was imperative for government to coordinate and organize all hospitals under the umbrella of one unified system, and efficiently use all the resources available in the state to attempt to meet the significant demands of the crisis.

The "Surge and Flex" system is designed to create a single, coordinated statewide system to prevent a disaster from overwhelming any one hospital in the state. The purpose of this NYSDOH regulation is to institutionalize Surge and Flex operation, giving hospitals the time and guidance to adequately prepare for a potential future activation of Surge and Flex. This regulation provides the Department of Health with the necessary tools to enact Surge and Flex operation during another wave of COVID-19, or a future public health emergency. Further, this regulation is designed to help each hospital prepare for this contingency in order to ensure a straightforward transition from standard operating procedures to "Surge and Flex."

(b) Application and Scope. In the event of a State disaster emergency declared pursuant to section 28 of the Executive Law, the Commissioner may exercise the authorities granted in this Part, thereby maximizing the efficiency and effectiveness of the State's hospital systems and mitigating the threat to the health of the people of New York. Further, this Part establishes certain ongoing emergency planning requirements, called the Surge and Flex Health Care Coordination System, for facilities and agencies regulated by the Department.

To the extent that any provision of this Part conflicts with any other regulation of the Department, this Part shall take precedence. All authorities granted to the Commissioner shall be subject to any conditions and limitations that the Commissioner may deem appropriate. The Commissioner may delegate activation of the authorities provided by this Part to appropriate executive staff within the Department. In the event that there are inconsistent statutes, which would preclude effectiveness of such regulation, such regulation shall be effective upon the suspension of such inconsistent statute by the Governor pursuant to authority in Article 2-B of the Executive Law, and such regulation shall immediately be effective.

Section 360.2. Surge and Flex Health Care Coordination System Requirements.

(a) In the event of a declared State disaster emergency, the Commissioner shall have all necessary authority and procedures to activate the Surge and Flex Health Care Coordination System (hereinafter “Surge and Flex System”), including the following:

(1) Increase Bed Capacity. At the Commissioner’s direction, which shall be incremental and geographically targeted, health care facilities shall increase by up to 50% the number of acute care beds and/or change the service categories of beds certified or otherwise approved in any entity regulated by the Department. At the Commissioner’s direction, health care facilities shall postpone up to 100% of non-essential elective procedures or allow such procedures only pursuant to such conditions as the Commissioner may determine. The Department shall establish procedures to approve temporary changes at regulated health care facilities to physical plants, to facilitate the increased capacity and shall expedite review of construction applications related to temporary locations, provided that schematics are filed with the Department and patient safety is maintained.

(2) Enhanced Staffing Capacity. Health care facilities shall establish plans to meet enhanced staffing levels sufficient to ensure that the increased bed capacity has adequate staffing. The Commissioner may further expand or modify criteria for staffing. Health care facilities shall have access to a State-run portal for staffing needs identifying both volunteers and available staff; whether licensed or registered in New York State, or authorized or licensed to practice in any other state or Canada.

(3) Availability of Supplies and PPE. Health care facilities shall maintain and actively manage a supply of personal protective equipment (PPE) appropriate for use during a declared health emergency that could last at least 60-days pursuant to Section 405.11(g) of this Title. The Commissioner shall have all necessary authority to re-distribute the resources of a regulated entity if there is a determination that such resources are limited and in order to preserve the health and safety of New Yorkers, including:

- (i) Requiring that any medical or other equipment that is held in inventory by any entity in the State, or otherwise located in the State, be reported to the Department, in a form and with such frequency as the Commissioner may determine.
- (ii) Requiring that the patient census be reported to the Department, in a form and with such frequency as the Commissioner may determine.
- (iii) For any infectious and communicable disease, ensuring that testing results are reported immediately if positive, and as determined by the Commissioner if such testing results are negative, via the electronic clinical laboratory reporting system or as the Commissioner may determine.
- (iv) Suspending or restricting visitation, in accordance with the need to conserve PPE, and subject to such conditions or limitations as the Commissioner may determine.

(4) Statewide Coordination.

- (i) Discharging, transfer, and receiving of patients. Health care facilities regulated by the Department shall, if directed to do so by the Commissioner, rapidly discharge, transfer, or receive patients, while protecting the health and safety of such patients and residents, and consistent with the Emergency Medical Treatment and Active Labor Act (EMTALA). The Department shall coordinate with health care facilities to balance individual facility patient load, and may promulgate further directives to specify the method and manner of transfer or discharge.
- (ii) Designating Health Care Facilities as Trauma Centers. The Department is authorized to designate an entity as a trauma center; extend or modify the period for which an entity may be designated as a trauma center; or modify the review team for assessment of a trauma center; or change the level of acuity designation or health services of a facility or other determination about patient care as appropriate, including restricting admission or treatment to patients with a particular diagnosis.
- (iii) Maintaining a Statewide Health Care Data Management System. Health care facilities or health systems shall report as directed by the Department any information necessary to implement the Surge and Flex System (e.g. available hospital beds, equipment available and in use) and the Department shall use that health facility or health system data in order to monitor, coordinate, and manage during the emergency.

Section 360.3. Hospital emergency Surge and Flex Response Plans.

(a) Every general hospital (hereinafter, “hospital”) shall adopt a detailed emergency Surge and Flex Response Plan (hereinafter, “plan”) that, at a minimum, includes the following elements:

- (1) Bed surge plan. The plan shall explain how the hospital will increase the number of current staffed acute care operational beds to a number set by the Commissioner, which shall be up to a 50% increase of such beds within seven days from the date of the declaration of the state disaster emergency. For the purposes of this Part, an “acute care operational bed” means a bed that is staffed and equipped with appropriate infrastructure such that it can be used to deliver health care services to a patient. The Commissioner may further define the type of acute care operational beds for a given state disaster emergency, which may include isolation beds, intensive care (ICU) beds, pediatric and/or acute care beds. The plan shall contain scenarios for increases of current staffed acute care operational beds in phased increments, detailing the associated considerations for PPE, staffing, and other supplies and equipment, including whether the hospital can meet those requirements using internal resources and capabilities, as well as intra-system load balancing and postponement of some or all non-essential elective procedures. These plans shall inform the Commissioner’s directives, which shall be incremental and geographically tailored at the Statewide, regional, or community level, as dictated by infection rate data.
- (2) PPE surge plan. The plan shall explain how the hospital will increase its supply of personal protective equipment (PPE) appropriate for use in a pandemic to achieve continuous maintenance of its required 60-day supply of PPE, pursuant to section 405.11(g) of this Title. The plan shall list the contracted entities or other supply chain agreements executed by the hospital. Such plan shall further include, as appropriate,

- how the hospital will repurpose existing equipment, replenish the inventory from other areas of the health system, and establish cooperative agreements to obtain PPE to accommodate supply chain interruptions. A PPE surge plan may provide for hospital utilization of some, but not all, of the stockpile reserves during a State disaster emergency, provided that within 30 days of the end of the State disaster emergency, the stockpile reserve is fully restored.
- (3) Mass casualty plan. The plan shall explain how the hospital will receive and treat mass casualty victims, in the event of a secondary disaster arising from the interruption of normal services resulting from an epidemic, earthquake, flood, bomb threat, chemical spills, strike, interruption of utility services, nuclear accidents and similar occurrences, while addressing the continued need for surge capacity for the underlying state disaster emergency declaration.
- (4) Staffing plan. The plan shall explain how the hospital will: identify and train backups for employees who may be unable to report to work during a pandemic; institute employee overtime protocols; and increase staffing by inter- and intra-system loan, cross-training, and volunteer programs, which would be operational on seven days' notice.
- (5) Capital plan. The plan shall explain how the hospital shall ensure continuous operation of facilities and access to utilities, materials, electronic devices, machinery and equipment, vehicles, and communication systems. The plan shall ensure that the hospital routinely performs all required maintenance and peak load testing of its infrastructure systems, including: electrical, heating, ventilation and air conditioning (HVAC), and oxygen supply.

(b) The Chief Executive Officer (CEO) of the hospital, or system if authorized by the Commissioner to report on a system-wide basis, shall certify to the review and approval of the plan, including an attestation that it can be implemented and achieved in the event of a declared disaster emergency. The CEO shall be responsible for ensuring that the plan is reviewed and updated, as necessary, periodically as specified by the Commissioner and shall re-certify that it is able to be implemented and achieved upon each review.

(c) The Department may require the hospital to submit its disaster emergency response plan and history of semi-annual certifications for review, and may require the hospital to make such amendments to the plan as the Commissioner deems appropriate, to ensure that the plan will achieve the requirements established in subdivision (a) of this section, including increases in bed capacity.

(d) In the event of a declared state disaster emergency, any or all hospitals shall execute their plans immediately upon the direction of the Commissioner.

(e) Additional preparedness requirements.

(1) PPE. Every hospital shall, at all times, continue to maintain the required 60-day supply of PPE appropriate for use in a disaster emergency including a pandemic, pursuant to section 405.11(g) of this Title.

(2) Information technology. Every hospital shall ensure that non-essential staff who are capable of working remotely in the event of an emergency are equipped and trained to do so, and that infrastructure is in place to allow for the repurposing of existing workspaces as needed when activating the Surge and Flex System.

(f) Reporting requirements during the activation of the Surge and Flex System.

(1) In the event of a declared state disaster emergency, upon the Commissioner's direction, hospitals or health systems shall report to the Department all data requested by the Commissioner, in a manner determined by the Commissioner under Section 306.2.

Such data may include, but shall not be limited to:

- (i) Bed availability, both in total and by designated service.
- (ii) Bed capacity, meaning acute care operational beds as defined in paragraph (a)(1) of this Section.
- (iii) Patient demographics.
- (iv) Other health statistics, including deaths.
- (v) PPE and other supplies, in stock and ordered.
- (vi) PPE and other supply usage rates.

(2) Such reports shall be submitted periodically as determined by the Commissioner, except and unless otherwise directed by the Department.

Section 360.4 Clinical laboratory testing

(a) In the event of a declared state disaster emergency, the Commissioner shall have all necessary authority to:

- (1) Authorize clinical laboratories to operate temporary collecting stations to collect specimens from individuals.

(b) In addition, and to the extent consistent with any Executive Order issued by the Governor, the Commissioner shall have all necessary authority to:

- (1) Waive permit requirements for clinical laboratories and establish minimum qualifications to allow non-permitted clinical laboratories to accept and test

specimens from New York State, provided that such laboratories must meet any federal requirements.

- (2) Establish minimum qualifications of individuals that may perform clinical laboratory tests, provided that such persons meet federal requirements.
 - (3) Allow clinical laboratories to accept specimens without an order, subject to a plan approved by Commissioner to ensure the result of any tests are reported to the patient or the patient's personal representative and there will be appropriate follow up with the patient based on the results.
 - (4) Authorize licensed pharmacists to order clinical laboratory tests, consistent with federal law, including certificate of waiver requirements.
 - (5) Permit licensed pharmacists to be designated as qualified healthcare professionals for the purpose of directing a limited service laboratory, pursuant to Section 579 of the Public Health Law.
 - (6) Permit licensed pharmacists to order and administer clinical tests.
- (c) Prioritization of clinical laboratory tests. In the event the declared state disaster emergency requires utilization of clinical laboratory testing at a rate that exceeds available capacity, no laboratory shall perform such test unless the test has been ordered consistent with the testing prioritization published by the Commissioner.
- (d) Reporting of results of any communicable disease during a Surge and Flex period shall be made immediately via the Electronic Clinical Laboratory Reporting system, if positive, and on a schedule as determined by the Commissioner if negative.

Subdivision (g) of section 405.24 of 10 NYCRR is amended to read as follows:

Emergency and disaster preparedness. The hospital shall have a written plan, rehearsed and updated at least twice a year, with procedures to be followed for the proper care of patients and personnel, including but not limited to the reception and treatment of mass casualty victims, in the event of an internal or external emergency or disaster arising from the interruption of normal services resulting from earthquake, flood, bomb threat, chemical spills, strike, interruption of utility services, nuclear accidents and similar occurrences. Personnel responsible for the hospital's accommodation to extraordinary events shall be trained in all aspects of preparedness for any interruption of services and for any disaster. This shall be in addition to the Surge and Flex Plan that is required pursuant to Part 360 of the Title.

Section 400.1 of 10 NYCRR is amended to read as follows:

(a) This Subchapter shall be known and may be cited as "Medical Facilities--Minimum Standards," and shall apply to medical facilities defined as hospitals within article 28 of the Public Health Law. The standards within a particular article shall constitute the minimum standards for the identified medical facility in addition to those standards that may apply to such facilities as set forth in Articles 1 and 3 of this Subchapter as applicable.

(b) During the period of a state disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Subchapter, that is not otherwise required by state statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the state disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of

regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a state disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies state statutes pursuant to his authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new section 700.5 of 10 NYCRR is added to read as follow:

700.5 Commissioner authority to suspend and modify regulations

During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Subchapter, that is not otherwise required by State statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the State disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies State statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or

modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new paragraph (8) is added to subdivision (e) of section 1001.6 of 10 NYCRR, to read as follows:

(8) During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Part, that is not otherwise required by State statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the state disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies state statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new section 1.2 of 10 NYCRR is added to read as follows.

1.2 Commissioner authority to suspend and modify regulations

During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Title, that is not otherwise required by state statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the state disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies state statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new paragraph (4) subdivision (g) of section 487.3 of 18 NYCRR is added to read as follows:

(4) During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Part, that is not otherwise required by State statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the state disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the

Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies state statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new paragraph (6) subdivision (f) of section 488.3 of 18 NYCRR is added to read as follows:

(6) During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Part, that is not otherwise required by state statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the State disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a State disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies State statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

A new paragraph (5) subdivision (g) of section 490.3 of 18 NYCRR is added to read as follows:

(5) During the period of a State disaster emergency declared pursuant to section 28 of the Executive Law, the State Commissioner of Health or their designee may suspend or modify any provision, of parts thereof, of this Part, that is not otherwise required by State statute or federal law, if compliance with such provisions, or parts thereof, would prevent, hinder, or delay action necessary to cope with the State disaster emergency, or if necessary to assist or aid in coping with such disaster. Such suspension or modifications may include any modifications of regulation, exceptions, limitations or other conditions as the Commissioner or their designee deems appropriate and necessary to respond to the disaster emergency. Provided, further, that should the Governor declare a state disaster emergency pursuant to section 28 of the Executive Law, which suspends or otherwise modifies State statutes pursuant to the Governor's authority under section 29-a of the Executive Law, the Commissioner or their designee may suspend or modify any provision of any regulation that is consistent with the statutory authority as modified or suspended, for the period of such suspension or modification.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The authority for the promulgation of these regulations with respect to facilities subject to Article 28 of the Public Health Law (PHL) is contained in PHL sections 2800 and 2803(2). PHL Article 28 (Hospitals), section 2800, specifies: “Hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state, pursuant to section three of article seventeen of the constitution, the department of health shall have the central, comprehensive responsibility for the development and administration of the state's policy with respect to hospital and related services, and all public and private institutions, whether state, county, municipal, incorporated or not incorporated, serving principally as facilities for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition or for the rendering of health-related service shall be subject to the provisions of this article.” PHL section 2801 defines the term “hospital” as also including residential health care facilities (nursing homes) and diagnostic and treatment centers (D&TCs). PHL section 2803 (2) authorizes PHHPC to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of such health care facilities.

PHL section 4662 authorizes the Commissioner to issue regulations governing assisted living residences. Social Services Law (SSL) section 461(1) authorizes the Commissioner to promulgate regulations establishing standards applicable to adult care facilities. PHL section 576 authorizes the Commissioner to regulate clinical laboratories.

PHL section 225 authorizes the Public Health and Health Planning Council (PHHPC) and the Commissioner to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York.

Upon the future declaration of any disaster emergency, any further authorization by the Governor pursuant to article 2-B of the Executive Law, if it should suspend any statutes which otherwise conflict with these regulations, will establish the immediate effectiveness of these provisions.

Legislative Objectives:

The objectives of PHL Article 28 include protecting the health of New York State residents by ensuring that they have access to safe, high-quality health services in medical facilities, while also protecting the health and safety of healthcare workers. Similarly, PHL Articles 36 and 40 ensure that the Department has the tools needed to achieve these goals in the home care and hospice spaces, and PHL section 4662 and SSL section 461 likewise ensure that the Department has appropriate regulatory authority with respect to assisted living residences and adult care facilities. PHL section 576 ensures that the Commissioner has appropriate regulatory authority over clinical laboratories. Finally, PHL section 225 ensures that the State Sanitary Code includes appropriate regulations in the areas of communicable disease control and environmental health, among others.

By permitting the Commissioner to temporarily suspend or modify regulatory provisions in each these areas, where not required by state statute or federal law, or where he is authorized

by a gubernatorial Executive Order, these amendments provide crucial flexibility for this and future emergency response efforts.

Needs and Benefits:

During a state disaster emergency, Section 29-a of the Executive Law permits the Governor to, among other things, “temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.”

Although the Governor retains authority to issue Executive Orders to temporarily suspend or modify regulations pursuant to the Executive Law, these proposed regulatory amendments would provide an expedient and coherent plan to implement quickly the relevant temporary suspensions or modifications. The proposed regulatory amendments would permit the State Commissioner of Health or designee to take specific actions, as well as to temporarily suspend or modify certain regulatory provisions (or parts thereof) in Titles 10 and 18 of the NYCRR during a state disaster emergency, where such provisions are not required by statute or federal law. These proposed amendments would also permit the Commissioner to take certain actions, where consistent with any Executive Order (EO) issued by the Governor during a declared state disaster emergency. Examples include issuing directives to authorize and require clinical laboratories or hospitals to take certain actions consistent with any such EOs, as well as the temporary suspension or modification of additional regulatory provisions when the Governor temporarily suspends or modifies a controlling state statute.

The proposed regulatory amendments would also require hospitals to: develop disaster emergency response plans; maintain a 60-day supply of personal protective equipment (PPE); ensure that staff capable of working remotely are equipped and trained to do so; and report data as requested by the Commissioner.

During a state disaster emergency with significant public health impact, and where compliance with certain regulations may prevent, hinder or delay action necessary to cope with the disaster, as is the case with COVID-19, this authority will ensure that the State has the most efficient regulatory tools to facilitate the State's and regulated parties' response efforts to Surge and Flex the healthcare system statewide. Additionally, this authority will also ensure that the Department has the flexibility to impose additional requirements, where necessary, to ensure effective response to a declared state disaster emergency. Accordingly, these tools will help ensure the health and safety of patients and residents in New York State.

Costs:

Costs to Regulated Parties:

As demonstrated during the COVID-19 pandemic emergency, significant provider costs, as well as local, regional and state costs, were incurred as a result of the need to respond to the demand for urgent healthcare and related services. These costs had significant impact throughout the state. It is anticipated there would be similar types of costs in a widespread emergency that would need to be addressed through both appropriate preparedness as well as within, and as part of, a coordinated response to a specific situation.

To the extent that additional requirements are imposed on regulated parties by these proposed regulatory amendments, most requirements would be in effect only for the duration of a declared state disaster emergency, with the hope of limiting costs to the extent possible.

Costs to Local Governments:

As demonstrated during the COVID-19 pandemic emergency, significant provider costs, as well as local, regional and state costs, were incurred as a result of the need to respond to the demand for urgent healthcare and related services. These costs had significant impact throughout the state. It is anticipated there would be similar types of costs in a widespread emergency that would need to be addressed through both appropriate preparedness as well as within and as part of a coordinated response to a specific situation.

To the extent additional requirements are imposed on local governments that operate facilities regulated by the Department, most requirements would be in effect only for the duration of a declared state disaster emergency, with the hope of limiting costs to the extent possible.

Cost to State Government:

The administration and oversight of these planning and response activities will be managed within the Department's existing resources.

Paperwork:

It is not anticipated that the proposed regulatory amendments will impose any significant paperwork requirements. Although these proposed amendments require additional reporting,

these reports can be submitted electronically using the current platforms that facilities are already using. Moreover, such reporting requirements would only be activated during a declared state disaster emergency, thereby limiting the burden.

Local Government Mandates:

Facilities operated by local governments will subject to the same requirements as any other regulated facility, as described above.

Duplication:

These proposed regulatory amendments do not duplicate state or federal rules.

Alternatives:

The alternative would be to not promulgate the regulation. However, this alternative was rejected, as the Department believes that these regulatory amendments are necessary to facilitate response to a state disaster emergency.

Federal Standards:

42 CFR 482.15 establishes emergency preparedness minimum standards in four core areas including emergency planning, development of applicable policies and procedures, communications plan, and training and testing. These proposed amendments would complement the federal regulation and further strengthen hospitals' emergency preparedness and response programs.

Compliance Schedule:

These regulatory amendments will become effective upon filing with the Department of State.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

The proposed regulatory amendments would primarily affect health care professionals, licensed health care facilities, permitted clinical laboratories, emergency medical service personnel, providers, and agencies, and pharmacies.

Compliance Requirements:

A significant portion of these regulatory amendments are designed to provide regulatory relief during a declared state disaster emergency. Where the regulatory amendments would impose requirements, most of them would only be applicable when there is a declared state disaster emergency. An example of a requirement that may be implemented during a declared state disaster emergency is reporting of data and inventory as requested by the Commissioner (i.e. medical supplies and equipment, as well as hospital bed capacity, bed utilization, patient demographics, etc.). There are certain ongoing requirements proposed by this regulatory amendments, which would apply regardless of whether there is a declared state disaster emergency, in which hospitals would be required to: (1) maintain minimum levels of PPE; (2) ensure work from home capabilities; and (3) develop disaster emergency response plans.

Professional Services:

It is not expected that any professional services will be required to comply with the proposed regulatory amendments.

Compliance Costs:

As demonstrated during the COVID-19 pandemic emergency, significant provider costs, as well as local, regional and state costs, were incurred as a result of the need to respond to the demand for urgent healthcare and related services. These costs had significant impact throughout the state. It is anticipated there would be similar types of costs in a widespread emergency that would need to be addressed through both appropriate preparedness as well as within and as part of a coordinated response to a specific situation.

To the extent additional requirements are imposed on small businesses and local governments by these proposed regulatory amendments, most requirements would only be in effect for the duration of a declared state disaster emergency, with the hope of limiting costs to the extent possible. Ongoing costs requiring hospitals to maintain a minimum PPE supply and ensure work from home capabilities should have been addressed throughout the ongoing COVID-19 pandemic, thereby limiting costs of continued implementation. Ongoing costs related to hospital development of disaster emergency response plan will complement and build upon existing planning documents that hospitals are already required to have, which also limits costs.

Economic and Technological Feasibility:

There are no economic or technological impediments to the proposed regulatory amendments.

Minimizing Adverse Impact:

Although the proposed regulatory amendments impose some additional requirements on regulated parties, most of these requirements are only triggered during a declared state disaster

emergency. Proposed amendments that would impose ongoing requirements would only apply to hospitals, and as noted above, will largely be a continuation of the efforts already being employed by these entities.

Small Business and Local Government Participation:

Due to the emergency nature of COVID-19, small businesses and local governments were not consulted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Number of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.” The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

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

Genesee County

Rensselaer County

Yates County

Schenectady County

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

Albany County

Monroe County

Orange County

Broome County

Niagara County

Saratoga County

Dutchess County

Oneida County

Suffolk County

Erie County

Onondaga County

Reporting, recordkeeping, and other compliance requirements; and professional services:

A significant portion of these regulatory amendments are designed to provide regulatory relief during a declared state disaster emergency. Where the regulatory amendments would impose requirements, most of them would only be applicable when there is a declared state disaster emergency. An example of a requirement that may be implemented during a declared state disaster emergency is reporting of data and inventory as requested by the Commissioner (i.e. medical supplies and equipment, hospital bed capacity, bed utilization, patient demographics, etc.). There are certain ongoing requirements proposed by this regulatory amendments, regardless of whether there is a declared state disaster emergency, in which hospitals would be required to: (1) maintain minimum levels of PPE; (2) ensure work from home capabilities; and (3) develop disaster emergency response plans. This regulation provides that the Commissioner's directives shall be incremental and geographically tailored and targeted at the Statewide, regional, or community level, as dictated by infection rate data.

It is not expected that any professional services will be required to comply with the proposed regulatory amendments.

Compliance Costs:

As a large part of these regulatory amendments would give the State Commissioner of Health authority to temporarily suspend or modify certain regulations within Titles 10 and 18 during a state disaster emergency, these regulatory amendments are not expected to result in any significant costs to public and private entities in rural areas.

To the extent additional requirements are imposed on public and private entities in rural areas by these proposed regulatory amendments, such requirements would only be in effect for the duration of a declared state disaster emergency.

Lastly, per SAPA § 202-bb(3)(c), it is not anticipated that there will be any significant variation in cost for different types of public and private entities in rural areas.

Economic and Technological Feasibility

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

Minimizing Adverse Impact

Although the proposed regulatory amendments impose additional requirements on regulated parties, including those in rural areas, most of these requirements are only triggered during a declared state disaster emergency. Proposed amendments that would require disaster emergency preparedness planning on the part of regulated parties will complement and build upon existing state and federal planning requirements.

Rural Area Participation

Due to the emergency nature of COVID-19, parties representing rural areas were not consulted in the initial draft. However, parties representing rural may submit comments during the notice and comment period for the proposed regulations.

JOB IMPACT STATEMENT

The Department of Health has determined that these regulatory changes will not have a substantial adverse impact on jobs and employment, based upon its nature and purpose.

EMERGENCY JUSTIFICATION

During a state disaster emergency with significant public health impact, and where compliance with certain regulations may prevent, hinder or delay action necessary to cope with the disaster, as is the case with COVID-19, these proposed regulations will ensure that the State has the most efficient regulatory tools to facilitate the State's and regulated parties' response efforts to Surge and Flex the healthcare system statewide. Additionally, this authority will also ensure that the Department has the flexibility to impose additional requirements, where necessary, to ensure effective response to a declared state disaster emergency. Accordingly, these tools will help ensure the health and safety of patients and residents in New York State.

Executive Order 11, issued November 26, 2021, and continued by Executive Order 11.4 on March 16, 2022, declared a State disaster emergency that activated the Surge and Flex Health Care Coordination System under these regulations.

Of note, a Notice of Proposed Rule Making was published in the *State Register* on February 16, 2022, with a public comment period that ends on April 18, 2022. The Department intends these emergency regulations to be in effect only until such time as the Department can publish an Assessment of Public Comment and adopt a Final Rule, which would make the Proposed Rule permanent.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 206 and 2803 of the Public Health Law and sections 461 and 461-e of the Social Services Law, Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) is hereby amended by adding a new Subpart 66-4, to be effective upon filing with the Secretary of State, to read as follows:

A new Subpart 66-4, titled COVID-19 Nursing Home and Adult Care Facility Vaccination Program, is added to read as follows:

66-4.1. Requirements for Nursing Homes

(a) Every nursing home regulated pursuant to Part 415 of this Title shall offer all consenting, unvaccinated existing personnel and residents an opportunity to receive the first or any recommended next or booster dose of the COVID-19 vaccine.

(b) The operator and administrator of every nursing home regulated pursuant to Part 415 of this Title must ensure that all new personnel, including employees and contract staff, and every new resident and resident readmitted to the facility has an opportunity to receive the first or any recommended next or booster dose of the COVID-19 vaccine within fourteen days of having been hired by or admitted or readmitted to such facility, as applicable.

(c) The requirement to ensure that all new and current personnel and residents have an opportunity to receive the COVID-19 vaccination, as set forth in subdivisions (a) and (b) of this section, shall include, but not be limited to:

(1) Posting conspicuous signage throughout the facility, including at points of entry and exit and each residential hallway, reminding personnel and residents that the facility offers COVID-19 vaccination; and

(2) Providing all personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for a COVID-19 vaccination but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request vaccination from the facility. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.

(d) Nursing homes must comply with the requirements for vaccination of personnel in 10 NYCRR § 415.19(a)(5).

66-4.2. Requirements for Adult Care Facilities

(a) The operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this Title shall make diligent efforts to arrange for all consenting, unvaccinated existing personnel and residents to register for a vaccine appointment and an appointment to receive any recommended booster, and shall document attempts to schedule and methods used to schedule the vaccine in the individual's personnel file or case management notes, as applicable.

(b) The operator and administrator of every adult care facility regulated pursuant to Parts 487, 488 and 490 of Title 18 of the NYCRR and Part 1001 of this Title must arrange for the COVID-19 vaccination, including the first or any recommended next or booster dose, of all new personnel, including employees and contract staff, and every new resident and resident

readmitted to the facility. The requirement to arrange for COVID-19 vaccination of such personnel and residents shall include, but not be limited to:

(1) For residents:

(i) during the pre-admission screening process, and in no event after the first day of admission or readmission, the adult care facility shall screen the prospective or newly-admitted or readmitted resident for COVID-19 vaccine eligibility, including whether any first doses of the vaccine were previously administered, and whether the resident is interested in obtaining the COVID-19 vaccine, including a recommended booster. Such information shall be documented with the resident's pre-admission screening information and, if admitted, retained in the resident's case management records; and

(ii) within seven days of admission or readmission, the facility shall make diligent efforts to schedule all consenting and eligible new or readmitted residents for the COVID-19 vaccination, including a recommended booster. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the resident's case management notes.

(2) For personnel:

(i) during the pre-employment screening process, the facility shall solicit information from the prospective personnel regarding their vaccination status, including whether any first doses of the vaccine were previously administered, and whether the prospective personnel is interested in obtaining the COVID-19 vaccine. Such information must be documented with the personnel's pre-employment screening information and, if hired, retained in the personnel file; provided, however, that nothing in this paragraph shall be construed to require an adult care facility to make any hiring determination based upon

the prospective personnel's COVID-19 vaccination status, history, or interest in COVID-19 vaccination; and

(ii) within seven days of hiring new personnel, the facility shall make diligent efforts to schedule all consenting and eligible new personnel for the COVID-19 vaccination. The facility must document attempts to schedule and methods used to schedule the vaccine appointment in the individual's personnel file.

(iii) Adult care facilities must comply with the requirements for vaccination of personnel in 18 NYCRR §§487.9(a)(18), 488.9(a)(14), 490.9(a)(15), and 10 NYCRR §1001.11(q)(5), as applicable.

(c) The facility shall further provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for a COVID-19 vaccination, but declined. Such affirmation must state that the signatory is aware that, if they later decide to be vaccinated for COVID-19, it is their responsibility to request the facility arrange for their vaccination. The facility shall maintain signed affirmations on file at the facility and make such forms available at the request of the Department.

66-4.3. Penalties.

(a) A violation of any provision of this Subpart shall be subject to penalties in accordance with sections 12 and 12-b of the Public Health Law.

(b) For adult care facilities, failure to arrange for the vaccination of every facility resident and personnel as set forth in section 66-4.2 of this Part constitutes a "failure in systemic practices and procedures" under Social Services Law 460-d(7)(b)(2)(iii) and pursuant to 18 NYCRR

486.5(a)(4)(v).

(c) In addition to any monetary penalties or referral for criminal investigation to appropriate entities, the Department shall be empowered to immediately take custody and control of such vaccine at a nursing home and re-allocate to another provider.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority is provided under sections 201, 206, and 2803 of the Public Health Law (PHL) and sections 461 and 461-e of the Social Services Law (SSL).

PHL § 201 authorizes the New York State Department of Health (Department) to control and promote the control of communicable diseases to reduce their spread. Likewise, PHL § 206 authorizes the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases.

PHL § 2803 authorizes the promulgation of such regulations as may be necessary to implement the purposes and provisions of PHL Article 28, including the establishment of minimum standards governing the operation of health care facilities.

SSL § 461 requires the Department to promulgate regulations establishing general standards applicable to Adult Care Facilities (ACF). SSL § 461-e authorizes the Department to promulgate regulations to require adult care facilities to maintain certain records with respect to the facilities residents and the operation of the facility.

Legislative Objectives:

The legislative objectives of PHL §§ 201 and 206 are to protect the health and life of the people of the State of New York, including by controlling the spread of communicable diseases. The legislative objectives of PHL Article 28, including PHL § 2803, include the efficient provision and proper utilization of health services of the highest quality. The legislative objective of SSL § 461 is to promote the health and well-being of residents of adult care

facilities. Collectively, the legislative purpose of these statutes is to protect the residents of New York's long-term care facilities by providing safe, efficient, and adequate care.

Needs and Benefits:

These regulations are necessary to prevent the spread of COVID-19 in nursing homes and adult care facilities and to help ensure the health and life of residents of nursing homes and ACFs by requiring such congregate care facilities to offer or arrange for consenting residents and personnel to receive the COVID-19 vaccine. This requirement will help ensure residents are less likely to suffer a COVID-related death or severe illness and that fewer staff test positive for COVID-19. To date, there are an approximate 8,200 (9%) nursing home and 1,100 (4%) adult care facility residents that remain unvaccinated. As such, the potential for COVID-19 introduction or re-introduction to this vulnerable population remains a risk and the need for protecting their health and safety a top high priority.

COVID-19 is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. Given the disproportionate adverse health impacts of COVID-19 for older adults and those with comorbidities, many of whom reside in New York's nursing homes and ACFs, it is imperative that nursing homes and ACFs facilitate the prompt vaccination of its residents. Moreover, in order to ensure that nursing home and ACF personnel can safely provide resident care, it is critically important that nursing homes offer continued COVID-19 vaccinations on-site for their current and new personnel and that ACFs arrange for

their current and new personnel to receive the COVID-19 vaccine at an off-site location, such as a pharmacy.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to best protect the residents of New York's nursing homes and ACFs.

COSTS:

Costs to Regulated Parties:

The purpose of this regulation is to require nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), "starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately \$40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately \$40 for each dose in the series." Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation, particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Costs to Local and State Governments:

This regulation will not impact local or State governments unless they operate a nursing home or ACF, in which case costs will be the same as costs for private entities. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two adult care facilities operated by county governments.

Costs to the Department of Health:

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

Paperwork:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in personnel files and resident clinical or case management records, these records must already be maintained by facilities.

Local Government Mandates:

Nursing homes and ACFs operated by local governments will be affected and will be subject to the same requirements as any other nursing home licensed under PHL Article 28 or ACF licensed under SSL Article 7, Title 2.

Duplication:

These regulations do not duplicate any State or federal rules.

Alternatives:

The Department believes that promulgation of this regulation is the most effective means of ensuring that nursing homes and ACFs adequately ensure their residents and personnel are vaccinated against COVID-19. Accordingly, the alternative of not issuing these regulations was rejected.

Federal Standards:

No federal standards apply.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

This regulation will not impact local governments or small businesses unless they operate a nursing home or ACF. Currently, there are 21 nursing homes operated by local governments (counties and municipalities) and 6 nursing homes operated by the State. Additionally, there are currently two ACFs operated by county governments (Chenango and Warren Counties).

Additionally, to date, 79 nursing homes in New York qualify as small businesses given that they have 100 or fewer employees. There are also 483 ACFs that have 100 or fewer employees and therefore qualify as small businesses.

Compliance Requirements:

This regulation primarily requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as State-run vaccination sites or a local pharmacy. The regulation also requires facilities to provide all current and new personnel and residents who decline to be vaccinated a written affirmation for their signature, which indicates that they were offered the opportunity for the facility to arrange for or offer, as applicable, a COVID-19 vaccination, but they declined. Further, nursing homes are required to post conspicuous signage throughout the facility reminding personnel and residents that the facility offers COVID-19 vaccinations.

Professional Services:

No professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Compliance Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), “starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately \$40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately \$40 for each dose in the series.” Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with

transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Small Business and Local Government Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of COVID-19 if contracted, particularly by older adults or persons with comorbidities, small business and local governments were not directly consulted. However, the Department will notify such entities of the existence of these regulations and the opportunity to submit comments or questions to the Department.

Cure Period:

This regulation does not include a cure period given the serious threat the COVID-19 virus causes to all New Yorkers, particularly those residing in nursing homes and adult care facilities, considering such residents' age and comorbidities. As detailed more fully within the regulations, nursing homes and adult care facilities will have 14 and 7 days, respectively, to offer

vaccinations to residents and staff. The Department finds these 14- and 7-day periods to comply with the regulatory requirements are sufficient to ensure facilities can establish or revise their vaccination policies and procedures, while balancing the urgent need to protect facility residents and personnel from this dangerous disease.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010:

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

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

Albany County
Broome County
Dutchess County
Erie County

Monroe County
Niagara County
Oneida County
Onondaga County

Orange County
Saratoga County
Suffolk County

Both licensed nursing homes and ACFs are located in these identified rural areas.

Reporting, recordkeeping, and other compliance requirements; and professional services:

This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by facilities, including documentation in personnel files and resident clinical or case management records, these records must already be maintained by facilities. Additionally, no professional services are required by this regulation. However, nursing homes may choose to partner with a pharmacy to offer COVID-19 vaccinations for personnel and residents of the facility, rather than receiving and administering the vaccine directly.

Compliance Costs:

This regulation requires nursing homes and ACFs to promptly coordinate the COVID-19 vaccination of their residents and personnel. Specifically, nursing homes will be required to offer ongoing COVID-19 vaccinations at the facility, and ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. For nursing homes, costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled nursing homes cover

administrative costs; specifically, pursuant to April 2, 2021 guidance from the Centers for Medicare & Medicaid Services (CMS), “starting on March 15, 2021, for single dose COVID-19 vaccines, Medicare pays approximately \$40 for its administration. Starting on March 15, 2021, for COVID-19 vaccines requiring multiple doses, Medicare pays approximately \$40 for each dose in the series.” Nursing homes will need in some circumstances to absorb the administrative costs associated with reporting doses of vaccine administered to the appropriate vaccine registry when not reported by an outside vendor or pharmacy provider.

For ACFs, costs to facilities are minimal to none, as ACFs will be responsible for arranging vaccinations at off-site locations, such as a local pharmacy. Many ACFs have vehicles which can be used for necessary transport, but there may be minimal costs associated with transportation particularly if the distance to the vaccination site is great and/or if the ACF does not readily have access to a vehicle.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities nursing homes and ACFs have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation’s health and safety benefits to residents and staff.

Rural Area Participation:

Due to the urgent need to ensure ACF and NH staff and residents are vaccinated as soon as possible given the seriousness of the COVID-19 virus on this population, facilities located in rural areas were not directly consulted. However, the Department will notify covered entities located in rural areas of the existence of these regulations and the opportunity to submit comments or questions to the Department.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

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

EMERGENCY JUSTIFICATION

Recent New York State data show that unvaccinated individuals continue to be more likely to be diagnosed with COVID-19 compared to vaccinated individuals. In fact, those who are unvaccinated have over 10 times the risk of being hospitalized with COVID-19 compared with vaccinated individuals. To date, there are an approximate 8,200 (9%) nursing home and 1,100 (4%) adult care facility residents that remain unvaccinated. As such, the potential for COVID-19 introduction or re-introduction to this vulnerable population remains a risk and the need for protecting their health and safety a top high priority.

The COVID-19 vaccines are safe and effective. They offer the benefit of helping to reduce the number of COVID-19 infections, including the Delta and Omicron variants, which is a critical component to protecting public health. Booster doses of the COVID-19 vaccine are important to maximize protection against infection. Certain settings, such as healthcare facilities and congregate care settings, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve. Personnel in such settings who have not received all recommended doses of the COVID-19 vaccine have an unacceptably high risk of both acquiring COVID-19 and transmitting the virus to colleagues and/or vulnerable patients or residents, exacerbating staffing shortages, and causing an unacceptably high risk of complications.

Based on the foregoing, the Department has made the determination that this emergency regulation is necessary to best protect the residents of New York's nursing homes and ACFs.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 206, and 225 of the Public Health Law, Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is adding new sections 2.9 and 2.62, to be effective upon filing with the Secretary of State, to read as follows:

Section 2.9 is added to read as follows:

2.9. COVID-19 Reporting in Schools. In addition to all other reporting requirements in this Part, every kindergarten, elementary, intermediate, or secondary school as well as any pre-kindergarten programs and school districts, as identified by the Department, shall report to the Department of Health, on a daily basis, in a form and manner to be determined by the Commissioner, all COVID-19 testing, positive test results reported in any manner to the school, and related information among students, teaching staff, and any other employees or volunteers. Such daily report shall include any other data elements as the Commissioner determines to be appropriate to track outbreaks of COVID-19 within such schools and school districts.

Section 2.62 is added to read as follows:

2.62. COVID-19 Testing Requirements.

(a) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, the Commissioner may require routine COVID-19 testing in certain settings, which may include schools, homeless shelters, correctional facilities, nursing homes, and health care settings, and

which may distinguish between individuals who have received full vaccination against COVID-19 or have had laboratory confirmed COVID-19 infection within the previous 90-days, and those who have not. Such testing determination may also include alternatives to testing as well as prevention protocols pending test results based on symptoms and/or exposure in certain settings.

(1) Entities subject to routine COVID-19 testing pursuant to a Commissioner's determination may accept documentation demonstrating full vaccination, or laboratory confirmed COVID-19 infection within the previous 90-days, in lieu of imposing such testing requirements, if permitted in a Commissioner's determination. "Full vaccination", for the purposes of this section, shall be determined by the Department in accordance with applicable federal guidelines and recommendations. Unless otherwise specified by the Department, documentation of full vaccination must include the manufacturer, lot number(s), date(s) of vaccination; and vaccinator or vaccine clinic site, in one of the following formats:

(i) record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a CDC COVID-19 vaccine card;

(ii) an official record from one of the following, which may be accepted as documentation of immunization without a health practitioner's signature: a foreign nation, NYS Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYSIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system;

(iii) Excelsior Pass; or

(iv) any other documentation determined acceptable by the Department.

(2) Entities subject to a Commissioner's determination pursuant to this section shall document testing or vaccination in appropriate records in accordance with applicable privacy laws and submit data and information related thereto to the Department in a manner and format set forth in such determination.

(3) The Commissioner shall issue findings regarding the necessity of testing requirements at the time such requirements are announced.

(b) Enforcement and Penalties

(1) All local health officers shall take such steps as may be necessary to assist with the enforcement of the provisions of this section in accordance with the Public Health Law and this Title.

(2) A violation of any provision of this section is subject to all civil and criminal penalties as provided for by law. Entities that violate this section are subject to a maximum fine of \$1,000 for each violation. For purposes of civil penalties, each day that an entity operates in a manner inconsistent with the section shall constitute a separate violation under this section.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authority for adding a new section 2.9 and 2.60 is sections 201, 206, and 225 of the Public Health Law (PHL). Subdivision (c) of section 201 of the PHL requires the Department to supervise the reporting and control of disease. Subdivision (d) of section 206 of the PHL requires the Commissioner to investigate the causes of diseases and epidemics. Section 225 of the Public Health Law (PHL) authorizes the Public Health and Health Planning Council (PHHPC), subject to the approval of the Commissioner of Health (Commissioner), to establish and amend the State Sanitary Code (SSC) provisions related to any matters affecting the security of life or health or the preservation and improvement of public health in the State of New York.

Legislative Objectives:

The legislative objective of PHL § 201 includes authorizing the New York State Department of Health (“Department”) to control and promote the control of communicable diseases to reduce their spread. Likewise, the legislative objective of PHL § 206 includes authorizing the Commissioner of Health to take cognizance of the interests of health and life of the people of the state, and of all matters pertaining thereto and exercise the functions, powers and duties of the department prescribed by law, including control of communicable diseases. The legislative objective of Public Health Law § 225 is, in part, to protect the public health by authorizing PHHPC, with the approval of the Commissioner, to amend the State Sanitary Code to address public health issues related to communicable disease.

Needs and Benefits:

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

In response to this significant public health threat, the Department of Health seeks to empower the Commissioner through this emergency regulation to issue determinations requiring the immediate implementation of heightened COVID-19 testing protocols for population segments that may be at increased risk of transmission due, in part, to their employment or residential circumstances. Regular COVID-19 testing enables the immediate identification of COVID-19-positive individuals, even if they are not symptomatic, so that they can isolate and prevent further transmission. Additionally, the reporting of positive COVID-19 test results to public health authorities facilitates the rapid initiation of contact tracing to ensure close contacts are quarantined, tested, and isolated as needed.

These regulations also permit the Department to require reporting of testing and positive reports among school students, teaching staff, and any other employees or volunteers. It is important for the Department to monitor COVID-19 testing and positive reports in schools, given the number of students that are currently unvaccinated. Children ages 5 through 11 years old were only recently authorized by the U.S. Food and Drug Administration (FDA) to receive COVID-19 vaccinations. For those in the 12-17 age group, the CDC data estimates that 70.2% of this population has been vaccinated in New York State, with 61.6% in this age group

completing a COVID-19 vaccine series. By carrying forward the reporting requirements that were in place for the 2020-2021 school year, the Department will be able to track COVID-19 incidence and prevalence in school settings for the upcoming school year. This will allow the Department to work with school districts and local health departments to implement targeted prevention strategies, where needed to limit the spread of the virus.

COSTS:

Costs to Regulated Parties:

In imposing testing requirements pursuant to a Commissioner's determination, the Commissioner, in consultation with the Department, will consider costs and how they may be offset. For example, testing for certain populations is supported by federal grant funding. The State has received approximately 335 million dollars in federal Epidemiology and Laboratory Capacity for Infectious Diseases Cooperative (ELC) Agreement School Reopening Funding through at least July 31, 2022 with the possibility for future funding periods. The New York City Department of Health and Mental Hygiene has received an award for this purpose of approximately 251 million dollars. These amounts are believed to be sufficient to offset any costs associated with any school-related testing in New York State that may be required pursuant to this regulation, such that the fiscal impact on Local Health Departments and schools is minimized. Costs for testing can also be offset by testing that is offered under Operation Expanded Testing which is free testing in K-12 schools and other congregate settings which is funded by the Department of Health and Human Services (HHS) and Department of Defense (DoD).

With regard to the COVID-19 school reporting requirement, schools had to submit daily reports related to COVID-19 testing and positive reports for the 2020-2021 school year. These regulations carry forward this reporting requirement and is not expected to generate any additional cost.

Costs to Local and State Governments:

Costs to local health departments and the Department are expected to be minimal and related to monitoring compliance with these regulations, which can be incorporated into existing reporting and oversight activities and resources.

Paperwork:

This measure will require documentation related to the testing requirement, as well as documentation to opt-out of testing by providing documentation of full vaccination against COVID-19 in appropriate records. No additional paperwork requirements are anticipated for the school reporting requirement, which is expected to take the form of electronic submission to the Department.

Local Government Mandates:

These regulations impose an obligation on schools and school districts to report COVID-19 testing and positive report data for students, teaching staff, and any other employees or volunteers. Local government may also be impacted if subject to a Commissioner's testing determination.

Duplication:

There is no duplication of federal law.

Alternatives:

The alternative to the school reporting requirement would be to not require COVID-19 related reporting for schools and school districts. A lack of the regulation would translate to a lack of accuracy in case statistics and delays or inadequate contact tracing. In addition, the Department would lose the ability to communicate with the community about COVID transmission patterns at the individual school level.

The alternative to permitting the Commissioner to issue determinations to require testing in certain settings would limit the ability for the Department to monitor trends related to COVID-19 transmission in more vulnerable populations, making it more difficult to work with partners to implement prevention strategies. Regular testing also helps to isolate infected individuals more quickly, as well as identify any contacts that need to be quarantined to prevent additional spread of COVID-19.

Federal Standards:

States and local governments have primary authority for controlling disease within their respective jurisdictions. Accordingly, there are no federal statutes or regulations that apply to disease control within NYS.

Compliance Schedule:

The regulations will become effective upon filing with the Department of State and will expire, unless renewed, 90 days from the date of filing. As the COVID-19 pandemic is consistently and rapidly changing, it is not possible to determine the expected duration of need at this point in time. The Department will continuously evaluate the expected duration of these

emergency regulations throughout the aforementioned 90-day effective period in making determinations on the need for continuing this regulation on an emergency basis or issuing a notice of proposed ruling making for permanent adoption. This notice does not constitute a notice of proposed or revised rule making for permanent adoption.

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REGULATORY FLEXIBILITY ANALYSIS

Effect on Small Business and Local Government:

As part of ongoing efforts to address the COVID-19 pandemic, small businesses and local governments have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the state since March of 2020. Given the testing and reporting mechanisms that have already been established in many settings, it is not anticipated that this regulation will have a significant impact on or cost to these entities. With regard to the school COVID-19 reporting requirement, this regulation will apply to private schools, including parochial schools, some of which may be small businesses, as well as public schools operated by local governments.

Compliance Requirements:

These regulations provide that testing may be required under certain circumstances, and in certain settings, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. As part of a Commissioner's testing-related determination, this regulation permits the Commissioner to request information/data related to the elements set forth in the determination. These regulations also set forth specific COVID-19 testing and positive report reporting requirements for schools, carrying forward the reporting requirements in place during the 2020-2021 school year.

Professional Services:

As testing is a requirement of this regulation, the types of professional services that will be needed to comply with this rule include diagnostic and screening testing services offered by clinical laboratories that hold the appropriate New York State approval to carry out testing. Because there will be flexibility in the types of tests that can be used to operationalize testing, the types of clinical laboratories that can be used for testing will depend on the type of testing being performed. If a laboratory-based nucleic acid amplification tests (e.g., PCR) will be used to meet the testing requirement, testing will need to be performed off-site by a fully permitted clinical laboratory. In this scenario, individuals are sent to a partner for testing, or an arrangement can be made to conduct sample collection on-site for testing off-site at the clinical laboratory. If rapid waived tests will be used to meet the testing requirement, testing can be performed by a Limited Service Laboratory (LSL). Due to the lower requirements that need to be met for waived testing, an LSL can be established for on-site testing of individuals (e.g., performing testing on-site at a school).

Compliance Costs:

In imposing testing requirements pursuant to a Commissioner's determination, the Commissioner, in consultation with the Department, will consider costs and how they may be offset. For example, testing for certain populations is supported by federal grant funding. The State has received approximately 335 million dollars in federal Epidemiology and Laboratory Capacity for Infectious Diseases Cooperative (ELC) Agreement School Reopening Funding through at least July 31, 2022 with the possibility for future funding periods. The New York City Department of Health and Mental Hygiene has received an award for this purpose of

approximately 251 million dollars. These amounts are believed to be sufficient to offset any costs associated with any school-related testing in New York State that may be required pursuant to this regulation, such that the fiscal impact on Local Health Departments and schools is minimized. Costs for testing can also be offset by testing that is offered under Operation Expanded Testing which is free testing in K-12 schools and other congregate settings which is funded by the Department of Health and Human Services (HHS) and Department of Defense (DoD).

With regard to the COVID-19 school reporting requirement, schools had to submit daily reports related to COVID-19 testing and diagnoses for the 2020-2021 school year. These regulations carry forward this reporting requirement and is not expected to generate any additional cost.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

Any adverse impacts related to school reporting requirements are expected to be minimal, as it carries forward reporting requirements that schools were required to implement last year. The Department, however, will work with schools to ensure they are aware of the new regulations and have the information necessary to comply.

With regard to minimizing adverse impacts related to the Commissioner's authority to issue test-related determinations, many settings have been increasingly implementing COVID-19 prevention strategies, with testing being one such example. Specifically, schools became

familiar with COVID-19 testing last year when the Department provided no cost antigen test cards as part of the microcluster testing initiative. Some schools have already implemented regular pooled surveillance testing to give communities confidence in the safety of their schools. Where the Commissioner issues a testing-related determination, the Department will work with the entities subject to such determination to provide the guidance necessary to comply.

Small Business and Local Government Participation:

Due to the emergent nature of COVID-19, small business and local governments were not consulted.

RURAL AREA FLEXIBILITY ANALYSIS

Type and Estimated Numbers of Rural Areas:

While this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), “rural area” means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as “counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein. In counties of two hundred thousand or greater population ‘rural areas’ means towns with population densities of one hundred fifty persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.”

The following 44 counties have an estimated population of less than 200,000 based upon the 2019 United States Census county populations projections:

Allegany County	Greene County	Schoharie County
Broome County	Hamilton County	Schuyler County
Cattaraugus County	Herkimer County	Seneca County
Cayuga County	Jefferson County	St. Lawrence County
Chautauqua County	Lewis County	Steuben County
Chemung County	Livingston County	Sullivan County
Chenango County	Madison County	Tioga County
Clinton County	Montgomery County	Tompkins County
Columbia County	Ontario County	Ulster County
Cortland County	Orleans County	Warren County
Delaware County		

Essex County	Oswego County	Washington County
Franklin County	Otsego County	Wayne County
Fulton County	Putnam County	Wyoming County
Genesee County	Rensselaer County	Yates County
	Schenectady County	

The following counties of have population of 200,000 or greater, and towns with population densities of 150 person or fewer per square mile, based upon the 2019 United States Census population projections:

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

Reporting, recordkeeping, and other compliance requirements; and professional services:

These regulations provide that testing may be required under certain circumstances and in certain settings, as determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread. As part of a Commissioner’s testing-related determination, this regulation permits the Commissioner to request information/data related to the elements set forth in the determination. Lastly, these regulations also set forth specific COVID-19 testing and positive test reporting requirements for schools, carrying forward the reporting requirements in place during the 2020-2021 school year.

Compliance Costs:

In imposing testing requirements pursuant to a Commissioner's determination, the Commissioner, in consultation with the Department, will consider costs and how they may be offset. For example, testing for certain populations is supported by federal grant funding. The State has received approximately 335 million dollars in federal Epidemiology and Laboratory Capacity for Infectious Diseases Cooperative (ELC) Agreement School Reopening Funding through at least July 31, 2022 with the possibility for future funding periods. The New York City Department of Health and Mental Hygiene has received an award for this purpose of approximately 251 million dollars. These amounts are believed to be sufficient to offset any costs associated with any school-related testing in New York State that may be required pursuant to this regulation, such that the fiscal impact on Local Health Departments and schools is minimized. Costs for testing can also be offset by testing that is offered under Operation Expanded Testing which is free testing in K-12 schools and other congregate settings which is funded by the Department of Health and Human Services (HHS) and Department of Defense (DoD).

With regard to the COVID-19 school reporting requirement, schools had to submit daily reports related to COVID-19 testing and diagnoses for the 2020-2021 school year. These regulations carry forward this reporting requirement and is not expected to generate any additional cost.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

Any adverse impacts related to school reporting requirements are expected to be minimal, as it carries forward reporting requirements that schools were required to implement last year. The Department, however, will work with schools to ensure they are aware of the new regulations and have the information necessary to comply.

With regard to minimizing adverse impacts related to the Commissioner's authority to issue test-related determinations, many settings have been increasingly implementing COVID-19 prevention strategies, with testing being one such example. Specifically, schools became familiar with COVID-19 testing last year when the Department provided no cost antigen test cards as part of the microcluster testing initiative. Some schools have already implemented regular pooled surveillance testing to give communities confidence in the safety of their schools. Where the Commissioner issues a testing-related determination, the Department will work with the entities subject to such determination to provide the guidance necessary to comply.

Rural Area Participation:

Due to the emergent nature of COVID-19, parties representing rural areas were not consulted.

JOB IMPACT STATEMENT

A Job Impact Statement is not being submitted with this rule because it is evident from the subject matter of the rule that it will have no impact on jobs and employment opportunities. The primary purposes of this rule is to carry forward COVID-19 related reporting and to permit the Commissioner to impose COVID-19 testing requirements in certain settings based on specified criteria.

EMERGENCY JUSTIFICATION

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

In response to this significant public health threat, the Department of Health seeks to empower the Commissioner through this emergency regulation to issue determinations requiring the immediate implementation of heightened COVID-19 testing protocols for population segments that may be at increased risk of transmission due, in part, to their employment or residential circumstances. Regular COVID-19 testing enables the immediate identification of COVID-19-positive individuals, even if they are not symptomatic, so that they can isolate and prevent further transmission. Additionally, the reporting of positive COVID-19 test results to public health authorities facilitates the rapid initiation of contact tracing to ensure close contacts are quarantined, tested, and isolated as needed.

These regulations also permit the Department to require reporting of testing and diagnoses among school students, teaching staff, and any other employees or volunteers. It is important for the Department to monitor COVID-19 testing and diagnoses in schools, given the number of students that are currently unvaccinated. Only 40.5% of children ages 5 through 11 years old have received at least one COVID-19 vaccination, with 34.9% of this age group completing a COVID-19 vaccine series. For those in the 12-17 age group, the CDC data estimates that 77.2% of this population has been vaccinated in New York State, with 70.1% in

this age group completing a COVID-19 vaccine series. By carrying forward the reporting requirements that were in place for the 2020-2021 school year, the Department will be able to track COVID-19 incidence and prevalence in school settings for the remainder of the school year. This will allow the Department to continue working with school districts and local health departments to implement targeted prevention strategies, where needed, to limit the spread of the virus.

Based on the foregoing, the Department has determined that these emergency regulations are necessary to control the spread of COVID-19, necessitating immediate action. Accordingly, pursuant to the State Administrative Procedure Act Section 202(6), a delay in the issuance of these emergency regulations would be contrary to public interest.



**Project # 212259-C
Sisters of Charity Hospital - St. Joseph Campus**

Program: Hospital
Purpose: Construction

County: Erie
Acknowledged: December 17, 2021

Executive Summary

Description

Sisters of Charity Hospital - St. Joseph Campus, a 103-bed division of Sisters of Charity Hospital, a not-for-profit hospital that is part of the Catholic Health System, Inc., is seeking to convert 40 of 89 medical/surgical beds to chemical dependence rehabilitation beds and perform renovations to create the new unit on the 5th floor.

The applicant states that demand for inpatient treatment beds consistently exceeds available beds and that there was an increase in opioid overdoses and deaths during the COVID-19 pandemic. The request for 40 beds at the St. Joseph campus will address the anticipated closure of 30 beds through an approved CON 211234 to replace the Eastern Niagara Hospital (Lockport), as well as, the pervasive higher-than-optimum utilization of beds in the region

OPCHSM Recommendation
Contingent Approval

Need Summary

This project will address the increased need for chemical dependence beds in the region.

Program Summary

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

Financial Summary

Total project costs of \$7,885,120, will be met via equity from hospital operations. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$8,232,205	\$8,321,620
Expenses	5,338,540	5,508,899
Excess Revenues	\$2,893,665	\$2,812,721

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **September 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2022**, and construction must be completed by **June 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

April 5, 2022

Need and Program Analysis

Background

The applicant reports that opioid addiction has tripled since 2010 and the current demand for inpatient beds consistently exceeds the beds available. Since the start of the COVID-19 pandemic, there has been a dramatic increase in the number of opioid overdoses and deaths. In the eight Western New York counties from which the hospital draws patients, there are currently 132 chemical dependence - rehabilitation beds. Of the 132 beds, 30 are slated to close through an approved CON 211234 to replace the Eastern Niagara Hospital (Lockport).

Analysis

There will be no change to the total number of certified beds at the St. Joseph Campus, but staffing is expected to increase by 25.6 FTEs after the completion of the project.

Beds	Current	Request	Proposed
Medical/Surgical	103	-40	63
Chemical Dependence - Rehab	0	40	40
Total	103	0	103

Beds	#	Occupancy		
		2019	2020	2021*
Med/Surg - Current	103	37.4%	35.6%	22.0%
Med/Surg – at Reduced Capacity	63	61.1%	58.3%	36.0%

*Annualized based on partial year data

Chemical Dependence - Rehabilitation Bed Occupancy in the Western Region

Name	County	Beds	2015	2016	2017	2018	2019	2020	% Change 2015 to 2019
Eastern Niagara Hospital - Lockport Division	Niagara	30*	60.00%	56.67%	63.33%	66.67%	73.33%	53.33%	22.22%
UPMC Chautauqua at WCA	Chautauqua	15	66.67%	106.67%	126.67%	126.67%	106.67%	86.67%	60.00%
United Memorial Medical Center Bank Street Campus	Genesee	22	77.27%	77.27%	86.36%	86.36%	86.36%	59.09%	11.76%
Erie County Medical Center	Erie	20	73.08%	76.92%	67.31%	90.38%	101.92%	94.23%	39.47%
Mount St. Mary's Hospital and Health Center	Niagara	45**	37.78%	44.44%	46.67%	75.56%	91.11%	77.78%	141.18%
Total		132	84.03%	92.44%	94.96%	116.81%	126.89%	105.88%	51.00%

*Slated to close through CON 211234

**24 additional beds were approved in 2021

Chemical dependence bed occupancy in the Western Region as a whole increased 51% from 2015 to 2019. Occupancy exceeded 100% for the region for the same period. Some facilities saw a marked decrease during the pandemic, but with COVID-19 receding we expect the return to pre-2020 levels.

40 Beds	Projected Utilization Year One (2023) & Year 3 (2025)		
	Discharges	Patient Days	Occupancy
Chemical Dependence - Rehab	563	11,707	80.18%

Source: applicant

The primary service area is Erie County. According to Data USA, in 2019 97.4% of the population in Erie County has health coverage as follows.

Employer Plans	51.2%
Medicaid	19.2%
Medicare	13.4%
Non-Group Plans	12.3%
Military or VA	1.21%

Prevention Agenda

In their work plan submitted in 2019, the hospital identified they were working on increasing access to healthy foods and increasing nutrition, using evidence-based care and self-management practices as part of their Prevent Chronic Disease focus. They also identified working on addressing maternal mortality in the Health Women Infants and Children priority, decreasing the transmission of sexually transmitted infections in the Prevent Communicable Disease priority, preventing opioid overdose deaths, and reducing depressive disorders in the Promote Well-Being and Prevent Mental and Substance Use Disorders priority.

The applicant reports that they are implementing interventions to support at least six goals of the 2019-2024 New York State Prevention Agenda. Among these are:

- Reducing depressive disorders
- Reducing opioid overdose deaths using Medication-Assisted Treatment

The application states that Sisters of Charity Hospital - St. Joseph Campus engaged Erie Region with the University of Buffalo, D'Youville College, Daëmon College, City of Buffalo, Erie County Department of Health and the opioid task force, and a dozen of local businesses and community organizations in their Prevention Agenda efforts. The hospital cites data indicators that it tracks to measure progress toward achieving local Prevention Agenda goals, including:

- Learning sessions being offered and participation by physicians on alternatives to opioids for pain management.
- Prenatal screening and ensure they are included in the patient's record.

In 2019 the applicant spent \$ 965,534 on community health improvement services, representing 0.28% of total operating expenses

Compliance with Applicable Codes, Rules, and Regulations

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

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. Between the continued growth in need and the anticipated reduction of beds in the service area, the addition of 40 chemical dependence beds appears warranted.

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$7,885,120 as follows:

Renovation and Demolition	\$5,000,000
Asbestos Abatement or Removal	600,000
Design Contingency	500,000
Construction Contingency	500,000
Fixed Equipment	350,000
Planning Consultant Fees	40,000
Architect/Engineering Fees	501,000
Moveable Equipment	238,000
Telecommunications	111,000
CON Fee	2,000
Additional Processing Fee	<u>43,120</u>
Total Project Cost	\$7,885,120

The applicant will provide cash from hospital operations to meet the total project cost.

Operating Budget

The applicant has submitted an incremental operating budget, in 2022 dollars, for the first and third years:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Discharge</u>	<u>Total</u>	<u>Per Discharge</u>	<u>Total</u>
<u>Revenues</u>				
Commercial FFS	\$1,015	\$380,451	\$1,119	\$419,447
Commercial MC	\$1,058	\$444,389	\$1,113	\$467,303
Medicare FFS	\$9,384	\$300,303	\$9,764	\$312,435
Medicare MC	\$1,015	\$380,510	\$1,056	\$395,883
Medicaid FFS	\$360	\$591,656	\$360	\$591,656
Medicaid MCE	\$745	\$6,084,738	\$745	\$6,084,738
Other	\$809	<u>\$50,158</u>	\$809	<u>\$50,158</u>
Total Revenues		\$8,232,205		\$8,321,620
<u>Expenses</u>				
Operating	\$8,504	\$4,787,807	\$8,807	4,958,166
Capital	<u>\$978</u>	<u>550,733</u>	<u>\$978</u>	<u>550,733</u>
Total Expenses	\$9,482	\$5,338,540	\$8,807	5,508,899
Excess Revenues		\$2,893,665		\$2,812,721
Utilization (Discharges)		563		563

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	3.20%	3.20%
Commercial MC	3.59%	3.59%
Medicare FFS	5.69%	5.69%
Medicare MC	3.20%	3.20%
Medicaid FFS	14.03%	14.03%
Medicaid MC	69.76%	69.76%
Other	<u>0.53%</u>	<u>0.53%</u>
Total	100.00%	100.00%

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

Capability and Feasibility

The total project cost of \$7,885,120 will be met via accumulated funds from the hospital. BFA Attachment A is the 2020 Certified Financial Statements, which indicate the availability of sufficient funds for the equity contribution.

The submitted budget indicates a net income of \$2,893,665 and \$2,812,721 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for chemical-dependence rehabilitation beds. The submitted budget appears reasonable.

As shown in BFA Attachment A, the applicant had a negative working capital position and a positive net asset position in 2020. The reason for the negative working capital position is intercompany payables. As the hospital is part of the Catholic Health System, management can apply cash and investments across entities to support cash flow needs as they arise. Sisters of Charity Care Hospital incurred a loss of \$26,296,000 in 2020; the loss was due to the COVID-19 pandemic, however, the facility received CARES Act Funding of \$39,756,000 in 2020 to mitigate losses.

Conclusion

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

Attachments

BFA Attachment A Sisters of Charity Hospital - 2020 Certified Financial Statements.



**Project # 212177-C
Buffalo Surgery Center, LLC**

Program: Diagnostic and Treatment Center
Purpose: Construction

County: Erie
Acknowledged: November 19, 2021

Executive Summary

Description

Buffalo Surgery Center (BSC), an existing Article 28 single-specialty freestanding ambulatory surgery center (FASC), at 3921 Sheridan Drive, Amherst (Erie County) seeks approval to relocate their existing gastrointestinal (GI) suite to an adjacent building on the same campus and renovate the vacated space to add two Class C operating rooms, two procedure rooms, and a new Central Supply Room. BSC is currently certified as a single-specialty for gastroenterology, orthopedics, and ophthalmology. As part of this project, BSC plans to add general colorectal and pain management and is requesting to be certified as a multi-specialty ambulatory surgery center (ASC). The applicant's practicing physicians have provided letters of interest demonstrating their commitment to performing the additional surgical procedures.

After this project, this location will have six Class C operating rooms and two minor procedure rooms plus requisite support space. The landlord of the adjacent building will fund the 12,275 square foot GI suite renovation. And the landlord of the current building will fund that 12,980 square feet renovation. There is a relationship between the landlords and the operator.

James J. Kelly Jr., D.O., who is board-certified in Orthopedic Surgery, will remain BSC's Medical Director. The applicant has transfer agreements for backup and emergency services with Kaleida Health System and Catholic Health System's affiliated hospitals.

OPCHSM Recommendation
Contingent Approval

Need Summary

Approval of this project will enhance access to multi-specialty surgery services for the residents of Erie County.

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 \$6,243,756 for renovation and movable equipment at both locations will be funded by the applicant and the two landlords. The applicant's total project cost contribution of \$2,219,142 for movable equipment and fees will be funded via \$222,000 in equity and a five-year loan for \$1,997,142 at 3.75% interest. The remaining project costs of \$4,024,614 will be funded as follows: Snyder Real Property Holdings LLC via a \$1,832,752 seven-year loan with a 30-year amortization period and 7-year Federal Home Loan Bank (FHLB) rate plus 200 basis points (BP), estimated at 4.04% as of February 16, 2022. Preferred Equity Partners II, LLC via a \$2,191,862 seven-year loan with a 30-year amortization period, 7-year FHLB plus 200 BP, estimated at 4.04% as of February 16, 2022. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$30,010,110	\$31,810,717
Expenses	<u>23,046,289</u>	<u>24,690,667</u>
Gain/(Loss)	\$6,963,821	\$7,120,050

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 loan commitment to Buffalo Surgery Center, LLC., acceptable to the Department. [BFA]
3. Submission of an executed loan commitment to Snyder Real property Holdings LLC., acceptable to the Department. [BFA]
4. Submission of an executed loan commitment to Preferred Equity Partners II, LLC., acceptable to the Department. [BFA]
5. Submission of an executed building lease, acceptable to the Department. [BFA]
6. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
7. Submission of Engineering (MEP) 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, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **September 1, 2022**, and construction must be completed by **September 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

April 5, 2022

Need and Program Analysis

Program Description

Buffalo Surgery Center (BSC), an existing freestanding single-specialty ambulatory surgery center, seeks approval to relocate the GI suite to a building directly adjacent to the current operating facility, repurpose and renovate the space previously utilized by the GI service to add two Class C operating rooms and two minor procedure rooms, construct a new Central Supply Room to accommodate the increase in volume and convert to a multi-specialty ambulatory surgery center.

Analysis

BSC currently has 28 credentialed orthopedic surgeons and is unable to meet block time demands where an ASC is the most appropriate setting. The current OR block time is at 97% and BSC is unable to accommodate existing patient and physician demands, which results in increased wait times for surgeries. The center reports over 16,000 orthopedic and GI procedures are being performed annually resulting in both case volume and attending physicians being nearly at capacity.

Gastroenterology cases have grown 22% annually since 2016 at BSC with additional colorectal and gastroenterologists credentialed. The physicians of BSC are performing over 2,000 procedures per GI room annually.

The addition of new operating rooms, procedure rooms, and the designation as a multi-specialty ASC will increase access to ambulatory services for the patients in the community, particularly the fast-growing aging population.

The service area is Erie County. According to Data USA, 97.4% of the population of Erie County has health coverage as follows:

Employer Plans	51.2%
Medicaid	19.2%
Medicare	13.4%
Non-Group Plans	12.3%
Military or VA	1.2%

The center is current with its SPARCS reporting. The following table shows the center's utilization for Medicaid and total visits for the last three years.

	2018	2019	2020
Visits	15,236	16,199	13,338
Medicaid	10.1%	9.1%	9.3%

The applicant projects 21,367 procedures in Year One and 22,618 in Year Three. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Years One and Three.

Payor	Year One		Year Three	
	Volume	%	Volume	%
Medicaid FFS	18	0.1%	19	0.1%
Medicaid MC	2,082	9.7%	2,205	9.7%
Medicare FFS	1,596	7.5%	1,692	7.5%
Medicare MC	4,252	19.9%	4,508	19.9%
Comm Ins FFS	3,062	14.3%	3,270	14.5%
Comm Ins MC	9,874	46.2%	10,379	45.9%
Private Pay	12	0.1%	15	0.1%
Charity Care	471	2.2%	530	2.3%
Total	21,367	100.0%	22,618	100.0%

The center has Medicaid-managed care contacts with the following: Molina, Fidelis, Univera, BCBS Amerigroup, UHC, Wellcare, IHA, and MVP/Cigna. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

The Department reached out to proximate hospitals asking for information on the impact of the proposal to convert to a multi-specialty ASC. No hospitals responded.

Compliance with Applicable Codes, Rules, and Regulations

Staffing will increase by 31.3 FTEs in the first year, and an additional 8.5 FTEs by the third year after completion of the CON. The medical staff will continue to ensure that the procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and expertise. The facility's admissions policy includes anti-discrimination provisions regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures are performed in accordance with all applicable federal and state codes, rules, and regulations.

Conclusion

Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3)(e) of the New York State Public Health Law. This project will enhance access to multi-specialty surgery services for the residents of Erie County.

Financial Analysis

Operating Budget

The applicant has submitted the current year (2020), first and third years projected operating budgets, in 2022 dollars, as summarized below:

Revenues	Current Year		Year One		Year Three	
	Per Proc	Total	Per Proc.	Total	Per Proc.	Total
Medicaid FFS	\$1,163	\$13,959	\$1,205	\$21,690	\$1,205	\$22,895
Medicaid MC	\$1,197	1,657,632	\$1,205	2,508,810	\$1,205	2,657,025
Medicare FFS	\$918	966,738	\$935	1,492,260	\$935	1,582,020
Medicare MC	\$1,122	3,256,851	\$1,135	4,826,020	\$1,140	5,139,120
Commercial FFS	\$1,143	2,263,012	\$1,195	3,659,090	\$1,205	3,940,350
Commercial MC	\$1,602	9,817,868	\$1,838	18,152,682	\$1,849	19,192,847
Private Pay	\$1,165	9,324	\$1,180	14,160	\$1,180	17,700
Charity		-351,963		-600,202		-636,240
Bad Debt		<u>-35,296</u>		<u>-64,400</u>		<u>-105,000</u>
Total Revenues*		\$17,598,125		\$30,010,110		\$31,810,717
Expenses						
Operating	\$974	\$13,440,256	\$954	\$20,382,247	\$975	\$22,048,100
Capital	<u>\$135</u>	<u>1,870,225</u>	<u>\$125</u>	<u>2,664,042</u>	<u>\$117</u>	<u>2,642,567</u>
Total Expenses:	\$1,109	\$15,310,481	\$1,079	\$23,046,289	\$1,092	\$24,690,667
Net Income (Loss)		<u>\$2,287,644</u>		<u>\$6,963,821</u>		<u>\$7,120,050</u>
Procedures		13,800		21,367		22,618
Cost Per Procedure		\$1,109		\$1,079		\$1,092

*The revenues for the above current year do not include "Other Income" totaling \$2,728,567 as reflected in the audited 2020 financial statements. (\$1,476,700 Paycheck Protection Program, \$1,125,507 Health and Human Services stimulus funds, \$120,000 rebates, and \$6,360 miscellaneous)

Utilization by payor source for the current year and years one and three are summarized below:

Payor	Current Year		Year One		Year Three	
	Procedures	%	Procedures	%	Procedures	%
Medicaid FFS	12	0.09%	18	0.08%	19	0.08%
Medicaid MC	1,385	10.04%	2,082	9.74%	2,205	9.75%
Medicare FFS	1,053	7.63%	1,596	7.47%	1,692	7.48%
Medicare MC	2,903	21.04%	4,252	19.90%	4,508	19.93%
Commercial FFS	1,980	14.35%	3,062	14.33%	3,270	14.46%
Commercial MC	6,129	44.40%	9,874	46.21%	10,379	45.89%
Private Pay.	8	0.06%	12	0.06%	15	0.07%
Charity Care	305	2.21%	425	1.99%	455	2.01%
Bad Debt	<u>25</u>	<u>0.18%</u>	<u>46</u>	<u>0.22%</u>	<u>75</u>	<u>0.33%</u>
Total	13,800	100%	21,367	100%	22,618	100%

The following is noted concerning the submitted FASC budget:

- The 2021 budgeted volume is the baseline for the first- and third-year budget projections. The applicant tested this by reviewing the trailing twelve months of activity through August 31, 2021, to ensure overall revenue by payor and revenue per procedure by payor was consistent with the 2021 budget.
- Managed care rates are based on previous experience and ongoing conversations with managed care organizations. Medicare fee-for-service rates are based on Ambulatory Patient Group reimbursements rates for the mix of procedures to be performed at the center.
- Staffing and related expenses for safe staffing in an ambulatory surgery environment were developed through standards from the following organizations: The Association of Peri-Operative Register Nurses (AORN), the American Society of Peri-Anesthesia Nurses (ASPAN), and the Society of Gastroenterology Nurses and Associates (SGNA). Surgical and procedural case volumes were taken into consideration to ensure that staffing was on par with anticipated patient acuity and related needs. Ancillary, office, and technical support staffing ratios are based on BSC's historical operating needs.
- Rent expense was based on a proposed lease to include the additional square footage in a second building. Depreciation expense was based on current reports plus anticipated capital expenditures for moveable equipment. Other expenses, such as medical and surgical supplies, were based on historical percentages of revenue.
- Utilization assumptions are supported by letters from the thirty-nine physicians based on their current experience. The current operating room block time utilization is 97%.
- Breakeven is approximately 16,409 procedures in Year One.

Total Project Cost and Financing

Total project costs for renovations and acquisition of movable equipment are estimated at \$6,243,756 broken down as follows:

Renovation & Demolition	\$3,074,825
Site Development	61,500
Construction Contingency	164,336
Architect/Engineering Fees	297,468
Construction Manager Fees	376,085
Other Fees	50,400
Movable Equipment	2,183,000
CON Application Fee	2,000
CON Processing Fee	<u>34,142</u>
Total Project Cost	\$6,243,756

The applicant's financing plan appears as follows:

Applicant - Cash Equity	\$222,000
Applicant - Loan (3.75% interest, 5-year term) *	1,997,142
Snyder Real Property Holdings LLC - Bank Loan (7-year FHLB +200 or 4.04%, 7-year term, 30-year amortization)**	1,832,752
Preferred Equity Partners II, LLC - Bank Loan (7-year FHLB + 200 BP or 4.04%, 7-year term, 30-year amortization) **	2,191,862
Total	\$6,243,756

* M&T Bank has provided a letter of interest for the applicant's loan.

**Northwest Bank has provided letters of interest for the landlords' loans, which are interest-only during construction.

BFA Attachment A is Buffalo Surgery Center, LLC's 2019 and 2020 certified financial statements and August 31, 2021, internal statements, which show sufficient resources to meet the equity requirement.

Lease Agreement

The applicant submitted a draft non-arm's length lease agreement for the two properties located at 3921 and 3915 Sheridan Drive. The applicant has provided an affidavit stating the lease is a non-arms-length agreement and two letters from NYS licensed realtors attesting to the rate being of fair market value.

Premise - A:	27,175 sq. ft. building at 3921 Sheridan Drive, Amherst, NY 14226
Landlord - A:	Preferred Equity Partners II, LLC.
Lessee - A:	Buffalo Surgery Center, LLC.
Term - A:	10-years and two (2) 10-year options to renew
Payment - A:	\$1,050,042 (\$38.64 per sq ft) _ monthly \$87,503.50
Provisions - A:	Triple Net
Premise - B:	12,275 sq ft. building at 3915 Sheridan Drive, Amherst, NY 14226
Landlord - B:	Snyder Real Property Holdings, LLC.
Lessee - B:	Buffalo Surgery Center, LLC.
Term - B:	10-years and two (2) 10-year options to renew
Payment - B:	\$474,306 (\$38.64 per sq ft) _ monthly \$39,525.50
Provisions - B:	Triple Net

Capability and Feasibility

Total project costs of \$6,243,756 will be funded by the applicant and the two landlords. The applicant's portion, \$2,219,142 for moving equipment and fees, will be funded via \$222,000 in equity and a five-year loan for \$1,997,142 at stated terms. The \$4,024,614 balance will be funded as follows; Snyder Real Property Holdings LLC via a \$1,832,752 seven-year loan and Preferred Equity Partners II, LLC via a \$2,191,862 seven-year loan at stated terms. During the construction period, the landlords' repayment terms are interest only. M&T Bank has provided a letter of interest for the BSC loan and Northwest Bank has provided a letter of interest for both landlords' loans. BSC will repay the costs of funding the renovation through its leases with the landlords.

The working capital requirement is estimated at \$4,115,111 based on two months of third-year expenses. BFA Attachment B is BSC's cash flow analysis demonstrating the adequacy of existing operating cash flow to provide working capital. Buffalo Surgery Center, LLC., projects a net operating income of \$6,963,821 and \$7,120,050 in the first and third years of operation, respectively. The budget appears reasonable.

Review of BFA Attachment A, Buffalo Surgery Center, LLC's 2019 and 2020 certified financial statements and the August 31, 2021, internal financial statements, shows positive working capital, positive net assets, and positive net income.

Conclusion

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

Attachments

- BFA Attachment A Buffalo Surgery Center, LLC. 2019 - 2020 Certified Financial Statement and August 31, 2021, Internal Financial Statement
- BFA Attachment B Buffalo Surgery Center, LLC. Cash Flow Analysis



Project # 212223-C
New York-Presbyterian Hospital

Program: Hospital
Purpose: Construction

County: New York
Acknowledged: December 22, 2021

Executive Summary

Description

The New York and Presbyterian Hospital d/b/a New York-Presbyterian Hospital (NYPH), a voluntary not-for-profit corporation that currently operates seven hospital divisions, requests approval to certify NewYork-Presbyterian/Brooklyn Methodist d/b/a NewYork-Presbyterian Brooklyn Methodist Hospital (NYP-BMH) as a new division of NYPH via a merger. As a result of this project, NYP-BMH (including four extension clinics) will be merged with and into NYPH, with NYPH being the surviving corporation.

NYP-BMH is a 591-bed voluntary not-for-profit Article 28 hospital at 506 Sixth Street, Brooklyn (Kings County), with four extension clinics. Currently, NYP Community Programs, Inc. (NYPCP) is the active parent and co-operator of NYP-BMH and NYPH is the sole member and passive parent of NYPCP. After the completion of this transaction, NYP-BMH will no longer be part of NYPCP and instead, all five sites will be owned and operated by NYPH. There will be no change in beds or services as a result of this application. There will also be no change to the board of trustees of NYPH.

The applicant reports that the purpose of the transaction is to further create an academically based integrated healthcare system to further a

high-quality system of care, increasing access, and lowering the costs of health care in the communities served by both NYPH and NYP-BMH.

**OPCHSM Recommendation
Contingent Approval**

Need Summary
There will be no change to beds or services as a result of this merger.

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

Financial Summary
There are no project costs associated with this application. NYP-BMH is merging into NYPH and becoming a division of NYPH. This will not have an impact on NYPH consolidated financial statements as NYP-BMH is already included.

<u>Budget</u>	<u>First Year</u>	<u>Third Year</u>
Revenues	\$1,243,145,000	\$1,391,974,000
Expenses	<u>1,229,625,000</u>	<u>\$1,315,235,000</u>
Gain/(Loss)	\$13,520,000	\$76,739,000

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of an executed Plan of Merger between The New York and Presbyterian Hospital and New York-Presbyterian/Brooklyn Methodist, acceptable to the Department of Health (Department). [CSL]
2. Submission of a photocopy of an executed Certificate of Merger of New York-Presbyterian/Brooklyn Methodist into The New York and Presbyterian Hospital, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

April 5, 2022

Need and Program Analysis

Program Description

NYPH seeks approval to certify NYP-BMH as a new division of NYPH via a plan of merger. Upon completion of the merger, NYPH will have eight divisions as follows:

Columbia Presbyterian Center 622 West 168th Street New York, NY 10032	Allen Hospital 5141 Broadway, New York, NY 10034
New York Weill Cornell Center 525 East 68th Street New York, NY 10021	Lower Manhattan Hospital 170 William Street New York, NY 10038
Westchester Division 21 Bloomingdale Road White Plains, NY 10605	Lawrence Hospital 55 Palmer Avenue Bronxville, NY 10708
David H. Koch Center 1283 York Avenue, New York, NY 10065	<u>To be added:</u> Brooklyn Methodist Hospital 506 Sixth Street Brooklyn, NY 11215

Analysis

There will be no changes in beds, services, or locations as a result of this application.

Beds	Count
Coronary Care	10
Intensive Care	28
Maternity	50
Medical / Surgical	385
Neonatal Intensive Care	18
Neonatal Intermediate Care	6
Pediatric	15
Pediatric ICU	4
Physical Medicine and Rehabilitation	25
Psychiatric	50

Services
Ambulatory Surgery - Multi Specialty
Audiology O/P
Cardiac Catheterization - Adult Diagnostic
Cardiac Catheterization - Electrophysiology (EP)
Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)
Cardiac Surgery - Adult
Clinical Laboratory Service

Services
Dental O/P
Level III Perinatal Care
Linear Accelerator
Lithotripsy
Medical Services - Other Medical Specialties
Medical Services - Primary Care
Medical Social Services
Nuclear Medicine - Diagnostic

Services
Nuclear Medicine - Therapeutic
Primary Stroke Center
Radiology - Diagnostic
Radiology-Therapeutic
Renal Dialysis - Acute
Respiratory Care
Therapy - Occupational O/P
Therapy - Physical O/P
Therapy - Speech Language Pathology

NYP-BMH's extension clinics will also become extension clinics of NYPH.

Extension Clinics
Center for Community Health 515 6th Street, Brooklyn, New York 11215
NY-Presbyterian Brooklyn Methodist Hospital Cardio-Vascular Services 8721 5th Avenue, Brooklyn, New York 11209
NY-Presbyterian Brooklyn Methodist Hospital Infusion Services 343 4th Ave, Brooklyn, New York 11215
NY-Presbyterian Brooklyn Methodist Hospital, Rehab Center, and Women & Children's Clinics 263 7th Avenue, 2nd & 3rd Floors, Brooklyn, New York 11215

The primary service area is Kings County. According to DataUSA, in 2019 93.7% of the population in Kings County has health coverage as follows.

Employer Plans	41.7%
Medicaid	33.2%
Medicare	8.05%
Non-Group Plans	10.5%
Military or VA	0.222%

Prevention Agenda

NYP Hospital - New York Weill Cornell Center is implementing multiple interventions to support priorities of the 2019-2024 New York State Prevention Agenda, including:

Prevent Chronic Diseases

- Choosing healthy & active lifestyles for kids (CHALK)
- Transitions of Care Model

Promote Healthy Women, Infants, and Children

- Develop a postpartum home visit program to partner with parents in order to improve health outcomes for parents and baby

Promote Well-Being & Prevent Mental & Substance Use Disorders

- Implement the Mental Health First Aid program for providers and community-based partners

Prevent Communicable Diseases

- ETE initiative to create an HIV and HCV elimination strategy
- Utilized existing multi-campus dashboards

The application states that NYP Hospital - New York Weill Cornell Center engaged with the New York City Department of Health and Mental Hygiene, Citizens Committee for Children, Columbia University Irving Medical Center, Weill Cornell Medical College, Greater New York Hospital Association, local community-based organizations, and the New York Academy of Medicine in data collection and analysis efforts. NYP Hospital - New York Weill Cornell Center cites data sources (including NYS BRFSS, NYC Open Data, and NYC Health Atlas) that it uses to measure progress toward achieving local Prevention Agenda goals. The indicators tracked are not specified.

In 2019 the applicant spent \$ 19,845,445 on community health improvement services, representing 0.31% 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. Through the proposed merger, New York-Presbyterian Brooklyn Methodist Hospital will become fully integrated into the New York and Presbyterian Hospital health system.

Financial Analysis

Operating Budget

The applicant has submitted the current year (2020) operating budget in 2022 dollars, and Years One and Three for NYP-BMH, in thousands:

<u>Revenues</u>	<u>Current Year</u>		<u>First Year</u>		<u>Third Year</u>	
	<u>Per Disch/ Visit</u>	<u>Total</u>	<u>Per Disch/ Visit</u>	<u>Total</u>	<u>Per Disch/ Visit</u>	<u>Total</u>
Inpatient	\$18,852	\$570,518	\$23,078	\$767,854	\$25,866	\$877,946
Outpatient	\$248	283,590	\$294	407,864	\$314	443,300
Other Operating*		145,967		37,460		38,973
Non-Operating**		<u>75,526</u>		<u>29,967</u>		<u>31,755</u>
Total Revenues		\$1,075,601		\$1,243,145		\$1,391,974
<u>Expenses</u>						
Operating		\$1,029,813		\$1,150,635		\$1,234,178
Capital		<u>41,055</u>		<u>78,990</u>		<u>81,057</u>
Total Expenses		\$1,070,868		\$1,229,625		\$1,315,235
Net Income		\$4,733		\$13,520		\$76,739
Inpatient Visits	30,262		33,272		33,941	
Outpatient Visits	1,143,180		1,383,605		1,411,416	

*Includes grants & contracts, HHS Provider Relief Fund, FEMA Disaster Relief Fund, cafeteria and vending, net assets released from restriction, professional fees, specialty pharmacy, and others.

** Investment return, less \$1,010,000 adjustment for voluntary retirement program costs and periodic pension and postretirement costs.

The following is noted regarding the submitted budget:

- Current year revenues and expenses are based on the NYPH 2020 certified financial statements, which include NYP-BMH 2020 financial results.
- In 2019, prior to COVID-19 pandemic, NYP-BMH had 36,932 inpatient discharges that declined 18% to 30,262 in 2020. First and third-year projected discharges are conservatively estimated to be 9.9% and 8.1% lower than 2019, respectively.
- Outpatient visits are projected to increase at an average annual rate of 4.7% from 1,143,426 in 2020 to 1,411,416 in Year 3 (2025).
 - The projected increase in outpatient activity is due to recent and planned outpatient facility expansion, including a \$500 million, 396,000 square foot Center for Community Health (CCH) located across the street from NYP-BMH that opened in 2021 and investments in ambulatory care services in the Flatlands and Midwood areas.
- NYP-BMH costs have increased from 2017 due to:
 - Investments in nursing, quality, and patient safety.
 - Investment in New York-Presbyterian Medical Group Brooklyn.
 - Continued integration and alignment with Weill Cornell Medicine.
 - Continued integration of corporate and technology services including Epic Systems.
 - Investment in capital and infrastructure, including the CCH.
 - Disruption in inpatient volumes and shifts from inpatient to ambulatory services.

Utilization by payor for the NYP-BMH is as follows:

<u>Inpatient</u> <u>Payor</u>	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>	<u>Discharges</u>	<u>%</u>
Medicaid FFS	1,474	4.87%	1,621	4.87%	1,653	4.87%
Medicaid MC	8,074	26.68%	8,876	26.68%	9,056	26.68%
Medicare FFS	6,132	20.26%	6,742	20.26%	6,877	20.26%
Medicare MC	5,250	17.35%	5,772	17.35%	5,888	17.35%
Commercial FFS	3,718	12.29%	4,088	12.29%	4,170	12.29%
Commercial MC	5,214	17.23%	5,733	17.23%	5,848	17.23%
All Other	<u>400</u>	<u>1.32%</u>	<u>440</u>	<u>1.32%</u>	<u>449</u>	<u>1.32%</u>
Total by Payor	30,262	100%	33,272	100%	33,941	100%

<u>Outpatient</u> <u>Payor</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>
Medicaid FFS	69,564	6.09%	78,159	5.65%	79,730	5.65%
Medicaid MC	212,452	18.58%	278,044	20.10%	283,632	20.10%
Medicare FFS	214,701	18.78%	251,052	18.14%	256,098	18.14%
Medicare MC	191,984	16.79%	233,120	16.85%	237,806	16.85%
Commercial FFS	407,521	35.65%	486,836	35.18%	496,622	35.18%
All Other	<u>46,958</u>	<u>4.11%</u>	<u>56,394</u>	<u>4.08%</u>	<u>57,528</u>	<u>4.08%</u>
Total by Payor	1,143,180	100%	1,383,605	100%	1,411,416	100%

Plan of Merger Agreement

The applicant has submitted a draft Plan of Merger Agreement between NYPH and NYP-BMH.

Merging Entities:	NYPH and NYP-BMH
Board of Directors:	The Boards of each entity has adopted and approved this Plan of Merger
Surviving Entity:	The New York and Presbyterian Hospital (NYPH)
Terms and Conditions of the Merger:	NY-BMH shall be merged with and into NYPH, with NYPH being the Surviving Corporation. The Certificate of Merger shall be filed with the New York Department of State immediately following receipt of all necessary regulatory consents and approvals in connection with the Merger, including, without limitation, Public Health and Health Planning Council approval in accordance with Sections 909 and 404(t) of the NPCL and approval of the New York State Attorney General in accordance with Section 907 of the NPCL so as to cause the effective date of the Merger to be the date of filing of the Certificate of Merger by the Department of State or such subsequent date, not to exceed thirty days, as shall be set forth in the Certificate of Merger (the "Effective Date"). Upon the Effective Date, the Members of NYPH shall continue to serve as the Members of NYPH as the Surviving Corporation unless otherwise terminated in accordance with the Bylaws of the Surviving Corporation. Upon the Effective Date, the membership interest of NYPCP as the sole Member of NYP-BMH shall be extinguished, and the powers, duties, and responsibilities of NYPCP as the sole Member of NYP-BMH shall be terminated.
Purchase Price:	There will be no cash, or any other consideration paid or delivered in exchange for the Merger.

Capability and Feasibility

There are no project costs associated with this application. The merger of NYP-BMH into NYPH to become a division of NYPH will not have an impact on NYPH's consolidated financial statements as NYP-BMH is already included in the NYPH consolidated financial statements. Working capital for this project will be funded using existing cash equity from ongoing NYPH operations. The submitted budget indicates an incremental net income of \$13,520,000 and \$76,739,000 in years one and three, respectively. The budget appears reasonable.

Review of BFA Attachment A, NYPH certified consolidating statement of financial position for 2019 and 2020, shows the organization (including NYP-BMH) maintained positive working capital and positive net assets for both years. In 2019, NYPH had \$905.6M in excess revenues over expenses of which \$99M came from NYP-BMH. In 2020, NYPH had a deficiency or excess expenses over revenue of \$187.4M. NYP-BMH generated a positive \$4.7M, which helped to reduce NYPH over loss in 2020. Review of BFA Attachment B, NYP-BMH 2020 consolidating statement of financial positions shows the hospital had positive results of \$82.9M offset by a \$78.2M loss from its professional corporation. Review of BFA Attachment C, NYPH internal consolidating statement financial position, shows the organization (including NYP-BMH) maintains positive working capital and positive net assets. By August 31, 2021, NYPH overall returned to a profitability of \$751.7M, while NYP-BMH incurred a loss of \$4.7M. NYPH had 335 days of cash on hand as of August 31, 2021.

NYP-BMH's rating is 'A3' with a rating outlook of stable, and NYPH has a fitch rating of 'AA' as of August 2, 2021, with a rating outlook of stable. Their rating reflects NYPH's market position as a major regional academic medical health system in the highly competitive greater New York Metro region. The rating also reflects expectations that NYPH's performance will return to levels consistent with a strong operating risk assessment after 2022, following a lower coronavirus-related performance in 2020 and 2021.

Conclusion

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

Attachments

- BFA Attachment A The New York and Presbyterian Hospital (NYPH) 2019 and 2020 Consolidated Financial Statements
- BFA Attachment B NewYork-Presbyterian/Brooklyn Methodist (NYP-BMH) Consolidating Statement of Financial Positions
- BFA Attachment C The New York and Presbyterian Hospital (NYPH) August 31, 2021, Consolidated Statement of Financial Position
- BFA Attachment D NewYork-Presbyterian Enterprise and NYP-BMH Key Utilization Statistics for August 31, 2021



Project # 212251-C
Hospice Care Network d/b/a
Hospice Care of Long Island, Queens South Shore

Program: Hospice
Purpose: Construction

County: Nassau
Acknowledged: December 20, 2021

Executive Summary

Description

Hospice Care Network d/b/a Hospice Care of Long Island, Queens South Shore (HCN), a not-for-profit Article 40 Hospice in Nassau County, requests approval to acquire the assets of Hospice Care in Westchester and Putnam, Inc., (HWP), a not-for-profit Article 40 Hospice at 540 White Plains Road, Tarrytown (Westchester County).

HCN is currently authorized to provide hospice services in Nassau, Queens, and Suffolk counties, and HWP is authorized to provide hospice services in Westchester and Putnam counties. Upon approval by the Public Health and Health Planning Council (PHHPC), HCN will add Westchester and Putnam counties to its service area and the HWP location to its operating certificate, and HWP will close. HCN will use the assumed name Hospice of Westchester and Putnam within Westchester and Putnam counties.

Both HCN and HWP are under the Northwell Health, Inc. umbrella. The objective of the purchase of HWP and its consolidation into HCN is to streamline the governance, back-room operations, and logistical functions while maintaining a high level of quality care.

OPCHSM Recommendation
Contingent Approval

Need Summary

After approval, Hospice Care Network will add Westchester and Putnam counties as service areas to their existing hospice program. There will be no change in services as a result of this application.

Program Summary

Based on the results of this review, a favorable recommendation can be made regarding the applicant's current compliance.

Financial Summary

There are no project costs or acquisition prices associated with this application. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$60,908,928	\$63,734,915
Expenses	<u>60,414,519</u>	<u>\$62,139,128</u>
Net Income	\$494,409	\$1,595,787

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed sublease agreement, acceptable to the Department of Health (Department). [BFA]
2. Submission of a photocopy of an amended and executed Sublease, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed Overlease, acceptable to the Department. [CSL]
4. Submission of a photocopy of the executed Asset Purchase Agreement, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]

Council Action Date

April 5, 2022

Need and Program Analysis

Program Description

At the close of this transaction, HCN will be the surviving entity providing services in Nassau, Suffolk, Queens, Westchester, and Putnam counties, and HWP will close. Additionally, HCN proposes to use the assumed name Hospice of Westchester and Putnam in Westchester and Putnam counties. HWP will stop admissions 60 days prior to closure/transition and existing patients will have the option to change hospice providers or transition to HCN.

HCN currently serves the residents of Nassau, Suffolk, and Queens from an office at 99 Sunnyside Boulevard, Woodbury. As a result of this merger, HCN's approved geographical service area will be expanded to include Putnam and Westchester counties. Additionally, the applicant intends to use HWP's current office at 540 White Plains Road, Suite 300, Tarrytown as a branch location after completion of the transaction.

Both hospice providers are operated under the Northwell Health, Inc. umbrella. The following is a complete listing of all healthcare facilities in the Northwell Health, Inc. network:

Hospitals and Diagnostic & Treatment Centers (D&TCs)

- North Shore University Hospital
- Syosset Hospital
- Long Island Jewish Medical Center
- Long Island Jewish Forest Hills Hospital
- Long Island Jewish Valley Stream Hospital
- Glenn Cove Hospital
- Plainview Hospital
- Huntington Hospital
- South Shore University Hospital
- Lenox Hill Hospital
- Lenox Health Greenwich Village
- Staten Island University Hospital – South d/b/a Staten Island University Hospital Prince's Bay
- Staten Island University Hospital – North
- Northern Westchester Hospital
- Phelps Memorial Hospital Association d/b/a Phelps Hospital
- Central Suffolk Hospital d/b/a Peconic Bay Medical Center
- John T. Mather of Port Jefferson NY Inc. d/b/a John T. Mather Memorial Hospital of Port Jefferson New York Inc.
- Long Island Home d/b/a South Oaks Hospital (Article 31 & Article 32)
- Dolan Family Health Center d/b/a Northwell Family Health Center at Huntington

Hospice

- Hospice Care Network d/b/a Hospice Care of Long Island, Hospice Care of Queens, Hospice Care of South Shore
- Hospice Care in Westchester & Putnam, Inc.
- Staten Island University Hospital d/b/a Staten Island University Hospital University Hospice

Certified Home Health Agencies (CHHAs)

- Central Suffolk Hospital d/b/a Peconic Bay Home Health Services
- North Shore University Hospital, Inc. d/b/a North Shore Home Care

Skilled Nursing Facilities (SNFs)

- Northwell Health Stern Family Center for Rehabilitation
- North Shore – LIJ Orzac Center for Rehabilitation
- Central Suffolk Hospital d/b/a Peconic Bay Skilled Nursing Facility

Star Ratings

CHHA Quality of Patient Care Star Ratings as of February 15, 2022	
CHHA Name	Quality of Care Rating
Central Suffolk Hospital d/b/a Peconic Bay Home Health Services	3.5 out of 5 stars
North Shore University Hospital, Inc. d/b/a North Shore Home Care	3 out of 5 stars

Conclusion

After approval, HCN will add Westchester and Putnam counties as service areas to their existing hospice program. Based on the results of this review, a favorable recommendation can be made regarding the applicant's current compliance.

Financial Analysis

Operating Budget

The applicant has submitted the current year (2020), first and third year projected operating budget, in 2022 dollars, as summarized below:

	<u>Current Year</u> (2020)	<u>Year One</u> (2022)	<u>Year Three</u> (2024)
Revenues			
Medicare (General Inpt.)	\$8,574,051	\$8,551,638	\$9,043,675
Medicaid (General Inpt.)	510,399	569,200	589,250
Medicare (Home Care)	45,693,542	44,782,575	46,787,602
Medicaid (Home Care)	2,159,293	2,756,105	2,894,621
Commercial/Other (Inpt.)	1,232,821	1,155,693	1,178,710
Commercial/Other (Home Care)	<u>3,188,352</u>	<u>3,093,717</u>	<u>3,241,057</u>
Total Revenues	\$61,358,458	\$60,908,928	\$63,734,915
Expenses			
Inpatient	\$14,743,953	\$15,537,129	\$15,880,576
Home Care	<u>44,560,697</u>	<u>44,877,390</u>	<u>46,258,552</u>
Total Expenses	\$59,304,650	\$60,414,519	\$62,139,128
Net Income/(Loss)	<u>\$2,053,808</u>	<u>\$494,409</u>	<u>\$1,595,787</u>

Projected utilization by site of service for Years One and Three are as follows:

<u>Site of Service</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Inpatient Days	8,388	7,967	8,385
Home Care Visits	<u>236,417</u>	<u>222,963</u>	<u>233,280</u>
Total	244,805	230,930	241,665

Projected utilization by payor source for Years One and Three is as follows:

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Medicare FFS	92.9%	92.1%	92.1%
Medicaid FFS	1.0%	1.5%	1.6%
Medicaid MC	1.6%	2.3%	2.3%
Commercial MC	4.5%	4.0%	4.0%

Budget projections are based on the following:

- In the latter part of 2021, the applicant reports experiencing clinical staffing shortages, mostly Registered Nurses, as a result of the pandemic and the NYS imposed vaccine mandate for health care workers in September 2021. As a result, they were unable to admit as many patients as they had in 2020. They projected this into their budget for Year One, knowing the obstacles they would face to a) bring their staffing levels back up to pre-vaccine mandate and b) once they were adequately staffed, work to increase their patient census. The expectation is that by Year Three, the census will be more in line with historical volume.
- Revenue was calculated based on expected volume and per diem reimbursement from Medicaid, Commercial, and Medicare. Medicare revenues are net of 2% payment sequestration.
- Utilization and payor mix for inpatient and home care were calculated on historical trends.
- Staffing assumptions were developed by clinical and operational leadership using existing program models adjustment for volume.
- Direct patient care expenses and services for inpatient and home care, excluding staffing, were derived from historical cost per patient day.
- In Year Three, volume is expected to be at pre-COVID-19 levels.

Bill of Sale Agreement

The applicant has submitted an executed Bill of Sale Agreement between HCN and HWP to be effectuated upon PHHPC approval of this application, as summarized below:

Date:	July 21, 2021
Buyer:	Hospice Care Network d/b/a Hospice Care of Long Island, Queens South Shore, (HCN)
Seller:	Hospice Care in Westchester and Putnam, Inc. (HWP)
Assets Transferred:	All assets, inventory, supplies, and/or other personal property principally used in the operation of Seller's hospice. Copies of all records relating to and used in the operation of the hospice. All rights, title, and interest of Seller in Seller's leases. All of the goodwill in or arising from the hospice.
Purchase Price:	\$0

Lease Agreement

The applicant has submitted a draft sublease for 540 White Plains Road, Tarrytown, which is the office that will continue to service the hospice patients in Westchester and Putnam counties. The terms are summarized below:

Premises:	Sublease 5,217 sq. ft on the third floor of building - 540 White Plains Road, Tarrytown
Landlord:	BASF Corporation
Tenant:	Visiting Nurse Association of Hudson Valley
Sublandlord :	Visiting Nurse Association of Hudson Valley
Subtenant:	Hospice Care Network d/b/a Hospice Care of Long Island, Queens South Shore
Term:	Expire at noon on the expiration date of the Extended Term of Over lease.
Rent:	Rent equal 22% of all Base Rent and 20% of all Additional Rent payable by sublandlord.

The applicant has provided an affidavit attesting that the lease is a non-arms-length agreement, as there is a relationship between sublandlord and subtenant. Letters from two NYS licensed realtors have been provided attesting to the rental rate being of fair market value.

Capability and Feasibility

There are no project costs or acquisition prices associated with this application. The applicant states staff, contracts, policies, and procedures for the hospice program are already in place for the five counties served. The budget projects a net income of \$494,409 and \$1,595,787 in the first and third years, respectively. Working capital will be provided from operating cash.

BFA Attachment A is Hospice Care Network's internal financial statement for December 31, 2021, which shows positive working capital, positive net assets, and operating income of \$7,987,000. BFA Attachment B is Hospice Care in Westchester and Putnam's internal financial statement for December 31, 2021, which shows positive working capital, positive net assets, and operating income of \$1,958,000.

Conclusion

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

<h2>Attachments</h2>

BFA Attachment A	Hospice Care Network internal financial statement for December 31, 2021.
BFA Attachment B	Hospice Care in Westchester and Putnam internal financial statement for December 31, 2021.



Project # 212079-E
Ambulatory Surgery Center of Western New York LLC

Program: Diagnostic and Treatment Center **County:** Erie
Purpose: Establishment **Acknowledged:** September 28, 2021

Executive Summary

Description

Ambulatory Surgery Center of Western New York LLC (ASCWNY LLC), a limited liability corporation, Article 28 ambulatory surgery center (ASC) at 945 Sweet Home Road, Amherst (Erie County), requests approval to transfer 77% ownership interest in the ASC to CH Emmaus, Inc. (CHE), a business corporation. Catholic Health System, Inc (CHS) is the sole member and active parent of (CHE) and is a not-for-profit corporation providing integrated care through a network of acute care hospitals, long-term care facilities, home health agencies, and providing other healthcare and health-related services. The table below details the proposed change in ownership:

Members	Current	Proposed
Charles Niles	11.20585%	2.57735%
Philip Niswander	9.26311%	2.13052%
James Twist	10.28020%	2.36445%
Todd Koch	4.61129%	1.06060%
Stephen Pollack	4.82739%	1.12065%
Asha Kumar	1.77541%	0.40834%
Albert Schlisserman	3.63455%	0.83595%
Gregg Zimmer	1.14305%	0.26290%
James Chmiel	4.52358%	1.04042%
A. Marc Tetro	3.67414%	0.84505%
Kevin Lanighan	6.98100%	1.60563%
Ashvani Gulati	2.00249%	0.46057%
Michael Parentis	4.03161%	0.92727%
Keith Stube	4.76432%	1.09579%
Nicholas Stathopoulos	3.88591%	0.89376%
Frank Schlehr	2.58477%	0.59450%
Peter Hurley	2.93630%	0.67535%
Graham Huckell	0.63236%	0.14544%
Deepan Selvadurai	2.31500%	0.53245%
John Legarreta	2.25000%	0.51750%
Ellen Fitzgerald	2.25000%	0.51750%

Members	Current	Proposed
David Rigan	4.55191%	1.04694%
Zvika Management, LLC Zvi Scharf (100%)	5.83073%	1.34107%
CH Emmaus Inc David Mancholz, <i>President</i> Mark Sullivan, <i>Treasurer</i> Leonardo Sette-Camara, <i>Secretary</i>	0.00000%	77.0000%
TOTAL	100%	100%

The ASC is licensed to provide multi-specialty services including ophthalmology, otolaryngology, orthopedics, podiatry, and pain management procedures. The community served by ASCWNY closely mirrors the population served by CHS, enabling ASCWNY to expand outpatient services through referrals for patients needing surgical interventions from Catholic Health Medical Partners. There will be no change in services as a result of this application.

David Anthone, M.D., who is board-certified in Anesthesiology will serve as the Medical Director. ASCWNY, LLC has negotiated a transfer and affiliation agreement for emergency and backup services with Millard Fillmore Suburban Hospital located 4.5 miles (9 minutes travel time) from the center.

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

Need Summary
Approval of this project will allow for continued access to multi-specialty surgery services at this site to the residents of Erie County.

Program Summary

The individual background review indicates the proposed board members of CH Emmaus, Inc. and Catholic Health System, Inc. have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

There are no project costs for this application. The total purchase price for the 77% ownership interest is \$23,300,000. Catholic Health

System, Inc. will fund the purchase price of shares by CH Emmaus, Inc. from accumulated cash. The proposed budget, in thousands, is as follows:

<u>Budget</u>	<u>Current</u> <u>Year</u>	<u>Year</u> <u>One</u>	<u>Year</u> <u>Three</u>
Revenues	\$18,145	\$17,951	\$18,124
Expenses	<u>15,838</u>	<u>\$17,449</u>	<u>\$17,973</u>
Net Income	\$2,306	\$501	\$151

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Contingent approval with an expiration of the operating certificate three years from the date of its issuance:

1. Submission of a signed agreement with an outside, independent entity satisfactory to the Department of Health (Department) to provide annual reports to the Department. 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 healthcare-associated infections recorded during the year reported.
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of a photocopy of an executed amendment of the Operating Agreement of Zvika Management Services, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Zvika Management Services, LLC, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for an 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

April 5, 2022

Need and Program Analysis

Program Description

There are no programmatic or staffing changes as a result of this request. The primary service area is Erie County, with specific emphasis on zip codes 14226, 14223, 14261, 14221, and 14150. The population of Erie County was 954,236 in 2020 and is projected to decrease by 1% to 945,162 by 2025. According to Data USA, in 2019, 97.4% of the population of Erie County has health coverage as follows:

Employee plans	51.2%
Medicaid	19.2%
Medicare	13.4%
Non-group plans	12.3%
Military or VA plans	1.21%

The applicant estimates 22,404 procedures in the first year and 23,926 in the third year with Medicaid utilization at 5.2% and charity care at 6.2%. The site is current with SPARCS reporting for 2021. The facility states they will provide care regardless of their ability to pay or source of payment.

Character and Competence

The table below details the proposed change in ownership:

Members	Current	Proposed
Charles Niles	11.20585%	2.57735%
Philip Niswander	9.26311%	2.13052%
James Twist	10.28020%	2.36445%
Todd Koch	4.61129%	1.06060%
Stephen Pollack	4.82739%	1.12065%
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Peter Hurley	2.93630%	0.67535%
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CH Emmaus Inc** David Manholz, <i>President</i> Mark Sullivan, <i>Treasurer</i> Leonardo Sette-Camara, <i>Secretary</i>	0.00000%	77.00000%
TOTAL	100%	100%

**Individuals subject to Character and Competence as the board of the new member

***Individuals who obtained membership through Transfer of Ownership Interest Notices and are now subject to a Character and Competence review per PHL §2801-a(4)(b)(i).

David Macholz is the Chief Financial Officer of Catholic Health System. He has held various roles in the organization. Previously, he served as the Vice President of Finance, the President Senior Director of Finance of Acute Care, the Director of Decision Support and Budget, the Director of Cost Accounting, and the Accounting Manager. He is responsible for the development of a system-wide plan and funding strategy to bring associates from multiple disciplines into the Catholic Health Administration and Regional Training Center saving Catholic Health \$1.6M annually. In addition to his roles at CHS, he was previously a Controller and Senior Accountant at BryLin Hospital.

Mark Sullivan is the President and CEO of the Catholic Health System where he is responsible for the health system with annual revenue of more than \$1.2 billion. He leads a team of more than 10,000 associates while working with Catholic Medical Partners and Trinity Medical WNY to help strengthen the system's relationship with its nearly 1,600 affiliated physicians. Previously, he was the Executive Vice President and Chief Operating Officer of CHS.

Leonardo Sette-Camara is the General Counsel for Catholic Health System where he provides legal counsel and services for the System and its corporate affiliates. In addition to advising the Board and Senior Executives, he is responsible for the Corporate Compliance, Institutional Review Board, Risk Management, Clinical Documentation Integrity, and Improvement departments division of legal services, the management of outside legal counsel, all insurance programs, and governance-related activity. Previously, he was the Chief Compliance Officer, the Deputy Counsel for Corporate Compliance and Privacy Officer, the Corporate Compliance and Privacy Officer, the Associate Counsel and Manager of Contracts. Leonardo Sette-Camara discloses the following healthcare affiliations:

Catholic Health Ministry Services Board

2020-present

Deepan Selvadurai, MD is an Ophthalmologist at Buffalo Ophthalmology. He received his medical degree from Rosalind Franklins University of Medicine and Science. He completed his residency at The Mayo Clinic and his fellowship at The University of Toronto. He is Board Certified in Ophthalmology.

Graham Huckell, MD is an Orthopedist at Pinnacle Orthopedics & Spine Specialists. He is also an Assistant Clinical Professor at the State University of New York at Buffalo. He is an Attending Physician at both Kaleida Health System and Catholic Health System. He received his medical degree from the University of Calgary. He completed his residency in Orthopedic Surgery at Western University and a fellowship in Adult Reconstructive Surgery and Total Joint Surgery at the University of Toronto. He is board-certified in Orthopedic Surgery.

John Legarreta, MD is an Ophthalmologist at Legarreta Eye Center. He is a Clinical Assistant Professor of Ophthalmology at the University of Buffalo School of Medicine giving lectures. He holds affiliations at Millard Fillmore Suburban Hospital, Sister's Hospital, and Lockport Hospital. He received his medical degree from State University of New York at Buffalo. He completed his residency in Internal Medicine at University at Buffalo School of Medicine and his residency in Ophthalmology at University of Miami School of Medicine and UPMC Medical Education. He is board-certified in Ophthalmology.

Ellen Fitzgerald, MD is an Ophthalmologist at Ambulatory Surgery Center of Western New York. She is also an Ophthalmologist at Visionary Ophthalmology and Cataract Care PLLC. She received her medical degree from University at Buffalo School of Medicine. She completed her residency in Internal Medicine at University at Buffalo School of Medicine and her residency in ophthalmology at Henry Ford Hospital. She is board certified in Ophthalmology.

Catholic Health System, Inc.

The sole member and active parent of CHE is Catholic Health System, Inc. (CHS). Therefore, CHS and their board is also subject to a character and competence review. **The board of CHS** is as follows:

Member Name	Title
Mark Sullivan	President and CEO
Maureen Athoe	Board Chair
Maureen Hurley	Vice Chair
Michael Keating	Vice Chair
Nancy Ware	Secretary
Lawrence Whistler	Treasurer
David Bauer	Member
John Duset	Member
Sister Marcia Fiutko FSSJ	Member
Carolyn "Carrie" Frank	Member
Johnathan Graves	Member
Alfred Hamilton	Member
Carol Heckman	Member
Kevin Keenan	Member
Hillary Lewis	Member
Teresa Majors	Member
Kristen Robillard	Member
David Rogers	Member
David Schmidt	Member
Paul Tokasz	Member
Rolanda Ward	Member
Monsignor Robert Zapfel	Member

Mark Sullivan – see above disclosure

Maureen Athoe has been the President of Moog, Inc for approximately seven years. She is responsible for the worldwide design, manufacturing, and integration of high-performance systems for a broad range of applications in aerospace and defense, industrial, and mechanical markets. She was the previous Vice President and Group General Manager for the Space and Defense Group and the previous Vice President of Finance of the Space and Defense Group. She is on the Catholic Health System Board of Directors for approximately four (4) years and had been the Board Chair for one (1) year. She was on the Mercy Hospital of Buffalo Foundation Board of Directors for seven years.

Maureen Hurley is retired from Rich Products Corp. where she served as the Executive Vice President for 14 years. She was responsible for reporting to the CEO, was a member of the Executive Leadership Team, and served as a key advisor to the Chair, Vice-Chair, and CEO.

Michael Keating has been the Senior Vice President of Wegmans Food Markets for 21 years. He is responsible for all operations within the company's Buffalo division, 11 stores in Western New York, and two in Erie, PA. He is responsible for over 6,000 full and part-time employees. He is a member of Business Leader's Task Force for Racial Equity Initiative of the Community Foundation of Greater Buffalo and The United Way Advisory Council. He serves on the board of The Buffalo Niagara Partnership.

Nancy Ware has been the Managing Partner and CEO of WPS MGMT Company for approximately two years. She is responsible for commercial property management for several businesses and properties in Western New York. She was the President of EduKids, Inc for 31 years. She created and established Western New York's largest privately-owned group of 16 childcare centers with a staff of over 450 employees, serving over 2,000 families. She was responsible for strategic planning, facility management, and operations.

Lawrence Whistler has been the President of Nottingham Advisors for over 15 years. He is responsible for leading the investment research and portfolio management process and managing the day-to-day activities of this Buffalo-based \$4.1B AUA registered investment advisory firm. He was an Adjunct Professor at Wehle School of Business for four where he taught fixed income securities.

David Bauer has been the President and CEO of National Fuel Gas Company for over two years. He previously held various executive positions with National Fuel Gas Supply Corporation. He is the Director and Chair of Finance for the YMCA Buffalo Niagara, the Chair of the Audit Committee of D'Youville College, an Investment Committee Member of the Diocese of Buffalo, a Member of Canisius College Business Advisory Council, the Director of Invest Buffalo Niagara, and the Director of American Gas Association.

John Dusett has been the President of Ingram Micro Corporation for approximately six years. He is responsible for complete strategic, P&L, and operational responsibility for the \$800M/year Microsoft Cloud and Software business in Ingram Micro's US operations. He was previously the Managing Director of The Aberdeen Group and the General Manager and Director of Operations of Xerox Corporation.

Sister Marcia Fiutko is a Franciscan Sister of St. Joseph. She is serving as a result of an election to FSSJ Leadership at the Franciscan Sisters of St. Joseph, Marycrest Manor Skilled Nursing Facility and Rehab Center, and Marycrest Heights.

Carolyn Frank has been a Consultant for Frank Executive Solutions LLC for approximately five years. She was previously the Vice President of Quality Informatics and Performance Improvement at Excellus Health Plan/Univera Healthcare, the Executive Vice President of Operations and the COO of Kaleida Health, and the Interim President and CEO, Executive Vice President and COO, and Vice president of Finance and CFO of The Buffalo General Health System.

Johnathon Graves has been a Mortgage Loan Officer at Northwest Bank for over two years. He is responsible for resident mortgage loans; developing and maintaining relationships with real estate agents, lawyers, and financial advisors; and creating and participating with local housing agencies and community groups. He was previously the Assistant Vice President of Five Star Bank, the Assistant Vice President of First Niagara Bank/Key Bank, and the Relationship Development Manager for Unyts.

Alfred Hamilton has been the President and CEO of Technology Solutions Consulting, LLC for over 12 years. He is responsible for developing strategic market guidance for public and private healthcare organizations; providing process improvements for the enhancements of internal and external operations; providing executive-level IT leadership training for public and private sector organizations; developing and implementing curriculum designs, facilitating recruitment and hiring, and quality assurance; and managing the accreditation process, and student recruitment and retention.

Carol Heckman has been a Partner at Lippes Mathias LLP for over five years. She is a litigation partner handling a broad range of commercial and business litigation and arbitration, including healthcare litigation and False claims Acts. She is a chair of Burchfield Penne Art Center, Hauptman Woodward Medical Research Institute, Children's Hospital, and Cradle Beach. She was also a federal court magistrate judge. She was previously a partner at Harter Secrest & Emery LLP.

Kevin Keenan is a Founding Partner of Keenan Communications Group. He is responsible for crisis communication, public relations, social media, and grassroots advocacy. He was previously the Director of the Office of Communication for the Diocese for 11 years. He was also the Editor in Chief of the Western New York Catholic.

Hillary Lewis has been the Vice President and Chief Information Security Officer of Mathematica Policy Research for over a year. She is responsible for working closely with the CIO to define a security and risk management culture for the enterprise and push out awareness and training to reinforce this culture. She is also employed as the Information Security Director of Cyber Capability and Maturity where she is responsible for leading annual programs to assess and define capability maturity targets for the following year; align annual capability targets with funded projects and report on progress; lead the team that supports risk remediation activities; supports the development of enterprise operation risk policies and

procedures; create, manage, and update security and privacy policies; lead privacy incident response efforts; and support litigation related to OIG InfoSec oversight /audit activities. She was an Adjunct Professor at George Washington University.

Teresa Majors is a Certified Public Accountant and has been employed at Dopkins for over 18 years. She works with public and private companies providing assistance with tax compliance, tax provision issues, Sarbanes-Oxley compliance, and FIN 48 implementation. She has extensive experience with multi-state corporations, consolidated return issues, mergers and acquisitions, and tax provision issues.

Kristen Robillard, MD is a Managing Partner at Lakeshore Primary Care Associates which has over 16,000 active patients, 13 providers, and 45 employees. She is the Medical Director of St. Joseph's Post-Acute COVID Center and the Interim President and CEO of Catholic Medical Partners. She received her medical degree from State University at Buffalo. She completed her residency in Family Medicine at University at Buffalo School of Medicine.

David Rogers is the Co-Founder and Member of the Board of Directors of Life Storage. He served as the CFO for 28 years and as the CEO for seven years. The company owns and operates over 1,100 storage facilities in over 35 states and employs over 2,000 people. Mr. Rogers also serves on the boards of the Old Niagara Association, the Life Storage, Foundation for Better WNY, Read to Succeed, the Buffalo, Niagara, Partnership, WNY Heritage Partnership, and the Brothers of Mercy Wellness Campus.

David Schmidt has been an Audit Partner at Ernst & Young LLP for 29 years. He serves a wide range of public, private, and venture-backed and family-owned entities in multiple industries including manufacturing, aerospace, and defense, healthcare and not-for-profit entities, and hospitality and gaming. He is on the Audit Committee and is a Financial and Accounting resource for 43North. He is a Board Treasurer and was on the Audit Committee and Executive Committee of the National Federation for Just Communities of WNY. He was a Council Chair, Executive Committee member, and Diversity Recruiting Committee Chair of Canisius Council on Accounting.

Paul Tokasz has been the Administrative Vice President of Government Relations of M&T Bank for over six years. He was the 143rd Assembly District Member for 18 years representing the residents of the towns and villages. He was the New York State Assembly Majority Leader for five years. He is involved in the Buffalo Philharmonic Stabilization Committee, Buffalo State College, Fireman's Association of New York State, and National Conference of State Legislatures.

Rolanda Ward, PhD is a macro trained social worker. She has been the lead investigator or research associate on numerous studies focusing on society's most vulnerable, underserved, and proven risk populations. Dr. Ward was an Associate Professor of Social Work at Niagara University in the Fall of 2015 and was Tenured in Spring of 2019. She was an Inaugural Endowed Faculty Director at Niagara University and reappointed in May 2020.

Reverend Monsignor Robert Zapfel is the Pastor at St. Leo the Great Church and St. Benedict Church. He is also a member of the Long Term Care Board, Home Care Board, Acute Care Board, Nominating and Governance Committee, Strategic Planning, Executive Compensation Committee, Finance and Operations Committee, Catholic Independent Physicians Associations Board, Our Lady of Victory Community Housing Development Organization, Mercy Housing Development Fund Corporation, and Our Lady of Victory renaissance Corporation.

Catholic Health System's affiliated healthcare facilities and agencies are as follows:

Kenmore Mercy Hospital	CHS Infusion Pharmacy
Mercy Hospital of Buffalo	Niagara Homemaker Services
Mount St. Mary's Hospital and Health Center	Mercy Home Care of Western NY
Sisters of Charity Hospital	McAuley-Seton Home Care
Father Baker Manor	St. Elizabeth's Home of Lancaster
McAuley Residence	St. Vincent's Home for the Aged
Mercy Hospital Skilled Nursing Facility	WNY Catholic Long-Term Care
St. Catherine Laboure Health Care Center	CHS PACE

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.

The filing of a Corporate Integrity Agreement on October 30, 2017, after a False Claims Act lawsuit was disclosed. A Whistleblower lawsuit was filed against Catholic Health System in May 2013 alleging the company submitted false Medicare claims for rehabilitation therapy services over a period of seven years between 2007 and 2014. The facilities involved in the agreement were Father Baker Manor and the McAuley Residence. The Corporate Integrity Agreement entered required monitoring of billing and therapy systems assessment in sub-acute rehabilitation facilities for five years. A settlement was reached for \$6 million.

Expiration of the Operating Certificate

By PHHPC Policy, because there is a greater than 50% change in the membership of the ASC, a new "limited life" is imposed on the facility to ensure appropriate outreach and care for the medically underserved and uninsured populations in the region. Since the ASC is open and operational, the operating certificate will have an expiration date imposed that is three years from the completion of the transaction, instead of five years for not-yet-operational ASCs.

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). There will be no changes in services as a result of this transfer of membership interest.

Financial Analysis

Operating Budget

	<u>Current Year (2020)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
<u>Revenues</u>						
Comm. FFS	\$1,025.55	\$3,305,350	\$1,025.46	\$3,404,511	\$1,025.64	\$3,635,885
Comm. MC	\$633.92	1,770,551	\$633.88	1,823,667	\$633.99	1,947,606
Medicare FFS	\$504.08	1,741,077	\$504.02	1,793,310	\$504.13	1,915,185
Medicare MC	\$834.00	5,913,032	\$833.96	6,090,423	\$834.00	6,504,335
Medicaid FFS	\$478.71	7,316	\$502.34	7,535	\$473.36	8,047
Medicaid MC	\$524.74	581,936	\$524.86	599,394	\$524.70	640,129
Private Pay	\$632.67	527,014	\$632.66	542,825	\$632.88	579,716
All Other ¹	\$1,322.41	2,484,800	\$1,322.66	2,559,344	\$1,322.34	2,733,280
Less: Bad Debt ²		<u>145,524</u>		<u>148,890</u>		<u>160,077</u>
Total Pat. Rev.		\$16,476,601		\$16,970,899		\$18,124,262
Other Income ³		<u>1,668,228</u>		<u>979,639</u>		<u>0</u>
Total Revenue		<u>\$18,144,829</u>		<u>\$17,950,539</u>		<u>\$18,124,262</u>
<u>Expenses</u>						
Operating	\$604.49	\$13,148,329	\$675.67	\$15,137,617	\$651.67	\$15,591,740
Capital	<u>123.68</u>	<u>2,690,091</u>	<u>103.19</u>	<u>2,311,871</u>	<u>99.52</u>	<u>2,381,225</u>
Total Expenses	<u>\$728.17</u>	<u>\$15,838,420</u>	<u>\$778.86</u>	<u>\$17,449,488</u>	<u>\$751.19</u>	<u>\$17,972,965</u>
Net Income/ (Loss)		\$2,306,409		\$501,051		\$151,297

	<u>Current Year (2020)</u>		<u>Year One (2023)</u>		<u>Year Three (2025)</u>	
	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>	<u>Per Proc.</u>	<u>Total</u>
Procedures		21,751		22,404		23,926
Cost/Procedure		\$728.17		\$778.86		\$751.19

¹ All Other includes Workers Compensation and No-Fault.

² In the Current Year the applicant reported 221 procedures attributable to Bad Debt resulting in reductions to net patient service revenues of \$182,544, which was offset by charity care estimated at \$328,068.

³ Other Income includes CARES Act programs ASCWNY participated in 2020 including Payroll Protection Program, Provider Relief Funds, and Employee Retention Credit.

The following is noted for the submitted budget:

- The current year reflects the facility's 2020 revenues and expenses.
- Staffing mix is determined by volume and specialties, training level, and ongoing operations.
- Medicare Managed Care revenues are based upon negotiated rates.
- Utilization and expense projections are based on the experience of ASCWNY LLC.
- Year One and Year Three procedure increases are based on current volume increase projections.
- Other income for Year Three is based on conservative expectations versus the current year and what was projected in Year One.
- Expenses in Years One and Three include labor costs, medical and surgical supplies, and utilities.
- Increase in cost per procedure in Year One is driven by increase in labor costs, medical and surgical supplies, and other direct expenses.

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

<u>Payor</u>	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	14.82%	14.82%	14.82%
Commercial MC	12.84%	12.86%	12.84%
Medicare FFS	15.88%	15.93%	15.88%
Medicare MC	32.60%	32.62%	32.60%
Medicaid FFS	0.07%	0.07%	0.07%
Medicaid MC	5.10%	5.10%	5.10%
Private Pay	3.83%	3.83%	3.83%
Charity Care	6.23%	6.23%	6.23%
All Other	8.64%	8.64%	8.64%
Total	100%	100%	100%

Executed Lease Agreement

The applicant has submitted an executed lease agreement for the existing site:

Date:	August 1, 2017
Premises:	945 Sweet Home Road, Amherst, New York, 14226
Landlord:	Amherst Affiliates LLC
Tenant:	Ambulatory Surgery Center of Western New York, LLC
Term:	20 Years commencing on August 1, 2017.
Rent:	\$792,680 (\$66,056.67 per month)
Provisions:	Tenant is responsible for insurance, utilities, modifications and alteration, and property taxes.

The lease between the property owner and the lessee is a non-arm's length arrangement due to common ownership. Common ownership between lessor and lessee consists of the same individuals but different ownership percentages.

Assignment of Lease and Additional Property

The applicant has submitted an assignment of the lease for the existing site between Amherst Affiliates LLC (Assignor) and MMAC HT II Amherst NY, LLC a Delaware limited liability company (Assignee):

Date:	November 11, 2021
Assignor:	Amherst Affiliates LLC
Assignee:	MMAC HT II Amherst NY, LLC
Price:	\$10
Consideration:	Assignor's rights, title, interests, duties, obligations, and liabilities under or with respect to those certain lease agreements and additional property.

The applicant has submitted an affidavit indicating that the lease assigned by Amherst Affiliates LLC to MMAC HT II Amherst NY, LLC remains in full force and effect.

Executed First Amendment to Lease Agreement

The applicant has submitted an executed first amendment to the lease agreement for the existing site between MMAC HT II Amherst NY, LLC a Delaware limited liability company, and Ambulatory Surgery Center of Western New York, LLC:

Date:	December 21, 2021
Premises:	945 Sweet Home Road, Amherst, New York, 14226
Landlord:	MMAC HT II Amherst NY, LLC
Tenant:	Ambulatory Surgery Center of Western New York, LLC
Term:	20 Years,
Rent:	\$792,680 (\$66,056.67 per month)
Provisions:	Tenant is responsible for insurance, utilities, modifications and alteration, and property taxes.

The applicant has submitted an affidavit stating that the amended lease is an arm's length agreement. The applicant also indicated that 40% of the membership interest of MMAC HT II Amherst NY, LLC is owned by RI-1 LLC, which is owned by nine individuals that are also members of ASCWNY, LLC. RI-1 LLC is a passive investor in MMAC HT II and holds no authority to make decisions or act on behalf of MMAC HT II Amherst NY, LLC.

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement (MIPA), effectuated on July 30, 2021, and summarized as follows:

Date:	July 30, 2021
Buyer:	CH Emmaus, Inc.
Seller/Company:	ASCWNY, LLC
Purchase:	Purchase 121.7662 units of ownership interest, constituting 77% ownership interest in ASCWNY, LLC.
Buyer Deliverables at Closing:	CHE shall make payments from the Base Purchase by wire transfer on behalf of ASCWNY to: 1. Payees of Company Transaction Expenses as directed by ASCWNY prior to the Closing; and 2. To each seller, his or her share of the estimated closing consideration.
Purchase Price:	\$23,300,000 subject to adjustments at closing

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without

releasing the transferor of its liability and responsibility. As of March 1, 2022, the facility had no outstanding Medicaid overpayment liabilities.

Capability and Feasibility

There are no project costs associated with this application. The submitted budget indicates an excess of revenues over expenses of \$501,051 and \$151,297 during the first and third year of operations, respectively. The total purchase price for the 77% units of interest is \$23,300,000. Catholic Health System, Inc. will fund the purchase of shares by CH Emmaus, Inc. via accumulated cash. CHS's financial statements, BFA Attachments A and B, indicate sufficient equity to fund the total purchase price. CHS has maintained adequate liquidity and holds over 100 days of unrestricted cash and investments on hand as of September 30, 2021. CHS has been working to reduce operating losses largely driven by the COVID-19 pandemic that have required a drawdown of both Net Assets and Working Capital over the past two years.

A summary of the 2020 Certified Financial Statements for Catholic Health System, Inc., and Subsidiaries is in BFA Attachment A. For the year ending December 31, 2020, CHS reported positive working capital and positive net assets and an operating loss of \$73,853,000, which was offset by \$8,876,000 in non-operating revenues, resulting in a deficiency of revenues over expenses of \$64,977,000. The operating loss was driven by the COVID-19 pandemic and contributing factors, including a reduction in hospital volume stemming from isolation and social distancing measures, temporary pause to elective surgeries, certain one-time items related to the preparation of its facilities for COVID-19 patients, as well as, a general increase in costs attributable to wages, and supplies. The impact of the pandemic has been partially offset by CARES Act Provider Relief Fund, from which the System has received approximately \$87 million in 2020.

A summary of the Internal Financial Statements for Catholic Health System, Inc. and Subsidiaries for the period ending September 30, 2021, is in BFA Attachment B. These statements show a positive working capital position, a positive net asset position, and a negative operating income of \$74,144,000, which was offset by \$10,715,000 in non-operating revenues resulting in an excess of expenses over revenues of \$63,429,000. The loss is driven by the ongoing COVID-19 pandemic, including a temporary ban from performing elective surgical procedures, resulting in lost revenue of over \$50 million through the first nine months of 2021. Receipts from the CARES Act Provider Relief Fund of \$9 million partially offset the lost revenue in 2021. In response to the surge in COVID-19 cases in early 2021, CHS ramped up staffing to accommodate the patient census. Due to retirements, turnover, and an overall shortage in available nursing resources, CHS has had to rely on temporary agency staffing which is in short supply across the country, and as such, come at a significant premium hourly wage rates. Operating losses have caused a drawdown of both Net Assets and Working Capital over the past two years. However, CHS has maintained adequate liquidity and holds over 100 days of unrestricted cash and investments on hand as of September 30, 2021.

BFA Attachments C is a summary of the 2020 Certified Financial Statements for Ambulatory Surgery Center of Western New York, LLC which shows a negative working capital position, a negative net asset position, and a positive operating income of \$1,740,039. During 2020, ACSWNY's day-to-day operations were impacted by the COVID-19 pandemic, and, in particular, the temporary ban on elective surgeries. During 2020, ASCWNY received a total of \$1.6M in CARES Act Program funds, including \$817,997 in Payroll Protection Funds, \$380,532 in Provider Relief Funds, as well as, \$469,699 in Employee Retention Credits. The forgiveness of Payroll Protection Funds is subject to the approval of the U.S. Small Business Administration.

BFA Attachment D is a summary of the September 2021 Internal Financial Statements for Ambulatory Surgery Center of Western New York, LLC, which shows a negative working capital position, a negative net asset position, and an operating income of \$1,734,663.

Conclusion

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

Attachments

- BFA Attachment A 2020 Certified Financial Statements for Catholic Health System, Inc., and Subsidiaries
- BFA Attachment B September 2021 Internal Financial Statements for Catholic Health System, Inc., and Subsidiaries
- BFA Attachment C 2020 Certified Financial Statements for Ambulatory Surgery Center of Western New York, LLC
- BFA Attachment D September 2021 Internal Financial Statements for Ambulatory Surgery Center of Western New York, LLC
- BFA Attachment E Catholic Health System, Inc. Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April 2022, 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 77% ownership interest from 23 existing members to one new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

RESOLVED, that 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:

212079 E Ambulatory Surgery Center of Western New York LLC

APPROVAL CONTINGENT UPON:

Contingent approval with an expiration of the operating certificate three years from the date of its issuance:

1. Submission of a signed agreement with an outside, independent entity satisfactory to the Department of Health (Department) to provide annual reports to the Department. 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 healthcare-associated infections recorded during the year reported.
 - g. A list of all efforts made to secure charity cases; and
 - h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of a photocopy of an executed amendment of the Operating Agreement of Zvika Management Services, LLC, acceptable to the Department. [CSL]
3. Submission of a photocopy of an executed Certificate of Amendment of the Articles of Organization of Zvika Management Services, LLC, 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for an 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*.



**Project # 212057-B
NY Med South Bronx, LLC**

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment and Construction **Acknowledged:** September 15, 2021

Executive Summary

Description

NY Med South Bronx LLC, an existing New York limited liability company, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 2825 Third Avenue, Bronx (Bronx County). The building is owned by Elidex Realty Owner LLC, a non-related entity, which will lease the clinic space to NY Med South Bronx, LLC. The applicant requests certification for primary care, other medical specialties, Magnetic Resonance Imaging (MRI), and physical therapy.

The proposed ownership is as follows:

<u>Name</u>	<u>Interest</u>
Sebastian Lattuga, M.D.	10.00%
Steven Soifer, D.C.	34.00%
Matthew B. Weiss, D.C.	34.00%
Russell Greenseid, D.C.	<u>22.00%</u>
Total	100.00%

Sebastian Lattuga, MD., one of the proposed members, who specializes in Orthopedic Surgery will serve as Medical Director. Lincoln Medical Center located 0.5 miles and five minutes travel time from the proposed D&TC is expected to serve as the backup hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

The proposed D&TC is located in an area designated as a Health Professional Shortage Area for Primary Care by the U.S. Health Resources & Services Administration (HRSA). The applicant projects 60,200 visits in Year One and 77,400 in Year Three with a Medicaid utilization at 40% and charity care at 2%.

Program Summary

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

Financial Summary

The project costs of \$1,576,267 will be met via the proposed members' equity of \$1,376,267 with the remaining \$200,000 financed via the landlord's contribution. The budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,634,812	\$10,128,018
Expenses	<u>5,931,500</u>	<u>7,139,185</u>
Net Profit	\$1,703,312	\$2,988,833

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. Submission of a photocopy of an executed and amended Restated Articles of Organization of NY Med South Bronx, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amendment of the Operating Agreement of NY Med South Bronx, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **June 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2022**, and construction must be completed by **March 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]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date

April 5, 2022

Need and Program Analysis

Program Description

Proposed Operator	NY Med South Bronx, LLC
To Be Known As	NY Med South Bronx
Site Address	2825 Third Avenue Bronx, New York 10455 (Bronx County)
Services	Medical Services-Primary Care Internal Medicine Family Practice Pediatrics Medical Services-Other Medical Specialties Cardiology Diagnostic Radiology Physical Therapy Magnetic Resonance Imaging (MRI)
Hours of Operation	Monday through Friday 8:00 am to 6:00 pm
Staffing (1st Year / 3rd Year)	33.75 FTEs / 42.75 FTEs
Medical Director(s)	Sebastian Lattuga, M.D.
Emergency, In-Patient, and Backup Support Services Agreement, and Distance	Expected to be provided by Lincoln Medical and Mental Health Center 0.5 miles / 5 minutes away

Analysis

The primary service area is the neighborhood of Mott Haven/Melrose in Bronx County. The population of Bronx County was 1,385,108 in 2010 and is estimated to grow to 1,567,988 by 2025, an increase of 13.2%. According to Data USA, in 2019, 92.1% of the population of Bronx County has health coverage as follows:

Employer Plans	31.3%
Medicaid	42.3%
Medicare	6.9%
Non-Group Plans	11.0%
Military or VA	0.4%

The applicant projects 60,200 visits in Year One and 77,400 in Year Three with Medicaid utilization at 40% and charity care at 2%. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

The Highbridge area of Bronx County is a Health Professional Shortage Area for Primary Care for Medicaid eligible and the Morrisania area is a Medically Underserved Area (HRSA).

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for Bronx County is significantly higher than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs

2017 PQI Rates	Bronx County	New York State
All PQIs	2,191	1,431

Character and Competence

The members of NY Med South Bronx, LLC are:

<u>Name</u>	<u>Interest</u>
Sebastian Lattuga, M.D.	10.00%
Steven Soifer, D.C.	34.00%
Matthew B. Weiss, D.C.	34.00%
Russell Greenseid, D.C.	22.00%
Total	100.00%

Dr. Sebastian Lattuga is an Orthopedic Spine Surgeon who is the Chief of Spine Surgery at New York Spinal Specialists, an Attending Surgeon at New York-Presbyterian Hospital, and an Assistant Clinical Professor in the Department of Orthopaedic Surgery at Weill Cornell Medical Center. He received his medical degree from Stony Brook University Health Sciences Center and completed his General Surgery residency at Mount Sinai, his Orthopedic Surgery residency at Stony Brook University Hospital, and his Orthopedic Spine Surgery residency at Jackson Health System in Miami. Dr. Lattuga is a board-certified Orthopedic Spine Surgeon. Dr. Lattuga is the proposed Medical Director for the facility.

Dr. Russell Greenseid is a Chiropractor that has worked at Finally Health Medical Services for approximately 22 years where he treats patients in a multidisciplinary setting. In addition, he is responsible for managing hiring, fiscal duties, enacting office protocol, and developing the office manual. He is also responsible for business development, marketing, and advertising campaigns. Dr. Greenseid discloses ownership in the following healthcare facilities:

<i>NY Med of Brooklyn, LLC (D&TC)</i>	<i>12/2021-present</i>
<i>Healthquest Health Center, LLC d/b/a Metro Healthcare Partners (D&TC)</i>	<i>06/2021-present</i>

Dr. Steven Soifer is a Chiropractor and the Owner and Operator of Queens Medical Pavilion, LLC d/b/a NY Med, an Article 28 D&TC, for over eight years, where he oversees the operations and management of the D&TC. Previously, he was the Healthcare Manager of Total Healthcare Management where he worked with other healthcare professionals to look for new ways to streamline care services. In addition, he hired staff, reviewed financial statements, read about new laws and regulations that could affect current operations, and implemented new technologies and procedures accordingly. Dr. Soifer discloses ownership in the following healthcare facility:

<i>Queens Medical Pavilion, LLC d/b/a NY Med (D&TC)</i>	<i>03/2013-present</i>
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Dr. Matthew Weiss is a Chiropractor and the Owner and Operator of Queens Medical Pavilion, LLC d/b/a NY Med for the past eight years. In this role, he oversees the day-to-day operations of the facility. He was the previous Operator and Manager of Total Healthcare Management where he oversaw the business operations and day-to-day management of the facility. Dr. Weiss discloses ownership in the following healthcare facilities:

<i>Queens Medical Pavilion, LLC d/b/a NY Med (D&TC)</i>	<i>03/2013-present</i>
<i>NY Med of Brooklyn, LLC (D&TC)</i>	<i>12/2021-present</i>

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 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.

Dr. Lattuga disclosed being named in multiple malpractice suits:

- A suit was filed on June 18, 2013, where the patient alleged improper surgery, treatment, and failure to perform the surgery properly. The case was settled for \$29,000.
- A suit was filed on June 17, 2016, where the patient alleged serious injury and pecuniary loss and failure to warn the patient of the nature, purpose, known perils, recognizable hazards, risk/possible complications of the medical diagnosis, treatment services, and advice rendered and/or advice as to alternative methods of treatments. The case remains open.
- A suit was filed on September 12, 2017, where the patient alleged improper surgery, treatment, and failure to perform surgery properly. The case is in the discovery phase.
- A suit was filed on December 20, 2018, where the patient alleged failing and neglecting to exercise a degree of care. There is a stipulation to dismiss that is not yet finalized.

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 provide for increased access to a variety of medical services for the underserved residents of the neighborhood of Mott Haven/Melrose and the surrounding communities in Bronx County.

Financial Analysis

Total Project Cost and Financing

The total project cost of \$1,576,267 for leasehold improvements, renovations, moveable equipment, and CON fees is distributed as follows:

Renovation & Demolition	\$840,000
Design Contingency	88,000
Construction Contingency	88,000
Architect /Engineering Fees	119,000
Other Fees	75,000
Moveable Equipment	355,656
CON Fee	2,000
Additional Processing Fee	<u>8,611</u>
Total Project Cost	<u>\$1,576,267</u>

The applicant's financing plan is as follows:

Equity	\$1,376,267
Other-Landlord Contribution	<u>200,000</u>
Total	\$1,576,267

Operating Budget

The applicant has provided an operating budget, in 2022 dollars, for the first and third year:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit.</u>	<u>Total</u>	<u>Per Visit.</u>	<u>Total</u>
<u>Revenues</u>				
Commercial-FFS	\$140	\$2,359,840	\$146	\$3,155,443
Medicare FFS	\$175	526,750	\$182	704,340
Medicare MC	\$140	1,685,600	\$146	2,253,888
Medicaid FFS	\$133	1,603,487	\$133	2,061,626
Medicaid MC	\$105	1,258,662	\$109	1,683,010
Private Pay	\$200	602,000	\$208	804,960
Charity Care	(\$200)	(240,800)	(\$208)	(321,984)
Bad Debt		<u>(160,727)</u>		<u>(213,265)</u>
Total Revenue		\$7,634,812		\$10,128,018

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit.</u>	<u>Total</u>	<u>Per Visit.</u>	<u>Total</u>
<u>Expenses</u>				
Operating	\$91	\$5,462,635	\$86	\$6,670,319
Capital	<u>8</u>	<u>468,865</u>	<u>6</u>	<u>468,866</u>
Total	\$99	\$5,931,500	\$92	\$7,139,185
Excess Revenues		<u>\$1,703,312</u>		<u>\$2,988,833</u>
Visits		60,200		77,400

Utilization by payor source is as follows:

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial FFS	28.00%	28.00%
Medicare FFS	5.00%	5.00%
Medicare MC	20.00%	20.00%
Medicaid FFS	20.00%	20.00%
Medicaid MC	20.00%	20.00%
Private Pay	5.00%	5.00%
Charity Care	<u>2.00%</u>	<u>2.00%</u>
Total	100.0%	100.0%

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

- Year One projected volume reflects the facility ramp-up period. The applicant states that the projected marketing efforts and development of its referral network will allow the facility to achieve full utilization by Year Three.
- The Medicaid APG base rate was used as the rate for the Medicaid Fee-For-Service population in the budget projections. The proposed operators based their utilization and payer mix projections on prior experience in operating inpatient and outpatient programs.

Lease Agreement

The terms of the executed lease agreement are summarized below.

Date:	March 22, 2021
Premises:	12,000 square feet of space at 2825 Third Avenue, Bronx, New York 11229
Landlord:	Elidex Realty Owner LLC
Tenant:	NY Med South Bronx, LLC
Term:	10 years
Rent:	Year 1 – Year 5 \$336,000 annually (\$28,000 per month) Year 5 – Year 10 \$369,600 annually (\$30,800 per month)
Provisions:	Tenant is responsible for insurance, maintenance, repairs, utilities, and property taxes.

The lease is an arm's length agreement as there is no relationship between the landlord and the tenant. The applicant has submitted letters from two New York realtors attesting to the rent reasonableness, which were based on the total square footage and the completion of construction of the space.

Capability and Feasibility

The total project costs of \$1,576,267 will be met via the proposed members' equity of \$1,376,267 and the remaining \$200,000 will be financed via the landlord's contribution. 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 \$1,189,864 based on two months of third-year expenses and will be funded via the proposed members' personal equity. BFA Attachment A reveals sufficient resources to meet all equity requirements. BFA Attachment B is NY Med South Bronx, LLC's Pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$2,755,520.

The submitted budget projects a net income of \$1,703,312 and \$2,988,833 for the first and third year respectively. Revenues are based on current reimbursement methodologies for primary care services. The submitted budget appears reasonable.

Conclusion

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

Attachments

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

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April 2022, 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 2825 Third Avenue, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

212057 B

NY Med South Bronx, 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
4. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. Submission of a photocopy of an executed and amended Restated Articles of Organization of NY Med South Bronx, LLC, acceptable to the Department. [CSL]
6. Submission of a photocopy of an amendment of the Operating Agreement of NY Med South Bronx, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **June 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2022**, and construction must be completed by **March 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]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf.
Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

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



Project # 212182-E
Main Street Radiology at Bayside LLC

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment **Acknowledged:** November 19, 2021

Executive Summary

Description

Main Street Radiology at Bayside, LLC (MSRB or the Center), an existing Article 28 diagnostic and treatment center (D&TC) at 32-35 Francis Lewis Boulevard (Queens County) requests approval to transfer 25.04% ownership interest from 10 withdrawing members to 5 existing members and 7 new members in Main RADS, LLC. MSRB is a joint venture diagnostic and treatment center owned by New York-Presbyterian/Queens (50%) and Main RADS, LLC (50%).

A full certificate of need application is required to effectuate the transfers of interest under PHL Section 2801-a(4)(b)(ii)(D) because the total percentage of interest being transferred in the operator is greater than twenty-five percent.

The approved membership and the proposed membership of Main RADS LLC after approval of this application are shown below:

Members	As Approved	Proposed
Ken Min, MD	6.67%	0.00%
Robert Meisell, MD	6.67%	0.00%
Gregory Carsen, MD	6.67%	0.00%
Alexander Talis, MD	6.67%	0.00%
Lawrence Schechter, MD	6.67%	0.00%
William Wolff, MD	6.67%	0.00%
David Roger, MD	6.67%	0.00%
Anthony Italiano, MD	6.67%	0.00%
Lawrence Carl, MD	6.67%	0.00%
Lai Ming Yu, MD	6.67%	0.00%
Jeffrey Lee, MD	6.67%	8.33%
John DeRosa, MD	6.67%	8.33%

Members	As Approved	Proposed
Yong Hahn, MD	6.67%	8.33%
Han Kim, MD	6.67%	8.33%
Wales Shao, MD	6.67%	8.33%
Erik Rio, MD	0.00%	8.33%
Komylo Chomy, MD	0.00%	8.33%
John Iraj, MD	0.00%	8.33%
Maura Noordhoom, MD	0.00%	8.33%
Stanley Yang, MD	0.00%	8.33%
Ari Jonisch, MD	0.00%	8.33%
Bobbi Ring, MD	0.00%	8.33%
Total	100%	100%

OPCHSM Recommendation Approval

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

Program Summary
There will be no changes to MSRB's services as a result of this application. The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary
There are no project costs associated with this application. The purchase price associated with the 25.04% of ownership interest transfer in Main RADS, LLC is \$2,090,574.99 and will be or has been met via members' equity.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval conditional upon:

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

Council Action Date

April 5, 2022

Program Analysis

Program Description

There are no programmatic changes as a result of this request.

Character and Competence

The table below details the proposed changes in the membership of Main RADs, LLC, a 50% member of Main Street Radiology at Bayside, LLC:

Members	Currently Approved	Proposed
Ken Min, MD	6.67%	0.00%
Robert Meisell, MD	6.67%	0.00%
Gregory Carsen, MD	6.67%	0.00%
Alexander Talis, MD	6.67%	0.00%
Lawrence Schechter, MD	6.67%	0.00%
William Wolff, MD	6.67%	0.00%
David Roger, MD	6.67%	0.00%
Anthony Italiano, MD	6.67%	0.00%
Lawrence Carl, MD	6.67%	0.00%
Lai Ming Yu, MD	6.67%	0.00%
Jeffrey Lee, MD	6.67%	8.33%
John DeRosa, MD	6.67%	8.33%
Yong Hahn, MD	6.67%	8.33%
Han Kim, MD	6.67%	8.33%
Wales Shao, MD	6.67%	8.33%
Erik Rio, MD	0.00%	8.33%
Kornylo Chomy, MD**	0.00%	8.33%
John Iraj, MD**	0.00%	8.33%
Maura Noordhoom, MD**	0.00%	8.33%
Stanley Yang, MD**	0.00%	8.33%
Ari Jonisch, MD**	0.00%	8.33%
Bobbi Ring, MD**	0.00%	8.33%
Total	100%	100%

***Member subject to Character and Competence*

Erik Rios, M.D. is an Attending Radiologist at Main Street Radiology and Radiology Associates of Main Street. Previously, he was an Attending Radiologist at Christ Hospital, Attending Radiologist at Wyckoff Hospital, and Attending Radiologist at Flushing Hospital. He has been a Clinical Assistant Professor of Radiology at Weill Medical College of Cornell University for over 20 years. He is board-certified in Diagnostic Radiology.

Kornylo Chorny, M.D. has been a Clinical Assistant Professor of Radiology at Weill Medical College of Cornell University for over 20 years and was an attending Radiologist at Beth Israel Deaconess Medical Center and an Instructor in Radiology at Harvard Medical School. He received his medical degree from Albert Einstein College of Medicine and completed his residency in Diagnostic Radiology at St. Luke's/Roosevelt Hospital of Columbia and his Fellowship in Women's Imaging at Beth Israel Deaconess Medical Center. He is board-certified in Radiology.

John Iraj, M.D. has been an Attending Radiologist at Radiology Associates of Main Street and New York-Presbyterian/Queens for over 18 years. He is also an Attending Radiologist and Medical Director of Main Street Radiology. He previously served as an Attending Radiologist at Staten Island University Hospital/Seaview Radiology. He is a Clinical Assistant Professor of Radiology at Weill Cornell Medical College of Cornell University. He received his medical degree from Mount Sinai School of Medicine and completed his residency in Diagnostic Radiology at the University of Illinois Michael Reese and Mercy

Hospital and his fellowship in Body Imaging at Northwestern University Evanston Hospital. He is board-certified in Radiology.

Maura Noordhoorn, M.D. has been an Attending Radiologist at New York Hospital Queens and Main Street Radiology for over 19 years. Previously, she was an Assistant Attending Radiologist at NYU Downtown Hospital. She has been a Clinical Assistant Professor of Radiology at Weill Medical College of Cornell University for over nine years.

Stanley Yang, M.D. has been a Managing Partner of Radiology Associates of Main Street, P.C. for over 18 years. He has been a Clinical Assistant at New York-Presbyterian Queens for approximately 18 years. Previously, he was a Clinical Assistant at Bellevue Hospital Center, NYU Tisch Hospital, and Hospital for Joint Disease. He received his medical degree from Mount Sinai School of Medicine and completed his residency in Radiology and fellowship in Neuroradiology at NYU Medical Center. He is board-certified in Radiology with a sub-certification in Neuroradiology.

Ari Jonisch, M.D. is the President and Chief of Radiology of Main Street Radiology, the Chief of the Radiology Department at New York-Presbyterian Queens, and Section Head of Musculoskeletal Radiology at New York-Presbyterian Queens. Previously, he was the Assistant Chairperson at New York-Presbyterian Queens. He is a Clinical Assistant Professor of Radiology at Weill Medical College of Cornell University. He received his medical degree from Upstate Medical University and completed his residency in Radiology at Yale-New Haven Hospital and his Musculoskeletal fellowship at NYU Hospital of Joint Disease. He is board-certified in Radiology.

Bobbi Ring, M.D. has been an Attending Radiologist at New York Medical Center of Queens and Main Street Radiology at Bayside for over 12 years. She has been a Clinical Instructor in Radiology at Weill Medical College of Cornell University for over nine years. Previously, she was an Assistant Clinical Instructor of Radiology at Stony Brook University. Dr. Ring received her medical degree from the University at Buffalo School of Medicine and Biomedical Science and completed her residency in Radiology at Winthrop University Hospital and a Breast and Body fellowship at Memorial Sloan Kettering Cancer Center.

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.

Dr. Rios disclosed a malpractice lawsuit that was filed on October 19, 2015, by a representative of the patient, alleging a negligent CT-guided biopsy of a retroperitoneal mass resulting in perforation, bleeding, and death of the patient. The case was closed on July 18, 2019, with an indemnity paid in the amount of \$163,333.33.

Conclusion

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

Financial Analysis

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the 25.04% ownership interest in Main RADS, LLC is \$2,090,574.99 and was paid for by members' equity.

BFA Attachment A is Main Street Radiology at Bayside LLC's financial summary. For the year ending December 31, 2020, and as of June 30, 2021, the facility maintained a positive average working capital position, an average positive net asset position, and achieved a net income in 2020 and through June 30, 2021.

Conclusion

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

Attachments

BFA Attachment A June 30, 2021, Internals and December 31, 2020, Certified Financial Statements for Main Street Radiology at Bayside, 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 5th day of April 2022, 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 ownership interest in a member LLC from ten withdrawing members to the remaining members and seven new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

212182 E Main Street Radiology at Bayside LLC

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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



Project # 212208-B
World Health Clinicians, Inc.
d/b/a Circle Care Center - Westchester

Program: Diagnostic and Treatment Center County: Westchester
Purpose: Establishment and Construction Acknowledged: December 9, 2021

Executive Summary

Description

World Health Clinicians, Inc. (WHC), a Connecticut non-for-profit corporation qualified to do business in New York State, is seeking approval to establish and construct an Article 28 Diagnostic & Treatment Center (D&TC) at 34 South Broadway, White Plains (Westchester County). The D&TC will be housed in leased space on the 5th floor of an existing building. Upon approval by the Public Health and Health Planning Council (PHHPC) the center will do business as Circle Care Center – Westchester (CCCW) and will be certified for Medical Services – Primary Care.

World Health Clinicians, Inc was founded in 2011 with the mission of preventing the spread of HIV/AIDS and sexually transmitted infections, and reducing the associated morbidity and mortality in the developed and developing worlds through treatment, patient advocacy and assistance, and education. The center will target services to people living with HIV, as well as the LGBTQ community. Studies show that the LGBTQ population experiences health disparities and barriers related to sexual orientation and/or gender identity or expression.

The board of World Health Clinicians, Inc. is:

Name	Title
Mark Hammond	CEO
Paola Greiger-Zanlugo, M.D.	Member
Reynold Jaglal, P.A.	Member
Andrew Mitchell-Namdar	Member
James Parker	Member
Betsy Randolph	Member

CCCW expects to have a transfer and affiliation agreement with Westchester Medical Center (WMC). WMC is located 7.5 miles and is 12 minutes travel time from the proposed D&TC.

David S. Rubin, M.D., who is board-certified in Internal Medicine and Infectious Diseases, will serve as the medical director.

OPCHSM Recommendation
Contingent Approval

Need Summary

The new diagnostic and treatment center will provide primary medical care, HIV prevention, Hepatitis C and STI testing and treatment, as well as, mental health services. The target population for the center will be people living with HIV and the LGBTQ community.

Program Summary

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).

Financial Summary

The total project cost of \$141,030 will be met via \$141,030 in accumulated funds from WHC. The proposed budget is as follows:

Budget	Year One	Year Three
Revenues	\$358,744	\$785,328
Expenses	485,943	697,860
Net Income (Loss)	(\$127,199)	\$87,468

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. This project must be completed by **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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 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 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

April 5, 2022

Need and Program Analysis

Program Description

Proposed Operator	World Health Clinicians, Inc.
To Be Known As	Circle Care Center – Westchester (CCCW)
Site Address	34 South Broadway White Plains, NY 10601 (Westchester County)
Services	Medical Services-Primary Care
Hours of Operation	Monday through Thursday 9:00 am to 5:00 pm Friday 9:00 am to 4:00 pm
Staffing (1st Year / 3rd Year)	4.50 FTEs / 6.00 FTEs
Medical Director(s)	David Rubin, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Westchester Medical Center 7.5 miles / 12 minutes away

World Health Clinicians, Inc was founded in 2011 with the mission of preventing the spread of HIV/AIDS and sexually transmitted infections, and reducing the associated morbidity and mortality in the developed and developing worlds through treatment, patient advocacy and assistance, and education. The center will target services to people living with HIV, as well as, the LGBTQ community. Studies show that the LGBTQ population experiences health disparities and barriers related to sexual orientation and/or gender identity or expression. Services will include primary medical care, HIV prevention, Hepatitis C and STI testing and treatment, as well as, mental health.

Analysis

The primary service area is the city of White Plains in Westchester County. The population of Westchester County was 1,004,457 in 2020 and is expected to grow to 1,016,760 by 2025. According to Data USA, in 2019 95.5% of the population in Westchester County has health coverage as follows.

Employer Plans	55.8%
Medicaid	13.8%
Medicare	13.3%
Non-Group Plans	12.3%
Military or VA	0.333%

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition per 100, 000 adults. It shows that the PQI rate for the city of White Plains (zip code 10601) is higher than the New York State rate.

2017 PQI Rates	Zip Code 10601	New York State
All PQIs	1,835	1,431

The applicant projects 2,548 visits in Year One and 5,100 in Year Three with a Medicaid utilization of 25.9% and charity care at 6.7%. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

Character and Competence

The board of World Health Clinicians, Inc. is:

Name	Title
Mark Hammond	CEO
Paola Greiger-Zanlugo, M.D.	Member
Reynold Jaglal, P.A.	Member
Andrew Mitchell-Namdar	Member
James Parker	Member
Betsy Randolph	Member

Paola Greiger Zanlugo, MD is the Director of HIV Services at Montefiore Mount Vernon Hospital, an Attending Physician at Montefiore Mount Vernon Hospital, an Assistant Clinical Professor at New York Medical College, the Director of the 5th Pathway Program at Mount Vernon Hospital, New York Medical College, and the Founder and Board Member of Beat AIDS Project Zimbabwe. She received her medical degree from the University of Bologna in Italy and completed her Internal Medicine residency at Mount Vernon Hospital. Dr. Greiger Zanlugo discloses membership interest in the following healthcare facilities:

Circle Care Center-Connecticut *2010-present*

Mark Hammond is the CEO of World Health Clinicians where he is responsible for the management and oversight of the clinic and pharmacy operations and reports to the Board of Directors. He is also the Owner of Mark Hammond Consulting where his responsibilities include the financial turnarounds for distressed healthcare organizations, including developing long-term strategies for marketing, best practice, compliance, and physician recruitment. Previously, he was the CFO of Wartburg, a retirement community, where his responsibilities included all financial functions of the adult campus in Mount Vernon. Mark Hammond discloses membership interest in the following healthcare facilities:

Circle Care Center *2019-present*

Reynold Jaglai is a Physician's Assistant and the Associate Program Director of Physician Assistant Studies at Sacred Heart University where he provides leadership support and coordinates with the program director in representation to the university and community organization and the clinical preceptors and sites. Previously, he was the Director of Clinical Education and Clinical Assistant Professor. He was also previously the PA Coordinator at Greenwich Hospital Emergency Department where he participated in strategic planning, design, and continuous quality improvement, and was a committee member for patient throughput and hospital operations. Reynold Jaglai discloses membership interest in the following healthcare facilities:

Circle Care Center *2015-present*

Andrew Mitchell-Namdar has been the Co-Owner, Chief Marketing, Officer, and Vice President of Ecommerce of Mitchell's Stores for over 22 years where he is responsible for the management of all commercial marketing. He is also responsible for all in-person store volumes and eCommerce relations. His experience has helped World Health Clinicians with all marketing efforts. Andrew Mitchell-Namdar discloses membership interest in the following healthcare facilities:

Circle Care Center-Connecticut *2013-present*

James Parker has been a Financial Advisor Vice President of UBS, a global investment firm, for over six years. In this role, he works with multigenerational families on customized investment strategies, portfolio management, lending and charitable giving, and retirement and estate planning. Previously, he was the Financial Advisor Vice President of Wells Fargo Advisors for six years. His work in these areas has helped World Health Clinicians with the adoption of financial strategies to secure proper cash flow management and planned portfolio growth to carry out their mission. James Parker discloses membership interest in the following healthcare facilities:

Circle Care Center-Connecticut *2013-present*

Betsy Randolph has been a member of the board of World Health Clinicians for over 10 years where she is responsible for supporting the organization's efforts to improve access to healthcare services for the LGBTQ population. She is a member of the Auxiliary of Lenox Hill Hospital (LHH), an all-volunteer group

that supports the hospital, its patients and staff, and the local community, and is the Chairperson of the Art Committee at Lenox Hill where she has managed the acquisition and placement of art throughout the LHH facility. She has also served on the Auxiliary Executive Committee, has volunteered at Lenox Hill Greenwich Village, taking aftercare surveys from patients, and has volunteered for the Bruce Museum, coordinating fundraising and event planning. For the Greenwich Historical Society, she chaired the largest fundraiser of the year, as well as, organized other events, which included organizing volunteer staff and security. Betsy Randolph discloses membership interest in the following healthcare facilities:

Circle Care Centers-Connecticut

2011-present

David Rubin, MD is the proposed Medical Director of the new D&TC. Dr. Rubin has been the Medical Director of World Health Clinicians/Circle Care Center for over five years. He was the former Medical Director and Attending Physician of New York-Presbyterian/Queens in the Infectious Disease Division and the NYSDOH Designated AIDS Center and Special Care Clinic for over 37 years. He was also previously an Infectious Disease Attending at St. Clare's Hospital. He received his medical degree from Cornell University and completed his residency in Internal Medicine at Beth Israel Medical Center of Mount Sinai and his fellowship in Infectious Disease at Manhattan Veteran's Administration Hospital. He is board-certified in Internal Medicine and Infectious Diseases.

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 of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3). Approval of this diagnostic and treatment center will expand services for people living with HIV or at risk of HIV in White Plains.

Financial Analysis

Total Project Cost and Financing

The total project cost for renovations and movable equipment is estimated at \$141,030 broken down as follows:

Renovation & Demolition	\$66,950
Design Contingency	6,695
Construction Contingency	6,695
Architect/Engineering Fees	5,356
Other Fees	5,150
Movable Equipment	47,424
Application Fee	2,000
Additional Processing Fee	<u>760</u>
Total Project Cost	\$141,030

The total project cost of \$141,030 will be met via \$141,030 in accumulated funds from WHC. BFA Attachments A and B show sufficient resources to meet the equity requirements.

Operating Budget

<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 MC	\$185.00	\$185,000	\$185.00	\$405,705
Medicare MC	\$166.00	59,760	\$166.00	150,064
Medicaid FFS	\$172.13	118,425	\$172.13	227,039
Medicaid MC	\$146.31	25,165	\$146.31	48,282
Private Pay	\$120.00	30,000	\$120.00	41,040
Bad Debt		<u>(30,000)</u>		<u>(30,000)</u>
Total Revenues		<u>\$358,744</u>		<u>\$785,328</u>
 <u>Expenses</u>				
Operating	\$170.15	\$433,544	\$126.38	\$644,544
Capital	<u>\$20.56</u>	<u>52,399</u>	<u>\$10.45</u>	<u>53,316</u>
Total Expenses	<u>\$190.71</u>	<u>\$485,943</u>	<u>\$136.83</u>	<u>\$697,860</u>
Net Income/(Loss)		(\$127,199)		\$87,468
Visits		2,548		5,100
Cost/Visit		\$190.71		\$136.83

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

<u>Payor</u>	<u>Year One</u>	<u>Year Three</u>
Commercial MC	39.3%	43.0%
Medicare MC	14.1%	17.7%
Medicaid FFS	20.2%	19.4%
Medicaid MC	6.8%	6.5%
Private Pay	9.8%	6.7%
Charity Care	<u>9.8%</u>	<u>6.7%</u>
Total	100.0%	100.0%

The following is noted concerning the submitted budget:

- Revenues and expenses are based on the experience of the applicant in operating an existing health clinic in Connecticut.
- An average reimbursement by payor was calculated using the total reimbursement by payor received by the Connecticut clinic and divided by the number of visits. The applicant anticipates that rates for other payors will not vary significantly from state to state.
- The Medicaid Fee for Service rate is conservatively estimated based on the Medicaid APG base rate of \$169.02, as obtained from the Department of Health's Bureau of D&TC Reimbursement, plus Capital Add-on.
- Expenses are based predominantly on the labor costs for the staffing model, as well as, medical supplies, utilities, and rent as documented per the lease agreement.
- Utilization assumptions, including the projected payor mix, are based on the experience of the applicant in operating an existing health clinic in Connecticut. Due to the more complex care needs of the patient population that the applicant intends to serve, including people living with HIV, the LGBTQ community and transgender patients, the length of time for a patient visit is typically longer than average – between 30 to 45 minutes.
- The applicant is conservatively estimating that the new D&TC will have 2,548 visits in the first year of operation and increase to 5,100 visits by the third year of operation.

Lease Agreement

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

Date:	August 25, 2021
Premises:	1,848 square feet located at 34 South Broadway, White Plains, New York 10601
Landlord:	Broadway Freedom LLC
Tenant:	World Health Clinicians, Inc.
Rental:	Base rent of \$42,504 per year (\$3,542 per month) for the first year with a 2.5% increase thereafter. Additional rent of \$462 will be paid annually for tenant electric charges. Additional rent for all-of-hour and non-standard air-conditioning, heating, and electricity at the rates of \$475/hr. from April 15 th through October 14 th and \$350/hr. from October 15 th through April 14 th .
Term:	10 years and 5 months with two consecutive options for a period of five years each. Rent during the additional extension period shall be 104% of Base Rent for the last 12-month period of the expiring term with 2.5% increases thereafter.
Provisions:	Lessee shall be responsible for real estate taxes, maintenance, insurance.

The lease arrangement is an arm's length agreement and the applicant has submitted an affidavit attesting there is no relationship between landlord and tenant. WHC has submitted letters from two New York real estate brokers attesting to the reasonableness of the rent.

Capability and Feasibility

The total project cost of \$141,030 will be met via \$141,030 in accumulated funds from WHC. Working capital requirements are estimated at \$116,310 based on two months of third-year expenses and will be satisfied by the ongoing operations of the applicant. BFA Attachments A and B indicate the availability of sufficient funds. BFA Attachment C, the pro forma balance sheet for the applicant, indicates that the facility will begin operations with total equity of \$361,030.

The submitted budget indicates the facility will generate a net loss of \$127,199 and a net income of \$87,468 in the first and third years, respectively. The applicant is conservatively projecting first-year visits to allow for the initial ramping up of volume and submitted a letter attesting to cover all operating shortfalls during the first year using existing funds.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	2020 Certified Financial Statements
BFA Attachment B	2021 Internal Financial Statements
BFA Attachment C	Pro Forma Balance Sheet for Circle Care Center - Westchester

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 5th day of April 2022, 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 an Article 28 diagnostic and treatment center to be located at 34 South Broadway, White Plains, 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:

212208 B World Health Clinicians, Inc.
d/b/a Circle Care Center-Westchester

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 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 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 # 212213-B
East 180 Operating, LLC d/b/a
East 180th Street Health and Treatment Center

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment and Construction **Acknowledged:** December 9, 2021

Executive Summary

Description

East 180th Street, LLC, requests approval to establish and construct a new Article 28 Diagnostic and Treatment Center (D&TC) to be located at 870 East 180th Street, Bronx (Bronx County) in leased space. There is a relationship between the landlord and one of the lessees. The applicant is requesting approval to provide primary care, dental, and psychology services and will provide pharmacy services after approval by the Pharmacy Board. Upon approval by the Public Health and Health Planning Council (PHHPC), the Center will do business as the East 180th Street Health and Treatment Center.

Dr. Cecilia Griselda Calderon, who is board-certified in Internal Medicine, will serve as the Medical Director. The applicant has contacted BronxCare Health System, located approximately 2 miles and 11 minutes travel time from the proposed facility, to establish transfer and affiliation agreements.

OPCHSM Recommendation
Contingent Approval

Need Summary

Approval of this project will increase access to primary care, psychological, dental, and pharmacy services for Bronx County’s residents.

Program Summary

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

Financial Summary

Total project costs of \$11,660,135 will be met with \$1,556,729 of member’s equity/operational cash and a bank loan of \$10,103,406 for a 25-year term. The first 10 years of the term will have a fixed interest rate of 2.5% over the prevailing Federal Home Loan Bank of New York (FHLBNY) 10-year advance rate. The rate will then reset 10 years thereafter, at the prevailing FHLBNY 10-year advance rate plus 2.5%. The rate will reset five years thereafter at the prevailing FHLBNY 5-year advance rate plus 2.50% with a floor rate of 4.30%. The budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,331,025	\$7,218,375
Expenses	<u>3,584,727</u>	<u>4,578,050</u>
Net Income	\$746,297	\$2,640,325

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed bank loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-01. [AER]
5. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-01. [AER]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of a photocopy of an amended and executed Lease between East 180 Operating, LLC and Sonid Holdings, LLC, acceptable to the Department. [CSL]
8. Submission of photocopy of amended and executed Operating Agreement of East 180 Operating, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Restatement of the Articles of Organization of East 180 Operating, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Certificate of Assumed Name of East 180 Operating, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **February 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **November 15, 2022**, and construction must be completed by **November 15, 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]
4. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]

5. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary:
https://www.health.ny.gov/facilities/hospital/docs/hcs_access_form_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic & Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov. [HSP]

Council Action Date
April 5, 2022

Need and Program Analysis

Program Description

Proposed Operator	East 180 Operating, LLC
Doing Business As	East 180 th Street Health and Treatment Center
Site Address	870 East 180 th Street Bronx, NY 10460 (Bronx County)
Certified Services	Medical Services-Primary Care Dental O/P
Hours of Operation	Monday through Friday 8:00 AM to 4:00 PM Saturday 8:00 AM to 12:00 PM
Staffing (1st Year / 3rd Year)	25.5 FTEs / 32.2 FTEs
Medical Director	Cecilia Griselda Calderon, M.D.
Emergency, In-Patient and Back-up Support Services Agreement and Distance	Expected to be provided by BronxCare Hospital Center 2.2 miles / 11 minutes away

Analysis

The primary service area is Bronx County, which in 2020 had a population of 1,472,654 according to the most recent U.S. Census data. The population of the county is estimated to increase to 1,567,988 by 2025 per projection data from the Cornell Program on Applied Demographics, an increase of 6.5%. According to Data USA, in 2019, 92.1% of the population of Bronx County has health coverage as follows:

Employee plans	31.3 %
Medicaid	42.3 %
Medicare	6.97 %
Non-group plans	11 %
Military or VA plans	0.405 %

The proposed facility is located in a Medicaid Eligible Population HPSA for Primary Care, Dental Health, and Mental Health, as well as a designated Medically Underserved Area/Population service area (U.S Health Resources & Services Administration). The center plans to establish arrangements with community organizations to present health education programs to schools, senior citizen centers, churches, and other community groups.

The applicant projects 28,390 visits in the first year and 47,317 visits in the third year, with 67% Medicaid, and 5% charity care. The proposed D&TC will accept all patients regardless of race, creed, color, religion, sex, age, payer status, or any other personal characteristic.

Character and Competence

The members of East 180 Operating, LLC are:

<u>Name</u>	<u>Interest</u>
Divina Espinal	80.0%
Adam Henick	20.0%
Total	100.0%

Divina Abreu Espinal has been the Special Education High School Teacher and Chairperson for the Yonkers Public Schools for approximately 10 years. She has experience in human resources management and health care coordination as a program coordinator for special needs students. She has developed and implemented programs for students with learning disabilities of all spectrums, including interaction and coordination with the student's specialist providers. In this role, she has represented the school district with more than 400 special needs students and acted as a liaison between the schools and

the districts, and has engaged with all agencies to ensure services are provided properly. She has ensured compliance with state regulations for special education students, HIPAA, and New York State's Dignity for All Student's Act, and has supervised a team of teachers, social workers, and specialist providers to ensure the full spectrum of services are provided to the students in accordance with regulations.

Adam Henick retired in 2020. Before that, he was a Partner in La Familia Home Care for approximately two years. In that role, he was responsible for business strategy and financial oversight. Prior to that, he was the previous COO of AdvantageCare Physicians where he had operating responsibilities of a 500-person medical group. Other previous positions include President of Mount Sinai Medical Center, Senior Vice President of Continuum Health Partners, Vice President of UMDNJ Hospital System, and Executive Director of Montefiore Medical Center for approximately three years. Mr. Henick discloses board membership interest in the following healthcare facilities:

<i>East Side Endoscopy, LLC (D&TC)</i>	<i>2010-2017</i>
<i>West Side GI, LLC (D&TC)</i>	<i>2013-2017</i>
<i>Manhattan Surgery Center (D&TC)</i>	<i>2014-2017</i>
<i>Carnegie Hill Endo, LLC (D&TC)</i>	<i>2014-2017</i>
<i>South Brooklyn Endoscopy, LLC (D&TC)</i>	<i>2014-2017</i>

Dr. Cecilia Griselda Calderon is the proposed Medical Director. She is the Chief Medical Officer of HDR Healthcare Network, Senior Medical Officer of Audubon Primary Care Medicine, Medical Director of 181st Street Medical PC, and an Internal Medical Physician at CCN General Medicine. She was previously a Primary Medical Physician at Amsterdam Medical PC for over three years. Dr. Calderon received her medical degree at Universidad Autonoma de Santo Domingo in the Dominican Republic and completed her residency in Internal Medicine at Bronx Lebanon Hospital. She is board-certified in Internal Medicine.

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 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

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 of this project will increase access to primary care, psychological, dental, and pharmacy services for Bronx County's residents.

Financial Analysis

Operating Budget

The applicant submitted their year one and year three operating budget, in 2022 dollars, as shown 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	\$77.69	\$66,169	\$77.69	\$110,282
Commercial MC	\$62.60	53,333	\$62.60	88,890
Medicare FFS	\$134.05	152,228	\$134.05	253,714
Medicare MC	\$110.39	470,142	\$110.39	783,570
Medicaid FFS	\$219.20	124,503	\$219.35	207,504
Medicaid MC	\$176.77	3,262,051	\$176.76	5,436,753
Private Pay	\$79.79	22,712	\$80.03	37,854
Pharmacy*	-	145,499	-	242,499
All Other	\$60.56	<u>34,386</u>	\$60.56	<u>57,310</u>
Total Revenue		\$4,331,025		\$7,218,376
<u>Expenses</u>				
Operating	\$102.30	\$2,904,633	\$82.38	\$3,897,956
Capital	<u>21.43</u>	<u>680,094</u>	<u>12.65</u>	<u>680,094</u>
Total Expenses	\$123.73	\$3,584,727	\$95.03	\$4,578,050
Net Income		<u>\$746,298</u>		<u>\$2,640,325</u>
Visits		28,393		47,318
Cost/Visit		\$126.29		\$96.75

*In-House Pharmacy Revenue (closed to the public).

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

<u>Payor</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Visits</u>	<u>%</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	852	3%	1,420	3%
Commercial MC	852	3%	1,420	3%
Medicare FFS	1,136	4%	1,893	4%
Medicare MC	4,259	15%	7,098	15%
Medicaid FFS	568	2%	946	2%
Medicaid MC	18,454	65%	30,756	65%
Private Pay	284	1%	473	1%
Charity Care	1,420	5%	2,366	5%
All Other	<u>568</u>	<u>2%</u>	<u>946</u>	<u>2%</u>
Total	28,393	100%	47,318	100%

The following is noted regarding the submitted budget:

- The revenue assumptions are based on a review of Ambulatory Health Care Facility-1 Cost Reports for several Article 28 D&TCs operating in the same geographic area with similar square footage, specialties, and anticipated patient flow.
- Revenue assumptions in year three are based on the facility reaching 100% occupancy in treating behavioral health, obstetrics and gynecology, and cardiology. Commensurate staff will be hired to accommodate the increase in utilization.
- This information formed the basis for the projected revenue, payor mix, patient visits, staffing, and operating expenses for the first and third years.
- Actual expenses unique to this facility were substituted where it was known or could be reasonably estimated.

Total Project Cost and Financing

The total project cost of \$11,660,135 for site development, new construction, and moveable equipment is distributed as follows:

New Construction	\$8,049,699
Renovation & Demolition	274,050
Site Development	537,950
Temporary Utilities	37,555
Design Contingency	793,074
Construction Contingency	396,537
Fixed Equipment (NIC)	101,500
Planning Consultant Fees	35,000
Architect /Engineering Fees	350,000
Construction Manager Fees	158,616
Other Fees	35,000
Moveable Equipment	329,875
Telecommunications	126,875
Financing Costs	40,000
Interim Interest Expense	328,360
CON Fee	2,000
Additional Processing Fee	<u>63,769</u>
Total Project Cost	\$11,660,135

Total project costs of \$11,660,135 will be met with \$1,556,730 members' equity/operational cash and a bank loan of \$10,103,406 for a 25-year term. BFA attachment A is the net worth statements of proposed members, which indicates sufficient resources to meet the equity requirements of this application.

Lease Agreement

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

Date:	September 2021
Premises:	11,979 square feet of space at 870 East 180th Street, Bronx, NY 10460
Owner:	Sonid Holdings, LLC
Tenant:	East 180 Operating, LLC
Security:	\$56,250 deposit paid
Rental:	Base rent \$225,000 per annum for years one through five, with a 10% increase for each five-year period thereafter. From the commencement date until the existing building is vacant there shall be no rent due. From the date the existing building is vacant until the date construction commences, base rent shall be \$5,000 plus additional rent equal to all taxes and water/sewer due. The rent and additional rent due shall accrue and be payable by Tenant upon the commencement of construction. From the date construction commences until a date that is six months after the issuance of a permanent or temporary certificate of occupancy and the issuance of an operating certificate, Base Rent, and Additional Rent shall accrue and be payable by Tenant to Landlord of 60% of the distribution of profits according to the Operating Agreement of Tenant.
Term:	49 years
Provisions:	The tenant is also responsible for taxes, assessments, water and sewer rates or charges, and other governmental charges.

There is a relationship between the landlord and one of the lessees. The applicant has submitted two letters of rent reasonableness from New York State realtors indicating that the rental was reasonable.

Capability and Feasibility

The total project costs of \$11,660,135 will be funded via \$1,556,730 member's equity/operational cash and a \$10,103,406 loan for a 25-year term. The first 10 years of the term will have a fixed interest rate of

2.5% over the prevailing Federal Home Loan Bank of New York (FHLBNY) 10-year advance rate. The rate will reset 10 years thereafter, at the prevailing FHLBNY 10-year advance rate plus 2.5% and again five years thereafter at the prevailing FHLBNY 5-year Advance rate plus 2.50% with a floor rate of 4.30%. Tompkins Mahopac Bank has provided a letter of interest for the financing.

Working capital requirements are estimated at \$763,008 based on two months of third-year expenses and will be satisfied via members' equity and a working capital loan of \$380,000 for a term of five years at an interest rate of 3.95%. Adam Henick and Divina Abreu-Espinal have each submitted affidavits of disproportionate share, indicating that Adam Henick and Divina Abreu-Espinal will each contribute 20% and 80% to working capital, respectively. BFA Attachment A is the net worth statements of the proposed members, which indicates the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with members equity of \$1,939,738. Divina Abreu-Espinal will have an unlimited and full guarantee as Guarantor.

The submitted budget indicates the facility will generate net income of \$746,297 and \$2,640,325 in the first and third years, respectively. The revenue assumptions are based on several Article 28 D&TCs operating in the same geographic area with similar square footage, specialties, and anticipated patient flow.

Conclusion

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

Attachments

BFA Attachment A Net Worth Statements of the proposed members
BFA Attachment B ProForma Balance Sheet for Community Health Center at East 180th Street

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 5th day of April 2022, 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 located at 870 East 180th Street, Bronx, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER: FACILITY/APPLICANT:

212213 B East 180 Operating, LLC
 d/b/a East 180th Street Health and Treatment Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed bank loan commitment for project costs, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
4. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-01. [AER]
5. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-01. [AER]
6. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
7. Submission of a photocopy of an amended and executed Lease between East 180 Operating, LLC and Sonid Holdings, LLC, acceptable to the Department. [CSL]
8. Submission of photocopy of amended and executed Operating Agreement of East 180 Operating, LLC, acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed Restatement of the Articles of Organization of East 180 Operating, LLC, acceptable to the Department. [CSL]
10. Submission of a photocopy of an amended and executed Certificate of Assumed Name of East 180 Operating, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **February 15, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **November 15, 2022**, and construction must be completed by **November 15, 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]

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

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



**Project # 212219-B
Bronx Community Health Network, Inc.**

Program: Diagnostic and Treatment Center **County:** Bronx
Purpose: Establishment and Construction **Acknowledged:** December 10, 2021

Executive Summary

Description

Bronx Community Health Network, Inc. (BCHN), a voluntary, not-for-profit, community-based organization, and Federally Qualified Health Center (FQHC) requests approval to establish and construct a new Article 28 diagnostic and treatment center (D&TC) that will have a main site and a mobile van extension clinic. The center’s main site will be at 3763 White Plains Road, Bronx (Bronx County), and the mobile van will be parked overnight in a secured parking area at 3676 White Plains Road, Bronx (Bronx County), one block from the center’s proposed main site.

BCHN received its first Public Health Services (PHS) Act Section 330e Consolidated Health Center grant in 1997. Using a “health center without walls” model, BCHN contracted with Montefiore Health System and Promesa, Inc. for the delivery of comprehensive medical and related services at five sites. With submission of this CON, BCHN is seeking to be established as an Article 28 D&TC so that it may provide health care services directly.

The proposed center will occupy leased space in an existing vacant two-story plus basement business use building owned by White Plains Estates LLC. The applicant requests certification for Medical Services – Primary Care and Dental services at both the main site and the mobile van clinic. Additionally, the main site will offer behavioral health services below the threshold requiring separate certification and/or licensure through the Office of Mental Health.

Jay M. Izes, M.D, who is board-certified in Pediatrics, will serve as the Medical Director.

The proposed center is negotiating a transfer and affiliation agreement for emergency and backup services with NYC Health + Hospitals | Jacobi (3.7 miles and 12 minutes travel time) and BronxCare Health System (4.7 miles and 27 minutes travel time).

**OPCHSM Recommendation
Contingent Approval**

Need Summary
The new FQHC D&TC, with a mobile van extension clinic, will enhance access in a medically underserved area for the Medicaid eligible.

Program Summary
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).

Financial Summary
Total project costs of \$5,031,392 will be met via \$2,141,698 in grant funds through the American Rescue Plan Act Funding for Health Centers; \$1,675,992 loan from the Community Health Center Capital Fund at 6% interest for a ten-year term and an amortization period of 20 years; and, the remaining \$1,213,702 to be financed through the New Markets Tax Credit (NMTC) program. The proposed budget is as follows:

<u>Budget</u>	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,649,144	\$6,151,377
Expenses	4,623,663	5,700,036
Net Income/(Loss)	(\$974,519)	\$451,341

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease, acceptable to the Department. [BFA]

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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 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. 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

April 5, 2022

Need and Program Analysis

Program Description

Proposed Operator	Bronx Community Health Network, Inc.
Site Addresses	<p>Main Site: 3763 White Plains Road Bronx, NY 10467 (Bronx County)</p> <p>Mobile Van: 3676 White Plains Road Bronx, NY 10467 (Bronx County)</p>
Services	<p>Main Site: Medical Services-Primary Care Dental O/P Behavioral Health (below threshold for separate licensure)</p> <p>Mobile Van: Medical Services-Primary Care Dental O/P</p>
Hours of Operation	<p>Main Site: Monday through Thursday 8:00 am to 7:00 pm Friday 8:00 am to 5:00 pm Saturday 10:00 am to 1:00 PM</p> <p>Mobile Van will operate at four sites: Edenwald Houses (NYCHA), Gunhill Houses (NYCHS), NorthEast Bronx YMCA, Community Board 12</p>
Staffing (1st Year / 3rd Year)	23.30 FTEs / 31.35 FTEs
Medical Director(s)	Jay Izes, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by NYC H+H/Jacobi: 3.7 miles / 12 minutes BronxCare Health System (Concourse): 4.7 miles / 27 minutes

BCHN was founded in 1996 with a mission to provide access to affordable high-quality, health care services, especially for uninsured persons; and to promote disease prevention, early treatment, and healthy lifestyles for the residents in the Bronx. In furtherance of that mission, BCHN received its first Public Health Services (PHS) Act Section 330e Consolidated Health Center grant in 1997. Using a “health center without walls” model, BCHN contracted with Montefiore Health System (Montefiore) and Promesa, Inc. for the delivery of comprehensive medical and related services at three Montefiore health center sites and two Promesa sites. A portion of BCHN’s health center grant supports its administrative and contractor compliance oversight functions and a portion is “passed through” to Montefiore and Promesa as compensation for eligible Section 330e primary health care and related services, including uncompensated care provided to patients with inadequate or no health care insurance. With this application, BCHN is seeking to be established as an Article 28 D&TC so that it may provide health care services directly. BCHN anticipates that its current arrangement with Montefiore will continue after approval of this CON and BCHN’s establishment as an Article 28 D&TC. However, the contract with Promesa, Inc. is not expected to continue.

Today, BCHN is responsible for regulatory compliance and governance oversight of Section 330e health services delivery at a network of 21 community and school-based health centers and receives funding from the Federal Health Resources and Services Administration (HRSA) Bureau of Primary Health Care and the HIV/AIDS Bureau. According to the applicant, over the past two decades, BCHN has invested \$143.8 million in Federal grant funding in its commitment to help improve the health status and quality of life of the predominantly Hispanic/Latino and African American populations it serves. BCHN served more than

118,000 Bronx residents (totaling more than 330,000 visits) in 2019, covering 75% of all Bronx ZIP codes. More than three-quarters of patients served have incomes below 200% of the Federal Poverty Level. In addition, BCHN's outreach professionals are engaged in health promotion and education, community outreach, and engagement activities at the network's health centers and in neighborhoods throughout the Bronx.

The facility will provide residents with primary care, dental, and behavioral health services. The mobile van will be providing primary care and dental services at the following locations: Edenwald Houses, Gunhill Houses, NorthEast Bronx YMCA, and Community Board 12.

Analysis

The primary service area is the northeast section of Bronx County. The population of Bronx County was 1,472,654 in 2020 and is expected to grow to 1,567,988 by 2025. According to Data USA, in 2019 92.1% of the population in Bronx County has health coverage as follows.

Employer Plans	31.30%
Medicaid	42.30%
Medicare	6.97%
Non-Group Plans	11.00%
Military or VA	0.41%

The Northeast Bronx is a federally designated Health Professional Shortage Area for both Primary Care and Dental for the Medicaid Eligible and Williamsbridge is federally designated as a Medically Underserved Area/Population by Health Resources and Services Administration (HRSA).

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for Bronx County is higher than the New York State rate.

2017 PQI Rates	Bronx County	New York State
All PQIs	2,191	1,431

The applicant projects 11,765 visits in Year One and 20,824 in Year Three with Medicaid utilization at 58% and charity care at 7%. The applicant is committed to serving all persons in need without regard to the ability to pay or source of payment.

Character and Competence

The board members of Bronx Community Health Network, Inc., are:

<u>Name</u>	<u>Title</u>
Eleanor Larrier	CEO
Jay Izes, M.D.	CMO
Sandra Piggee, LCSW	President
Marjorie Cadogen, J.D.	Vice President
John Ruiz	Treasurer
Zahara Elmekawy	Corp. Secretary
Victor Quarshie	Record Secretary
Arthur Edwards	Board Members
Hamid Khalique	Board Member
Richard Thomas	Board Member
Emma Torres	Board Member

Eleanor Larrier has been the CEO of Bronx Community Health Network for 22 years where she is responsible for leading the oversight of the FQHC sites, developing partnerships and collaborations with

over 100 public and private organizations, pioneering initiatives to reduce ER utilization, and implementing social determinants of health services. She has grown the annual HRSA budget from \$1.8M to \$9.5M. Previously, she spent 15 years as an Associate Executive Director for Planning and Development at NYC Health and Hospitals/Elmhurst. At NYC Health and Hospitals/Harlem, she established the Planning Department, led planning for the establishment of the Ron Brown Ambulatory Care Building, and moved laterally to Clinical Services and Ambulatory Care.

Jay Izes, MD has been the Chief Medical Officer of Bronx Community Health Network, Inc., for over 12 years. He retired as the Vice President for Medical Affairs from St. John's Riverside Hospital and Yonkers General Hospital in December 2007. Previously, he was the Medical Director of Park Care Center, the Medical Director of Valentine Lane Family Practice, the Owner of a private practice, and a School Physician. He received his medical degree from Temple University School of Medicine and completed his residency in Pediatrics at Montefiore Medical Center. He is board-certified in Pediatrics. Dr. Izes is the proposed Medical Director.

Sandra Piggee has been on the Board of Directors for Bronx Community Health Network where she works with the CEO and Chair to oversee the organization's partnership with Montefiore Hospital and Promesa, secure and monitor the deployment of federal funds, monitor BCHN's organizational and financial health, and support the development of strategic growth initiatives. Previously, she was employed as a Special Consultant II at the New York City Department of Health and Mental Hygiene for 35 years where she advised public, private, and volunteer agencies receiving NYC funding to provide various mental health and social services on issues related to regulatory and legal compliance, operations, and service agreement execution, negotiated contracts for city funding with providers and monitored and evaluated professional standards, quality of care, and adequacy of services, and provided technical assistance to program Executive Directors and administrative teams.

Marjorie Cadogen has been the Executive Deputy Commissioner of the City of New York where she is responsible for developing City proposals and initiatives in collaboration with City and State agencies, health care providers, advocates, private insurers, and other stakeholders to promote and improve health insurance coverage for New York City residents and small businesses. She also serves as HRA/DHS liaison to Mayor's NYC Care Initiative and administers technical assistance, outreach, and enrollment assistance services for NYC Facilitated Enrollment Program for Aged, Blind, and Disabled. Previously, she was the Director of Operations and External Affairs at Primary Care Development Corp.

John Ruiz retired in September 2010. He has been a board member of Bronx Community Health Network for approximately five years and has been the Board Treasurer for two years. He is also a board member of La Casa de Salud, another FQHC. During his tenure with the two FQHCs, he has completed the following certificates: Certificate in Healthcare Governance, Ambulatory Care Risk Management, Digital Transformation in Healthcare Certificate, and NYS Public Citizen Health Leader Certificate.

Zahara Elmekawy is the Director of Delivery System Innovation at the Peterson Center on Healthcare where she leads a team focused on identifying and funding innovative solutions to reduce costs and improve healthcare quality in the U.S.; developed a grant strategy focused on addressing the needs of high needs patients and transforming the delivery of primary care; and oversees grant fund stewardship, analysis of the program outcomes and compliance with the program requirements. She was previously the Senior Managing Director and Head of Global Operational Risk Management of American International Group, Senior Vice President of Foreign Financial Institutions of the Federal Reserve Bank, Senior Vice President and COO of Group Operations of the Federal Reserve Bank, Vice President of Market Risk of the Federal Reserve Bank, Executive Sponsor of the African American and Latina Employee Resource Network, and helped found the Federal Reserve's Diversity Advisory Council.

Victor Quarshie was the Utility Steward at the Four Seasons Hotel where he was responsible for the kitchen hotline cleaning, overnight cleaning, setting up the back of the house, cleaning dishes and washing pits, and setting up banquets. Previous to that, he was a Housekeeper at Bainbridge Nursing Home and he was previously employed by the Ghana Airforce for 22 years where he was a Radio Officer and Air Traffic Control Assistant for three tours.

Arthur Edwards retired in 1995. Prior to that, he worked for the New York City Health and Hospitals Corporation for 14 years in the Office of Corporate Planning. In this position, he was responsible for the operation of 11 acute care hospitals, five long-term care facilities, and five diagnostic and treatment centers.

Hamid Khalique is the Director of the Deutsche Bank Securities Inc. where he is responsible for understanding U.S. GAAP reporting companies and the financial risks present on income statements and balance sheets, appropriately networking internally and externally with key stakeholders, and managing high profile transactions successfully for the bank while executing with minimal risk or slippage. Previously, he was the Vice President of NatWest Markets Securities, Inc, an Associate at the Royal Bank of Scotland, and an Analyst at the Royal Bank of Scotland.

Richard Thomas retired in August 2005. In his leadership capacity on the Board, he serves as the Chair of the Bylaws and Fundraising Committees and also serves as a member of the Audit Committee.

Emma Torres retired in September 2018. Before that, she was employed as a Community Health Worker at Bronx Community Health Network, Inc. where she was responsible for presenting and developing workshops on various health topics to community organizations, enrolling and providing referral services to prenatal women in the Healthy Start Partnership Program, enrolling uninsured/underinsured in the New York State of Health Marketplace, connecting underserved populations to quality healthcare, and building partnerships with faith-based and community organizations. Previously, she was a Peer Leader at Emblem Health, a Community Health Worker for Institute for Leadership, and a Family Health Worker and Certified HIV Counselor at Montefiore Medical Group

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 of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed board members have met the standard for approval as set forth in Public Health Law §2801-a(3). The new FQHC D&TC, with a mobile van extension clinic, will enhance access in a medically underserved area for the Medicaid eligible.

Financial Analysis

Total Project Cost and Financing

The total project cost for leasehold improvements, renovations, and moveable equipment is \$5,031,392, which is distributed as follows:

Renovation & Demolition	\$2,351,551
Site Development	5,000
Design Contingency	214,805
Construction Contingency	214,805
Architect /Engineering Fees	89,850
Other Fees	136,298
Moveable Equipment	1,058,933
Financing	886,500
Interim Expense	49,866
CON Fee	1,250
Additional Processing Fee	<u>22,534</u>
Total Project Cost	\$5,031,392

The total project cost of \$5,031,392 will be met via \$2,141,698 in grant funds through the American Rescue Plan Act Funding for Health Centers; \$1,675,992 loan from the Community Health Center Capital Fund at 6% interest for a ten-year term and an amortization period of 20 years; and, the remaining \$1,213,702 to be financed through the New Markets Tax Credit (NMTC) program.

Operating Budget

The applicant has submitted their first year and third-year operating budget, in 2022 dollars, as shown 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	\$185	\$523,328	\$188	\$940,743
Medicare FFS	\$189	219,712	\$193	429,525
Medicaid FFS	\$139	683,339	\$140	1,170,476
Medicaid MC	\$137	274,878	\$139	520,911
Charity Care	\$35	30,036	\$35	53,267
All Other		<u>446,415</u>		<u>791,343</u>
Total Outp. Revenue		\$2,177,708		\$3,906,265
Ancillary Services		787,336		1,512,272
Other Operating Rev*		<u>684,100</u>		<u>732,840</u>
Total Revenue		<u>3,649,144</u>		<u>6,151,377</u>
 <u>Expenses</u>				
Operating	\$310	\$3,644,083	\$234	\$4,882,753
Capital	<u>\$83</u>	<u>979,580</u>	<u>\$39</u>	<u>817,283</u>
Total Expenses	\$393	\$4,623,663	\$274	\$5,700,036
Net Income		<u>(\$974,519)</u>		<u>\$451,341</u>
Visits		11,765		20,824
Cost/Visit		\$393		\$274

* Other represents FQHC Grants and contributions, misc. revenue

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

Payor	Year One		Year Three	
	Visits	%	Visits	%
Commercial FFS	2,824	24.00%	4,998	24.00%
Medicare FFS	1,162	9.88%	2,227	10.69%
Medicaid FFS	4,921	41.83%	8,347	40.08%
Medicaid MC	2,000	17.00%	3,745	17.98%
Charity Care	858	7.29%	1,507	7.24%
Total	11,765	100.0%	20,824	100.0%

The following is noted for the submitted budget:

- Staffing is based on expected utilization and the experience of the applicant as a Federally Funded Health Center in contracting with other Article 28 providers.
- Reimbursement rate assumptions are based on the experience of the applicant as an existing Federally Qualified Health Center that contracts with existing health care providers in the Bronx for the delivery of health care services.
- Per the applicant, BCHN received CARES Act funding in 2021 for \$927,550 (out of a total award amount of \$2,487,350). This funding is also reflected on BCHN's September 20, 2021 internal financial statement under Attachment A. In addition, BCHN was a subcontractor on a DSRIP grant received by Bronx Partners for Healthy Communities. Monies through the subcontract totaled \$457,536, which was received from 2018 to 2021. BCHN has not previously received any direct support from New York State, nor has it been part of a state support program.
- The applicant plans to achieve the projected levels of utilization in the third year through leveraging existing relationships that have been established with a wide range of community providers and organizations to benefit operations of the proposed new center and build awareness of the new D&TC services through community outreach and communication. BCHN will leverage an existing and well-established outreach program to promote healthcare services, recruit patients, and help educate service area residents on relevant health topics, promote wellness, and address social needs. The outreach program will continue to work to build collaborative programs and partnerships with neighborhood groups to improve community health outcomes.

Lease Agreement

The applicant has submitted an arm's length lease letter of interest and letters from two New York realtors attesting to the rent reasonableness. The terms of the lease letter of interest for the proposed center's main site are summarized below.

Premises:	11,000 square feet of space at 3763 White Plains Road, Bronx New York 11229
Landlord:	White Plains Estates LLC
Tenant:	Bronx Community Health Network, Inc.
Term:	10 years
Rent:	\$330,000 annually
Provisions:	Tenant is responsible for Insurance, maintenance, repairs, utilities and property taxes.

Capability and Feasibility

Total project costs of \$5,031,392 will be met via \$2,141,698 in grant funds through the American Rescue Plan Act Funding for Health Centers; \$1,675,992 via a loan from the Community Health Center Capital Fund at 6% interest for a ten-year term and an amortization period of 20 years; and \$1,213,702 to be financed through the New Markets Tax Credit (NMTC) program. The applicant has provided a copy of the American Rescue Plan Notice of Award, and a loan letter of interest from Community Health Center Capital Fund at the stated terms.

Working capital requirements are estimated at \$950,006 based on two months of third-year expenses and will be satisfied via the ongoing operations of BCHN. BFA Attachment A, the Internal Financial Statements of BCHN as of September 30, 2021, reveals sufficient liquid resources available to meet the

working capital requirement of this application. BFA Attachment D, the pro forma balance sheet for the applicant, indicates that the facility will begin operations with equity of \$2,715,044.

The submitted budget indicates the facility will generate a net operating loss of \$974,519 in the first year and an excess of revenue over expenses of \$451,341 in the third year. Revenues are based on prevailing reimbursement methodologies for D&TCs. The applicant has provided a letter indicating that the first year's net operating losses will be offset via operating cash. The budget appears reasonable.

Conclusion

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

Attachments

- | | |
|------------------|--|
| BHFP Attachment | Map |
| BFA Attachment A | Bronx Community Health Network, Inc.'s Internal Financial Statement as of September 30, 2021 |
| BFA Attachment B | Pro Forma Balance Sheet for Bronx Community Health Network, Inc. |

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 5th day of April 2022, 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 at 3763 White Plains Road, Bronx with a mobile van extension clinic to provide primary care and dental services, 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:

212219 B

Bronx Community Health Network, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease, acceptable to the Department. [BFA]

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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 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. 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*.



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel

Date: March 3, 2022

Subject: Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.

NYP Community Programs, Inc. ("NYPCP") requests Public Health and Health Planning Council ("PHHPC") approval of a proposed Certificate of Amendment to its Certificate of Incorporation.

NYPCP wishes to eliminate references in its purposes language to New-York Presbyterian/Brooklyn Methodist ("NYP/BM"), as an affiliate of NYPCP. NYP/BM is the operator of New York-Presbyterian Brooklyn Methodist Hospital (the "Hospital"). Currently, NYPCP is the active sole member of NYP/BM and co-operator the Hospital. NYPCP is requesting this change in connection with CON Application #212223, which proposes to merge NYP/BM into The New York and Presbyterian Hospital (NYPH) and certify the Hospital as a new division of NYPH. NYPH is the passive parent of NYPCP and the ultimate parent of NYP/BM. Upon approval of CON Application #212223, NYP/BM will be merged into NYPH, with NYPH as the surviving corporation.

The Board of Directors of NYPCP approved the amendment on December 16, 2021. The Board of Directors of The New York and Presbyterian Hospital, the sole member of NYPCP, also approved the amendment on December 16, 2021.

Approval of the Public Health and Health Planning Council (PHHPC) is required under the Not-for-Profit Corporation Law § 804(a)(i).

There is no legal objection to the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., and it is legally acceptable.

Attachments.



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: March 3, 2022

SUBJECT: Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.

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) Letter from Frank Cicero, consultant of NYP Community Programs, Inc., dated December 10, 2021;
- 3) A copy of the executed Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.;
- 4) A copy of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., dated April 13, 2018;
- 5) A copy of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., dated December 6, 2016;
- 6) A copy of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., dated July 1, 2015;
- 7) A copy of the Restated Certificate of Incorporation of NYP Community Programs, Inc., dated January 26, 2015;
- 8) A copy of the Certificate of Incorporation of NYP Community Programs, Inc., dated September 29, 2014.
- 9) A copy of the Bylaws of NYP Community Programs, Inc., dated November 12, 2017.
- 10) A copy of the proposed Amended and Restated Bylaws of NYP Community Programs, Inc.; and
- 11) A copy of the Resolution of the Board of Directors of the of New York Community Programs, Inc., dated December 16, 2021, consenting to amending the Certificate of Incorporation and bylaws; and

12) A copy of the Resolution of the Board of Directors of the New York and Presbyterian Hospital, the sole member of New York Community Programs, Inc., dated December 16, 2021, consenting to amending the Certificate of Incorporation and bylaws.

Attachments

cc: B. DelCogliano, M. Ngwashi

Attachment 1

Placeholder for memo from Kathy Marks

Attachment 2

Cicero Consulting Associates

VCC, Inc.

White Plains Unit
Frank M. Cicero
Charles F. Murphy, Jr.
James Psarianos
Michael D. Ungerer
Noella Chung
Brian Baldwin
Michael F. Cicero
Karen Dietz
Evelyn Branford
Michael C. Maiale
Linda Cammisia, R.N.
Patrick Clemente

925 Westchester Ave. • Suite 201 • White Plains, NY 10604
Tel: (914) 682-8657 • Fax: (914) 682-8895
cicero@ciceroassociates.com

Albany Unit
William B. Carmello
Joseph F. Poff
Albert L. D'Amato
Mark Van Guysling
Rosemarie Porco
Daniel Rinaldi, Jr.
Mary Ann Anglin

Emeritus Consultants
Nicholas J. Mongiardo
Joan Greenberg
Martha H. Poff
Frank T. Cicero, M.D.
Rose Murphy

Michael P. Parker, Sr.
(1941-2011)
Anthony J. Maddaloni
(1952-2014)

December 10, 2021

Ms. Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
NEW YORK STATE DEPARTMENT OF HEALTH
Corning Tower, Room 1805
Empire State Plaza
Albany, New York 12237


RE: NYP COMMUNITY PROGRAMS, INC.
Certificate of Amendment of Certificate of Incorporation

Dear Ms. Leonard:

We represent NYP Community Programs, Inc. (NYPCP), the active sole corporate member of NewYork-Presbyterian/Brooklyn Methodist (NYP/BM). Under Certificate of Need (CON) Application 212223-C, NYP/BM will be merged into NewYork-Presbyterian Hospital – New York Weill Cornell Center (NYPH-NYWCC) and NYP/BM will cease to exist as a separate corporate entity. As a result of that action, NYP Community Programs, Inc. must secure the approval of the Public Health and Health Planning Council (PHHPC) to amend its Certificate of Incorporation, to eliminate references to NYP/BM.

Please find enclosed a proposed Certificate of Amendment of the Certificate of Incorporation of NYPCP, which seeks to achieve the purpose noted above. I have also enclosed the existing Certificate of Incorporation, prior amendments, current bylaws and proposed bylaws of NYPCP. NYPCP requests the approval of PHHPC to amend its Certificate of Incorporation and, in keeping with discussions with the Bureau of Project Management, asks that this request be processed concurrently with CON Application 212223-C.

Please let me know if you require any additional information regarding this matter. Thank you.

Sincerely,

Frank M. Cicero

cc: Ms. Celi Ortiz, NYPH-NYWCC

Attachment 3

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chairman of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("**NPCL**"), and does hereby further certify as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29, 2014 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:

i. Amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, to delete NewYork-Presbyterian/Brooklyn Methodist as an affiliate of the Corporation so that said Paragraph (a) shall read in its entirety as follows:

"THIRD: (a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliates, Hudson Valley Hospital Center (doing business as NewYork-Presbyterian/Hudson Valley Hospital), and NewYork-Presbyterian/Queens, each a New York not-for-profit corporation licensed as a

hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (individually, a "Hospital" and collectively, the "Hospitals"), by:

(1) serving as the sole member of each Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of a Hospital and/or the communities served by a Hospital by performing certain functions of, and carrying out the charitable mission of, each Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of, and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, the Hospitals, and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes."

ii. Amend Article ELEVENTH, which sets forth the agent of the Corporation upon whom process against it may be served, to read in its entirety as follows:

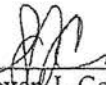
"ELEVENTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

NYP Community Programs, Inc.
c/o The New York and Presbyterian Hospital
Office of Legal Affairs
466 Lexington Avenue, Box 36
New York, NY 10017
Attn: General Counsel"

5. This Amendment to the Certificate of Incorporation was duly authorized by the Board of Directors of the Corporation at a meeting duly held and was authorized by the Member of the Corporation at a meeting duly held in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

NYP Community Programs, Inc.
c/o The New York and Presbyterian Hospital
Office of Legal Affairs
466 Lexington Avenue, Box 36
New York, NY 10017
Attn: General Counsel

IN WITNESS WHEREOF, this Certificate has been signed and the statements made herein affirmed astrue under penalty of perjury this 13th day of January, 2022.

By: 
Name: Steven J. Corwin, MD
Title: Chairman

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 April 16, 2018.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", is written over a horizontal line.

Brendan W. Fitzgerald
Executive Deputy Secretary of State

CSC 45
Drawdown

1804 13000629

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chairman of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29th, 2014 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:

Amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, to delete New York-Presbyterian/Lawrence Hospital as an affiliate of the Corporation so that said Paragraph (a) shall read in its entirety as follows:

THIRD: (a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York-Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliates, Hudson Valley Hospital Center (doing business as New York-Presbyterian/Hudson Valley Hospital), New York-Presbyterian/Queens and New York-Presbyterian/Brooklyn Methodist (doing business as New York-Presbyterian Brooklyn Methodist Hospital), each a New York not-for-profit

corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (individually, a "Hospital" and collectively, the "Hospitals"), by:


(1) serving as the sole member of each Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of a Hospital and/or the communities served by a Hospital by performing certain functions of, and carrying out the charitable mission of, each Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of, and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, the Hospitals, and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes."

5. This Amendment to the Certificate of Incorporation was duly authorized by the Board of Directors of the Corporation at a meeting duly held, and was authorized by the member of the Corporation at a meeting duly held, in each case in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

NYP Community Programs, Inc.
c/o The New York and Presbyterian Hospital
Office of Legal Affairs
525 East 68th Street, Box 88
New York, NY 10065
Attn: General Counsel

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed
as true under penalties of perjury this day of 12/14, 2017.

By: 
Name: Steven J. Corwin, MD
Title: Chairman



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 20, 2017

Patricia Smyth
Cicero Consulting Associates
701 Westchester Avenue, Suite 210W
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, 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 7th day of December, 2017, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of Certificate of Incorporation of NYP Community Programs, Inc. dated December 14, 2017.

Please email a copy of the Notice of Filing to the Operating Certificate Unit, at HFISmb@health.ny.gov

Sincerely,

A handwritten signature in cursive script that reads 'Colleen M. Leonard'.

Colleen M. Leonard
Executive Secretary

/cl



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SCHNEIDERMAN
ATTORNEY GENERAL


DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU

TO: Anita R. Golbey, Esq.
VP and Deputy General Counsel
New York-Presbyterian-Weill Cornell
525 East 68th Street, Box 88
New York, NY 10065

RE: NYP Community Programs, Inc.

The Attorney General hereby approves pursuant to N-PCL § 804(a)(ii)(A) the proposed Certificate of Amendment of NYP Community Programs, Inc. Said approval is conditioned on submission to the Department of State for filing within 60 days hereafter. A copy of the filed certificate shall be provided to the Attorney General.

April 6th, 2018


Paula Gellman
Assistant Attorney General

CSC 45
Drawdown

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CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

FILED

2018 APR 13 PM 4:42

Filed by:

Under Section 803 of the New York Not-for-Profit Corporation Law

Anita R. Golbey, Esq.
525 East 68th Street, Box 88
New York, NY 10065

Cust Ref #155518
KXIC

JCC
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED APR 13 2018

TAXS _____
BY: KVP

RECEIVED

2018 APR 13 PM 12:08

672

Attachment 5

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 December 7, 2016.

A handwritten signature in black ink, appearing to read "B. Fitzgerald", written over a horizontal line.

Brendan W. Fitzgerald
Executive Deputy Secretary of State

E-12

161206000390

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chief Executive Officer of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29th, 2014 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:

Amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, to add New York-Presbyterian/Lawrence Hospital and New York-Presbyterian/Brooklyn Methodist as affiliates of the Corporation so that said Paragraph (a) shall read in its entirety as follows:

"(a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities

served from time to time by the Corporation's affiliates, Hudson Valley Hospital Center (doing business as New York-Presbyterian/Hudson Valley Hospital), New York-Presbyterian/Queens, New York-Presbyterian/Lawrence Hospital and New York-Presbyterian/Brooklyn Methodist, each a New York not-for-profit corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (individually, a "Hospital" and collectively, the "Hospitals"), by:

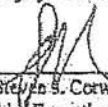
(1) serving as the sole member of each Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of a Hospital and/or the communities served by a Hospital by performing certain functions of, and carrying out the charitable mission of, each Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of, and (ii) the governance, policy making, and strategic planning for, and (b) provide other forms of support for the benefit of, the Hospitals, and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes."

5. This Amendment to the Certificate of Incorporation was duly authorized by the sole member of the Corporation.
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

NYP Community Programs, Inc.
c/o The New York and Presbyterian Hospital
Office of Legal Affairs
325 East 68th Street, Box 88
New York, NY 10065
Attn: General Counsel

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 31st day of October 2016.

By: 
Name: Stephen S. Corwin, MD
Title: Chief Executive Officer



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-0964
PHHPC@health.ny.gov

November 22, 2016

Patricia Smyth
Cicero Consulting Associates
701 Westchester Avenue
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, 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 6th day of October, 2016, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of the NYP Community Programs, Inc. dated October 31, 2016.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/s/



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. BOGERTZELMAN
Attorney General

DIVISION OF SOCIAL JUSTICE
CHARLES SCHEIDT

The Attorney General hereby approves pursuant to N-PCL § 804(a)(1)(A) the proposed Certificate of Amendment of NYR Compassity Programs, Inc. Said approval is conditioned on submission to the Department of State for filing within 60 days hereafter. A copy of the filed certificate shall be provided to the Attorney General.

11-28-16
Date

Paula Costanzo
Paula Costanzo
Assistant Attorney General

388

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the New York Not-for-Profit Corporation Law

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STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 06 2016
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Dut

Filed: Anita Golbey
525 East 68th Street (Box 88)
New York, NY 10065.

E-12 /
DRAWDOWN

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2016 DEC -6 PM 12: 14

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Attachment 6

STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 1, 2015.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

CSC 45
DRAW DOWN

150701000

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CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

Under Section 803 of the
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chief Executive Officer of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29th, 2014 under the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:

Amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, to add New York-Presbyterian/Queens as an affiliate of the Corporation so that said Paragraph (a) shall read in its entirety as follows:

"(a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliates, Hudson Valley Hospital Center and New York-Presbyterian/Queens, each a New York not-for-profit corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section

509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (individually, a "Hospital" and collectively, the "Hospitals"), by:


(1) serving as the sole member of each Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of a Hospital and/or the communities served by a Hospital by performing certain functions of, and carrying out the charitable mission of, each Hospital, and exercising its rights, powers and authority in each capacity to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of; and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, the Hospitals; and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes."

5. This Amendment to the Certificate of Incorporation was authorized by the Board of Directors of the Corporation at a meeting duly held and was authorized by the member of the Corporation at a meeting duly held in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: NYP Community Programs, Inc., c/o The New York and Presbyterian Hospital Office of Legal Affairs, 525 E. 68th Street, Box 88, New York, NY 10065 Attn: General Counsel.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 20th day of May, 2015.

By: 
Name: Steven J. Corwin, M.D.
Title: Chief Executive Officer



PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

(518) 402-6954
PHHPC@health.ny.gov

June 17, 2015

Patricia Smyth
Cleero Consulting Associates
701 Westchester Avenue, Suite 210W
White Plains, New York 10604

Re: Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc.

Dear Ms. Smyth:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council and Health Planning Council held on the 16th day of April, 2015, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., dated May 20, 2015.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/cl



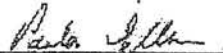
STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

BRIAN T. SCHWARTZMAN
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
COLUMBA BOESCH

The Attorney General hereby approves pursuant to N-POL § 804(a)(1)(A) the proposed Certificate of Amendment of NYP Community Programs, Inc. said approval is conditioned on submission to the Department of State for filing within 60 days hereafter. A copy of the filed certificate shall be provided to the Attorney General.

6-19-15
Date


Paul C. Cohen
Assistant Attorney General

798

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CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

FILED

2015 JUL -1 PM 2:32

Under Section 803 of the New York Not-for-Profit Corporation Law

Filed by:

Anita R. Golbey, Esq.
525 East 68th Street, Box 88
New York, NY 10065

Call 692 7375C

la

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2015 JUL -1 PM 1:16

STATE OF NEW YORK
DEPARTMENT OF STATE
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BY: *par*

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Attachment 7

STATE OF NEW YORK DEPARTMENT OF STATE

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 26, 2015.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

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Drawdown

150126000619

RESTATED
CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

Under Section 805 of the
New York Not-for-Profit Corporation Law

The undersigned, Steven J. Corwin, M.D., certifies that he is the Chief Executive Officer of NYP Community Programs, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

1. The name of the Corporation is NYP Community Programs, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Secretary of State of the State of New York on September 29th, 2014 under Section 402 of the NPCL.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.
4. The Certificate of Incorporation is hereby amended to effect the following changes therein authorized pursuant to Section 801(b) of the NPCL:
 - (a) amend Paragraph (a) of Article THIRD, which sets forth the purposes of the Corporation, by modifying said Paragraph (a) to read in its entirety as follows:

"(a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliate, Hudson Valley Hospital Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(a)(1) and Section 170(b)(1)(A)(iii) of the Code (the "Hudson Valley Hospital"), by:

(1) serving as the sole member of Hudson Valley Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of Hudson Valley Hospital and/or the communities served by Hudson Valley Hospital by performing certain functions of, and carrying out the charitable mission of, Hudson Valley Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate; (i) the charitable mission and purposes of; and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, Hudson Valley Hospital; and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities, and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.

- (b) re-designate Paragraph (b), (c) and (d) of Article THIRD as Paragraphs (c), (d), and (e), respectively, of said Article THIRD, and add new Paragraph (b) of said Article THIRD to provide that the Corporation's purposes as described in Paragraph (a) of Article THIRD do not preclude the Corporation from owning certain ownership or other interests in certain other entities, which new Paragraph (b) shall read in its entirety as follows:

"(b) Paragraph (a) of this Article THIRD shall not preclude the Corporation from owning, directly or indirectly: (i) shares of stock, membership interests or other ownership interests in one or more for-profit business corporations or other business entities, including, without limitation, general or limited partnerships, limited liability companies, or limited liability partnerships; or (ii) membership interests in one or more not-for-profit corporations, which for-profit and/or not-for-profit entities operate in furtherance of, and support the charitable purposes, mission, objectives, operations and activities, of the Corporation, as set forth in this Article THIRD."

- (c) Amend old Paragraph (c) of Article THIRD, which sets forth limitations on the Corporation's activities, which Paragraph (c) is to be re-designated as new Paragraph (d) of Article THIRD, as follows:

(i) delete clause (i) thereof in its entirety;

(ii) amend clause (ii) thereof, which shall be re-designated as clause (i) of said Paragraph (d) of Article THIRD, to delete the references to "hospital" and Article "28" of the PHL, so that said clause (i) of new Paragraph (d) of new Article THIRD shall read in its entirety as follows:

"(i) establish, operate or maintain a home care services agency, a hospice, a managed care organization or a health maintenance organization, as

provided for by Articles 36, 40 and 44 respectively, of the PHL and implementing regulations;"

(iii) amend clause (vi) thereof, relating to the Corporation's ability to solicit contributions for certain types of organizations, which shall be re-designated as clause (v) of said new Paragraph (d) of new Article THIRD, to delete the reference therein to "a PHL Article 28 facility" so that said clause (v) of new Paragraph (d) of Article THIRD shall read in its entirety as follows:

"(v) solicit any funds, contributions or grants, from any source, for the support of a SSL Article 7 facility."

(d) re-designate old clause (vi) of Paragraph (d) of Article THIRD, which sets forth certain restrictions on the Corporation's activities that require the prior consent or approval from specified New York State governmental and/or regulatory agencies, as clause (vi) of Paragraph (d) of said Article THIRD, and amend by:

(i) modifying the statutory reference to "Section 404(e) through (v) of the NPCL" to remove clauses (e) and (f) of NPCL Section 404 from such restrictions, and to change the reference to clause "(v)" of NPCL Section 404(a) to be clause "(w)" of NPCL Section 404(a), so that such statutory reference reads "Section 404(a) through (u), (e), (g), (r), (u), (v) and (w) of the NPCL";

(ii) adding the following sentence at the end of said new Paragraph (d):

"Notwithstanding the foregoing restrictions of this Paragraph (d) on the Corporation's activities, the Corporation may, directly or indirectly, be a member of, or hold an ownership interest in, any entity that is authorized to provide any of the services or perform any of the actions or functions listed herein."

(e) Omit Article FOURTH of the Certificate of Incorporation, which provides that the Corporation is not formed to engage in any purpose or activity requiring consent or approval, and accordingly re-designate Articles FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, and TENTH as Articles FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH, and NINTH, respectively;

(f) Amend Article FIFTH, as re-designated above, which provides that no part of the assets, net earnings, income or profit of the Corporation shall be distributed to or inure to the benefit of any trustee, director, officer, or employee of the Corporation or to any other private person, so that said Article FIFTH reads in its entirety as follows:

"No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, trustee, director, officer or employee of the Corporation or other private person, except as permitted by law; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person

for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation."

- (g) Omit Articles ELEVENTH and FOURTEENTH of the Certificate of Incorporation, which set forth information regarding the incorporators and initial Directors of the Corporation, as such information is not required to be set forth in a restated certificate of incorporation in accordance with Section 805(c) of the NPCL, and accordingly redesignate Article TWELFTH and THIRTEENTH as Articles TENTH and ELEVENTH, respectively; and
- (h) make certain minor non-substantive changes to the format and language of the Certificate of Incorporation.

5. This Restated Certificate of Incorporation was unanimously authorized by the members of the Board of Directors of the Corporation by written consent and authorized by the members of the Corporation by written consent in accordance with NPCL Sections 708(b), 614(a), and 802(x).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: NYP Community Programs, Inc., c/o The New York and Presbyterian Hospital Office of Legal Affairs, 525 E. 68th Street, Box 88, New York, NY 10065 Attn: General Counsel.
7. The text of the Certificate of Incorporation of the Corporation, as amended hereby, is restated to read in its entirety as follows:

FIRST: The name of the Corporation is NYP Community Programs, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.

THIRD: (a) The Corporation is organized, and shall be operated exclusively, for the charitable purpose of benefiting, supporting and furthering the charitable mission of The New York and Presbyterian Hospital ("NYPH"), a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (the "PHL") and exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended (the "Code"), by promoting, facilitating and enhancing the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities served from time to time by the Corporation's affiliate, Hudson Valley Hospital Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the PHL and exempt from federal income tax under Section 501(a).

of the Code as an organization described in Section 501(c)(3) of the Code and classified as other than a private foundation by reason of being described in Section 509(s)(1) and Section 170(b)(1)(A)(ii) of the Code (the "Hudson Valley Hospital"), by:

(1) serving as the sole member of Hudson Valley Hospital, and as the direct or indirect member or shareholder of one or more other not-for-profit corporations or other legal entities that operate in support of and/or for the benefit of Hudson Valley Hospital and/or the communities served by Hudson Valley Hospital by performing certain functions of, and carrying out the charitable mission of, Hudson Valley Hospital, and exercising its rights, powers and authority in such capacities to: (a) oversee, supervise and coordinate: (i) the charitable missions and purposes of; and (ii) the governance, policy making, and strategic planning for; and (b) provide other forms of support for the benefit of, Hudson Valley Hospital; and

(2) subject to the limitations set forth herein, engaging in any and all other lawful acts or activities; and exercising all such powers, rights and privileges applicable to not-for-profit corporations organized under the NPCL, that are incidental to and in furtherance of accomplishing the foregoing charitable purposes.

(b) Paragraph (a) of this Article THIRD shall not preclude the Corporation from owning, directly or indirectly: (i) shares of stock, membership interests or other ownership interests in one or more for-profit business corporations or other business entities, including, without limitation, general or limited partnerships, limited liability companies, or limited liability partnerships; or (ii) membership interests in one or more not-for-profit corporations, which for-profit and/or not-for-profit entities operate in furtherance of, and support the charitable purposes, missions, objectives, operations and activities, of the Corporation, as set forth in this Article THIRD.

(c) The Corporation shall engage in activities in furtherance of the purposes described in Paragraph (a) of this Article THIRD exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Code.

(d) Notwithstanding anything to the contrary in this Certificate, nothing contained herein shall authorize the Corporation, directly or indirectly, to: (i) establish, operate or maintain a home care services agency, a hospice, a managed care organization or a health-maintenance organization, as provided for by Articles 35, 40 and 44 respectively, of the PHL and implementing regulations; (ii) establish or operate an independent practice association; (iii) establish, operate, construct, lease or maintain an adult home, an enriched housing program, a residence for adults or an assisted living program, as provided for by Article 7 of the New York State Social Services Law, ("SSL"); (iv) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B of the PHL; (v) solicit any funds, contributions or grants, from any source, for the support of a SSL Article 7 facility; or (vi) otherwise engage in or include among its purposes any of the activities mentioned in Section 404(a) through (z), (p), (q), (r), (u), (v) and (w) of the NPCL or Section 460-a of the SSL, without the Corporation first having obtained consent or approval from the appropriate governmental authority with respect thereto. Notwithstanding the foregoing restrictions of this

Paragraph (d) on the Corporation's activities, the Corporation may, directly or indirectly, be a member of, or hold an ownership interest in, any entity that is authorized to provide any of the services or perform any of the actions or functions listed herein.

(e) The Corporation shall not operate for the purpose of carrying on a trade or business, for profit.

FOURTH: In furtherance of the foregoing purposes, the Corporation shall have all of the general rights, powers and privileges enumerated in the NPCL. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities which are not in furtherance of its purposes as set forth in Article THIRD hereof.

FIFTH: No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any member, trustee, director, officer or employee of the Corporation or other private person, except as permitted by law; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

SIXTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

SEVENTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation that is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code; or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

EIGHTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) NYPH and/or one or more affiliates or successors thereof as are then in good standing under Section 501(c)(3) of the Code; or (b) in the event that NYPH and its affiliates and successors have ceased to exist or are not then qualifying under Section 501(c)(3) of the Code, then to one or more charitable organizations as are then in existence and qualifying under Section 501(c)(3) of the Code, or to Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, in either case, subject to compliance with the rules

and regulations of the New York Department of Health and any other applicable laws of the State of New York and receipt of any and all approvals that may be required by applicable laws of the State of New York.

NINTH: The office of the Corporation shall be located in the County of New York within the State of New York.

TENTH: In accordance with Section 508(c) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(e) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and


(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

ELEVENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is:

NYP Community Programs, Inc.
c/o The New York and Presbyterian Hospital
Office of Legal Affairs
525 East 68th Street — Box 88
New York, New York 10065
Attention: General Counsel

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF this Certificate has been signed and the statements made
herein affirmed as true under penalties of perjury this 19th day of December, 2014.

By: 
Name: Stephen J. Corwin, M.D.
Title: Chief Executive Officer

SIGNATURE PAGE TO RESTATED CERTIFICATE OF INCORPORATION (NYPCF)

PHHPC

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12180

(518) 402-0964
PHHPC@health.ny.gov

December 29, 2014

Patricia Smyth
Cleero Consulting Associates
701 Westchester Avenue
White Plains, New York 10604

Re: Restated Certificate of Incorporation of NYP Community Programs, 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 4th day of December, 2014, I hereby certify that the Public Health and Health Planning Council consents to the filing of the Restated Certificate of Incorporation of NYP Community Programs, Inc., dated December 17, 2014.

Sincerely,

Colleen M. Leonard
Colleen M. Leonard
Executive Secretary

/s/



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

ERIC T. SOLMENDHAM
Attorney General

DIVISION OF REGIONAL OFFICES
WESTCHESTER REGIONAL OFFICE

December 30, 2014

Linda V. Tiano, Esq.
Epstein, Becker Green
1227 25th Street, NW
Washington, DC 20037

Re: Application of Restated Certificate of Incorporation of
NYF Community Programs, Inc.

Dear Ms. Tiano,

The Attorney General hereby approves pursuant to the Not-For-Profit Corporation Law § 804(a)(ii)(A) the proposed Restated Certificate of NYF Community Programs, Inc. Said approval is conditioned on submission of the Restated Certificate of Incorporation to the Department of State for filing within 60 days hereafter. A copy of the filed Certificate shall be provided to the Attorney General within 30 days thereafter.

Sincerely,

Eric T. Solmendham
Attorney General
State of New York

By: 

Sandra Green-Locco
Assistant Attorney General
Westchester Regional Office

cc - Charities Bureau Registration Unit

CSC 45
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RESTATED CERTIFICATE OF INCORPORATION

OF

NYP COMMUNITY PROGRAMS, INC.

Section 805 of the Not-for-Profit Corporation Law

FILED

2015 JAN 26 PM 2:58

Filer: Epstein Becker & Green, P.c.
250 Park Avenue
New York, NY 10177
Cust. Ref#477347KXK

DRAWDOWN

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loc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED JAN 26 2015

TAX \$:

BY: luc

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Attachment 8

N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

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ENTITY NAME: NYP COMMUNITY PROGRAMS, INC.

DOCUMENT TYPE: INCORPORATION (NOT-FOR-PROFIT)

TYPE: C COUNTY: NEWY

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FILED:09/29/2014 DURATION:PERPETUAL CASH#:140929000311 FILM #:140929000280

FILER:

EXIST DATE

EVAN M. HELLMAN, ESQ.
EPSTEIN BECKER & GREEN, P.C.
250 PARK AVENUE
NEW YORK, NY 10177-1211

09/29/2014

ADDRESS FOR PROCESS:

NYP COMMUNITY PROGRAMS, INC.-C/O THE NY PRESBYTERIAN HOSPITAL
ATTN: GENERAL COUNSEL 525 EAST 68TH STREET-BOX 88
NEW YORK, NY 10065

REGISTERED AGENT:



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SERVICE COMPANY: CORPORATION SERVICE COMPANY - 45

SERVICE CODE: 45

FEEs 160.00

FILING 75.00
TAX 0.00
CERT 0.00
COPIES 10.00
HANDLING 75.00

PAYMENTS 160.00

CASH 0.00
CHECK 0.00
CHARGE 0.00
DRAWDOWN 160.00
OPAL 0.00
REFUND 0.00

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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 September 30, 2014.

Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

140929000

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CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

Under Section 402 of the
New York Not-for-Profit Corporation Law

The undersigned, desiring to form a corporation pursuant to the provisions of the New York Not-for-Profit Corporation Law (the "NPCL"), does hereby certify (this "Certificate") as follows:

FIRST: The name of the corporation is NYP Community Programs, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.

THIRD: (a) The Corporation is organized, and shall be operated exclusively, as a charitable corporation for the purposes of: (i) supporting, promoting and improving the public health and welfare of the communities in the New York metropolitan area by planning for, preparing and assisting in the processing of an application to the Public Health and Health Planning Council of the New York State Department of Health and all other governmental and regulatory agencies as may be required by law, for the approval of the Corporation to become the sole member of one or more health care facilities licensed under Article 28 of the New York State Public Health Law (the "PHL"); and (ii) subject to the limitations set forth herein, engaging in any and all lawful acts or activities, and exercising all such powers, rights and privileges, as may be applicable to not-for-profit corporations organized under the NPCL, in each case in furtherance of accomplishing the foregoing charitable purposes.

(b) The Corporation shall engage in activities in furtherance of the purposes described in paragraph (a) of this Article THIRD exclusively for charitable purposes within the meaning of Sections 170(c)(2)(B) and 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code").

(c) Notwithstanding anything to the contrary in this Certificate, nothing contained herein shall authorize the Corporation, directly or indirectly, to: (i) provide hospital services or health related services, as such terms are defined in the PHL; (ii) establish, operate or maintain a hospital, a home care services agency, a hospice, a managed care organization, or a health maintenance organization, as provided for by Articles 28, 36, 40, and 44, respectively, of the PHL and implementing regulations; (iii) establish or operate an independent practice association; (iv) establish, operate, construct, lease or maintain an adult home, an enriched housing program, a residence for adults or an assisted living program, as provided for by Article 7 of the New York State Social Services Law ("SSL"); (v) establish, operate, construct, lease or maintain an assisted living residence, as provided for by Article 46-B

of the PHL; (vi) solicit any funds, contributions or grants, from any source, for the support of a PHL Article 28 facility or a SSL Article 7 facility; or (vii) otherwise engage in or include among its purposes any of the activities mentioned in Section 404(a) through (v) of the NPCL or Section 460-a of the SSL, in each case without the Corporation first having obtained consent or approval from the appropriate governmental authority with respect thereto. Additionally, nothing in this Certificate shall authorize the Corporation to, within the State of New York, hold itself out as providing or provide any health care professional services that require licensure or registration pursuant to either Title 8 of the New York State Education Law or the PHL, including, but not limited to, medicine, nursing, psychology, social work, occupational therapy, speech therapy, physician therapy or radiation therapy.

(d) The Corporation shall not operate for the purpose of carrying on a trade or business, for profit.

FOURTH: The Corporation is not formed to engage in any activity or for any purpose requiring consent or approval of any state official, department, board, agency, or other body, and no such consent or approval is required.

FIFTH: In furtherance of the forgoing purposes, the Corporation shall have all of the general rights, powers and privileges enumerated in the NPCL. The Corporation shall have the right to exercise all other powers which are, or hereafter may be, conferred by law upon a corporation organized for the above purposes or incidental to the conferred powers. Notwithstanding the foregoing, the Corporation shall not have the power to engage in any activities which are not in furtherance of its purposes as set forth in Article THIRD hereof.

SIXTH: No part of the Corporation's assets, net earnings, income or profit shall inure to the benefit of, or be distributable to, any trustee, director, officer or employee of the Corporation or other private person; provided, however, that the Corporation shall be authorized and empowered to pay reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes. No trustee, director, officer or employee of the Corporation or any private person shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

SEVENTH: No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation (except to the extent permitted by Section 501(h) of the Code if the Corporation makes an election thereunder), and the Corporation shall not participate in or intervene in (including the publishing or the distributing of statements in connection with) any political campaign on behalf of or in opposition to any candidate for public office.

EIGHTH: Notwithstanding anything to the contrary in this Certificate, the Corporation shall neither have nor exercise any power, nor shall it engage directly or indirectly in any activity, that would invalidate its status: (a) as a corporation that is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code; or (b) as a corporation contributions to which are deductible under Sections 170(c)(2), 2055(a) or 2522(a) of the Code.

NINTH: In the event of dissolution of the Corporation, all of the remaining assets and property of the Corporation shall, after payment of or due provision for all necessary expenses and liabilities thereof, be distributed to: (a) The New York and Presbyterian Hospital, a New York not-for-profit corporation qualifying under Section 501(c)(3) of the Code ("NYPH") and/or one or more affiliates or successors thereof, as are then in good standing under Section 501(c)(3) of the Code; or (b) in the event that NYPH and its affiliates and successors have ceased to exist or are not then qualifying under Section 501(c)(3) of the Code, then to one or more charitable organizations as are then in existence and qualifying under Section 501(c)(3) of the Code, or to Federal, State and/or local governments for a related public purpose, in such proportions as the Board of Directors of the Corporation shall determine, in either case, subject to compliance with the rules and regulations of the New York Department of Health and any other applicable laws of the State of New York and receipt of any and all approvals that may be required by applicable laws of the State of New York.

TENTH: The office of the Corporation shall be located in the County of New York within the State of New York.

ELEVENTH: The names and addresses of the initial Directors of the Corporation, each of whom is at least eighteen (18) years of age, are as follows:

Name	Address
Steven Corwin, M.D.	525 East 68 th Street New York, NY 10065
Wayne Osten	525 East 68 th Street New York, NY 10065
Gary Zuar	525 East 68 th Street New York, NY 10065

TWELFTH: In accordance with Section 508(e) of the Code, if in any taxable year the Corporation is a private foundation as defined in Section 509(a) of the Code, then in such year:

(a) The Corporation shall distribute such amounts for each taxable year at such time and in such manner so as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code;

(b) The Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(c) The Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(d) The Corporation shall not make any investments in such manner so as to subject the Corporation to tax under Section 4944 of the Code; and

(e) The Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

THIRTEENTH: The Secretary of State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation which is served upon him is:

NYP Community Programs, Inc.
c/o The New York and Presbyterian Hospital
Office of Legal Affairs
525 East 68th Street — Box 88
New York, New York 10065
Attention: General Counsel

FOURTEENTH: The Incorporator is at least eighteen (18) years of age.

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[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 29th day of September, 2014:

By: *Evan M. Hellman*
Name: Evan M. Hellman, Sole Incorporator

c/o Epstein Becker & Green, P.C.
250 Park Avenue
New York, NY 10177

140929000 280

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Drawdown

CERTIFICATE OF INCORPORATION
OF
NYP COMMUNITY PROGRAMS, INC.

Under Section 402 of the
New York Not-for-Profit Corporation Law

Filed By:

Evan M. Hellman, Esq.
Epstein Becker & Green, P.C.
250 Park Avenue
New York, New York 10177-1211

lcc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 29 2014

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Attachment 9

AMENDED AND RESTATED BY-LAWS

OF

NYP COMMUNITY PROGRAMS, INC.

A New York Not-for-Profit Corporation

Adopted November 2, 2017 and to be effective upon the consummation of the merger of
NewYork-Presbyterian Lawrence Hospital with and into
The New York and Presbyterian Hospital

ARTICLE 1

SOLE MEMBER OF THE CORPORATION;
ACTION OF THE SOLE MEMBER; NO LIABILITY OF SOLE MEMBER

- 1.1 Sole Member. The Corporation shall have a single member, The New York and Presbyterian Hospital, a New York not-for-profit corporation (the "Member").
- 1.2 Meetings of the Member.
 - 1.2.1 The Member shall hold an annual meeting at such date, time and place as shall be established by the Member. In addition to the annual meeting of the Member, the Member may hold such other regular and special meetings at such dates, times and places as shall be determined by the Member and set forth in the notices of meeting. Special meetings of the Member may be called by the Member, the Chairman or Chief Executive Officer of the Corporation or the Board of Directors.
 - 1.2.2 Notice of meetings of the Member may be given personally or by mail, or by facsimile telecommunications or electronic mail to the fax number or email address as it appears on the records, of the Member or as filed with the Secretary of the Corporation.
 - 1.2.3 Notice of any meeting of the Member may be waived pursuant to the provisions set forth in the NPCL.
- 1.3 Action of the Member. Any action by the Member in regard to the affairs of the Corporation shall be taken in accordance with the By-Laws of the Member and as established by resolution of the Board of Directors of the Member or a duly authorized committee thereof. Whenever under the NPCL, the Member is required or permitted to take any action by vote, such action may be set forth in a consent of the Member, which may be written or electronic and shall in any event be delivered to the Corporation as provided by the NPCL and retained in the records of the Corporation.

- 1.4 No Personal Liability of the Member. In accordance with Section 517(a) of the Not-for-Profit Corporation Law of New York (as amended, restated, modified or supplemented from time to time, the "NPCL"), the Member shall not be personally liable or responsible for the debts, liabilities or obligations of the Corporation.

ARTICLE 2

MEMBERSHIP AND ACTIVE PARENT STATUS

- 2.1 Sole Member. The Corporation shall be the sole member of Hudson Valley Hospital Center (doing business as NewYork-Presbyterian Hudson Valley Hospital), NewYork-Presbyterian Queens and NewYork-Presbyterian Brooklyn Methodist Hospital, each a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (individually, a "Hospital" and collectively, the "Hospitals").
- 2.2 Active Parent Status Regarding the Hospitals. In addition to such other rights, powers and authority as are vested in the Corporation in its capacity as the sole member of a Hospital pursuant to the Certificate of Incorporation and By-Laws of each Hospital, the Corporation shall have, as the licensed "active parent" and co-operator under Article 28 of the New York Public Health Law, the following rights, powers and authorities with respect to each Hospital:
- (a) appointment of the members of the Board of Directors of the Hospital;
 - (b) appointment or dismissal of officers, managers and medical staff of the Hospital;
 - (c) approval of the operating and capital budgets and strategic and operating plans of the Hospital;
 - (d) adoption or approval of operating policies and procedures for the Hospital;
 - (e) approval of certificate of need applications filed by or on behalf of the Hospital;
 - (f) approval of any indebtedness of the Hospital;
 - (g) approval of management or clinical services contracts of the Hospital;
 - (h) adoption or approval of any amendment, repeal or other change to the organizational documents (including the Certificate of Incorporation and By-Laws) of the Hospital, including the adoption of any new By-Laws of the Hospital; and

- (i) approval of settlements of administrative or other litigation or proceedings to which the Hospital is a party.

For the purposes of these Bylaws, approval of the Corporation as member shall mean, *inter alia*, the power of the member to: (i) initiate action without a prior recommendation from the Board of Directors of the Hospital; (ii) accept, reject, or modify a recommendation of the Board of Directors of the Hospital and direct action by the Hospital upon such determination; or (iii) return a recommended action to the Hospital's Board of Directors setting forth the reasons for the rejection and/or suggested changes.

2.3 Action as Member. Any action required or permitted to be taken by the Corporation in its capacity as the sole member of a Hospital shall be taken (i) by resolution of the Board of Directors of the Corporation or a duly authorized committee thereof or (ii) pursuant to a Board-approved specific or general delegation to the Board of a Hospital or to an officer or agent of the Corporation or a Hospital.

ARTICLE 3

BOARD OF DIRECTORS

- 3.1 Powers. The Board of Directors of the Corporation shall be vested with all powers and duties for the conduct of the activities of the Corporation and for the management of the properties, affairs and operations of the Corporation, except as may be limited to or conferred upon the Member by law, the Corporation's Certificate of Incorporation, these By-Laws, or a resolution duly adopted by the Member.
- 3.2 Qualifications. Each Director shall be an individual and at least eighteen (18) years of age. At least a majority of the Directors shall be individuals concurrently participating in the supervision, control or management of The New York and Presbyterian Hospital.
- 3.3 Number. The number of Directors comprising the entire Board of Directors shall be set from time to time by the Member, but shall consist of no fewer than three (3) Directors.
- 3.4 Appointment. Term. The Member shall make any new or renewed appointments to the Board of Directors, and shall deliver written notice of such appointment or appointments to the Corporation, in advance of the annual meeting of the Board of Directors. Each Director shall serve for a term of one (1) year and until his or her successor has been duly appointed and qualified. No action to decrease the number of Directors specified in Section 3.3 above shall shorten the term of any incumbent Director.
- 3.5 Resignation. Any Director may resign at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then effective as of that date. The resignation of any Director shall be effective regardless of any acceptance or rejection by the Corporation.
- 3.6 Removal. Any Director may be removed, with or without the assignment of any cause, by

the Member.

- 3.7 Vacancies. If any vacancy exists among the positions available for Directors, whether by the death, resignation or removal of any Director, or by an increase in the number of positions, or because any position has remained unfilled, then the position may be filled by the Member. The Member shall deliver written notice of the appointment to the Corporation. A Director appointed to fill a vacancy shall serve until the next annual meeting of the Board of Directors, and until her or his successor is appointed and qualified.

ARTICLE 4

MEETINGS OF THE BOARD OF DIRECTORS

- 4.1 Annual Meeting. The annual meeting of the Board of Directors shall be held on such date and at such time as shall be determined by the Board of Directors.
- 4.2 Regular Meetings. Regular meetings of the Board of Directors shall be held on such dates and at such times as shall be determined by the Board of Directors.
- 4.3 Special Meetings. A special meeting of the Board of Directors may be called at any time by the Chairman or the Chief Executive Officer of the Corporation, and shall be called by the Secretary upon the demand of a majority of the Directors, with the date and time for any such special meeting to be specified in the notice of meeting.
- 4.4 Place. Each annual, regular and special meeting of the Board of Directors shall be held at such places within or without the State of New York as may be fixed by the Chairman, the Chief Executive Officer or the Board for annual and regular meetings and in the notice of meetings for special meetings.
- 4.5 Notice. Notice of meetings of the Board of Directors may be given personally or by mail, or by facsimile telecommunication or electronic mail to the address, fax number or email address for each Director as the same appears on the record of Directors or as filed with the Secretary of the Corporation.
- 4.6 Waiver of Notice. Notice of any meeting of the Board of Directors may be waived pursuant to the provisions set forth in the NPCL.
- 4.7 Adjournment. The Directors present at any meeting may vote to adjourn a meeting to another time and place, even if they do not constitute a quorum, but no such meeting shall be reconvened without reasonable notice to those who were not present at the time of the adjournment.
- 4.8 Quorum. A majority of all the Directors then serving, present in person, shall constitute a quorum of the Board of Directors.
- 4.9 Vote. Each Director shall be entitled to one (1) vote on each matter before the Board of Directors.

- 4.10 Action. The affirmative vote of a majority of the Directors, present in person at the time of the vote at a meeting at which a quorum is present, shall be the act of the Board of Directors, except as may be otherwise provided in the Certificate of Incorporation of the Corporation, these By-Laws or the NPCL.
- 4.11 Participation in Meetings of the Board of Directors by Conference Telephone or Video Screen Communication. Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.
- 4.12 Action of the Board of Directors Without a Meeting. Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

ARTICLE 5

COMMITTEES OF THE BOARD OF DIRECTORS

- 5.1 Committees. The Board of Directors may create committees of the Board of Directors or committees of the Corporation from time to time, by resolution adopted by the affirmative vote of a majority of the entire Board, or as otherwise set forth in these By-Laws.
- 5.2 Composition, Conduct. Each committee of the Board shall consist of three (3) or more Directors. A quorum for the conduct of business of any committee of the Board of Directors shall consist of a majority of the Directors serving as members of that committee. Each committee of the Board of Directors shall keep regular minutes of its proceedings and report the same to the Board of Directors.
- 5.3 Authority. Each committee of the Board of Directors shall have such authority as is specified in these By-Laws or as may be delegated by resolution of the Board of Directors, except that no committee of the Board of Directors shall have authority as to the following matters:
- (a) the submission to the Member of any action requiring the Member's approval under the Certificate of Incorporation of the Corporation, these By-Laws or the NPCL;
 - (b) the filling of vacancies in the Board of Directors or in any committee of the

Board of Directors;

- (c) the fixing of compensation of any individual for serving as a Director or on any committee of the Board of Directors;
- (d) the amendment, repeal or replacement of these By-Laws, or the adoption of new by-laws of the Corporation; or
- (e) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable.

- 5.4 Audit and Corporate Compliance. Audit and compliance oversight for the Corporation and of any corporation of which the Corporation is the member shall be exercised by the audit and corporate compliance sub-committee of the System Strategy Committee of the Member (the "Audit and Corporate Compliance Committee").

ARTICLE 6

OFFICERS OF THE CORPORATION

- 6.1 Positions, Qualification. The officers of the Corporation shall include a Chief Executive Officer, a Secretary and a Treasurer, and may include one or more Executive Vice Presidents, Senior Vice Presidents and Vice Presidents and such other officers as the Board of Directors may choose to designate from time to time (each, an "Officer"). Any two (2) or more offices may be held by the same person, except the offices of Chief Executive Officer and Secretary.
- 6.2 Election, Term. Each Officer shall be elected by the affirmative vote of a majority of the Board of Directors then serving at the annual meeting of the Board, and shall serve until the following annual meeting and until her or his successor is elected and qualified.
- 6.3 Duties. The powers and duties of the Officers of the Corporation shall be such as may be prescribed by or pursuant to these Bylaws or from time to time by the Board of Directors and, to the extent not so prescribed, as usually appertain to their respective offices, subject to the control of the Board of Directors.
- 6.3.1 The Chief Executive Officer shall preside at meetings of the Board of Directors and shall supervise the activities of the Board and its committees. The Chief Executive Officer shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors in the absence of the Chairman, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation.
- 6.3.2 Executive, Senior and other Vice-Presidents shall have such powers and duties as the Board of Directors may prescribe or as the Chief Executive Officer may

delegate.

- 6.3.3. The Secretary shall assure that minutes are prepared for all meetings of the Board of Directors and retained as part of the corporate records of the Corporation, shall assure that appropriate notice is given for all meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer or as otherwise required by law. The Secretary is authorized to delegate any of these functions to one or more assistant secretaries.
- 6.3.4. The Treasurer shall assure that accurate accounts of the assets, receipts and disbursements of the Corporation are maintained, shall produce financial reports as described in these By-laws and as requested by the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. The Treasurer is authorized to delegate any of these functions to one or more assistant treasurers.
- 6.4. Resignation. Any Officer may resign at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then effective as of that date. The resignation of any Officer shall be effective regardless of any acceptance or rejection by the Corporation.
- 6.5. Removal. Any Officer may be removed by the Board of Directors at any time, with or without cause, but such removal shall be without prejudice to the individual's contractual rights, if any, in regard to the Corporation.
- 6.6. Vacancies. Interim Appointments. If any vacancy exists among the offices of the Corporation, whether by the death, resignation or removal of any Officer, or if the Board of Directors deems it necessary to appoint a new Vice President or create a new Officer position at any time between annual meetings of the Board of Directors, then the position may be filled by the affirmative vote of a majority of the Directors then serving. An Officer so appointed shall serve until the next annual meeting of the Board of Directors, and until her or his successor is elected and qualified.

ARTICLE 7

POLICIES

- 7.1. Conflict of Interest. The Board of Directors shall adopt a Conflict of Interest Policy of the Corporation, approved by the Audit and Corporate Compliance Committee, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Conflict of Interest Policy of the Corporation shall include: (a) a definition of circumstances that constitute a conflict of interest; (b) procedures for disclosing a conflict of interest; (c) procedures for disclosing, addressing and documenting "related party transactions" (as defined in the NPCL); and (d) such other matters as are required to be included or addressed in such Conflict of Interest Policy pursuant to Section 715-a(b) of the NPCL to the extent applicable to the Corporation.

- 7.2 Whistleblower Protection. The Board of Directors shall adopt a Whistleblower Policy of the Corporation approved by the Audit and Corporate Compliance Committee, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Whistleblower Policy of the Corporation shall include: (a) procedures for the reporting of violations or suspected violations of laws or corporate policies, including procedures for preserving the confidentiality of reported information; (b) a requirement that a copy of the Whistleblower Policy be distributed to all directors, officers and employees of, and volunteers who contribute substantial services to, the Corporation; and (c) such other matters as are required to be included or addressed in such Whistleblower Policy pursuant to Section 715-b(b) of the NPCL to the extent applicable to the Corporation.
- 7.3 Additional Policies. The Board of Directors shall adopt additional policies, as it sees fit and from time to time, in order to facilitate the efficient administration of the Corporation's affairs, and in order to protect and promote the quality and integrity of the Corporation's pursuits.

ARTICLE 8

RECORDS AND REPORTS

- 8.1 Annual Financial Report. At the annual meeting of the Member, the Board of Directors shall present a report showing in appropriate detail each of the following in regard to the most recently completed fiscal year of the Corporation:
- (a) the assets and liabilities, including trust funds, of the Corporation;
 - (b) the principal changes in assets and liabilities of the Corporation, including trust funds;
 - (c) the revenues and receipts of the Corporation, both restricted and unrestricted as to particular purposes;
 - (d) the expenses and disbursements of the Corporation, for both general and restricted purposes; and
 - (e) accounts of all restricted assets and the use made of such assets and of the income thereof.

The report shall be verified by the Chief Executive Officer and the Treasurer or by a majority of the Directors then serving, or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board of Directors, and shall be attached to the minutes of the annual meeting.

- 8.2 Corporate Records. The Corporation shall maintain corporate records including, at a minimum, each of the following;

- (a) the Corporation's Certificate of Incorporation, with all amendments thereto;
- (b) the Corporation's By-Laws, with all amendments thereto;
- (c) minutes of each meeting of the Board of Directors and of each committee of the Board of Directors;
- (d) all resolutions adopted by the Board of Directors or of any committee of the Board of Directors without a meeting, together with all written consents thereto;
- (e) all written notices delivered by the Member; and
- (f) copies of all corporate tax returns, registrations and other filings with federal, state and local authorities.

ARTICLE 9

LIABILITY AND INDEMNIFICATION

9.1 Liability. No Director or Officer of the Corporation shall have any personal liability to the Corporation or its member for damage resulting from any breach of such Director's or Officer's duties as a Director or Officer of the Corporation; provided, however, that this Section 9.1 shall not eliminate or limit the liability of any Director or Officer: (a) if a judgment or other final adjudication adverse to such Director or Officer establishes that his or her acts or omissions: (i) were in bad faith or involved intentional misconduct or a knowing violation of law or that such Director or Officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled; or (ii) created personal liability pursuant to Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability; or (b) to the extent that such personal liability is otherwise required by, or cannot otherwise be eliminated in accordance with, the NPCL or other applicable law.

9.2 Indemnification.

9.2.1 Generally. The Corporation shall, to the fullest extent permitted by the NPCL, indemnify any individual made or threatened to be made a party in any civil or criminal action or proceeding by reason of the fact that such individual, or his or her testator or intestate, is or was a Director or Officer of the Corporation, or, at the request of the Corporation, is or was serving as a director or officer of any other organization, entity or other enterprise, to the full extent and in all such circumstances as shall be permitted under the NPCL, and upon proper authorization all such indemnified costs and expenses incurred shall be advanced by the Corporation pending the final disposition of such action or proceeding.

9.2.2 Exception for Bad Faith and Misconduct. Such required indemnification shall be

subject to the exception that no indemnification may be made to or on behalf of any Director or Officer in the event and to the extent that a judgment or other final adjudication adverse to the Director or Officer establishes that such individual's acts were committed in bad faith or involved intentional misconduct or a knowing violation of law, or that such Director or Officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled (provided, however, that indemnification shall be made upon any successful appeal of any adverse judgment of final adjudication).

9.2.3 Other Limitations and Prohibitions on Indemnification. No indemnification shall be made under this Section 9.2 if such indemnification would be inconsistent with the provisions of the Corporation's Certificate of Incorporation or a resolution of the Corporation's Board of Directors or other proper corporate action, as any of the foregoing may be in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding, which prohibits or otherwise limits such indemnification.

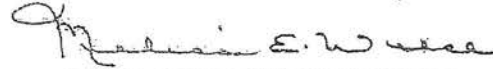
9.3 Other Rights. The foregoing right of indemnification shall not be deemed exclusive of any other right to which any Director or Officer may be entitled.

ARTICLE 10

MISCELLANEOUS

- 10.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January, and end on the last day of December.
- 10.2 Headings. Headings are provided in these By-Laws for reference only, and shall not control any interpretation of the content of any provision hereof.
- 10.3 Delivery of Notice. Whenever any notice is required under these By-laws, such notice shall be given in writing, and may be delivered by any of the following means:
- (a) by regular or certified mail, in which case such notice shall be sent to the addressee's last known street address, and shall be deemed effective three (3) days after mailing;
 - (b) by courier service, in which case such notice shall be sent to a location where the addressee is reasonably expected to be able to accept delivery, and shall be deemed effective upon first attempted delivery;
 - (c) by fax machine, in which case such notice shall be sent to the addressee's last known fax number, and shall be deemed effective upon transmission;
 - (d) by email, in which case such notice shall be sent to the addressee's last known email address, and shall be deemed effective upon transmission; or
 - (e) in person, in which case such notice shall be effective upon delivery.

- 10.4 Fictitious Names. The Corporation shall not conduct any activities in New York State under any name other than the name appearing in its Certificate of Incorporation, or another name duly registered as a fictitious, assumed or alternative name pursuant to applicable law.



Melissa E. Welch
Secretary

Initially adopted: September 29, 2014

Amended: Effective July 1, 2015

Amended: Effective December 6, 2016

Amended: November 2, 2017 and to be effective upon the consummation of the merger of NewYork-Presbyterian Lawrence Hospital with and into The New York and Presbyterian Hospital

Attachment 10

DRAFT 11/04/21

PROPOSED

AMENDED AND RESTATED BY-LAWS

OF

NYP COMMUNITY PROGRAMS, INC.

A New York Not-for-Profit Corporation

Adopted _____ and to be effective upon the consummation of the merger of
New York-Presbyterian/Brooklyn Methodist with and into
The New York and Presbyterian Hospital

ARTICLE I

SOLE MEMBER OF THE CORPORATION;
ACTION OF THE SOLE MEMBER; NO LIABILITY OF SOLE MEMBER

- 1.1 Sole Member. The Corporation shall have a single member, The New York and Presbyterian Hospital, a New York not-for-profit corporation (the "Member").
- 1.2 Meetings of the Member.
 - 1.2.1 The Member shall hold an annual meeting at such date, time and place as shall be established by the Member. In addition to the annual meeting of the Member, the Member may hold such other regular and special meetings at such dates, times and places as shall be determined by the Member and set forth in the notices of meeting. Special meetings of the Member may be called by the Member, the Chairman or Chief Executive Officer of the Corporation or the Board of Directors.
 - 1.2.2 Notice of meetings of the Member may be given personally or by mail, or by facsimile telecommunications or electronic mail to the fax number or email address as it appears on the records, of the Member or as filed with the Secretary of the Corporation.
 - 1.2.3 Notice of any meeting of the Member may be waived pursuant to the provisions set forth in the NPCL.
- 1.3 Action of the Member. Any action by the Member in regard to the affairs of the

Corporation shall be taken in accordance with the By-Laws of the Member and as established by resolution of the Board of Directors of the Member or a duly authorized committee thereof. Whenever under the NPCL, the Member is required or permitted to take any action by vote, such action may be set forth in a consent of the Member, which may be written or electronic and shall in any event be delivered to the Corporation as provided by the NPCL and retained in the records of the Corporation. No Personal Liability of the Member. In accordance with Section 517(a) of the Not-for-Profit Corporation Law of New York (as amended, restated, modified or supplemented from time to time, the "NPCL"), the Member shall not be personally liable or responsible for the debts, liabilities or obligations of the Corporation.

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- 2.1 Sole Member. The Corporation shall be the sole member of Hudson Valley Hospital Center (doing business as NewYork-Presbyterian Hudson Valley Hospital) ~~and~~, NewYork-Presbyterian Queens, ~~and NewYork-Presbyterian Brooklyn Methodist Hospital~~, each a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law (individually, a "Hospital" and collectively, the "Hospitals").
- 2.2 Active Parent Status Regarding the Hospitals. In addition to such other rights, powers and authority as are vested in the Corporation in its capacity as the sole member of a Hospital pursuant to the Certificate of Incorporation and By-Laws of each Hospital, the Corporation shall have, as the licensed "active parent" and co-operator under Article 28 of the New York Public Health Law, the following rights, powers and authorities with respect to each Hospital:
- (a) appointment of the members of the Board of Directors of the Hospital;
 - (b) appointment or dismissal of officers, managers and medical staff of the Hospital;
 - (c) approval of the operating and capital budgets and strategic and operating plans of the Hospital;
 - (d) adoption or approval of operating policies and procedures for the Hospital;
 - (e) approval of certificate of need applications filed by or on behalf of the Hospital;
 - (f) approval of any indebtedness of the Hospital;
 - (g) approval of management or clinical services contracts of the Hospital;
 - (h) adoption or approval of any amendment, repeal or other change to the

organizational documents (including the Certificate of Incorporation and By-Laws) of the Hospital, including the adoption of any new By-Laws of the Hospital; and

- (i) approval of settlements of administrative or other litigation or proceedings to which the Hospital is a party.

For the purposes of these Bylaws, approval of the Corporation as member shall mean, *inter alia*, the power of the member to: (i) initiate action without a prior recommendation from the Board of Directors of the Hospital; (ii) accept, reject, or modify a recommendation of the Board of Directors of the Hospital and direct action by the Hospital upon such determination; or (iii) return a recommended action to the Hospital's Board of Directors setting forth the reasons for the rejection and/or suggested changes.

2.3 Action as Member. Any action required or permitted to be taken by the Corporation in its capacity as the sole member of a Hospital shall be taken (i) by resolution of the Board of Directors of the Corporation or a duly authorized committee thereof or (ii) pursuant to a Board-approved specific or general delegation to the Board of a Hospital or to an officer or agent of the Corporation or a Hospital.

ARTICLE 3

BOARD OF DIRECTORS

- 3.1 Powers. The Board of Directors of the Corporation shall be vested with all powers and duties for the conduct of the activities of the Corporation and for the management of the properties, affairs and operations of the Corporation, except as may be limited to or conferred upon the Member by law, the Corporation's Certificate of Incorporation, these By-Laws, or a resolution duly adopted by the Member.
- 3.2 Qualifications. Each Director shall be an individual and at least eighteen (18) years of age. At least a majority of the Directors shall be individuals concurrently participating in the supervision, control or management of The New York and Presbyterian Hospital.
- 3.3 Number. The number of Directors comprising the entire Board of Directors shall be set from time to time by the Member, but shall consist of no fewer than three (3) Directors.
- 3.4 Appointment. Term. The Member shall make any new or renewed appointments to the Board of Directors, and shall deliver written notice of such appointment or appointments to the Corporation, in advance of the annual meeting of the Board of Directors. Each Director shall serve for a term of one (1) year and until his or her successor has been duly appointed and qualified. No action to decrease the number of Directors specified in Section 3.3 above shall shorten the term of any incumbent Director.
- 3.5 Resignation. Any Director may resign at any time, such resignation to be made in writing

and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then effective as of that date. The resignation of any Director shall be effective regardless of any acceptance or rejection by the Corporation.

- 3.6 Removal. Any Director may be removed, with or without the assignment of any cause, by the Member.
- 3.7 Vacancies. If any vacancy exists among the positions available for Directors, whether by the death, resignation or removal of any Director, or by an increase in the number of positions, or because any position has remained unfilled, then the position may be filled by the Member. The Member shall deliver written notice of the appointment to the Corporation. A Director appointed to fill a vacancy shall serve until the next annual meeting of the Board of Directors, and until her or his successor is appointed and qualified.

ARTICLE 4

MEETINGS OF THE BOARD OF DIRECTORS

- 4.1 Annual Meeting. The annual meeting of the Board of Directors shall be held on such date and at such time as shall be determined by the Board of Directors.
- 4.2 Regular Meetings. Regular meetings of the Board of Directors shall be held on such dates and at such times as shall be determined by the Board of Directors.
- 4.3 Special Meetings. A special meeting of the Board of Directors may be called at any time by the Chairman or the Chief Executive Officer of the Corporation, and shall be called by the Secretary upon the demand of a majority of the Directors, with the date and time for any such special meeting to be specified in the notice of meeting.
- 4.4 Place. Each annual, regular and special meeting of the Board of Directors shall be held at such places within or without the State of New York as may be fixed by the Chairman, the Chief Executive Officer or the Board for annual and regular meetings and in the notice of meetings for special meetings.
- 4.5 Notice. Notice of meetings of the Board of Directors may be given personally or by mail, or by facsimile telecommunication or electronic mail to the address, fax number or email address for each Director as the same appears on the record of Directors or as filed with the Secretary of the Corporation.
- 4.6 Waiver of Notice. Notice of any meeting of the Board of Directors may be waived pursuant to the provisions set forth in the NPCL.
- 4.7 Adjournment. The Directors present at any meeting may vote to adjourn a meeting to another time and place, even if they do not constitute a quorum, but no such meeting shall be reconvened without reasonable notice to those who were not present at the time of the adjournment.
- 4.8 Quorum. A majority of all the Directors then serving, present in person, shall constitute a

quorum of the Board of Directors.

- 4.9 Vote. Each Director shall be entitled to one (1) vote on each matter before the Board of Directors.
- 4.10 Action. The affirmative vote of a majority of the Directors, present in person at the time of the vote at a meeting at which a quorum is present, shall be the act of the Board of Directors, except as may be otherwise provided in the Certificate of Incorporation of the Corporation, these By-Laws or the NPCL.
- 4.11 Participation in Meetings of the Board of Directors by Conference Telephone or Video Screen Communication. Any one (1) or more Directors who is not physically present at a meeting of the Board of Directors, or any committee thereof, may participate in such meeting by means of a conference telephone or similar communications equipment or by electronic video screen communication. Participation by such means shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each Director can participate in all matters before the Board of Directors or such committee, including, without limitation, the ability to propose, object to, and vote upon a specific action to be taken by the Board of Directors or such committee.
- 4.12 Action of the Board of Directors Without a Meeting. Any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board or such committee, as the case may be, consent in writing or electronically, in either case as provided by the NPCL, to the adoption of a resolution approving such action.

ARTICLE 5

COMMITTEES OF THE BOARD OF DIRECTORS

- 5.1 Committees. The Board of Directors may create committees of the Board of Directors or committees of the Corporation from time to time, by resolution adopted by the affirmative vote of a majority of the entire Board, or as otherwise set forth in these By-Laws.
- 5.2 Composition. Conduct. Each committee of the Board shall consist of three (3) or more Directors. A quorum for the conduct of business of any committee of the Board of Directors shall consist of a majority of the Directors serving as members of that committee. Each committee of the Board of Directors shall keep regular minutes of its proceedings and report the same to the Board of Directors.
- 5.3 Authority. Each committee of the Board of Directors shall have such authority as is specified in these By-Laws or as may be delegated by resolution of the Board of Directors, except that no committee of the Board of Directors shall have authority as to the following matters:

- (a) the submission to the Member of any action requiring the Member's approval under the Certificate of Incorporation of the Corporation, these By-Laws or the NPCL;
 - (b) the filling of vacancies in the Board of Directors or in any committee of the Board of Directors;
 - (c) the fixing of compensation of any individual for serving as a Director or on any committee of the Board of Directors;
 - (d) the amendment, repeal or replacement of these By-Laws, or the adoption of new by-laws of the Corporation; or
 - (e) the amendment or repeal of any resolution of the Board of Directors which by its terms shall not be so amendable or repealable.
- 5.4 Audit and Corporate Compliance. Audit and compliance oversight for the Corporation and of any corporation of which the Corporation is the member shall be exercised by the audit and corporate compliance sub-committee of the System Strategy Committee of the Member (the "Audit and Corporate Compliance Committee").

ARTICLE 6

OFFICERS OF THE CORPORATION

- 6.1 Positions. Qualification. The officers of the Corporation shall include a Chief Executive Officer, a Secretary and a Treasurer, and may include one or more Executive Vice Presidents, Senior Vice Presidents and Vice Presidents and such other officers as the Board of Directors may choose to designate from time to time (each, an "Officer"). Any two (2) or more offices may be held by the same person, except the offices of Chief Executive Officer and Secretary.
- 6.2 Election. Term. Each Officer shall be elected by the affirmative vote of a majority of the Board of Directors then serving at the annual meeting of the Board, and shall serve until the following annual meeting and until her or his successor is elected and qualified.
- 6.3 Duties. The powers and duties of the Officers of the Corporation shall be such as may be prescribed by or pursuant to these Bylaws or from time to time by the Board of Directors and, to the extent not so prescribed, as usually appertain to their respective offices, subject to the control of the Board of Directors.
- 6.3.1 The Chief Executive Officer shall preside at meetings of the Board of Directors and shall supervise the activities of the Board and its committees. The Chief Executive Officer shall be the highest administrative officer of the Corporation and shall preside at all meetings of the Board of Directors in the

- absence of the Chairman, shall generally supervise the business of the Corporation, and shall execute documents as necessary to evidence actions of the Corporation.
- 6.3.2 Executive, Senior and other Vice-Presidents shall have such powers and duties as the Board of Directors may prescribe or as the Chief Executive Officer may delegate.
- 6.3.3. The Secretary shall assure that minutes are prepared for all meetings of the Board of Directors and retained as part of the corporate records of the Corporation, shall assure that appropriate notice is given for all meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer or as otherwise required by law. The Secretary is authorized to delegate any of these functions to one or more assistant secretaries.
- 6.3.4. The Treasurer shall assure that accurate accounts of the assets, receipts and disbursements of the Corporation are maintained, shall produce financial reports as described in these By-laws and as requested by the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the Chief Executive Officer. The Treasurer is authorized to delegate any of these functions to one or more assistant treasurers.
- 6.4 Resignation. Any Officer may resign at any time, such resignation to be made in writing and to take effect from the time of its receipt by the Corporation, unless some later time may be fixed in the resignation, and then effective as of that date. The resignation of any Officer shall be effective regardless of any acceptance or rejection by the Corporation.
- 6.5 Removal. Any Officer may be removed by the Board of Directors at any time, with or without cause, but such removal shall be without prejudice to the individual's contractual rights, if any, in regard to the Corporation.
- 6.6 Vacancies. Interim Appointments. If any vacancy exists among the offices of the Corporation, whether by the death, resignation or removal of any Officer, or if the Board of Directors deems it necessary to appoint a new Vice President or create a new Officer position at any time between annual meetings of the Board of Directors, then the position may be filled by the affirmative vote of a majority of the Directors then serving. An Officer so appointed shall serve until the next annual meeting of the Board of Directors, and until her or his successor is elected and qualified.

ARTICLE 7

POLICIES

- 7.1 Conflict of Interest. The Board of Directors shall adopt a Conflict of Interest Policy of the Corporation, approved by the Audit and Corporate Compliance Committee, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Conflict of Interest Policy of the Corporation shall include: (a) a definition of circumstances that constitute a conflict of interest; (b) procedures for

disclosing a conflict of interest; (c) procedures for disclosing, addressing and documenting "related party transactions" (as defined in the NPCL); and (d) such other matters as are required to be included or addressed in such Conflict of Interest Policy pursuant to Section 715-a(b) of the NPCL to the extent applicable to the Corporation.

- 7.2 Whistleblower Protection. The Board of Directors shall adopt a Whistleblower Policy of the Corporation approved by the Audit and Corporate Compliance Committee, and shall review that policy from time-to-time to assure that it provides appropriate guidance and protections. The Whistleblower Policy of the Corporation shall include: (a) procedures for the reporting of violations or suspected violations of laws or corporate policies, including procedures for preserving the confidentiality of reported information; (b) a requirement that a copy of the Whistleblower Policy be distributed to all directors, officers and employees of, and volunteers who contribute substantial services to, the Corporation; and (c) such other matters as are required to be included or addressed in such Whistleblower Policy pursuant to Section 715-b(b) of the NPCL to the extent applicable to the Corporation.
- 7.3 Additional Policies. The Board of Directors shall adopt additional policies, as it sees fit and from time to time, in order to facilitate the efficient administration of the Corporation's affairs, and in order to protect and promote the quality and integrity of the Corporation's pursuits.

ARTICLE 8

RECORDS AND REPORTS

- 8.1 Annual Financial Report. At the annual meeting of the Member, the Board of Directors shall present a report showing in appropriate detail each of the following in regard to the most recently completed fiscal year of the Corporation:
- (a) the assets and liabilities, including trust funds, of the Corporation;
 - (b) the principal changes in assets and liabilities of the Corporation, including trust funds;
 - (c) the revenues and receipts of the Corporation, both restricted and unrestricted as to particular purposes;
 - (d) the expenses and disbursements of the Corporation, for both general and restricted purposes; and
 - (e) accounts of all restricted assets and the use made of such assets and of the income thereof.

The report shall be verified by the Chief Executive Officer and the Treasurer or by a majority of the Directors then serving, or certified by an independent public or certified public accountant or a firm of such accountants selected by the Board of Directors, and

shall be attached to the minutes of the annual meeting.

8.2 Corporate Records. The Corporation shall maintain corporate records including, at a minimum, each of the following:

- (a) the Corporation's Certificate of Incorporation, with all amendments thereto;
- (b) the Corporation's By-Laws, with all amendments thereto;
- (c) minutes of each meeting of the Board of Directors and of each committee of the Board of Directors;
- (d) all resolutions adopted by the Board of Directors or of any committee of the Board of Directors without a meeting, together with all written consents thereto;
- (e) all written notices delivered by the Member; and
- (f) copies of all corporate tax returns, registrations and other filings with federal, state and local authorities.

ARTICLE 9

LIABILITY AND INDEMNIFICATION

9.1 Liability. No Director or Officer of the Corporation shall have any personal liability to the Corporation or its member for damage resulting from any breach of such Director's or Officer's duties as a Director or Officer of the Corporation; provided, however, that this Section 9.1 shall not eliminate or limit the liability of any Director or Officer: (a) if a judgment or other final adjudication adverse to such Director or Officer establishes that his or her acts or omissions: (i) were in bad faith or involved intentional misconduct or a knowing violation of law or that such Director or Officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled; or (ii) created personal liability pursuant to Section 719 of the NPCL, unless the NPCL is amended or supplemented to so limit or eliminate such liability; or (b) to the extent that such personal liability is otherwise required by, or cannot otherwise be eliminated in accordance with, the NPCL or other applicable law.

9.2 Indemnification.

9.2.1 Generally. The Corporation shall, to the fullest extent permitted by the NPCL, indemnify any individual made or threatened to be made a party in any civil or criminal action or proceeding by reason of the fact that such individual, or his or her testator or intestate, is or was a Director or Officer of the Corporation, or, at the request of the Corporation, is or was serving as a director or officer of any other organization, entity or other enterprise, to the full extent and in all such

circumstances as shall be permitted under the NPCL, and upon proper authorization all such indemnified costs and expenses incurred shall be advanced by the Corporation pending the final disposition of such action or proceeding.

9.2.2 Exception for Bad Faith and Misconduct. Such required indemnification shall be subject to the exception that no indemnification may be made to or on behalf of any Director or Officer in the event and to the extent that a judgment or other final adjudication adverse to the Director or Officer establishes that such individual's acts were committed in bad faith or involved intentional misconduct or a knowing violation of law, or that such Director or Officer personally gained in fact a financial profit or other advantage to which he or she was not legally entitled (provided, however, that indemnification shall be made upon any successful appeal of any adverse judgment of final adjudication).

9.2.3 Other Limitations and Prohibitions on Indemnification. No indemnification shall be made under this Section 9.2 if such indemnification would be inconsistent with the provisions of the Corporation's Certificate of Incorporation or a resolution of the Corporation's Board of Directors or other proper corporate action, as any of the foregoing may be in effect at the time of the accrual of the alleged cause of action asserted in the threatened or pending action or proceeding, which prohibits or otherwise limits such indemnification.

9.3 Other Rights. The foregoing right of indemnification shall not be deemed exclusive of any other right to which any Director or Officer may be entitled.

ARTICLE 10

MISCELLANEOUS

10.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January, and end on the last day of December.

10.2 Headings. Headings are provided in these By-Laws for reference only, and shall not control any interpretation of the content of any provision hereof.

10.3 Delivery of Notice. Whenever any notice is required under these By-laws, such notice shall be given in writing, and may be delivered by any of the following means:

- (a) by regular or certified mail, in which case such notice shall be sent to the addressee's last known street address, and shall be deemed effective three (3) days after mailing;
- (b) by courier service, in which case such notice shall be sent to a location where the addressee is reasonably expected to be able to accept delivery, and shall be deemed effective upon first attempted delivery;
- (c) by fax machine, in which case such notice shall be sent to the addressee's last known fax number, and shall be deemed effective upon transmission;

- (d) by email, in which case such notice shall be sent to the addressee's last known email address, and shall be deemed effective upon transmission; or
- (e) in person, in which case such notice shall be effective upon delivery.

10.4 Fictitious Names. The Corporation shall not conduct any activities in New York State under any name other than the name appearing in its Certificate of Incorporation, or another name duly registered as a fictitious, assumed or alternative name pursuant to applicable law.

Secretary

Initially adopted: September 29, 2014

Amended: Effective July 1, 2015

Amended: Effective December 6, 2016

Amended: November 2, 2017 and to be effective upon the consummation of the merger of New York-Presbyterian Lawrence Hospital with and into The New York and Presbyterian Hospital

Attachment 11

CERTIFICATE OF THE CORPORATE SECRETARY OF THE CORPORATION

Mary Braunsdorf, a member of the Bar of the State of New York, certifies that the following is true:

I am the duly elected, qualified, and acting Corporate Secretary of NYP Community Programs, Inc. ("NYPCP"), a New York Not-for-Profit Corporation and the sole member, active parent, and co-operator licensed under Article 28 of the New York Public Health Law of NewYork-Presbyterian Brooklyn Methodist Hospital ("NYP/BMH"). At a properly noticed and duly constituted meeting of the Board of Directors (the "Board") of NYPCP held on December 16, 2021, at which meeting a quorum was present and acting throughout, and upon motion duly made, seconded, and carried, the Board unanimously approved the following resolution:

RESOLVED that the Board of Directors of NYP Community Programs, Inc., a New York Not-For-Profit Corporation and the sole member, active parent, and co-operator licensed under Article 28 of the New York Public Health Law of NewYork-Presbyterian Brooklyn Methodist Hospital (NYP/BMH) hereby:

Approves an amendment to the Amended Certificate of Incorporation and Amendment and Restatement of the Bylaws of NYP Community Program, Inc. to delete entirely all references to NewYork-Presbyterian/Brooklyn Methodist d/b/a NewYork-Presbyterian Brooklyn Methodist Hospital as a corporation of which NYP Community Programs, Inc. is the Member under the New York Not-for-Profit Corporation Law, effective upon the filing with the New York Secretary of State of the Certificate of Merger of New York-Presbyterian Brooklyn Methodist Hospital into The New York and Presbyterian Hospital; and

Authorizes and Directs the officers of NYP Community Programs, Inc. to take all such actions that they deem necessary, appropriate and/or advisable in order to carry out the intent of these resolutions, the authority and necessity for the taking of such actions and the execution and delivery of such documents, certificates, and instruments to be conclusively evidenced thereby.

This resolution has not been revoked, amended, or modified in any respect and remains in full force and effect.

IN WITNESS WHEREOF, I have executed this Certificate on behalf of NYP Community Programs, Inc. as of the 18th day of January, 2022.


Mary Braunsdorf

Attachment 12

CERTIFICATE OF THE CORPORATE SECRETARY OF THE CORPORATION

John V. Campano., a member of the Bar of the State of New York, certifies that the following is true:

I am the duly elected, qualified, and acting Corporate Secretary of The New York and Presbyterian Hospital (d/b/a/ NewYork-Presbyterian Hospital), a New York Not-for-Profit Corporation duly organized and existing under the laws of the State of New York (the "Corporation") and the sole member of NYP Community Programs, Inc. At a properly noticed and duly constituted meeting of the Board of Directors of the Corporation (the "Board") held on December 16, 2021, at which meeting a quorum was present and acting throughout, and upon motion duly made, seconded, and carried, the Board acting in its capacity as sole Member of NYPCP unanimously approved the following resolution:

RESOLVED that the Member (The New York and Presbyterian Hospital by its Board of Trustees) of NYP Community Programs, Inc. hereby:

Approves an amendment to the Amended Certificate of Incorporation and Amendment and Restatement of the Bylaws of the NYP Community Program, Inc. to delete entirely all references to NewYork-Presbyterian/Brooklyn Methodist d/b/a NewYork-Presbyterian Brooklyn Methodist Hospital as a corporation of which NYP Community Programs, Inc. is the Member under the New York Not-for-Profit Corporation Law, effective upon the filing with the New York Secretary of State of the Certificate of Merger of New York-Presbyterian Brooklyn Methodist Hospital into The New York and Presbyterian Hospital.

This resolution has not been revoked, amended, or modified in any respect and remains in full force and effect.

IN WITNESS WHEREOF, I have executed this Certificate on behalf of NewYork-Presbyterian Hospital as of the 18th day of January, 2022.


John V. Campano

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 5th day of April 2022 approves the filing of the Certificate of Amendment of Certificate of Incorporation of NYP Community Programs, Inc., dated January 13, 2022.



MEMORANDUM

To: Lisa Thomson
Division of Health Facility Planning

Colleen Leonard, Executive Secretary
Public Health and Health Planning Council

From: Vincent DiCocco, Senior Attorney
Bureau of Health Facility Planning and Development
Division of Legal Affairs

Date: March 2, 2022

Subject: The Northeast Health Foundation, Inc.
Proposed Certificate of Amendment to Certificate of Incorporation to change
name to Samaritan and the Eddy foundation Inc.

This is to request that the above matter be included on the agendas for the next Establishment and Project Review Committee and Public Health and Health Planning Council (PHHPC) meetings.

The attachments relating to this matter include the following:

1. A memorandum from Kathy Marks, General Counsel, to the Public Health and Health Planning Council.
2. An October 25, 2021 letter from the attorney for the corporation explaining the intent and meaning of the proposed name change.
3. The draft Verified Petition of the proposed name change.
4. Corporate Merger documentation to help substantiate the need for the name change.
5. The Restated Certificate of Incorporation of the name change.

cc: B. DeCogliano, M. Ngwashi



MEMORANDUM

To: Public Health and Health Planning Council (PHHPC)

From: Kathy Marks *KSM*
General Counsel
Division of Legal Affairs

Date: March 2, 2022

Subject: The Northeast Health Foundation, Inc.
Name Change Pursuant to N-PCL §804(a)(i) and 10 NYCRR § 600.11(a)(1)
resulting in Samaritan Hospital and the Eddy Foundation, Inc.

The Northeast Health Foundation Inc. (NE Foundation) requests Public Health and Health Planning Council ("PHHPC") approval to change its name to the SAMARITAN HOSPITAL AND THE EDDY FOUNDATION, INC.

Attached is the proposed Restated Certificate of Incorporation of The NE Foundation. The NE Foundation served as the funding entity of Northeast Health and its affiliates. Northeast Health was a not-for-profit health care system that included hospitals, nursing homes, home care and other facilities.

On December 31, 2015, Northeast Health merged into St. Peter's Health Partners with St. Peter's Health Partners being the surviving entity. As a result of the merger the NE Foundation is requesting the name change to better reflect its affiliation with St. Peter's Health Partners.

Public Health and Health Planning Council approval is required under Not-for-Profit Corporation Law § 804(a)(i) and 10 NYCRR § 600.11(a)(1) prior to the filing of the Restated Certificate of Incorporation.

Attached is an electronic letter dated October 25, 2021, from Robert N. Swidler which explains the intent and meaning of the proposed name change and the Verified Petition. Also attached are the corporate documents of the merger, the existing Certificate of Incorporation, and the amendments thereto.

These documents have been reviewed. There is no legal objection to the proposed Restated Certificate of Incorporation of the NE Foundation, and it is in legally acceptable form.

Attachments

[Type here]



ST PETER'S HEALTH
PARTNERS

Robert N. Swidler, Esq.
V.P. Legal Services
St. Peter's Health Partners
315 S. Manning Blvd.
Cusack Bldg 5th Floor
Albany NY 12208

October 25, 2021

Colleen Leonard
Executive Secretary
Public Health and Health Planning Committee
Corning Tower, Room 1805,
Albany, NY 12237

Re: The Northeast Health Foundation, Inc.:
Proposed Amendment to Change Name

Dear Ms. Leonard:

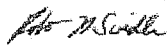
As you know, I am counsel to St. Peter's Health Partners and its affiliated organizations, including THE NORTHEAST HEALTH FOUNDATION, INC. ("the Foundation"). I am writing to seek the department's approval of an amendment to the certificate of the Foundation to change its name to "SAMARITAN AND THE EDDY FOUNDATION, INC." as required by NYS NFP-CL § 804(a)(i) and § 404(o).

As background, prior to 2010 Northeast Health was a not-for-profit health care system that included hospitals, nursing homes, home care and more. Its principal foundation, THE NORTHEAST HEALTH FOUNDATION, INC., supported most of the Northeast Health affiliates. On December 31, 2015 Northeast Health merged into St. Peter's Health Partners. The Foundation continues to be active and effective but, since Northeast Health no longer exists, the name "Northeast Health Foundation" no longer makes sense. Accordingly, the Foundation board recently voted to change its name to "SAMARITAN HOSPITAL AND THE EDDY FOUNDATION, INC." Accordingly, I am seeking the Department's approval for that change.

At the same time, I am also seeking the consent of the Attorney General's Charities Bureau to the proposed amendment. I am attaching the Verified Petition and related documents that I submitted in connection with that application. My understanding is that the Charities Bureau will not act until it receives the DOH approval.

Thank you for for your assistance. Feel free to contact me should you have any questions.

Yours truly,


Digitally signed
by Robert Swidler
Date: 2021.10.25
13:24:01 -04'00'

Robert N. Swidler
VP Legal Services
St. Peter's Health Partners

**Restated Certificate of Incorporation of
THE NORTHEAST HEALTH FOUNDATION, INC.**

Under Section 805 of the NYS Not-for-Profit Corporation Law

The undersigned, being the Secretary of THE NORTHEAST HEALTH FOUNDATION, INC. (the "Corporation"), does hereby certify:

- FIRST:** The name of the Corporation is THE NORTHEAST HEALTH FOUNDATION, INC., and was formed under the name THE SAMARITAN HOSPITAL FOUNDATION, INC.
- SECOND:** The Corporation's Certificate of Incorporation was filed by the Department of State on April 23, 1985 under the NYS Not-for-Profit Corporation Law ("NFPCL")
- THIRD:** The text of the Certificate of Incorporation is amended to effect the following changes, including changes to the name and purposes of the Corporation:
1. Change the name of the Corporation to "SAMARITAN HOSPITAL AND THE EDDY FOUNDATION"
 2. Change the purpose of the corporation as stated in sections 3.1 – 3.3 to delete all references to support for Northeast Health (which merged into St. Peter's Health Partners) and for Memorial Hospital, Albany NY (which merged into Samaritan Hospital); to insert support for St. Peter's Health Partners in those sections; and to retain references for support for Samaritan Hospital of Troy N.Y., LTC (Eddy), Inc., and their related organizations.
 3. Change the agent for service of process.
- FOURTH:** The text of the Certificate of Incorporation is restated as amended to read as set forth in full below:
-

SAMARITAN HOSPITAL AND THE EDDY FOUNDATION, INC.

Under Section 402 of the NYS Not-for-Profit Corporation Law

1. The name of the Corporation is SAMARITAN HOSPITAL AND THE EDDY FOUNDATION (the "Corporation"),
2. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law ("N-PCL") and a charitable corporation under Section 201 of the N-PCL.
3. The objects and purposes of the Corporation shall be exclusively within the meaning of Section 501(c)(3) of the United States Internal Revenue Code of 1986, as the same may be amended from time to time, and without limiting the generality of the foregoing, shall include the following objects and purposes:
 - (1) To foster and facilitate the delivery of health care services to the Community by Samaritan Hospital of Troy, New York, LTC (Eddy), Inc., and such related organizations, corporations, foundations and institutions which qualify as organizations exempt from income taxation under Section 501 (c)(3) of the Internal Revenue Code;
 - (2) To develop financial programs and solicit contribution for and on behalf of Samaritan Hospital of Troy, New York, LTC (Eddy), Inc., and their related organizations;
 - (3) To receive and administer property and funds for and on behalf of Samaritan Hospital of Troy, New York, LTC (Eddy), Inc., and their related organizations, and to that end to take and hold by bequest device, gift, grant, purchase, lease or otherwise, either absolutely or jointly with any other person, persons, or corporation, any property, real, personal, tangible, or intangible, or any divided interest therein, without limitation as to amount or value; to sell, convey, or otherwise dispose of any such property and to invest, reinvest, or deal with the principal or the income thereof in such manner as, in the judgment of the directors, will best promote the purposes of the Corporation without limitation, except such limitations, if any, as may be contained in the instrument under which said property is received, this certificate of incorporation, the bylaws of the corporation or any laws applicable thereto.
 - (4) To grant funds to St. Peter's Health Partners, Samaritan Hospital of Troy, New York, LTC (Eddy), Inc., and their related organizations and such other organizations or not-for-profit corporations which are also organizations described in Section 501(c)(3) and Section 509(a)(1) or Section 509(a)(2) of the Internal Revenue Code, as the Corporation may deem appropriate;
 - (5) To give, convey or assign any of its property outright, or upon lawful terms regarding the use thereof: to other organizations which, in the judgment of the Board of Directors, are engaged in the promotion of the health of the community;
 - (6) To publicly solicit funds in support of the foregoing purposes; and
 - (7) To do any other lawful thing incidental to, connected with or useful, suitable or proper for the furtherance or accomplishment of the foregoing purposes.

Nothing herein contained shall authorize the Corporation to establish, operate, construct, lease or maintain a hospital or to provide service or health-related services to operate a drug maintenance program, a certified home health agency, or a health maintenance organization or to

provide a health services plan as defined in and conveyed by Articles 28, 33, 36, 40 and 44, respectively, of the Public Health Law. Notwithstanding any other provision of these articles, this Corporation is organized exclusively for charitable, educational, religious, or scientific purposes as specified in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986.

The objects and purposes provided herein shall be subject to the approvals or consents of such regulatory authorities as may be required by law. "Related organization" as used in this Article shall mean only organizations duly established pursuant to Article 28 of the Public Health Law, certified or licensed pursuant to Article 36 of the Public Health Law or approved pursuant to other applicable laws of the State of New York. "Other organizations" and not-for-profit corporations as used in this Article shall not include "hospitals" as defined in Article 28 of the Public Health Law other than hospitals duly established pursuant to said Article 28.

4. As means of accomplishing the foregoing purposes, the Corporation shall have all the powers set forth in Section 202 of the Not-for-Profit Corporation Law of the State of New York and, in general, to exercise such powers which now are or hereafter may be conferred by law upon a corporation for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the attainment of the purposes of the Corporation, subject to such limitations as are or may be prescribed by law. The Corporation shall have the power to engage in the public solicitation of funds, and to enter into contracts and hire personnel in connection with its above designated purposes.
5. Notwithstanding any other provisions of these Articles, the Corporation shall not carry on any activities or have or exercise any powers not permitted to be carried on or exercised:
 - (1) By a corporation exempt from federal income taxation under Section 501 (c)(3) of the Internal Revenue Code of 1986, as amended.
 - (2) By a corporation, contributions to which are deductible under Section 170 (c) of the Internal Revenue Code of 1986, as amended.
6. It is the intention of the Corporation to qualify and remain qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Accordingly:
 - (1) No part of the net earnings of the Corporation shall inure to the benefit of any individual; provided that nothing contained in this Certificate shall prevent the payment in good faith of reasonable and proper remuneration to any officer, director or employee of the Corporation, or to any other person, organization, firm, association, corporation or institution in return for services actually rendered to the Corporation, and
 - (2) No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation; nor shall the Corporation participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to, any candidate for public office, and
 - (3) In the event of dissolution of the Corporation, the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, education, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue Law), as the Board of Directors shall determine. Any of such assets not so disposed of shall be

disposed of by the Supreme Court of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.


7. The member of the Corporation is St Peter's Health Partners.
8. The Office of the Corporation shall be located in the City of Troy, County of Rensselaer, and State of New York.
9. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may- be served. The post office address to which the Secretary shall mail a copy of any process against the Corporations served upon him is: 2224 Burdett Avenue, Troy, New York 12180.
10. The Corporation hereby expressly reserves and delegates certain powers to St. Peter's Health Partners. St. Peter's Health Partners may initiate and implement any proposal with respect to any of the following, or if any proposal with respect to any of the following is otherwise initiated, it shall not become effective unless the requisite approvals and other actions shall have been taken by St. Peter's Health Partners, as required pursuant to the Corporation's Governance Documents:
 - (a) Approve the amendment or restatement of the Certificate of Incorporation and Bylaws of the Corporation, in whole or in part;
 - (b) Elect and remove members of the Corporation's Board of Directors;
 - (c) Elect and remove the Executive Director of the Corporation;
 - (d) Approve the strategic plan of the Corporation;
 - (e) Approve Significant Finance Matters;
 - (f) Approve the annual operating and capital budgets of the Corporation;
 - (g) Conduct financial planning and monitor and assure long-term financial performance of the Corporation;
 - (h) Approve any merger, consolidation, transfer or relinquishment of membership rights, or the sale of all or substantially all of the operating assets of the Corporation (certain transactions and transfers of real property and immovable goods may also be subject to the approval of Catholic Health Ministries);
 - (i) Approve any dissolution, winding up or abandonment of operations, liquidation, filing of action in bankruptcy, receivership or similar action affecting the Corporation;
 - (j) Approve any formation or dissolution of Affiliates, partnerships, cosponsorships, joint membership arrangements, and other joint ventures involving the Corporation;
 - (k) Approve any pledge or encumbrance of assets whether pursuant to a sale, capital lease, mortgage, disposition, hypothecation, or other transaction in excess of limits established by St. Peter's Health Partners (pledges or encumbrances of certain real property and immovable goods may also be subject to the approval of Catholic Health Ministries);
 - (l) Approve any change to the structure or operations of the Corporation which would affect its status as a nonprofit entity, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code;
 - (m) Approve all other matters and take all other actions reserved to members of nonprofit corporations (or shareholders of for-profit corporations, as the case may be) by the laws

of the state in which the Corporation is domiciled or as reserved in the Governance Documents of the Corporation;

- (n) Approve settlements of litigation when such settlements exceed an amount to be fixed from time to time by St. Peter's Health Partners; and
- (o) Approve, interpret and change the statement of mission and philosophy adopted by the Corporation and require the Corporation to operate in conformance with its statement of mission and philosophy.

FIFTH: This Restated Certificate of incorporation was authorized by the member in accordance with Section 802(a) of the Not-for-Profit Corporation Law.

IN WITNESS WHEREOF, the undersigned executed this Restated Certificate of Incorporation on this 24th day of September 2021



Joseph CELESTE, SECRETARY

**Restated Certificate of Incorporation of
THE NORTHEAST HEALTH FOUNDATION, INC.**

Under Section 805 of the NYS Not-for-Profit Corporation Law

Filed by:
Robert N. Swidler
VP Legal Services
St. Peter's Health Partners
315 South Manning Boulevard
Albany NY 12208
518-525-6099

ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

THE NORTHEAST HEALTH FOUNDATION, INC.

VERIFIED PETITION

OAG No. _____

For Approval to Amend its Certificate of Incorporation
to Change Its Name


TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
Charities Bureau
The Capitol
Albany, New York 12224-0341

Petitioner, The Northeast Health Foundation, Inc., ("The Foundation") through Peter Semenza, its Executive Director, alleges:

1. The name of the corporation is THE NORTHEAST HEALTH FOUNDATION, INC. INC., and was formed under the name THE SAMARITAN HOSPITAL FOUNDATION, INC.
2. The Foundation's Certificate of Incorporation was filed by the Department of State on April 23, 1985 under the NYS Not-for-Profit Corporation Law ("NFPCL").
3. The current Certificate of Incorporation of The Foundation is attached as Exhibit A.
4. The Foundation's NYS Charities Registration Number is 06-18-28.
5. On June 22, 2021, the board of the The Foundation approved an amendment to the Certificate of Incorporation to change the name of The Foundation to "SAMARITAN HOSPITAL AND THE EDDY FOUNDATION." A certification of the approval is attached as Exhibit B.
6. On July 30, the board of St. Peter's Health Partners, the sole member of The Foundation, approved the aforesaid amendment. The approval resolution is attached as Exhibit C.
7. The proposed Restated Certificate of Incorporation is attached as Exhibit D.

WHEREFORE, Petitioners request that the Attorney General, pursuant to Section 804 of the Not-for-Profit Corporation Law, approve the Restated Certificate of Incorporation and authorize its filing with the Secretary of State.

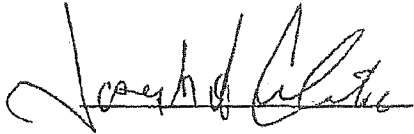
IN WITNESS WHEREFORE, The Foundation has caused this Petition, by its Executive Director, to be executed this 24th day of September 2021.

By: 

Peter Semenza, Executive Director

Certification

I Joseph CELESTE hereby certify that I am secretary of THE NORTHEAST HEALTH FOUNDATION, INC.; that on June 22, 2021, the Board of the Foundation, at a regular meeting, with a quorum present, unanimously approved an amendment to change the name of the Foundation to "SAMARITAN HOSPITAL AND THE EDDY FOUNDATION, INC." and authorized the filing of the attached restated certificate of incorporation.

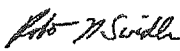


9-24-21
Date

Certification

I Robert N. Swidler hereby certify that I am secretary of the board of St. Peter's Health Partners,
the sole member of THE NORTHEAST HEALTH FOUNDATION, INC.;

That on October 22, 2021, the Executive Committee of the Board of St. Peter's Health Partners,
at a regular meeting, with a quorum present, acting with full authority of the Board, unanimously
approved the action of the board of THE NORTHEAST HEALTH FOUNDATION, INC. to
change the name of the Foundation to "SAMARITAN AND THE EDDY FOUNDATION,
INC."


Digitally signed
by Robert Swidler
Date: 2021.10.22
15:44:32 -04'00'

October 22, 2021

Date

Robert N. Swidler



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

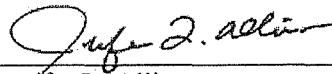
DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU

TO: Robert N. Swidler, Esq.
V.P. Legal Services
St. Peter's Health Partners
315 South Manning Blvd.
Cusack Building, 5th Floor
Albany, NY 12208

RE: The Northeast Health Foundation, Inc.

The Attorney General hereby approves pursuant to N-PCL § 805 the proposed Restated Certificate of Incorporation of The Northeast Health Foundation, Inc. Said approval is conditioned on submission to the Department of State for filing within 60 days hereafter. A copy of the filed certificate shall be provided to the Attorney General.

November 2, 2021



Jennifer L. Allinson
Assistant Attorney General

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
November 15, 2018.

A handwritten signature in black ink, appearing to read "Whitney Clark".

Whitney Clark
Deputy Secretary of State for Business and
Licensing Services

181002000392


**CERTIFICATE OF MERGER
OF
SETON HEALTH FOUNDATION, INC.
INTO
THE NORTHEAST HEALTH FOUNDATION, INC.**

Under Section 904 of the NYS Not-for-Profit Corporation Law

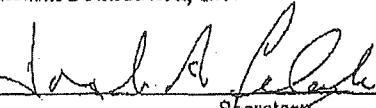
- FIRST:** The names of the constituent corporations to be merged are (each a "Constituent Corporation"):
- (a) The Northeast Health Foundation, Inc. ("NEH Foundation"), which was formed under the name The Samaritan Hospital Foundation, Inc.; and
 - (b) Seton Health Foundation, Inc. ("Seton Foundation"), which was formed under the name St. Mary's Hospital of Troy Foundation, Inc. (collectively, "Constituent Corporations").
- SECOND:** The certificates of incorporation of each Constituent Corporation were filed by the New York Department of State on the following dates under the New York State Not-for-Profit Corporation Law ("NPC-L"):
- (a) NEH Foundation on April 23, 1985; and
 - (b) Seton Foundation on January 6, 1981.
- THIRD:** St. Peter's Health Partners is the sole member of NEH Foundation and Seton Health System, Inc., is the sole member of Seton Foundation.
- FOURTH:** NEH Foundation shall be the surviving corporation of the merger (the "Surviving Corporation").
- FIFTH:** The Certificate of Incorporation of NEH Foundation shall be amended as follows:
- (a) Any references to "Northeast Health, Inc." in Article 3, Sections (1), (2), (3) and (4) are deleted because this entity no longer exists.
- SIXTH:** The effective date of the merger shall be January 1, 2019.
- SEVENTH:** The merger was authorized by affirmative vote of the Board of Directors and the sole members of each Constituent Corporation.

IN WITNESS WHEREOF, the Constituent Corporations, by their duly authorized officers, have executed this Certificate of Merger on this 27 day of July, 2018.

The Northeast Health Foundation, Inc.

By: 
Secretary

Seton Health Foundation, Inc.

By: 
Secretary



**Department
of Health**

ANDREW M. CUOMO
Governor

**HOWARD A. ZUCKER, M.D.,
J.D.**
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

August 21, 2018

Karen E. Sosler, Esq.
Partner
Rivkin Radler
9 Thurlow Terrace
Albany, New York 12203-1005

Re: Plan of Merger and Certificate of Merger for the proposed merger of Seton Health Foundation into The Northeast Health Foundation, Inc.

Ms. Sosler:

The above referenced proposed merger, stated to be effective on January 1, 2019, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law, since the Certificate of Merger does not add, change or delete a purpose from the Certificate of Incorporation of The Northeast Health Foundation, Inc., the surviving corporation, that requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

There is no legal objection to the certificate being filed with the New York State Department of State.

Sincerely,

Mark Furnish
Director
Bureau of Health Facility Planning and
Development
Division of Legal Affairs

cc: Colleen Leonard

ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

Seton Health Foundation, Inc. and
The Northeast Health Foundation, Inc.

ATTORNEY GENERAL
APPROVAL
OAG No. OAG-_____

For Approval of their Plan of Merger Under Section 907-b
of the Not-for-Profit Corporation Law and Authorizing the
Filing of a Certificate of Merger under Section 904 of the
Not-for-Profit Corporation Law

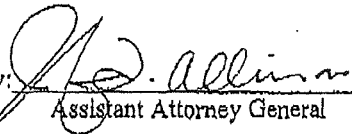
1. By Petition verified on September 5, 2018, Seton Health Foundation, Inc. ("Seton Foundation") and The Northeast Health Foundation, Inc. ("NEH Foundation"), with NEH Foundation being the surviving corporation, applied to the Attorney General pursuant to Article 9 of the Not-for-Profit Corporation Law for approval of an application of merger (the "Merger").
2. The name of the surviving corporation is The Northeast Health Foundation, Inc. (the "Surviving Corporation").
3. The purpose of the merger is to merge NEH Foundation and Seton Foundation, with NEH Foundation being the Surviving Corporation of the merger. Seton Foundation was formed with the purpose of financially supporting Seton Health System, Inc., which is licensed as an Article 28 hospital and is doing business as St. Mary's Hospital ("Seton"). Effective January 1, 2019, Seton will be merged into Samaritan Hospital of Troy, New York, with Samaritan Hospital being the surviving entity, to create administrative efficiencies and reduce costs. NEH Foundation financially supports Samaritan Hospital. Therefore, the Boards of Directors of Seton and NEH Foundations have determined that it is in the best interest of each to merge the two Foundations in a manner that is consistent with the merger of the two hospitals.
4. The Merger is authorized by the Laws of the State of New York, the jurisdiction in which each Constituent Corporation was formed.
5. The effective date of the Merger shall be January 1, 2019.
6. Neither the Petitioners nor any third party have raised with the Attorney General any objections to the Merger.
7. The interests of the Constituent Corporations and the public interest will not be adversely affected by the Merger.

7. The interests of the Constituent Corporations and the public interest will not be adversely affected by the Merger.

Based on a review of the Petition and the Exhibits attached thereto (and any additional documents and information requested by the Attorney General), and the verifications of Karl Cote, Executive Director of both Constituent Corporations, the Attorney General has determined that (a) the Petitioners have complied with the provisions of Article 9 of the Not-for-Profit Corporation Law applicable to the Merger of the Constituent Corporations; (b) neither the Petitioners nor any third party having raised with the Attorney General any objections to the proposed Merger, and it appearing to the satisfaction of the Attorney General that the interest of the Constituent Corporations and the public interest will not be adversely affected by the Merger, the Plan of Merger is approved and the Certificate of Merger is authorized to be filed with the Department of State.

A copy of the Certificate of Merger, as filed with the Department of State, shall be sent to the Attorney General's office within ten (10) days of its filing.

Barbara Underwood
Attorney General of the State of New York

By: 
Assistant Attorney General

Date: 9/25/18

392

CERTIFICATE OF MERGER
OF
SETON HEALTH FOUNDATION, INC.
INTO
THE NORTHEAST HEALTH FOUNDATION, INC.

Under Section 904 of the NYS Not-for-Profit Corporation Law

Filed by: Karen E. Sosler, Esq.
Rivkin Radler, LLP
9 Thurlow Terrace
Albany, New York 12203
(518) 462-3000

Drawdown Account: J8

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED OCT 02 2018

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[Signature]
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STATE OF NEW YORK

DEPARTMENT OF STATE

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

WITNESS my hand and official seal of the
Department of State, at the City of Albany,
on January 4, 2016.



Anthony Giardina

Anthony Giardina
Executive Deputy Secretary of State

151231000324

CERTIFICATE OF MERGER
OF
ST. PETER'S HEALTH CARE SERVICES
AND
NORTHEAST HEALTH, INC.
AND
ST. PETER'S HEALTH PARTNERS
INTO
ST. PETER'S HEALTH PARTNERS

Under Section 904 of the NYS Not-for-Profit Corporation Law

FIRST: The names of the constituent corporations to be merged are (each a "Constituent Corporation"):

- (a) St. Peter's Health Care Services ("SPHCS"), a New York not-for-profit corporation that was formed under the name MercyCare Corporation;
- (b) Northeast Health, Inc. ("NEH"), a New York not-for-profit corporation that was formed under the name SH, Inc.; and
- (c) St. Peter's Health Partners ("SPHP"), a New York not-for-profit corporation.

SECOND: The certificates of incorporation of each Constituent Corporation were filed with the New York Department of State on the following dates: SPHCS, on May 13, 1985; NEH on January 7, 1983; and SPHP on August 15, 2011.

THIRD: SPHP is the sole member of both SPHCS and NEH. SPHP's sole member is Trinity Health Corporation, an Indiana nonprofit corporation. None of these entities have any holders of any certificates evidencing capital contributions or subventions.

FOURTH: SPHP will be the surviving corporation of the merger (the "Surviving Corporation").

FIFTH: The certificate of incorporation of SPHP, as the Surviving Corporation, is amended as follows:

- (a) Article THIRD, subparagraph (a), regarding the Surviving Corporation's purposes, is amended in its entirety and shall read:

"(a) The Corporation's purposes shall be to foster acts of caring for the health care needs of the community by being organized and operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code (the "Code"), and for the benefit of, and to support the charitable functions, purposes, mission and identity of, the following New York not-

(01065669)

151231000324

for-profit corporations (each for so long as it is exempt from federal income taxation under Section 501(c)(3) of the Code and is a public charity under Section 509(a)(1) or 509(a)(2) of the Code): St. Peter's Hospital of the City of Albany, Memorial Hospital, Albany, N.Y., Samaritan Hospital of Troy, New York, Sunnyview Hospital and Rehabilitation Center, Seton Health System, Inc., and such other charitable, tax exempt organizations that have the Corporation as their member within the meaning of the N-PCL, or are related to the Corporation through a direct chain of subsidiary membership relationships (collectively, the "Supported Affiliates"), with Trinity Health Corporation ("Trinity Health"), an Indiana nonprofit corporation, as the sole member of the Corporation within the meaning of the N-PCL and with the Corporation as a "Regional Health Corporation" of Trinity Health, as defined in Trinity Health's Governance Documents (as herein defined). The Corporation shall carry out such purposes as part of and in concert with the Roman Catholic health care system governed by Trinity Health. The Corporation shall not have a Catholic mission or identity, but shall (i) conduct its operations and affairs in a way that respects the mission and identity of each Supported Affiliate, and (ii) pursue its purposes in conformity with the Ethical and Religious Directives for Catholic Health Care Services as promulgated and amended from time to time by the United States Conference of Catholic Bishops ("ERDs").

In furtherance of the foregoing purposes, the Corporation shall support the charitable purposes, functions and missions of the Supported Affiliates by:

- (i) promoting the coordination, rationalization, and quality of health care services provided by the Supported Affiliates, optimizing the availability of and access to such services, and improving patient transitions across the continuum of such services; and
 - (ii) exercising any reserved powers that are delegated to the Corporation by the Supported Affiliates;"
- (b) Article EIGHTH, first sentence, regarding the Surviving Corporation's establishment of a committee to review compliance with the ERDs, is amended in its entirety and shall read:

"The Corporation shall establish a committee to review its compliance and the compliance of the Supported Affiliates with the ERDs, including any relationships with The Burdett Care Center, Inc."

- (c) Article ELEVENTH, regarding dissolution, reference to "St. Peter's, NEH and Seton" is replaced with "St. Peter's Health Care Services, Northeast Health, Inc., and Seton Health System, Inc."

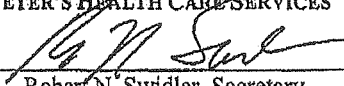
SIXTH: The effective date of the merger shall be December 31, 2015.

SEVENTH: The merger was authorized by affirmative vote of the board of directors and the sole member of each Constituent Corporation.

IN WITNESS WHEREOF, the Constituent Corporations, by their duly authorized officers, have executed this Certificate of Merger on this 30th day of July, 2015.

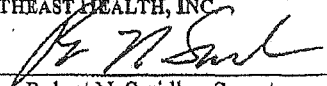
ST. PETER'S HEALTH CARE SERVICES

By:


Robert N. Swidler, Secretary

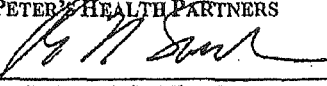
NORTHEAST HEALTH, INC.

By:


Robert N. Swidler, Secretary

ST. PETER'S HEALTH PARTNERS

By:


Robert N. Swidler, Secretary



Department
of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

August 10, 2015

Karen E. Sosler, Esq.
Iseman, Cunningham, Reister & Hyde, LLP
9 Thurlow Terrace
Albany, New York 12203

Re: Proposed Certificate of Merger of St. Peter's Health Care Services and Northeast Health, Inc. and St. Peter's Health Partners into St. Peter's Health Partners

Dear Ms. Sosler:

The above referenced Certificate of Merger dated July 30, 2015 and signed by Robert N. Swidler does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law or the Not-for-Profit Corporation Law. The purposes of the surviving corporation, St. Peter's Health Partners, which is already established under Article 28 of the Public Health Law, will not substantively change as a result of the merger.

The Department of Health does not object to the Certificate being filed with the Department of State.

Sincerely,

Michael M. Stone
Assistant Counsel
Bureau of House Counsel

ATTORNEY GENERAL OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of the Application of

St. Peter's Health Care Services,
Northeast Health, Inc., and
St. Peter's Health Partners,

ATTORNEY GENERAL
APPROVAL
OAG No. 2015-040

For Approval of their Plan of Merger Under Section 907-b
of the Not-for-Profit Corporation Law and Authorizing the
Filing of a Certificate of Merger under Section 904 of the
Not-for-Profit Corporation Law

1. By Petition verified on June 10, 2015, as amended and verified on July 31, 2015, St. Peter's Health Care Services ("SPHCS"), Northeast Health Inc. ("NEH"), and St. Peter's Health Partners ("SPHP"), with SPHP being the surviving corporation, applied to the Attorney General pursuant to Article 9 of the Not-for-Profit Corporation Law for approval of an application of merger (the "Merger").
2. The name of the surviving corporation is St. Peter's Health Partners (the "Surviving Corporation").
3. The purpose of the merger is to merge SPHCS, NEH and SPHP (each, a "Constituent Corporation"), with SPHP being the Surviving Corporation of the Merger. SPHCS and NEH are each the sole member of certain operating entities, including Article 28 hospitals and nursing homes and other health care entities (collectively, "Affiliates"). In 2011, SPHCS, NEH and Seton Health System, Inc., entered into an affiliation that resulted in the creation of SPHP, which is the sole member of each. The Merger subject to the current application will (a) allow SPHP to hold SPHCS's and NEH's membership interests in the Affiliates, and (b) create administrative efficiencies and reduce costs because there will be fewer corporate entities to maintain. The proposed Merger was contemplated for completion on or about December 31, 2015.
4. The Merger is authorized by the laws of the State of New York, the jurisdiction in which each Constituent Corporation was formed and all requisite approvals from the Department of Health for the State of New York were obtained and provided by Petitioner prior to this approval.
5. The effective date of the Merger shall be December 31, 2015, at 11:59p.m.
6. As of the date of execution of this Approval, the Petitioners have not provided any objections from their Affiliates, the Constituents or any Third Party that have been raised to the proposed Merger. Nor have any Affiliates, Constituents or Third Parties provided

Notice of any objections to the proposed Merger to the attention of the Attorney General's Office.

7. As a result of the Merger, the Certificate of Incorporation of the Surviving Corporation, SPHP, shall be amended to replace subparagraph (a) of Article Third with the following language:
 - (a) The Corporation's purposes shall be to foster acts of caring for the health care needs of the community by being organized and operated exclusively for charitable, educational and scientific purposes within the meaning of Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code (the "Code"), and for the benefit of, and to support the charitable functions, purposes, mission and identity of, the following New York not-for-profit corporations (each for so long as it is exempt from federal income taxation under Section 501(c)(3) of the Code and is a public charity under Section 509(a)(1) or 509(a)(2) of the Code): St. Peter's Hospital of the City of Albany, Memorial Hospital, Albany, N.Y., Samaritan Hospital of Troy, New York, Sunnyview Hospital and Rehabilitation Center, Seton Health System, Inc., and such other charitable, tax exempt organizations that have the Corporation as their member within the meaning of the N-PCL, or are related to the Corporation through a direct chain of subsidiary membership relationships (collectively, the "Supported Affiliates"), with Trinity Health Corporation ("Trinity Health"), an Indiana nonprofit corporation, as the sole member of the Corporation within the meaning of the N-PCL and with the Corporation as a "Regional Health Corporation" of Trinity Health, as defined in Trinity Health's Governance Documents (as herein defined). The Corporation shall carry out such purposes as part of and in concert with Roman Catholic health care system governed by Trinity Health. The Corporation shall not have a Catholic mission or identity, but shall (i) conduct its operations and affairs in a way that represents the mission and identity of each Supported Affiliate, and (ii) pursue its purposes in conformity with Ethical and Religious Directives for Catholic Health Care Services as promulgated and amended from time to time by the United States Conference of Catholic Bishops ("ERDs").
8. The Petitioner agrees that there shall be no changes in the board of directors for the Surviving Corporation and that the Constituent Corporations do not own any real estate which would require transfer to the Surviving Corporation.
9. Pursuant to 907-b(d), two Constituent Corporations, SPHCS and SPHP do not have restricted funds. NEH does have restricted funds, however the Merger herein will not affect the continued use for their intended purposes and therefore a petition for *Cy Pres* relief is not necessary at this time. Petitioner asserts that all intended use for said funds will be strictly enforced by the Surviving Corporation.

10. The interests of the Constituent Corporations and the public interest will not be adversely affected by this Merger.
11. The Petitioner has supplied and the Attorney General has relied on the accuracy of said documents having based this approval thereon. All approvals and resolutions were supplied to the Attorney General containing original signatures certified to be that of Robert N. Swidler as Secretary to SPHCS, NEH and SPHP. The Attorney General has not received any notice that his position or authority to sign in said capacity has been terminated.

Based on a review of the Petition, the assertions made therein and the Exhibits attached thereto, the consent of the New York State Department of Health, the consent of Trinity Health (and any additional documents and information requested by the Attorney General), and the verifications of Robert N. Swidler, Secretary of each of the Constituent Corporations, the Attorney General has determined that:

(a) the Petitioners have complied with the provisions of Article 9 of the Not-for-Profit Corporation Law applicable to the Merger of the Constituent Corporations;

(b) neither the Petitioners nor any third party having raised with the Attorney General any objections to the proposed Merger, and it appearing to the satisfaction of the Attorney General that the interest of the Constituent Corporations and the public interest will not be adversely affected by the Merger;

(c) based on the above assertions, the Plan of Merger is hereby APPROVED and the Certificate of Merger is authorized to be filed with the Department of State.

A copy of the Certificate of Merger, as filed with the Department of State, shall be sent to the Attorney General's office within ten (10) days of its filing.

Eric T. Schneiderman
Attorney General of the State of New York

By: 
Assistant Attorney General

Date: December 30, 2015.

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CERTIFICATE OF MERGER
OF
ST. PETER'S HEALTH CARE SERVICES
AND
NORTHEAST HEALTH, INC.
AND
ST. PETER'S HEALTH PARTNERS
INTO
ST. PETER'S HEALTH PARTNERS

Under Section 904 of the NYS Not-for-Profit Corporation Law

Filed by: Karen E. Sosler, Esq.
Iseman, Cunningham, Riester & Hyde, LLP
9 Thurlow Terrace
Albany, New York 12203
(518) 462-3000

Drawdown Account# J8

1cc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED DEC 3 1 2015

TAX \$ _____

BY: lmc

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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 5th day of April 2022, approves the filing of the Restated Certificate of Incorporation of The Northeast Health Foundation, Inc., dated September 24, 2021.



Project # 212176-B
Columbia/NewYork-Presbyterian Advanced Imaging, Inc.

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** December 6, 2021

Executive Summary

Description

Columbia/NewYork-Presbyterian Advanced Imaging, Inc. (CNYPAI, the "Center"), an existing New York not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) and D&TC extension clinic specializing in radiology and imaging services. Both sites are conversions from existing non-Article 28 facilities operated by ColumbiaDoctors, the faculty practice of Vagelos College of Physicians & Surgeons at Columbia University.

The main site will be at 710 West 168th Street, New York (New York County). There are currently three Magnetic Resonance Imaging (MRI) machines at this site, and upon completion of this project, there will be six. The extension clinic will be at 722 West 168th Street, New York (New York County). The site currently has three Positron Emission Tomography – Computed Tomography (PET/CT) Scanners. Upon completion of this project, there will be four.

CNYPAI will have two co-operators/active parents: NYP Programs, Inc. and Columbia Radiology, Inc., existing New York not-for-profit corporations. NYP Programs, Inc.'s sole (passive) corporate member is New York-Presbyterian Foundation, Inc., (NYPF) a New York not-for-profit corporation. Columbia Radiology, Inc.'s sole (passive) corporate member is The Trustees of Columbia University in the City of New York, a New York educational corporation. See BFA Attachment A for the organizational chart.

Marc Brown, M.D., board-certified in Radiology, will serve as Medical Director. The applicant will have a transfer and affiliation agreement with New York-Presbyterian Hospital - Columbia Presbyterian Center which is 0.1 miles and 1 minute from the proposed sites.

OPCHSM Recommendation
Contingent Approval

Need Summary
The new clinic sites will provide MRI, PET/CT scans, and Other Medical Specialties services. The project is intended to reduce wait times for imaging services in the area.

Program Summary
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).

Financial Summary
Total project costs are \$53,289,721 and working capital requirements are \$5,949,153. The combined project cost and working capital total of \$59,238,874 will be funded equally for \$29,619,437 each, through subvention subscription agreements, from New York-Presbyterian Fund, Inc., (NYPF) and The Trustees of Columbia University in the City of New York (Columbia University).

<u>Budget</u>	<u>First Year</u>	<u>Third Year</u>
Revenues	\$44,537,286	\$44,835,978
Expenses	<u>\$36,035,729</u>	<u>\$35,694,920</u>
Gain/(Loss)	\$8,501,557	\$9,141,058

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 subvention subscription agreement between Columbia/NewYork-Presbyterian Advanced Imaging, Inc. and New York-Presbyterian Fund Inc, acceptable to the Department. [BFA]
3. Submission of an executed subvention subscription agreement between Columbia/NewYork-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, Inc., acceptable to the Department. [BFA]
4. Submission of an executed medical equipment sublease and lease agreement between Columbia/NewYork-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, Inc., acceptable to the Department. [BFA]
5. Submission of an executed affiliated license agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The New York and Presbyterian Hospital, acceptable to the Department. [BFA]
6. Submission of an executed affiliated license agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, acceptable to the Department. [BFA]
7. Submission of an executed administrative service agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, acceptable to the Department. [BFA]
8. Submission of an executed administrative service agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The New York and Presbyterian Hospital, acceptable to the Department. [BFA]
9. Submission of a photocopy of an executed Certificate of Amendment of Columbia/New York-Presbyterian Advanced Imaging, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed Restated Bylaws of Columbia/New York-Presbyterian Advanced, Imaging, Inc., acceptable to the Department. [CSL]
11. Submission of photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of NYP Programs, Inc., acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Columbia Radiology, Inc., acceptable to the Department. [CSL]
13. Submission of an executed Administrative Services Agreement with The New York-Presbyterian Hospital, acceptable to the Department. [CSL]
14. Submission of an executed Attestation for Services Agreement for the Administrative Services Agreement with The New York-Presbyterian Hospital, acceptable to the Department. [CSL]
15. Submission of an executed Administrative Services Agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
16. Submission of an executed Attestation for Services Agreement for the Administrative Services Agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
17. Submission of an executed Medical Equipment Sublease and Lease with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
18. Submission of an executed Subvention Agreement with New York-Presbyterian Hospital, acceptable to the Department. [CSL]

19. Submission of an executed Subvention Agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
20. Submission of an executed License Agreement with The New York and Presbyterian Hospital for the main site, acceptable to the Department. [CSL]
21. Submission of an executed License Agreement with the Trustees of Columbia University in the City of New York for the extension site, acceptable to the Department. [CSL]
22. Submission of an executed Medical Director Agreement, acceptable to the Department. [CSL]
23. Submission of an executed Employee Leasing Agreement, acceptable to the Department. [CSL]
24. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
25. 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, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2022**, and construction must be completed by **October 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 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
April 5, 2022

Need and Program Analysis

Program Description

Proposed Operator	Columbia/New York-Presbyterian Advanced Imaging, Inc.
Site Addresses	<p>Main Site: 719 West 168th Street New York, New York 10032 (New York County)</p> <p>Extension Site: 722 West 168th Street New York, New York 10032 (New York County)</p>
Certified Services	<p>Main Site: Magnetic Resonance Imaging Medical Services: Other Medical Specialties</p> <p>Extension Site: CT Scanner Medical Services: Other Medical Specialties</p>
Hours of Operation	Monday Through Friday 7:00 am to 8:00 pm Saturday 9:00 am to 5:00 pm
Staffing (1st Year / 3rd Year)	104.59 FTEs / 104.76 FTEs
Medical Director(s)	Marc Brown, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by New York-Presbyterian Hospital - Columbia Presbyterian Center 0.1 miles / 1 minute away

Analysis

According to the applicant, limited capacity forces patients to wait for imaging services. Expanding capacity and supporting same-day services will improve access and the patient experience. Upon completion of this project, the main site will have six MRIs, and the extension clinic will have four PET/CT Scanners. The applicant anticipates that the outpatient MRI and CT scan volume currently provided at New York-Presbyterian Hospital - Columbia Presbyterian Center will shift to the proposed Centers.

The primary service area is the neighborhoods of Washington Heights/ Inwood in northern New York County. The population of New York County was 1,694,251 in 2020 and is expected to grow to 1,709,958 by 2025. According to Data USA, in 2019 95.5% of the population in New York County has health coverage as follows.

Employer Plans	55.1%
Medicaid	18.1%
Medicare	10.1%
Non-Group Plans	11.9%
Military or VA	0.351%

Prevention Quality Indicators (PQIs) are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease. The table below provides information on the PQI rates for the overall PQI condition. It shows that the PQI rate for the area where the centers are located (zip code 10032) is higher than the New York State rate.

2017 PQI Rates	Zip Code 10032	New York State
All PQIs	1,617	1,431

The applicant projects 48,168 visits in Year One and 48,726 in Year Three with a Medicaid utilization at 17%. The applicant states they are committed to serving all persons in need without

Paul Dunphey is the Senior Vice President and Chief Operating Officer at New York-Presbyterian Allen Hospital & Ambulatory Care Network. In his role, he is responsible for the overall direction, leadership, and operational management of Allen Hospital and Ambulatory Care Network. He is also responsible for the daily operations including cost, quality, delivery of service, fiscal management, and strategic initiatives. He has been employed by New York-Presbyterian for 31 years and has held various positions.

Anand Joshi, MD has been employed at New York-Presbyterian for over 17 years. He is currently the Vice President of Procurement and Strategic Solutions where he manages a team of approximately 400 individuals responsible for NYP's sourcing and contracting, supply chain, and equipment planning functions with increasing responsibility over these functions across the NYP Healthcare System. He also leads performance improvement efforts across the NYP Healthcare System to manage the System's \$2 billion-plus of non-labor expense. Previously, he was the Corporate Director of Strategic Sourcing of PSS Department, Director of Serious Adverse Event Reporting: Quality Division, Clinical Sourcing Director of the PSS Department, Engagement Manager at McKinney & Company. Dr. Joshi discloses an affiliation with the following healthcare facilities:

ColumbiaDoctors/New York-Presbyterian Imaging 2017-present

George Cioffi, MD has been a Chief Ophthalmologist and Chair of the Ophthalmology Department at New York-Presbyterian/Columbia University for over nine years. He was previously employed as the Chair of Ophthalmology at the Devers Eye Institute, the Chief Medical Officer, and the Senior Vice President of the Legacy Health System in Oregon. He received his medical degree from the University of South Carolina, completed his residency in Ophthalmology at the University of Maryland, and completed his fellowship at the Devers Eye Institute. He is board-certified in Ophthalmology. Dr. Cioffi discloses an affiliation with the following healthcare facilities:

ColumbiaDoctors/New York-Presbyterian Imaging 2017-present

Donna Lynne, DrPH is the Senior Vice President and Chief Operating Officer of Columbia University Medical Center where she manages the professional staff responsible for Facilities, Human Resources, Information Technology, External Relations and Communications, Public Safety, and other administrative functions. She manages the faculty practice of nearly 2000 physicians and over 5000 other staff who provide direct clinical care in over 300 offices and works in partnership with New York-Presbyterian Hospital leadership in setting a vision for healthcare that includes expanded reliance on technology and expansion of healthcare services. Previously, she was the Lieutenant Governor and Chief Operating Officer of the State of Colorado where she worked on policy, budget, and legislative matters with the Governor, and was responsible for healthcare reform and implementation. As the COO, she had accountability for government operations, performance, and accountability. She was also the previous Executive Vice President and Group President at Kaiser Permanente for approximately 11 years. She was responsible for leading transition efforts following Kaiser Permanente's acquisition of the \$3 billion Group Health Cooperative plan. Dr. Lynne discloses an affiliation with the following healthcare facilities:

ColumbiaDoctors/New York-Presbyterian Imaging 2017-present

William McKoy is the Senior Vice President and Chief Financial Officer of Columbia University Irving Medical Center where he reports to the Executive Vice President and Dean of the Faculties of Health Sciences and Medicine. He oversees all campus financial functions including compliance, accounting, budgeting, and planning across patient care, research, education, and administrative mission lines. Previously, he was the Vice President of Budget and Planning at Columbia University Irving Medical Center, as well as, the Assistant Vice President of Budget and Planning where he reported to the Chief Financial Officer of the Medical Center, oversaw annual operating and capital budgets, as well as, campus space planning and new business development. He also was the previous Interim Senior Associate Dean of Finance and Planning of Columbia's College of Dental Medicine. William McKoy discloses an affiliation with the following healthcare facilities:

Columbia University Health Care Inc. 2018-present

ColumbiaDoctors/New York-Presbyterian Imaging 2017-present

Anil Rustgi, MD is the Interim Vice President and Dean of the Faculties of Health Sciences and Medicine of Columbia University Medical Center and the Irving Professor of Medicine, Associate Dean of Oncology, and Director of Herbert Irving Comprehensive Cancer Center. Previously, he was the Professor of

Medicine and Chief of Gastroenterology at the University of Pennsylvania School of Medicine for over 21 years. He received his medical degree from Duke University

Anne Sullivan has been the Executive Vice President for Finance and Information Technology for over 14 years at Columbia University. She is responsible for overseeing the University's operating and capital budget, the Controller's office operations, Student Financial Services, the Office of the University Registrar, treasury operations, procurement, Internal Audit, and Information Technology.

Marc Brown, MD is the proposed Medical Director. He has been the Executive Vice Chairman of Clinical Operations at Columbia University Irving Medical Center for over 13 years, and the Medical Director of ColumbiaDoctors Radiology for over 21 years. He is also the Associate Professor of Clinical Radiology at Columbia University College of Physicians and Surgeons, and an Associate Attending at New York-Presbyterian. He received his medical degree from Columbia University College of Physicians and Surgeons and completed his Diagnostic Radiology residency and fellowship in Ultrasound and Breast Imaging at Columbia Presbyterian Medical Center. He is board-certified in Diagnostic Radiology.

Staff from the Department's Division of Hospitals and Diagnostic & Treatment Centers (DHDTC) 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 DHDTC reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

On November 6, 2017, the Department issued a Stipulation and Order and a \$2,000 fine against New York-Presbyterian Queens. This enforcement was based on a validation survey concluded on May 16, 2016, where deficient practice was cited in the area: Patient Rights. Specifically, the facility failed to have trained security staff.

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). The new clinic sites will provide MRI, CT scans, and Other Medical Specialties services which are intended to reduce wait times for imaging services in the area.

Financial Analysis

Total Project Cost and Financing

Total project costs for renovation and moveable equipment are estimated at \$53,289,721, broken down as follows:

Renovation & Demolition	\$17,309,277
Asbestos Abatement or Removal	502,520
Design Contingency	1,730,928
Construction Contingency	1,730,928
Architect/Engineering Fees	2,077,113
Construction Manager Fees	519,279
Other Fees	323,220
Movable Equipment	28,396,958
Telecommunications	406,019
Application Fee	2,000
Additional Fee for Projects	<u>291,479</u>
Total Project Cost with Fees	\$53,289,721

Project Costs broken out by site before fees are:

719 West 168 th Street	\$33,516,931
722 West 168 th Street	\$19,479,311

The applicant's financing plan is as follows:

Subvention subscription agreements: Medical Equipment Lease	\$18,805,237
Subvention subscription agreements	<u>34,484,484</u>
Total	\$53,289,721

Operating Budget

The applicant has submitted an operating budget in 2022 dollars, for years one and three, as summarized below:

<u>Revenues</u>	<u>First Year</u>		<u>Third Year</u>	
	<u>Per Proc</u>	<u>Total</u>	<u>Per Proc</u>	<u>Total</u>
Outpatient	\$924.63	\$44,537,286	\$920.17	\$44,835,978
 <u>Expenses</u>				
Operating	\$608.27	\$29,299,107	\$597.00	\$29,089,537
Capital	<u>139.86</u>	<u>6,736,622</u>	<u>\$135.56</u>	<u>6,605,383</u>
Total Expenses	\$748.13	\$36,035,729	\$732.56	\$35,694,920
Net Income		\$8,501,557	\$9,141,058	
Procedures		48,168	48,736	

The following is noted for the operating budget:

- Utilization projections were based on shifting existing volume at the two existing faculty practices and some MRI and CT outpatient volume from New York-Presbyterian Hospital.
- Staffing at the Center has been developed based on the experience of NYPH and of the existing ColumbiaDoctors faculty practice locations in delivering services at their respective existing sites.
- Revenue projections are based on actual revenues received by ColumbiaDoctors/NewYork-Presbyterian Imaging, an existing radiology D&TC that is also a joint venture of NYPH and Columbia University.

- Expense projections are based on the actual operating expenses for the existing faculty practice sites that will become the main site and extension clinic of the proposed new D&TC but have been increased based on the projected volume increase and anticipated incremental expenses.
- Breakeven in the first year is approximately 38,974 procedures.

Utilization by payor source is as follows:

Payor	Year One		Year Three	
	Procedures	%	Procedures	%
Commercial MC	22,027	45.73%	22,257	45.67%
Medicare FFS	8,940	18.56%	9,033	18.53%
Medicare MC	5,433	11.28%	5,490	11.26%
Medicaid FFS	531	1.10%	546	1.12%
Medicaid MC	7,663	15.91%	7,743	15.89%
All Other	<u>3,574</u>	<u>7.42%</u>	<u>3,667</u>	<u>7.52%</u>
Total	48,169	100%	48,736	100%

The applicant will fund the project costs equally through subvention subscription agreements. Review of BFA Attachment B, NYPF 2019 -2020 certified financial statements, December 31, 2021 internals, and Columbia University certified financial statements for June 30, 2020 and 2021, along with December 31, 2021 internals, shows the availability of sufficient resources to meet the subvention subscription agreements.

Subvention Subscription Agreement #1

The applicant submitted a draft subvention subscription agreement between New York-Presbyterian Fund Inc., and Columbia/New York-Presbyterian Advanced Imaging, Inc., for \$29,619,437 for financing the project cost and working capital.

Subvention Subscription Subscriber:	New York-Presbyterian Fund Inc. (NYPF)
Corporation:	Columbia/New York-Presbyterian Advanced Imaging, Inc (CNYPAI)
Total Subvention Amounts:	\$29,619,437 Broken out as follows: project cost \$26,644,860.50 & working capital \$2,974,576.50
Interest Charged:	0%

The Subscriber is not entitled to fixed or contingent periodic payments. These agreements have no interest associated with them and will only be paid back upon authorization by the Corporation's Board of Directors, at its sole discretion.

Subvention Subscription Agreement #2

The applicant submitted a draft subvention subscription agreement between The Trustees of Columbia University in the City of New York, Inc., and Columbia/New York-Presbyterian Advanced Imaging, Inc., for \$29,619,437 for financing the project cost and working capital.

Subvention Subscription Subscriber:	The Trustees of Columbia University in the City of New York, Inc. (Columbia University)
Corporation:	Columbia/New York-Presbyterian Advanced Imaging, Inc (CNYPAI)
Total Subvention Amounts:	\$29,619,437 Broken out as follows: project cost \$26,644,860.50 & working capital \$2,974,576.50
Interest Charged:	0%

The Subscriber is not entitled to fixed or contingent periodic payments. These agreements have no interest associated with them and will only be paid back upon authorization by the Corporation's Board of Directors, at its sole discretion.

Medical Equipment Sublease and Lease Agreement

The applicant submitted a memorandum of understanding for subleasing and leasing medical equipment from Columbia University.

Owner/Lessor:	The Trustees of Columbia University in the City of New York (Columbia University)
Lessee:	Columbia/New York-Presbyterian Advanced Imaging, Inc. (CNYPAI)
Rental Terms:	Equipment that Columbia University leases CNYPAI – will reimburse Columbia its monthly lease payments. Equipment owned by Columbia University CNYPAI – will pay a usepayment
Provisions:	Reimburse monthly costs of service agreements

Affiliated License Agreement # 1

The applicant submitted a draft affiliated license agreement to rent space at 710 West 168th Street, New York, NY for 10-years at \$908,634 plus 2.5% annual increases between The New York and Presbyterian Hospital and Columbia/New York-Presbyterian Advanced Imaging, Inc.

Premises:	Approximately 17,778 sq. ft. located at 710 West 168 th Street, New York, NY10032 a/k/a Neurological Institute Building
Licensor/Landlord:	The New York and Presbyterian Hospital (NYPH)
Licensee/Lessee:	Columbia/New York-Presbyterian Advanced Imaging, Inc., (CNYPAI)
Term:	10 years following rent commencement date, renewal (2) 5-year terms
Rental:	\$908,634 annually (\$51.11 per sq. ft.) increasing by 2.5% annually
Provisions:	Installing medical equipment, insurance, and maintenance

The lease is non-arm's length. NYPH states the base rent charged CNYPAI is the same base rent that NYPH charges The Trustees of Columbia University in the City of New York (Columbia University) for Columbia University's use and occupancy in the Neurological Institute Building.

Affiliated License Agreement # 2

The applicant submitted a draft affiliated license agreement to rent space at 722 West 168th Street, New York, NY for 10-years at \$398,300 plus 2.5% annual increases between The Trustees of Columbia University in the City of New York and Columbia/New York-Presbyterian Advanced Imaging, Inc.

Premises:	Approximately 7,793 sq. ft. located at 722 West 168 th Street, New York, NY10032 a/k/a Allan Rosenfield Building
Licensor/Landlord:	The Trustees of Columbia University in the City of New York (Columbia University)
Licensee/Lessee:	Columbia/New York-Presbyterian Advanced Imaging, Inc. (CNYPAI)
Term:	10 years following rent commencement date, renewal (2) 5-year terms
Rental:	\$398,300 annually (\$51.115 per sq. ft.) increasing by 2.5% annually
Provisions:	Installing medical equipment, insurance, and maintenance

The lease is non-arm's length. Columbia University states the base rent charged CNYPAI is the same base rent that Columbia University charges The New York and Presbyterian Hospital (NYPH) for NYPH's use and occupancy in the Allan Rosenfield Building.

Administrative Services Agreement

The applicant has submitted a draft administrative service agreement between The Trustees of Columbia University in the City of New York (Columbia University) and CNYPAL for certain areas of CNYPAL's radiology outpatient services at 710 West 168th Street, New York and 722 West 168th Street, New York.

Client:	Columbia/New York-Presbyterian Advanced Imaging (CNYPAL)
Provider:	The Trustees of Columbia University in the City of New York, (Columbia University)
Services:	<p><u>Obligations of Columbia University</u></p> <ul style="list-style-type: none"> • Government Filings. File with government agencies all documents deemed necessary or appropriate for the business operations. • Financial Services. Provide all general financial services including accounting, accounts payable, accounts receivable, payroll, tax, internal auditing, coordination of external auditing, financial statements, and cash flow statements. • Budgets. Assist with annual budgets, review of expenditures, and business planning support. • Treasury Functions. Assist with financial controls and vendor payments. • Managed Care Contracts; Credentialing. Assist with contractual arrangements, oversight, and credentialed in accordance with contracts and payors rules. • Billing and Billing Compliance Services. On behalf and for the benefit of CNYPAL shall bill for or arrange for third-party services. directly or indirectly, be responsible for all accounts receivable collection activities on such billing services and shall provide any necessary billing and coding compliance services to CNYPAL leased professional employees and leased employees. All billings for clinical services shall be submitted in the name, on behalf, and for the benefit of CNYPAL. • Advertising and Marketing Materials. In collaboration with New York-Presbyterian Hospital shall furnish advice and assistance with the development and implementation of marketing materials and programs. • Radiation Safety and Physics, Environmental Health and Safety and OSHA Compliance. Provide radiation safety and radiation physics services and provide OSHA compliance training. • Supplies. Provide or procure medical and other supplies. • Other Administrative Services. Provide other agreed-upon services, including procuring in the name of CNYPAL insurance, human resources administration, faculty affairs administration, purchasing, and general IT support. • Compliance with Applicable Laws. Provide the services at all times in material compliance with generally accepted industry standards and all applicable federal, state, and local laws. Rules, and regulations. <p><u>Obligations of CNYPAL</u></p> <ul style="list-style-type: none"> • Provision of Services. CNYPAL shall cooperate, and shall cause its employees, leased employees, leased professional employees, independent contractors, and agents to cooperate with Columbia in order for Columbia efficiently to perform the Services. • Professional Fees and Third-Party Payors. CNYPAL shall have responsibility for setting professional and technical services fees of Physicians who provide services through, and in the name of, CNYPAL. CNYPAL agrees to participate in any third-party payor plans in which Columbia is currently participating or that Columbia recommends and to cooperate with Columbia in its efforts to obtain Third Party Payor Contracts • Non-Discrimination. CNYPAL shall provide medical services to patients without discrimination. • Compliance with Applicable Laws. CNYPAL shall provide medical services at all

	times in accordance with prevailing standards of care in the community and shall perform all obligations hereunder in material compliance with all applicable federal, state, and local laws, rules, and regulations, and such of Columbia's policies, rules, and regulations that are applicable to the Services and not inconsistent with CNYPAI's own policies, rules, and regulations.
Term	12 months with successive one-year renewal terms.
Fee	\$10,657,137 per year unless mutually changed

The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Administrative Services Agreement

The applicant has submitted a draft administrative service agreement between The New York and Presbyterian Hospital (NYP) and CNYPAI for certain areas of CNYPAI's outpatient radiology services at 710 West 168th Street, New York, and 722 West 168th Street, New York.

Client:	Columbia/New York-Presbyterian Advanced Imaging (CNYPAI)
Provider:	The New York and Presbyterian Hospital (NYPH)
Services:	<p><u>NYPH'S Obligations under the direction of the CNYPAI Board of Directors.</u></p> <ul style="list-style-type: none"> • Use of PACS/RIS. CNYPAI shall be permitted to utilize NYP's picture archiving and communications system (PACS), radiology information system (RIS), and PowerScribe 360 systems, including software applications and interfaces ("Systems"), to provide, display, store, archive, and interpret images and to generate diagnostic reports at the Site. • Biomedical support. • Corporate Secretary support services. • In collaboration with Columbia, NYP shall provide marketing and external communications services, including regulatory planning oversight services, including consultation with respect to program changes, equipment purchases, and other Article 28 related requirements to CNYPAI. • Managed care contracting services. NYP shall assist CNYPAI with contractual arrangements with third-party payors as are reasonably necessary and appropriate for the business operation of CNYPAI. • Information technology system support, including installation (if required), ongoing maintenance, and support for hospital-based information technology systems, including RIS, PACS, and Powerscribe 360. • Reviewing public relations, marketing and advertising materials, and programs on behalf of CNYPAI prior to use or implementation. NYP shall also furnish advice and assistance in connection with the development and implementation of marketing materials and programs. • Other administrative and support services as the parties may agree, including but not limited to, strategy, finance, insurance placement services, external affairs, IT, general administration, and human resources; provided, that NYP shall not be required to furnish such additional services unless it has the capacity and expertise to do so; and provided further that NYP shall not be obligated to furnish such additional services (other than services reasonably incident to the above services) unless the parties agree to an appropriate adjustment to the compensation payable to NYP. <p><u>CNYPAI's Obligations</u></p> <ul style="list-style-type: none"> • Access to Books and Records/Personnel. CNYPAI shall provide NYP with access to the books, records, and personnel, of CNYPAI as needed to perform the duties.
Term	12 months with successive one-year renewal terms.
Fee	\$1,846,013 per year unless mutually changed

The applicant has submitted an executed attestation acknowledging understanding of the statutory and regulatory required reserve powers that cannot be delegated, and that they will not willfully engage in any such illegal delegations of authority.

Capability and Feasibility

Total project costs are \$53,289,721 and working capital is \$5,949,153 for a total of \$59,238,874. This combined amount will be equally funded at \$ 29,619,437 each through subvention subscription agreements from New York-Presbyterian Fund, Inc., (NYPF) and The Trustees of Columbia University in the City of New York (Columbia University). Draft subvention subscription agreements have been provided. Review of BFA Attachment B, NYPF 2019 -2020 certified financial statements, December 31, 2021 internals, and Columbia University certified financial statements for June 30, 2020 and 2021, along with December 31, 2021 internals, shows sufficient resources to meet the subvention subscription agreements.

The submitted incremental budget indicates a net income of \$8,501,557 in the first year and \$9,141,058 net income in the third year. NYPF's December 31, 2021, and Columbia University's December 31, 2021, financial statements show positive assets of \$3.674 billion and \$19.927 billion, respectively, per BFA Attachment B. BFA Attachment C is CNYPAI's pro forma balance sheet that shows assets will equal liabilities. The budget is reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	Columbia/New York-Presbyterian Advanced Imaging, Inc., (CNYPAI) organizational chart
BFA Attachment B	New York-Presbyterian Fund, Inc 2019-2020 certified financial statements, December 31, 2021, internal financial statements, and The Trustees of Columbia University in the City of New York June 30, 2020 – 2021 Certified Financial Statements and December 31, 2021, internal financial statements
BFA Attachment C	Columbia/New York-Presbyterian Advanced Imaging, Inc., Pro Forma Balance Sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April 2022, 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 at 710 West 168th Street, New York and an extension clinic at 722 West 168th Street, New York; both specializing in radiology and imaging services, 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:

212176 B Columbia/NewYork-Presbyterian Advanced Imaging, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health (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 subvention subscription agreement between Columbia/NewYork-Presbyterian Advanced Imaging, Inc. and New York-Presbyterian Fund Inc, acceptable to the Department. [BFA]
3. Submission of an executed subvention subscription agreement between Columbia/NewYork-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, Inc., acceptable to the Department. [BFA]
4. Submission of an executed medical equipment sublease and lease agreement between Columbia/NewYork-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, Inc., acceptable to the Department. [BFA]
5. Submission of an executed affiliated license agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The New York and Presbyterian Hospital, acceptable to the Department. [BFA]
6. Submission of an executed affiliated license agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, acceptable to the Department. [BFA]
7. Submission of an executed administrative service agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The Trustees of Columbia University in the City of New York, acceptable to the Department. [BFA]
8. Submission of an executed administrative service agreement between Columbia/New York-Presbyterian Advanced Imaging, Inc. and The New York and Presbyterian Hospital, acceptable to the Department. [BFA]
9. Submission of a photocopy of an executed Certificate of Amendment of Columbia/New York-Presbyterian Advanced Imaging, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed Restated Bylaws of Columbia/New York-Presbyterian Advanced, Imaging, Inc., acceptable to the Department. [CSL]
11. Submission of photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of NYP Programs, Inc., acceptable to the Department. [CSL]
12. Submission of an executed Certificate of Amendment of the Certificate of Incorporation of Columbia Radiology, Inc., acceptable to the Department. [CSL]
13. Submission of an executed Administrative Services Agreement with The New York-Presbyterian Hospital, acceptable to the Department. [CSL]
14. Submission of an executed Attestation for Services Agreement for the Administrative Services Agreement with The New York-Presbyterian Hospital, acceptable to the Department. [CSL]
15. Submission of an executed Administrative Services Agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
16. Submission of an executed Attestation for Services Agreement for the Administrative Services Agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]

17. Submission of an executed Medical Equipment Sublease and Lease with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
18. Submission of an executed Subvention Agreement with New York-Presbyterian Hospital, acceptable to the Department. [CSL]
19. Submission of an executed Subvention Agreement with The Trustees of Columbia University in the City of New York, acceptable to the Department. [CSL]
20. Submission of an executed License Agreement with The New York and Presbyterian Hospital for the main site, acceptable to the Department. [CSL]
21. Submission of an executed License Agreement with the Trustees of Columbia University in the City of New York for the extension site, acceptable to the Department. [CSL]
22. Submission of an executed Medical Director Agreement, acceptable to the Department. [CSL]
23. Submission of an executed Employee Leasing Agreement, acceptable to the Department. [CSL]
24. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
25. 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, 2024**, including all pre-opening processes, if applicable. Failure to complete the project by this date may constitute an abandonment of the project by the applicant and the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2022**, and construction must be completed by **October 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 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 # 212242-B
NY PACE Care Facility, LLC**

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** December 13, 2021

Executive Summary

Description

NY PACE Care Facility, LLC (NY PACE) is seeking approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) that will solely serve Welbe Health NYC PACE, LLC's Article 44 Program of All-Inclusive Care for the Elderly (PACE). The D&TC will be located on the second floor with the PACE program on the second, third, and fourth floors of 5521 8th Avenue, Brooklyn (Kings County). Welbe Health NYC PACE, LLC will lease space from the building owner, and the D&TC will sublease space from Welbe Health NYC PACE, LLC.

The PACE model of care provides comprehensive medical and social services, including case management, social services, physician, hospital, and nursing home care to adults aged 55 and older who want to remain in their own homes. Most of these individuals are dually eligible for Medicare and Medicaid benefits.

The D&TC, which is one component of the PACE program, will provide primary medical care, outpatient dental and blood draws (phlebotomy) solely for enrollees of the PACE program. To this end, the D&TC will be certified for Medical Services – Primary Care and Dental O/P services. This Certificate of Need (CON) application is only for the Article 28 D&TC. The managed long-term care portion of a PACE program is regulated under Article 44 of the New York Public Health Law; therefore, Welbe Health NYC PACE, LLC has submitted an application to be certified as a PACE provider under Article 44.

The sole member of NY PACE Care Facility, LLC is Clancy (Si) France, M.D. The D&TC will enter into an Administrative Services Agreement with Welbe Health NYC PACE, LLC. Welbe Health NYC PACE, LLC's ownership is comprised of Welbe Health, LLC (80%) and CAIPA, Inc (20%).

Dr. Otashe N. Golden, who is board-certified in family medicine, hospice and palliative care, and wound care, will serve as Medical Director.

The D&TC expects to have a transfer and affiliation agreement for emergency and backup services with Maimonides Medical Center, which is 1 mile and 7 minutes travel time from the proposed center.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

The facility will serve the Welbe Health NYC PACE, exclusively. The PACE will provide comprehensive medical and social services to elderly individuals who live in the community.

Program Summary

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

Financial Summary

The total project cost is estimated at \$900,781 to be funded entirely by equity provided by Welbe Health, LLC. The proposed budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,352,662	\$3,273,264
Expenses	<u>\$1,381,960</u>	<u>\$3,302,562</u>
Gain/(Loss)	(\$29,298)	(\$29,298)

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease, acceptable to the Department. [BFA]
4. Submission of an executed building Sub-Lease, acceptable to the Department. [BFA]
5. Submission of an executed Administrative Services Agreement, acceptable to the Department. [BFA]
6. Submission of a photocopy of a Master Lease Agreement acceptable to the Department. [CSL]
7. Submission of a photocopy of a Sub Lease Agreement acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Administrative Services Agreement acceptable to the Department. [CSL]
9. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
10. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
11. Submission of documentation of approval of the Article 44 PACE program, acceptable to the Department. [PMU]

Approval conditional upon:

1. This project must be completed by **September 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2022**, and construction must be completed by **June 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 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

April 5, 2022

Need and Program Analysis

Program Description

Proposed Operator	NY PACE Care Facility, LLC
Site Address	5521 8 th Avenue Brooklyn, NY 11229 (Kings County)
Certified Services	Medical Services-Primary Care Dental O/P
Hours of Operation	Monday through Friday 8:00 AM to 4:00 PM
Staffing (1st Year / 3rd Year)	8.00 FTEs / 21.00 FTEs
Medical Director(s)	Otashe Golden, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Maimonides Medical Center 1.0 miles / 7 minutes away

Analysis

The primary service area is Brooklyn (Kings County). Kings County is designated by the Health Resources and Services Administration (HRSA) as a Health Professional Shortage Area for both Primary Care and Dental Services. The population of Kings County was 2,736,074 in 2020 and is expected to grow to 2,810,876 by 2025. According to Data USA, in 2019 95.5% of the population in New York County has health coverage as follows.

Employer Plans	41.70%
Medicaid	33.20%
Medicare	8.05%
Non-Group Plans	10.50%
Military or VA	0.22%

The Hospital Prevention Quality Indicators (PQIs) for Adult Discharges in ZIP Code 11220 in 2017 are noted below:

PQIs	Observed*	Expected*
Diabetes Long Term	99.7	72.8
COPD	444.6	329.5
Heart Failure	228.7	232.5
Dehydration	103.5	75.7
Bacterial Pneumonia	71.6	89.3
Uncontrolled Diabetes	47.3	44.2
PQI Overall Composite	963.5	879.0
Acute Composite	253.0	256.1
Chronic Composite	710.5	623.1
Diabetes	175.1	148.9
All Circulatory Composite	279.8	282.2
All Respiratory Composite	255.6	192.1

* per 100,000 people

Relevant data from the New York State Community Health Indicator Reports (CHIRS) for Kings County is noted below:

	Data Years	Kings County	NYS	NYC
Percent Population in Poverty	2018	18.9%		13.7%
Percent Population with Medicaid	2014-2018	36.5%	25.4%	33.0%
Number of Primary Care MDs per 100,000	2017	64	82	
Number of Mental Health Providers per 100,000	2019	220	289	
Number of Dentists per 100,000	2018	64	82	

The applicant projects 2,808 visits in Year One and 13,176 in Year Three.

Character and Competence

The sole member of NY PACE Care Facility, LLC is Clancy (Si) France.

Clancy (Si) France, MD is the Founder and CEO of WelbeHealth, LLC, a PACE provider. Previously, he was the Founder and CEO of GoHealth Urgent Care where he was responsible for integrating urgent care with hospital systems, and the Engagement Manager of McKinsey & Company where he led operational transformation across several hospital systems for bottom-line impact, served private equity funds on thesis development and acquisition diligence, and developed knowledge around the combined impact of economic volatility and policy in the Health Reform Institute. Dr. France disclosed ownership of the following health care facilities/agencies:

WelbeHealth Sierra PACE (PACE)	2016-present
Stockton PACE (ADHC)	2016-present
Stockton PACE (HHA)	2016-present
WelbeHealth Pacific PACE (PACE)	2017-present
Pacific PACE (ADHC)	2017-present
Pacific PACE (HHA)	2017-present
WelbeHealth Coastline PACE (PACE)	2018-present
LA Coast PACE (ADHC)	2018-present
WelbeHealth Sequoia PACE (PACE)	2018-present
Sequoia PACE (ADHC)	2018-present

Otashe Golden, MD is the proposed Medical Director. She has been the owner of Otashe Golden MD, Inc for over 20 years and has been the Medical Director of NY PACE Care Facility for approximately one year. In addition, she holds the following positions: Medical Director of WelbeHealth Sierra PACE and the HHA Director of Patient Care Services of Stockton PACE (HHA), Pain Management Committee Chair, Palliative Care Medical Director, and member of the Utilization Management Committee. She was the Chief of Medicine for approximately six years. She received her medical degree from Albany Medical Center and completed her residency in Family Medicine at Sutter Health. She is board-certified in Family Medicine.

Staff from the Department's Division of Hospitals and Diagnostic & Treatment Centers (DHDTC) 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 DHDTC reviewed the ten-year history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The PACE program, which the proposed D&TC is a part of, will provide comprehensive medical and social services to elderly individuals residing in the community, most of whom are dually eligible for Medicare and Medicaid benefits. The individual background review indicates the proposed member has met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Analysis

Operating Budget

The applicant has submitted first and third years operating budgets, in 2022 dollars, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
<u>Revenues</u>				
MLTCP	\$481.72	<u>\$1,352,662</u>	\$248.43	<u>\$3,273,264</u>
Total Revenue		\$1,352,662		\$3,273,264
<u>Expenses</u>				
Operating	\$442.72	\$1,243,162	\$239.67	\$3,157,935
Capital	<u>\$49.43</u>	<u>\$138,798</u>	<u>\$10.98</u>	<u>\$144,627</u>
Total Expenses	\$492.15	\$1,381,960	\$250.65	\$3,302,562
Net Income (Loss)		<u>(\$29,298)</u>		<u>(\$29,298)</u>
Total Visits		2,808		13,176

The following is noted regarding the submitted budget:

- Article 44 PACE program utilization is based on the physical capacity of the initial PACE Program location and assumptions built around historical MMCOR data for New York City PACE plans.
- The proposed D&TC will serve only patients who are enrolled in Welbe Health NY PACE, LLC PACE Program. Therefore, the only payor will be Welbe Health NYC PACE, LLC (Medicare).
- The D&TC's revenue and utilization assumptions are based on the projected number of PACE program participants in the Article 44 application.
- The reimbursement rates were set by Welbe Health NYC PACE, LLC based on the overall expenses for the D&TC.
- Expense and staffing assumptions are based on the projected utilization, certain industry standards, and experience of similar D&TCs in New York State.

Total Project Cost and Financing

The total project costs for renovations and the acquisition of moveable equipment are estimated at \$900,781 broken down as follows:

Renovation	\$585,989
Design Contingency	\$58,599
Construction Contingency	\$58,599
Architect /Engineering Fees	\$137,700
Moveable Equipment	\$52,978
CON Application Fee	\$2,000
Additional Fees	<u>\$4,916</u>
Total Project Cost	\$900,781

The total project costs of \$900,781 will be met via cash equity provided by Welbe Health, LLC.

Administrative Service Agreement

The applicant has provided a draft Administrative Service Agreement, summarized below:

Facility Operator:	NY PACE Care Facility, LLC
Service Provider:	Welbe Health NYC PACE, LLC
Term:	3 years with unlimited 3-year renewals
Services:	General administrative services, accounting and financial services, banking and finance, collection services, compliance, and project management.
Compensation:	\$10,000 per month

While Welbe Health NYC PACE, LLC will be providing all the services listed above, the facility operator retains ultimate control in all final decisions associated with the services. The applicant has submitted an attestation stating that the applicant understands and acknowledges that there are powers that must not be delegated, the applicant will not willfully engage in any illegal delegation, and understands that the Department will hold the applicant accountable. It is noted that the proposed Administrative Service Agreement is a non-arm's length agreement as there is a relationship between the facility operator and the consultant.

Lease Rental Agreement

The applicant has submitted a draft lease for the proposed facility, summarized below:

Date:	September 27, 2021
Premises:	Suites 2a,2b,2c,2d, 2e, 2f,2g, 2h, 3e, 4f and 4h consisting of approximately 14,814 gross square feet of area in 5515 8 th Ave, Brooklyn, NY
Landlord:	Golden 8 th Ave Realty Corp
Lessee:	Welbe Health NYC Pace, LLC
Term:	15 years with two 5-year extension periods
Rental:	\$725,886 annually for Year One with an annual 3% rent increase
Provisions:	Tenant is responsible for maintenance, utilities, real estate taxes, and insurance

Sub-Lease Rental Agreements

The applicant has submitted a draft sub-lease agreement for the facility, summarized below:

Premises:	Suites 2a, 2b, 2c, 2d, 2e, 2f, 2g, and 2h on the second floor of 5515 8 th Ave, Brooklyn, NY which is approximately 10,742 gross square feet.
Landlord:	Golden 8 th Ave Realty Corp
Lessee:	Welbe Health NYC Pace, LLC
Sub-Lessee	NY PACE Care Facility, LLC
Term:	15 years with 2 (5) year extension options
Rental:	Year 1 - \$526,358 abated, Year 2 - \$542,149, 3% increase for years 3-15. Options will be based on fair market rental rate for the first year of each option with a 2% annual increase for the remaining years.
Provisions:	Tenant is responsible for maintenance, utilities, real estate tax, and insurance

The applicant has provided an affidavit stating that the lease is an arm's length agreement, and the sublease agreement is a non-arm's length arrangement. Letters from two New York State licensed realtors have been provided attesting to the rental rate being of fair market value.

Capability and Feasibility

Total project costs of \$900,781 will be funded via equity from Welbe Health, LLC. The working capital requirement is \$550,427 based on two months of first-year expenses and will also be funded with equity from Welbe Health, LLC. BFA Attachment A, the 2019-2020 Certified Financial Statements and 11/30/21 Internal Financial Statements of Welbe Health, LLC shows sufficient liquidity to fund the project and working capital equity requirements. BFA Attachment B is the pro forma balance sheet for NY PACE

Care Center, LLC as of the first day of operation, which indicates a positive member's equity of \$1,451,208.

As shown in BFA Attachment A, the 2019-2020 Certified Financials indicate the facility had an average positive working capital position and net asset position. Welbe Health, LLC had an average operating loss of \$13,169,158 for the period 2019-2020. As of 11/30/2021, they had positive working capital and net asset position and a net loss of \$32,425,817. The previous corporate losses for Welbe Health represent early investments in infrastructure necessary to serve PACE participants and initial support for the operational PACE program (these facilities are now profitable on a stand-alone basis). Welbe Health is well-capitalized following a Series D financing and as shown in the November 2021 internal balance sheet, Welbe Health has over \$150 million in cash on hand. Welbe Health is investing in growth and scale, with expansion into New York as part of its investment plan, and expects that its financial results will continue to improve throughout 2022.

Conclusion

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

Attachments

BFA Attachment A	2019-2020 Certified Financial Statements and 11/30/2021 Internal Financial Statements for Welbe Health, LLC
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	Organizational Chart

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 5th day of April 2022, 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 at 5521 8th Avenue, Brooklyn to solely serve the PACE program operated by Welbe Health NYC PACE, 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:

212242 B

NY PACE Care Facility, 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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of an executed building lease, acceptable to the Department. [BFA]
4. Submission of an executed building Sub-Lease, acceptable to the Department. [BFA]
5. Submission of an executed Administrative Services Agreement, acceptable to the Department. [BFA]
6. Submission of a photocopy of a Master Lease Agreement acceptable to the Department. [CSL]
7. Submission of a photocopy of a Sub Lease Agreement acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Administrative Services Agreement acceptable to the Department. [CSL]
9. Submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
10. Submission of Engineering (MEP) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
11. Submission of documentation of approval of the Article 44 PACE program, acceptable to the Department. [PMU]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **September 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 the expiration of the approval. It is the responsibility of the applicant to request prior approval for any extensions to the project approval expiration date. [PMU]
2. Construction must start on or before **October 1, 2022**, and construction must be completed by **June 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 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*.