STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

October 6, 2022

- ***90 Church Street, Conference Rooms 4 A/B, NYC***

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

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

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

June 2, 2022 PHHPC Meeting Minutes

July 28, 2022 PHHPC Meeting Minutes

September 15, 2022 Special PHHPC Meeting Minutes

III. 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 Health Equity and Human Rights

Johanne Morne, Deputy Commissioner, Office of Health Equity and Human Rights

D. 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

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

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

IV. 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)

20-07 Addition of Section 2.60 to Title 10 NYCRR (Face Coverings for COVID-19 Prevention)

22-21 Amendment of Section 23.1 of Title 10 NYCRR (Monkeypox Virus to the List of Sexually Transmitted Diseases (STDs))

For Information

22-21 Amendment of Section 23.1 of Title 10 NYCRR (Monkeypox Virus to the List of Sexually Transmitted Diseases (STDs))

V. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

A. Report of the Committee on Establishment and Project Review

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

APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

NO APPLICATIONS

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 Application

Acute Care Services - Construction

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	221218 C	United Memorial Medical Center (Genesee County) Mr. Thomas – 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

APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Diagnostic and Treatment Centers – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	221199 B	Yaldeinu Health Inc. (Kings County)	Contingent Approval
2.	221212 E	Smile New York Outreach, LLC (Bronx County)	Contingent Approval

Certificate of Dissolution

Applicant	E.P.R.C. Recommendation
J.G.B. Health Facilities Corporation	Approval

Ambulatory Surgery Centers – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	211143 E	AMSC, LLC d/b/a Downtown Bronx, ASC (Bronx County)	Contingent Approval
2.	221095 B	Empire CSS, LLC d/b/a Empire Center for Special Surgery (Richmond County)	Contingent Approval
3.	221224 E	21 Reade Place ASC, LLC d/b/a Bridgeview Endoscopy (Dutchess County)	Approval
4.	221267 E	Advanced Endoscopy LLC d/b/a Advanced Endoscopy Center (Bronx County)	Approval
5.	221270 E	Endoscopy Center of Niagara, LLC (Niagara County)	Approval
6.	221271 E	Endoscopy Center of Western New York, LLC (Erie County)	Approval
7.	221272 E	Island Digestive Health Center (Suffolk County)	Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Ambulatory Surgery Centers - Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	221268 E	Carnegie Hill Endoscopy, LLC (New York County) Dr. Lim - Recusal	Approval
2.	221269 E	East Side Endoscopy, LLC d/b/a East Side Endoscopy and Pain Management Center (New York County) Dr. Lim – Recusal	Approval

Certified Home Health Agencies – Establish/Construct

	Number	Applicant/Facility	E.P.R.C. Recommendation
1.	221184 E	Emerest Certified Home Health Care of NY LLC d/b/a Royal Care Certified Home Health Care of NY (Bronx County) Dr. Torres - Abstained at EPRC Mr. LaRue - Abstained at EPRC	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

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. Long Term Care Ombudsman Overview

Claudette Royal, Long Term Care Ombudsman, NYS Office for the Aging

VI. CLINICAL STAFFING OVERVIEW

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

Clinical Staffing Overview

VII. NEXT MEETINGS

November 17, 2022
December 8, 2022

VIII. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
June 2, 2022

The meeting of the Public Health and Health Planning Council was held on Thursday, June 2, 2022 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York, 90 Church Street, 4th Floor, PSC Board Room, NYC and Zoom. Jeffrey Kraut, Chair presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner – NYC	Dr. John Rugge – Albany
Dr. Jo Boufford - Zoom	Ms. Nilda Soto - NYC
Dr. Angel Gutiérrez – Zoom	Mr. Hugh Thomas - NYC
Mr. Thomas Holt – NYC	Dr. Anderson Torres - NYC
Dr. Gary Kalkut - NYC	Dr. Kevin Watkins – Zoom
Mr. Jeffrey Kraut – NYC	Dr. Patsy Yang – Zoom
Dr. Roxanne Lewin - Zoom	Commissioner Bassett Ex-Officio - Albany
Dr. Sabina Lim – NYC	
Ms. Ann Monroe – NYC	
Mr. Peter Robinson – NYC	

DEPARTMENT OF HEALTH STAFF PRESENT

Ms. Lynn Baniak - Zoom
Dr. Ursula Bauer - Albany
Ms. Val Deetz - Zoom
Mr. Brett Friedman - NYC
Mr. Mark Furnish – Albany
Ms. Shelly Glock – Albany
Mr. Michael Heeran – NYC
Mr. Adam Herbst – Zoom
Dr Eugene Heslin – Albany
Mr. Jonathan Karmel - Albany
Ms. Colleen Leonard- NYC
Dr. Emily Lutterloh - Albany
Ms. Kathy Marks – Zoom
Dr. John Morley - Albany
Ms. Marthe Ngwashi - NYC
Mr. Jason Riegert - Albany
Mr. William Sacks -Albany
Ms. Lora Santilli - NYC
Ms. Angela Smith - Albany
Mr. Michael Stelluti - Albany
Ms. Jennifer Treacy - Albany

INTRODUCTION

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

APPROVAL OF THE MEETING MINUTES OF APRIL 5, 2022

Mr. Kraut asked for a motion to approve the April 5, 2022 Minutes of the Public Health and Health Planning Council meeting. Dr. Berliner motioned for approval. Dr. Torres seconded the motion. Dr. Boufford requested the minutes be revised to make corrections to her report to make it easier to recall the specifics. The revised minutes were unanimously adopted. Please refer to pages 1 and 2 of the attached transcript.

APPROVAL OF THE 2023 PHHPC MEETING DATES

Mr. Kraut asked for a motion to approve the 2023 PHHPC Meeting dates. Dr. Berliner motioned to adopt. Dr. Torres seconded the motion. The motion to adopt carried. Please see page 2 of the attached

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

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

Commissioner Bassett began her report by stating that on May 6, 2022 there was a case of monkeypox reported in the United Kingdom. This person had traveled to Nigeria, where the disease is endemic, but we've subsequently seen an extension of this virus infection to other individuals. It is a rare virus that doesn't usually give rise to serious illness, but it can result in hospitalization and death. It's related from the same family of viruses as the smallpox virus, but it is accompanied by a characteristic swelling of lymph nodes. It progresses with a rash, which is how it is usually recognized. The early data on this current outbreak suggests that gay, bisexual and other men who have sex with men make up a high proportion of the cases. This is transmitted through close contact, so anybody who's had close contact with somebody who had monkeypox is at risk. On May 20, 2022 the Department along with the New York City Department of Health and Mental Hygiene, provided a public update on the ongoing investigation of two suspected cases of monkeypox, both of which were identified in New York City residents. While one individual was ruled out, the other proved positive and had an illness consistent with monkeypox. The confirmation of monkeypox is done by the Centers for Disease Control. As of the end of May, we have now a total of four confirmed ortho pox, monkeypox virus cases in New York. This is the designation that's now being used by the CDC. They combine testing positive for ortho pox with monkeypox. All of these were identified in New York City. They are identified through confirmatory testing for pox virus. It is important that we treat these as probable monkeypox cases and we are continuing to be vigilant as we watch this unfold. The Department has responded by alerting New York health care providers so that they have information that can help with the rapid case identification and presentation for testing should any of their patients present with symptoms. The number of cases has increased around the world, the global count mostly from Europe now stands at over 500. We have new data from England, which has seen a rapid increase in the number of cases. They now have 183 confirmed cases, most of them in the City of London. Based on the information that we have available, the current risk to the general public is low. The Department is urging the public to remain vigilant and ensuring that clinicians have information they need to rapidly identify and

test patients who meet diagnostic consideration for monkeypox. The Department is working in partnership with federal and local public health authorities, and we will continue to keep the public and the health care community updated.

Dr. Bassett reported encouraging information on COVID-19 She noted that the last time she reported to the Council we were seeing the beginning of another wave that began in Central New York and spread across New York State and then to the entire state, including Downstate. For several weeks, we had a large number of counties in New York that were designated as high risk by the Centers for Disease Control over 50 counties of our 62 counties. New York is now seeing a decline in cases across all regions, accompanied by a decline in hospitalizations in many part of the states. It appears that although case rates remain high that this current increase is now declining. The Department still continues to recommend to all New Yorkers in high risk counties and anyone who is at increased risk of severe disease or of spreading it to someone in their family network who would be at increased risk of severe disease, that they wear masks in public indoor spaces regardless of vaccination status. COVID-19 is still here, but we continue to use the tools we have to ensure its control. New Yorkers are, you know, about three quarters of New Yorkers, including the littlest children for whom a vaccine is not yet available, are fully vaccinated. We really need New Yorkers to continue receiving all of the recommended doses of the vaccine, wear masks, especially in areas of high transmission, get tested, stay home if they feel sick and seek advice on whether treatment would be appropriate to them.

Commissioner Bassett noted that New York State has played a pioneering role through its Wadsworth Lab and the identification of some of the new variants. These are the BA212 and the BA212.1. These sub lineages of BA2 have expanded rapidly. Each new lineage seems to be more transmissible than the previous one and has a substantial growth advantage, crowding out the original variant and now the original BA2 variant. Wadsworth Lab has been able to identify these variants, identify the mutations that appear to be related to transmissibility and to make these data available through the public reporting system. We now really are hardly seeing any of the original consequences among people who are infected and the CDC's Region Two, which includes New Jersey, Virgin Islands and Puerto Rico as well as New York, now is estimating that 100% of all samples are these sub lineages. Wadsworth is keeping an eye on other potentially emerging variants that have been identified elsewhere in the world. They are BA4 and 5, which we have not yet seen spreading in in New York State, but Wadsworth is fortunate to have is keeping an eye on these.

Dr. Bassett announced that on May 23, 2022, after the FDA authorized and the CDC's advisory committee recommended, we announce that children who age 5 to 11 should receive a COVID-19 vaccine boosters five months after completing their initial primary course. Children who are moderately to severely immunocompromised can receive their booster three months after completing their primary series, which would include three vaccinations. Vaccinations continue to be an extremely effective way that we have to protect from serious illness due to COVID-19. The Department is working rapidly to release new clinical guidance for the administration of the booster to children to all providers enrolled in the New York State vaccination program. The Department continues to reach out to inform parents and guardians of the expansion of booster eligibility and is pushing notifications through our Excelsior Pass platform. This is also paired with the continued state investment in making COVID-19 testing

available. The Department continues to provide over the counter tests and has delivered more than 80 million over-the-counter COVID-19 tests to New Yorkers since December of last year and encourages people to use these tests when they are not feeling well or they have been potentially exposed as well as when traveling or before attending a large gathering.

Dr. Bassett expressed that if you test positive, the Department urges you to contact your health care provider to discuss eligibility for treatment. The Department has been reminding New Yorkers about treatment in the early days of the variant surge, we had a shortage of treatment. That is no longer the case. We want it to be very clear to New Yorkers that they should assess their eligibility for treatment and that this treatment is best taken when within five days of the onset of symptoms. So, when symptoms arise, people should not wait to get tested and they should not wait after testing positive and contacting a health care provider. These medications remain available at free of cost. The Department continues to work with providers to increase awareness and facilitate the early connection of New Yorkers who test positive and continues to be the treatment of choice to appropriate patients with mild to moderate symptoms. The Department is seeing a decline in cases and therefore a decline of use at this time. We have been pleased to see that treatment did seem to be expanding and we want to ensure that people are aware that they should get tested and get access to treatment.

Dr. Bassett then spoke on the topic of cases of pediatric hepatitis. In April, 2022, the CDC issued a nationwide alert to notify clinicians about a cluster of children with hepatitis. They have seemed to be associated with that no virus infection. The Department has been alerting physicians to be on the lookout to identify these cases and continues to not be clear on the origins of this pediatric hepatitis and the connection to adenovirus also remains unclear. Adenoviruses usually cause respiratory illnesses. There have been outbreaks throughout the year but have found among the sick children with hepatitis the presence of Type 41. It may be a cause of hepatitis and this that's being observed clinically. The Department is working with local and federal public health authorities and investigating cases of pediatric hepatitis. New York now have nearly 250 persons under investigation. Some have led to quite severe outcomes, including the need for liver transplant.

Dr. Bassett noted that influenza remains with us. We had an unusual pattern of influenza this season with a bimodal distribution of influenza cases, a late rise and seasonal flu and two weeks ago, we alerted New Yorkers that seasonal flu rates were unusually high for this time of year. We know that the precautionary measures that are followed with COVID-19 are also useful for influenza. Symptoms, stay home, consult your physician, get tested, get treatment, wear a mask in public indoor spaces and living in a high risk counties or at personal risk. The Department has issued an advisory to the New York State Public and private schools to remind administrators to contact their local health department if they see an increase in school absences. For the week of May 21, 2022, the influenza activity level was categorized as geographically widespread, and this is the 27th consecutive week that we've seen widespread activity reported. The Department has extended the surveillance season beyond May until influenza activity has decreased.

Dr. Bassett stated that while the Department has been managing COVID-19, monkeypox, influenza and pediatric hepatitis, we have also been faced with other events in our nation which we also consider relevant to public health. Obviously, some of these are events that have to be addressed very widely across government and across society. I'm referring to the acts of gun violence. The City of Buffalo experienced a heinous and unjust act that we have known too well when a white teen drove over 3 hours to the nearest Black neighborhood that he was able to identify and shot 13 people, 10 of whom who died all while livestreaming this event. She noted that she is grateful to Governor Hochul for being unflinching in her characterization of this atrocity as an act of white supremacy. As a Department, our thoughts are with the victims and their families, as they are with the victims in the State of Texas. June is Gun Violence Prevention Month, and we continue to view gun violence as a public health crisis and will work with our state, federal and local partners and our own newly established Office of Gun Violence Prevention to address the impacts of gun violence.

Commissioner Bassett advised that New York is facing an enormous challenge with the anticipated reversal of Roe v Wade. The Supreme Court is poised to roll back this landmark decision ending nearly half a century of federally and constitutionally protected abortion rights. If this happens, all pregnant people, particularly people of color and those who already have too little access to health care, will no longer be free to make the decisions that are best for them. However, in New York State, abortion access is the law, and here reproductive health care is enshrined in our state law as a medical freedom and a human right. When safe abortion access is stripped away, it doesn't stop abortions, but it does make abortions more deadly and dangerous. This impact will be particularly felt among low income communities, particularly among Black and Brown and Indigenous communities who are overrepresented among the poor in our state and our country. New York has enshrined these rights. The Department is aware that we need to think through what support we can offer to the rest of the country, should the Roe decision be overturned.

Commissioner Bassett noted that it is no secret that over the past few years, the Department has lost many members of staff. It has a high vacancy rates that there are many full reasons, but burnout is among them, as well as retirement and whatever reasons people leave their jobs. The Department has been focusing on rebuilding the department not only through rehiring and through recharging our staff who have made it through this long road towards the COVID recovery period, but trying to figure out how to work better, to communicate with our staff and improve our support for hard working people and dedicated people who have long served in this department. She explained that she hosted a town hall with nearly half of the Department employees, 2,700, turned out for this virtual town hall and noted that she is hopeful that this will be the beginning of many conversations, or at least exposure to conversations that we will have with members of the Department. The Department conducted a staff survey, which had a pretty good response rate, over two thirds of our staff. Actual numbers, 71% participated. We learned that people, by and large, are very proud to work at the department. 8 out of 10 said that they were proud to work for this department, but only 6 out of 10 said that they'd recommend the department as a great place to work. This is a challenge to us. We have a staff that is committed to the mission, and we need to make it a place where people really feel good about coming to work every day. And of course, another finding of this staff survey was that there was widespread belief that the department could do more to improve diversity and

inclusion. The Commissioner noted that it has been 6 months almost to the day as Health Commissioner and as in the first days, she remains enormously impressed by the talent and commitment of the people who live here. We are now on the road of looking at how to strengthen the Department as we go forward.

Dr. Bassett next mentioned that June is Pride Month and recognized the importance of the LGBTQ community and the Department's commitment to advancing health equity. We are grateful for the many partnerships and health care networks and community based providers that have allowed us to address urgent, emergent and long term community needs. With that rather long report, I look forward to keeping you apprised.

Lastly, Commissioner Bassett announced that Brett Friedman, is stepping down as Medicaid Director and thanked him on a personal level for introducing me to this complex and important program for the people of the state and our department and for his service in leading the Medicaid program more generally. Mr. Friedman has met the challenge of running one of the most robust Medicaid programs in the country and has advocated for critical funding during this year's budget cycle. He leaves with several key accomplishments, and we are grateful for that and grateful also for his work and wished him well.

Dr. Bassett concluded her report. To review the complete report and members questions and comments please see pages 2 through 8 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Activities of the Office of Public Health

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

Dr. Bauer began her report and stated that COVID is proving to be quite resilient and although cases and hospitalizations are declining, the rates are still higher than they were one year ago and higher even than they were in March of this year. Nonetheless, we do recognize the COVID fatigue felt by the public, by our Health Department staff, and by governmental leaders at all levels. The Department continues to explore ways to make the COVID pandemic more manageable and for our public health workforce to contemplate a return to some semblance of regular order. The Department began such an effort back in the Fall. As of June while we have more cases than we did in either of the past two years at this time, and we have a more infectious variant than we had previously. New York has vaccines and boosters that still mostly protect against severe disease and hospitalizations and prior infections that also offer some protection. We have diagnostics, including a home test, to help us make decisions about gathering and traveling and when to stay home or seek treatment. We also have therapeutics we're working hard to deploy to those in need who are eligible. The Department has lowered the likelihood that an infection leads to hospitalization or death.

Dr. Bauer stressed that we do not know what is to come. COVID is not the killer that it was and in this this context in the Office of Public Health (OPH), we are planning for the future. OPH has been gathering perspectives and ideas from current and former Health Department staff and from our local health department colleagues to lift up the best practices from the COVID response that we should continue into the future and make sure that we have at the ready for future pandemics or other public health emergencies. The Department has been reviewing our executive orders and guidance documents to understand what's needed, when and how we can simplify and streamline the information that we share and how we can strengthen and improve our internal processes. The Department is creating some approaches to understand the pandemic's trajectory now and into the future and identifying trends and signals that warn us to be ready to take action, to inform the public and to work to protect our health care capacity. The Department is gathering and synthesizing in June and July, and looks forward to updating you on our public health approach to the pandemic going forward.

Dr. Bauer shared that CDC is expected to release a new funding opportunity on strengthening the public health workforce, public health infrastructure and our data systems with a focus on health equity. This is another effort to help rebuild public health and to address some of the challenges that frankly, existed before COVID, but were certainly stressed and exacerbated by the pandemic. The Department sees this as an opportunity to reinforce our core public health capacity, especially our support to local health departments and our efforts to engage with communities. It is also an opportunity to continue and expand some of our data modernization efforts that were begun under the COVID ELC awards and to address many of our NON-COVID data systems, particularly in environmental health. This is one of the few CDC grants that is disease agnostic. It allows us to take a holistic approach to strengthening community health with a focus on cross-cutting efforts to build our public health capacity. The Department is looking forward to that work in the future.

Finally, I'll just mention as a heads up for future discussion at the July and September meetings. The Department, through our Center for Environmental Health is proposing to revise 10 NYCRR Part 5 Sub Part 51 to adopt maximum contaminant levels or MCL's for additional per and polyfluoroalkyl substances, also known as PFOA’s and add notification levels and monitoring requirements for 19 PFOA’s to meet the statutory requirements of Public Health Law Section 1112, which was enacted last year and of course, following the recommendations of our Drinking Water Quality Council.

Dr. Bauer concluded her report. To view the complete report and Members comments and questions, please see pages 8 through 10 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

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

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

Dr. Morley began his report by stating that the Health Care Policy Workforce Initiatives, is at the top of the Office list. Health care investment in fiscal year 2023 state budget that includes 1.2 billion for investment in frontline health care workers. 2.4 billion is directed to improving health care infrastructure, 3.9 billion in funding to provide aid to hospitals struggling financially from COVID-19 pandemic and 7.7 billion for four years to increase the home care worker minimum wages. These investments will combine to improve working conditions and grow the workforce by 20% over the next five years improving the health care industry considerably. The NANY program, Nurses Across New York, which is similar to the current DANY or Doctors Across New York program. NANY will provide loan repayments over a three year period to registered nurses and licensed practical nurses who choose to work in New York's high need health care facilities. 2.5 billion is available for loan repayments in year one. Over the course of the Summer, the Department will work with stakeholder groups to develop the program further into identifying further criteria.

Dr. Morley announced that there will be an additional member joining the Council who represents women's health and facilities in the area of health equity and inclusion. The legislature has also passed a bill public health law 2802B was amended requiring a health equity impact assessment be submitted as part of the Certificate of Need application to the Department. This law adds consideration of projects impact on medically underserved individuals as factors to consider when improving a CON application when considering whether to approve a project. It requires a health equity and inclusion assessment be prepared by an independent entity and include whether a project will improve access to services, health equity or reduce health care disparities with reference to members of medically underserved groups in the applicant service area. The requirement applies to Public Health Article 28 definition of quote hospital, end quote, which includes general hospitals, nursing homes, diagnostic and treatment centers, ambulatory surgery centers and birthing centers. The requirement applies to construction, establishment, changes in establishment, mergers, acquisitions, elimination or substantial reduction, expansion or additions of a hospital or health related service that requires review by the council or Commissioner. This would be full review CON's, administrative reviews and limited reviews. The law does not require an HEI assessment for a diagnostic and treatment center whose population is over 50% Medicaid or uninsured, unless it's a change in a controlling person. Requires posting of the application and assessment by the department on the DOH website, as well as a requirement for the applicant to post the application and assessment on its website within a week of acknowledgement of the application by the Department and requires the Commissioner to make regulations to take other actions, such as issuing guidance reasonably necessary to implement the law. The effective date will be June 21, 2023.

Dr. Morley noted that the Center for Health Care Provider Services and Oversight, the Division of Adult Care Facilities and Assisted Living has developed a new administrator and new surveyor orientation, which is now close to production and will allow individuals new to the ACF platform to be consistently trained in best practices and regulatory expectations specific to the ACF industry. The division has further streamlined its licensure procedures to allow for expeditious onboarding of newly established facilities and new certifications. From the Division of Home and Community based settings, the division recently addressed the issue of local health department licensed home care services that went unregistered during COVID. 12 Local health departments were provided the opportunity to reregister without fines or in some cases where a fine was paid to request refunds. Personal care aide training program documents are on the website and have recently been updated.

Dr. Morley stated that the Division of Hospitals, Transplant Council met on May 26, 2022. There were presentations from the presidents and the Review of the National Academy of Sciences recent paper on Equity in Organ Transplantation. From the Bureau of EMS, Governor Hochul issued a proclamation recognizing EMS week on May 15, 2022. The proclamation recognized all the great people and work in their field and honored those who had fallen in the line of service. The World University Games will take place in Lake Placid. It's an 11 day international festival that will take place in January of 2023, involving over 1,800 athletes from 15 countries. Twice as many as those who took part in the venue hosted in the 1980 Winter Olympics. The Bureau of the EMS continues to work with the promoter to develop plans and procedures for the events that ensure participant health and safety and also support the local emergency services system. The surge operations center, part of BMS, fielded 98 calls for assistance through the first three weeks of May. That's down from 200 the month before, but still shows that assistance is being requested. From the Bureau of Narcotic Enforcement, they continue to work on the prescription drug monitoring program based on input from focus groups of New York State practitioners, including at adding visual indicators to flag for prescribers, the presence of overlapping opioid and benzodiazepine prescriptions and provider episodes, also known as doctor shopping. The PMP is now interoperable in 33 states the District of Columbia, Puerto Rico, the military health services and the VHA. The drug takeback program. They hope to announce very shortly the approval of two operators for the drug takeback program. The Department is anticipating its implementation in the coming months. The Opioid Stewardship Program has collected over 80 million in opioid stewardship revenue stemming from the calendar year 2017.

Lastly Dr. Morley notated that OPCHSM is focused, as is the entire Department, on rebuilding our state workforce. We have 76 open positions that we're recruiting and 16 positions, waiting for someone to begin. The people have been identified. We just want a starting date. The executive budget increased OPCHSM FTE's by 164 positions to implement the budget initiatives. Of particular note, we recently posted the position of the Director for the Center for Health Care, Planning, Licensure and Finance, and resumes are being collected. Dr. Morley thanked Ms. Glock who has been performing her old duties while also filling in in the new duties of that acting role over the course of the last couple of years and she has done a terrific job, and I hope you join me in encouraging her to apply for that position.

Dr. Morley concluded his report. To see the complete report please see pages 10 through 13 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report of the Office of Health Insurance Programs

Mr. Kraut introduced Mr. Friedman to provide the Council with a PACE Program Overview.

Mr. Friedman began his report by stating that PACE is a great example of integrated licensure. Mr. Friedman presented a power point presentation outlining the challenges and promise of a program that spans multiple regulatory licensure silos. The complexity that the review committee was struggling with single application is a reflection of how to navigate integrated licensure on something like a PACE program. Mr. Friedman gave an overview of PACE and discussed the nuts and bolts of how PACE is currently regulated in New York in ways and options that New York could modify, expand, enhance its regulatory licensure process to promote PACE in New York.

Mr. Friedman concluded his report. To see the complete report and question and comments from members, please see pages 13 through 24 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 Information

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

For Emergency Adoption

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

Mr. Holt began his report by introducing For Information and For Emergency Adoption Addition of Subpart 66-4 to Title 10 NYCRR (COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel). Mr. Holt motioned for adoption, Dr. Berliner seconded the motion. The motion carried. Please see page 24 of the transcript.

For Information

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

For Emergency Adoption

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

Mr. Holt introduced For Information and For Emergency Adoption Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements). Mr. Holt motioned for adoption, Dr. Berliner seconded the motion. The motion carried. Please see page 25 of the attached transcript.

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)

20-24 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)

Mr. Holt introduced For Emergency Adoption of 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. Berliner seconded the motion. The motion carried. Please see page 25 of the transcript.

Mr. Holt introduced For Emergency Adoption of 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 25 and 26 of the transcript.

Mr. Holt introduced For Emergency Adoption of Addition of Sections 1.2, 700.5 and Part 360 to Title 10 NYCRR; Amendment of Sections 400.1, 405.24 & 1001.6 of Title 10 NYCRR and Sections 487.3, 488.3 and 490.3 of Title 18 NYCRR (Surge and Flex Health Coordination System) and motioned for emergency adoption. Dr. Berliner seconded the motion. The motion carried. Please see pages 26 and 27 of the transcript.

For 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 lastly introduced For Adoption of 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 adoption, Dr. Berliner seconded the motion. The motion carried. Please see page 27 of the attached transcript.

Mr. Holt concluded his report. Mr. Kraut thanked Mr. Holt for his report

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

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

Number	Applicant/Facility	Council Action
212174 C	Westchester Medical Center (Westchester County)	Contingent Approval

Residential Health Care Facilities - Construction

Number	Applicant/Facility	Council Action
221065 C	Elizabeth Seton Children's Center (Westchester County)	Contingent Approval

Mr. Robinson called applications 212174 and 221065 and motioned for approval. Dr. Torres seconded the motion. The motion to approve passed. See pages 28 and 29 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

Number	Applicant/Facility	Council Action
211094 C	New York-Presbyterian Hospital - New York Weill Cornell Center (New York County) Dr. Kalkut - Recusal Dr. Lim - Interest/Abstaining	Contingent Approval
212212 C	NYU Langone Orthopedic Center (New York County) Dr. Kalkut - Recusal Dr. Lim - Interest/Abstaining	Contingent Approval
221054 C	Canton-Potsdam Hospital (St. Lawrence County) Mr. Thomas - Recusal	Contingent Approval

Mr. Robinson introduced application 211094 and noted for the record that Dr. Kalkut has a conflict and has exited the meeting room and Dr. Lim has declared an interest and will abstain. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried with the Dr. Kalkut's recusal and Dr. Lim's abstention. Dr. Kalkut remains outside the meeting room. Please see page 29 of the attached transcript.

Mr. Robinson called application 212212 and noted for the record that Dr. Kalkut has a conflict and has exited the meeting room and Dr. Lim has declared an interest and will abstain. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried with the Dr. Kalkut's recusal and Dr. Lim's abstention. Dr. Kalkut remains outside the meeting room. Please see pages 29 and 30 of the attached transcript.

Mr. Robinson introduced application 221054 and noted for the record that Dr. Kalkut has a conflict and has exited the meeting room and Dr. Lim has declared an interest and will abstain. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion to approve carried with the Dr. Kalkut's recusal and Dr. Lim's abstention. Dr. Kalkut returns to the meeting room. Please see page 30 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Diagnostic and Treatment Centers – Establish/Construct

Number	Applicant/Facility	Council Action
212258 B	Rego Park Counseling, LLC d/b/a Rego Park Diagnostic and Treatment Center (Queens County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

Number	Applicant/Facility	Council Action
202106 E	Montgomery Operating Co., LLC d/b/a Montgomery Nursing and Rehabilitation Center (Orange County)	Contingent Approval
202269 E	Ross OPCO LLC d/b/a Ross Center for Nursing and Rehabilitation (Suffolk County)	Contingent Approval
192026 E	Eastside Opco LLC d/b/a East Side Nursing & Rehab (Wyoming County)	Contingent Approval

Certificates

Certificate of Amendment of the Certificate of Incorporation

Applicant	Council Action
St. Barnabas Nursing Home, Inc.	Approval

Mr. Robinson calls application 212258, 202106, 202269, 192026 and St. Barnabas Nursing Home, Inc. and motions for approval. Dr. Berliner seconds the motion. The motion to approve carries. Please see pages 30 and 31 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

Number	Applicant/Facility	Council Action
211139 E	Village Acquisition l, LLC d/b/a Lower West Side Rehabilitation and Nursing Center (New York County) Mr. LaRue – Interest (not present at meeting)	Contingent Approval

Certificates

Certificate of Dissolution

Applicant	Council Action
Kateri Residence Mr. LaRue – Recusal (not present at meeting)	Approval

Next, Mr. Robinson introduces application 211139 and Kateri Residence and notes for the record that Mr. LaRue had declared a conflict of interest for the applications but is not present at the meeting. Mr. Robinson motions for approval. Dr. Berliner seconds the motion. The motion to approve carried. Please see pages 31 and 32 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

CON Applications

Dialysis Services – Establish/Construct

Number	Applicant/Facility	Council Action
201222 E	True North III DC, LLC d/b/a Grand Boulevard Dialysis (Suffolk County) Mr. Kraut – Recusal	Deferred
211244 E	True North VI DC, LLC d/b/a Peconic Bay Dialysis (Suffolk County) Mr. Kraut – Recusal	Deferred

Lastly, Mr. Robinson calls applications 201222 and 211244 and notes for the record that Mr. Kraut has a conflict and has exited the meeting room. Mr. Robinson motions for approval. Dr. Berliner seconds the motion. The motion to approve failed. Mr. Robinson then motioned to defer the applications. Mr. Thomas seconded the motion. The motion to defer passed. Mr. Kraut returned to the meeting room. To see the members discussion please see pages 32 through 41 of the attached transcript.

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

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
FULL COUNCIL MEETING
JUNE 2, 2022
10:15 AM
ESP, CONCOURSE LEVEL, MEETING ROOM 6, ALBANY
90 CHURCH STREET, 4TH FLOOR, PSC HEARING ROOM, NYC
TRANSCRIPT

Jeff Kraut Good morning. I'm Jeff Kraut. I'm Chair of the Public Health and Health Planning Council. My privilege to call to order our June 2nd meeting. I'd like to welcome Commissioner Bassett,. Participants and observers at the outset of the Codes Committee, Mr. Holt described our requirements to comply with the record of appearance form, which is posted on the Department of Health's website. www.NYHealth.Gov under Certificate of Need. Please email the completed form back to the Secretary of the Council. He described our webcasting today's meeting. We're doing closed captioning. Please don't speak over each other. Please identify yourself the first time you speak. I particularly want to remind the public and those that are reviewing them that you should join the department's Certificate of Need listserv, where we regularly send out important council information notices such as the dates of our meeting, our agenda and other policy matters that may come before us. There is printed instructions on the reference table how to join that outside the meeting rooms today. Today's meeting is going to we're going to first hear from the Department of Health under Dr. Bassett, who will provide us a report on recent activities. Dr. Bassett will be followed by Dr. Bauer to talk about the Office of Public Health Activities, then Dr. Morley, and on the Office of Primary Care and Health Systems Management. We have a special presentation by Mr. Bret Friedman from the Office of Health Insurance Programs to provide additional information about the PACE programs and some of the changes that may be coming before us in the future. And then Mr. Holt will then present regulations for adoption from the Codes Committee, followed by Mr. Robinson with the Committee on the Project Review and Establishment Actions. As many of you already may be aware, after 15 years of dedicated service to the Council, Ms. Ellen Rautenberg has resigned. On behalf of the Council, I want to extend our appreciation to her for the dedication and the work that she did, the important role she played. She had an absolute passion for bringing public health conversations and serving local communities and making sure that was brought into this room in each and every conversation she participated in, and we were going to wish her well. We've created a resolution signed by Dr. Boufford and I. I just want to give you some of the highlights. Ms. Rautenberg joined us in June of 2007 and, as I said, served until this past Monday, May 31st. She served on our Establishment committee, the Health Planning Committee, the Public Health Committee, and the Ad Hoc committee to lead the state health improvement plan. She did a great job in really advocating for her particular areas of interest, which was promoting the public health of the citizens of New York State. And on behalf of the Council, we want to thank her and acknowledge the invaluable service she provided us for the past 15 years. I hope each one of you would take the time to write a note to Ms.. Rautenberg for what is clearly one of the longest serving tenures on the council and its predecessor organizations. Now, most of our guests that who regularly attend the meeting should be familiar now with our agenda and how we responsibly organize that for the batching of CON's. Before Mr. Robinson gives his report. If there's any changes that you want to be moved out of a batch, please let Ms. Leonard know and Mr. Robinson and we will change the agenda to reflect anything that you would like to do. My next item on the agenda is the adoption of the minutes.

Jeff Kraut May I have been a motion for the adoption of the revised April 5th, 2022 Public Health and Health Plans Council Meeting.

Jeff Kraut Motion by Dr. Berliner.

Jeff Kraut A Second by Dr. Torres.

Jeff Kraut All those in favor, aye.

Jeff Kraut Go ahead, Jo.

Jo Boufford I'd like to make some corrections that don't change the substance and the report of my report to the committee, if I may, after the meeting, but it doesn't change the essence of it. I think it just makes it easier to recall the specifics.

Jo Boufford Thank you.

Jeff Kraut Are you talking about in the minutes or the transcript?

Jo Boufford The minutes.

Jeff Kraut Do you want to make modifications to those minutes?

Jo Boufford That's correct. Just for the section where I reported to the Council on the Activities of the Public Health and Planning Committee. They're really editorial challenge changes. They don't affect the substance of what's said.

Jo Boufford Thank you.

Jeff Kraut Thank you.

Jeff Kraut We'll note that.

Jeff Kraut Next thing, I want to have a motion for adoption of the 2023 Public Health and Health Planning Council meeting dates. You received them prior to the meeting.

Jeff Kraut I just need a motion to adopt them and publish them.

Jeff Kraut Dr. Berliner.

Jeff Kraut Thank you, Dr. Torres, for seconding it.

Jeff Kraut All those in favor, aye.

Jeff Kraut Opposed?

Jeff Kraut Motion carries.

Jeff Kraut It is now my pleasure to introduce Dr. Bassett, who will give us an update about the Department's activities since our last meeting.

Jeff Kraut Dr. Bassett.

Dr. Bassett Thank you very much, Mr. Kraut. I'd like to add to the words that you've given. I know her well from my tenure in New York City and admire her not only for her service, but for her service to public health more generally and in New York City and the state. So, best wishes to you and thank you for the 15 years of service. It is a real pleasure for me to join you this morning. I'm going to give you an initial update on behalf of the department, as you've heard. You're also going to hear from Dr. Bauer and Dr. Morley. There's a lot that's happened and I'll just get started, much of which what I'll be talking about actually falls under the purview of Dr. Bauer, but we've coordinated our remarks, so I'm hopeful that we won't be repetitive. On May 6th, as you know, there was a case of monkeypox reported in the United Kingdom. This person had traveled to Nigeria, where the disease is endemic, but we've subsequently seen an extension of this virus infection to other individuals. It is a rare virus that doesn't usually give rise to serious illness, but it can result in hospitalization and death. It's related from the same family of viruses as the smallpox virus, but it is accompanied by a characteristic swelling of lymph nodes. It progresses with a rash, which is how it is usually recognized. The early data on this current outbreak suggests that gay, bisexual and other men who have sex with men make up a high proportion of the cases. This is transmitted through close contact, so anybody who's had close contact with somebody who had monkeypox is at risk. On May 20th, our department working with the New York City Department of Health and Mental Hygiene, provided a public update on the ongoing investigation of two suspected cases of monkeypox, both of which were identified in New York City residents. While one individual was ruled out, the other proved positive and had an illness consistent with monkeypox. The confirmation of monkeypox is done by the Centers for Disease Control. As of the end of last month, we have now a total of four confirmed ortho pox, monkeypox virus cases in the state. This is the designation that's now being used by the CDC. They combine testing positive for ortho pox with monkeypox. All of these were identified in New York City. They are identified, as I've said, through confirmatory testing for pox virus. So, it's important that we treat these as probable monkeypox cases and we are continuing to be vigilant as we watch this unfold. We have responded by alerting New York health care providers so that they have information that can help with the rapid case identification and presentation for testing should any of their patients present with symptoms. As you know, the number of cases has increased around the world, the global count mostly from Europe now stands at over 500. We have new data from England, which has seen a rapid increase in the number of cases. They now have 183 confirmed cases, most of them in the City of London. Based on the information that we have available, the current risk to the general public is low. But we are, of course urging the public to remain vigilant and ensuring that clinicians have information they need to rapidly identify and test patients who meet diagnostic consideration for monkeypox. We're working in partnership with federal and local public health authorities, and we will continue to keep the public and the health care community updated. On COVID-19, we do have some encouraging information. As you know, the last time I spoke with you, we were seeing the beginning of another wave that began in Central New York and spread across New York State and then to the entire state, including Downstate. For several weeks, we had a large number of counties in New York that were designated as high risk by the Centers for Disease Control over 50 counties of our 62 counties. We're now seeing a decline in cases across all regions, accompanied by a decline in hospitalizations in many part of the states. It appears that although case rates remain high and you'll hear a bit more about this from Dr. Bauer, that this current increase is now declining. We, as of Friday, going into the holiday weekend, we were seeing a drop in most measures, including the cases per 100,000, the seven day average and daily hospitalizations. We still continue to recommend to all New Yorkers in high risk counties

and anyone who is at increased risk of severe disease or of spreading it to someone in their family network who would be at increased risk of severe disease, that they wear masks in public indoor spaces regardless of vaccination status. COVID-19 is still here, but we continue to use the tools we have to ensure it's control. New Yorkers are, you know, about three quarters of New Yorkers, including the littlest children for whom a vaccine is not yet available, are fully vaccinated. We really need New Yorkers to continue receiving all of the recommended doses of the vaccine, wear masks, especially in areas of high transmission, get tested, stay home if they feel sick and seek advice on whether treatment would be appropriate to them. New York State has played a pioneering role through its Wadsworth lab and the identification of some of the new variants. These are the BA212 and the BA212.1. I don't know why we're keeping the name omicron and adding all these numbers, but these sub lineages of BA2 have expanded rapidly. Each new lineage seems to be more transmissible than the previous one and has a substantial growth advantage, crowding out the original variant and now the original BA2 variant. We have a lab that has been able to identify these variants, identify the mutations that appear to be related to transmissibility and to make these data available through the public reporting system. We now really are hardly seeing any of the original consequences among people who are infected and the CDC's Region Two, which includes New Jersey, Virgin Islands and Puerto Rico as well as New York, now is estimating that 100% of all samples are these sub lineages. Our lab is keeping an eye on other potentially emerging variants that have been identified elsewhere in the world. They are BA4 and 5, which we have not yet seen spreading in in New York State, but our lab we're lucky to have is keeping an eye on these. Turning to boosters, you are aware that on May 23rd, after the FDA authorized and the CDC's advisory committee recommended, we announce that children who age 5 to 11 should receive a COVID-19 vaccine boosters five months after completing their initial primary course. Children who are moderately to severely immunocompromised can receive their booster three months after completing their primary series, which would include three vaccinations. Vaccinations continue to be an extremely effective way that we have to protect from serious illness due to COVID-19. We are working rapidly to release new clinical guidance for the administration of the booster to children to all providers enrolled in the New York State vaccination program. We continue our work to reach out to inform parents and guardians of the expansion of booster eligibility. We are pushing notifications through our Excelsior Pass platform. This is also paired with the continued state investment in making COVID-19 testing available. We are continuing to provide over the counter tests. We've delivered more than 80 million over-the-counter COVID-19 tests to New Yorkers since December of last year, and we encourage people to use these tests when they're not feeling well or they've been potentially exposed as well as when traveling or before attending a large gathering. And of course, if you test positive, we urge contact with a health care provider to discuss eligibility for treatment. We have been reminding New Yorkers about treatment in the early days of the variant surge, we had a shortage of treatment. That is no longer the case. We want it to be very clear to New Yorkers that they should assess their eligibility for treatment and that this treatment is best taken when within five days of the onset of symptoms. So, when symptoms arise, people should not wait to get tested and they should not wait after testing positive and contacting a health care provider. These medications remain available at free of cost. We're continuing to work with providers to increase awareness and facilitate the early connection of New Yorkers who test positive. Continues to be the treatment of choice to appropriate patients with mild to moderate symptoms. We are seeing a decline in cases and therefore a decline of use at this time. We have been pleased to see that treatment did seem to be expanding and we want to ensure that people are aware that they should get tested and get access to treatment. I'm going to turn now to the cases of pediatric hepatitis. We know that in April, the CDC issued a nationwide alert to notify clinicians about a cluster of children with

hepatitis. They have seemed to be associated with that no virus infection. We've been alerting physicians to be on the lookout to identify these cases. We continue to not be clear on the origins of this pediatric hepatitis and the connection to adenovirus also remains unclear. Adenoviruses usually cause respiratory illnesses. We see outbreaks throughout the year, but we have found among the sick children with hepatitis the presence of Type 41. It may be a cause of hepatitis and this that's being observed clinically. The department is working with local and federal public health authorities and investigating cases of pediatric hepatitis. We now have nearly 250 persons under investigation. Some have led to quite severe outcomes, including the need for liver transplant. We know that influenza remains with us. We had an unusual pattern of influenza this season with a bimodal distribution of influenza cases, a late rise and seasonal flu and two weeks ago, we alerted New Yorkers that seasonal flu rates were unusually high for this time of year. We know that the precautionary measures that are followed with COVID-19 are also useful for influenza. Symptoms, stay home, consult your physician, get tested, get treatment, wear a mask in public indoor spaces and living in a high risk counties or at personal risk. We've issued an advisory to the New York State Public and private schools to remind administrators to contact their local health department if they see an increase in school absences. For the week of May 21st, the influenza activity level was categorized as geographically widespread, and this is the 27th consecutive week that we've seen widespread activity reported. The department has extended the surveillance season beyond May until influenza activity has decreased. While we've been managing COVID-19, monkeypox, influenza and pediatric hepatitis, we've also been faced with other events in our nation which we also consider relevant to public health. Obviously, some of these are events that have to be addressed very widely across government and across society. I'm referring to the acts of gun violence. Since I spoke with you last, the City of Buffalo experienced a heinous and unjust act that we have known too well when a white teen drove over 3 hours to the nearest Black neighborhood that he was able to identify and shot 13 people, 10 of whom who died all while livestreaming this event. I'm grateful to Governor Hochul for being unflinching in her characterization of this atrocity as an act of white supremacy. As a department, our thoughts are with the victims and their families, as they are with the victims in the State of Texas. June is Gun Violence Prevention Month, and we continue to view gun violence as a public health crisis and will work with our state, federal and local partners and our own newly established Office of Gun Violence Prevention to address the impacts of gun violence. We also are facing an enormous challenge with the anticipated reversal of Roe v Wade. We know that the Supreme Court is poised to roll back this landmark decision ending nearly half a century of federally and constitutionally protected abortion rights. If this happens, all pregnant people, particularly people of color and those who already have too little access to health care, will no longer be free to make the decisions that are best for them. However, in New York State, abortion access is the law, and here reproductive health care is enshrined in our state law as a medical freedom and a human right. When safe abortion access is stripped away, it doesn't stop abortions, but it does make abortions more deadly and dangerous. This impact will be particularly felt among low income communities, particularly among Black and Brown and Indigenous communities who are overrepresented among the poor in our state and our country. New York has enshrined these rights. We know that we need to think through what support we can offer to the rest of the country, should the ROE decision be overturned. Let me now say a little bit about what we've been doing inside the department. As things have slowed down a bit, we've been able to turn our attention to our own department. It is no secret that over the past few years, the department has lost many members of staff. It has a high vacancy rates that there are many full reasons, but burnout is among them, as well as retirement and whatever reasons people leave their jobs. We have been focusing on rebuilding the department not only through rehiring and through

recharging our staff who have made it through this long road towards the COVID recovery period, but trying to figure out how to work better, to communicate with our staff and improve our support for hard working people and dedicated people who have long served in this department. So, I hosted a town hall. Nearly half of the department employees, 2,700, turned out for this virtual town hall. I'm hopeful that this will be the beginning of many conversations, or at least exposure to conversations that we will have with members of the department. We have conducted a staff survey, which had a pretty good response rate, over two thirds of our staff. Actual numbers, 71% participated. We learned that people, by and large, are very proud to work at the department. 8 out of 10 said that they were proud to work for this department, but only 6 out of 10 said that they'd recommend the department as a great place to work. This is a challenge to us. We have a staff that is committed to the mission, and we need to make it a place where people really feel good about coming to work every day. And of course, another finding of this staff survey was that there was widespread belief that the department could do more to improve diversity and inclusion. So, this is then I'm now 6 months almost to the day into my role as Health Commissioner. As I was in the first days, I remain enormously impressed by the talent and commitment of the people who live here. We live here. It feels like they live here. I'm sure many of them feel that who work here. We are now on a road of looking at how to strengthen the department as we go forward. I of course, I have to finally mention that this is Pride Month, and I would be remiss if I didn't recognize the importance of the LGBTQ community and the Department's commitment to advancing health equity. We are grateful for the many partnerships and health care networks and community based providers that have allowed us to address urgent, emergent and long term community needs. With that rather long report, I look forward to keeping you apprised. As we continue to work on these many areas, I want to say just a few words about one of my colleagues who will be presenting to you for the last time today. I'm referring to Brett Frieddman, who stepped down as Medicaid Director. I want to thank Brett on a personal level for introducing me to this complex and important program for the people of the state and our department and for his service in leading the Medicaid program more generally. He has met the challenge of running one of the most robust Medicaid programs in the country and has advocated for critical funding during this year's budget cycle. He leaves with several key accomplishments, and we are grateful for that and grateful also for his his work and building a deep bench, which includes who is now acting Medicaid Director, and to whom we have been transferring Brett's responsibilities. Brett, we wish you well.

Dr. Bassett And with that, I'll turn it over to Dr. Bauer, who will provide additional updates and public health.

Dr. Bassett Dr. Bauer.

Jeff Kraut Just before we go there, just to take a pause. Is there any questions for the Commissioner on the wide ranging topics that she addressed? Anybody up in Albany?

Jeff Kraut Commissioner, I just want to thank you.

Jo Boufford Jeff, sorry.

Jeff Kraut Go ahead, Dr. Boufford.

Jo Boufford I don't know which hands to put up or the yellow guy or the other hand.

Jo Boufford Mary, thank you. I just want to say thank you very much for the wide ranging report. It's really good to hear about obviously, the infectious diseases which understandably attract very high levels of attention, but also the issues of gun violence that you raised and the the threat to Roe v Wade as well as LGBTQ support. I appreciate your adding those really important public health issues to your report. I do want to indicate that the Public Health committee of the council has hopes to really begin to be more active in support of the staff, especially, it has expressed interest. Before COVID was very involved and really taking a broad look at the issue of gun violence. New York State, as you noted, being very aggressive and assertive in its legal frameworks that have been developed, but also looking at how we could be using this platform, public platform or other mechanisms, working with the staff to address that important and tragic issue. Secondly, we have been very interested in maternal mortality going back five or six years. You mentioned family planning and access to family planning. One of the really two recommendations that a white paper for this council, which I think was very influential in setting up the Governor's Commission on Maternal Mortality and keeping that focus very much alive, was on the universal availability of family planning, as well as the importance of early identification of high risk pregnancy and availability of referral for women of high risk. hat thoTse two issues have not been as much of a focus of the gubernatorial commission over the last year or two. I think we would really like to revive the focus, as you mentioned, on the availability of family planning, abortion services and others in that context, as well as continuing the sort of visibility of that, using, again, the platform of the council. In the March 1st meeting, which I think allowed us to kind of set the agenda for what we hope the Public Health Committee and the Health Planning Committee will be able to take on in the coming weeks and months, understanding the changes that are afoot in the department. All the efforts that you're making to address, you know, what we all know have been real narrowness difficulties in bandwidth given COVID and all the other pressures. It's delighted to hear that. We really want to be supportive of staff bringing the issues that you all are committed to, to the public's attention through their work of the council, and look forward to ongoing collaboration and revitalisation of those collaborative efforts.

Jo Boufford So, thank you.

Dr. Bassett I really appreciate that comment.

Dr. Bassett Thank you.

Jeff Kraut Yeah, we certainly have kind of an appetite and a robust agenda that we'd love to get back to. I know we've been talking about it and frankly, been pretty patient given the challenges you have in staffing the department and frankly, addressing an the ongoing challenges every day in public health. We recognize that, but we'll be a dependable and I think a very useful partner in kind of helping to formulate some policy in the state. We really look forward to the upcoming year.

Jeff Kraut Any other questions before I ask Dr. Bauer to speak?

Jeff Kraut I just want to I neglected to mention to the council that the legislature has recently passed registration legislation, adding an additional seat to the council. I think it's primarily for women's health. And that's going to require us to change our quorum requirements from thirteen to fourteen. Currently our bylaws reference a quorum of thirteen members to constitute a quorum to conduct business, and therefore we're going to have to revise our bylaws. In order to do so, we're going to. In order to amend the bylaws, the council is going to be receiving the notice of the intent to amend those bylaws at a

meeting prior to the council voting on the amendment. So, essentially, I'm giving you notice now that we are going to amend the bylaws. You will receive revisions to you five days prior to the next full council meeting to review it. And then we will be coming back together to vote to amend those bylaws, raising our quorum requirements from thirteen to fourteen. So, just consider you. Everybody is on notice that we're going to do that.

Jeff Kraut Dr. Gutierrez, go ahead.

Dr. Gutierrez I'd like to bring up an issue, I think that is pertinent related to the presentation by the Commissioner, being that we are the council. I'm concerned the media coverage of monkeypox paints it as an African virus. I believe we should be careful to avoid that labelling. This particular virus is quite endemic. I think we need to mind our verbiage. That's it.

Dr. Bassett Thanks for that comment. I guess we should also point out that it's not correct to call it a monkeypox virus. This species that it's thought to be and host in is not the monkeys. It was just first found in monkeys back in the 1950's. So, you're right, but it is endemic in part in West and Central Africa. But currently, we really don't quite understand what's driving the current increase.

Jeff Kraut Thanks, Dr. Gutierrez.

Jeff Kraut Thank you, Dr. Bassett, for your remarks.

Jeff Kraut I now turn to Dr. Bauer to provide the remarks.

Dr. Bauer Thanks very much.

Dr. Bauer Good morning, everyone. I'll keep my remarks brief. As Dr. Bassett had mentioned, COVID is proving to be quite, quite resilient. And although cases and hospitalizations are declining, the rates that we're seeing now are still higher than they were one year ago and higher even than they were in March of this year. Nonetheless, we do recognize the COVID fatigue felt by the public, by our Health Department staff, and by governmental leaders at all levels. We continue to explore ways to make the COVID pandemic more manageable and for our public health workforce to contemplate a return to some semblance of regular order. We began such an effort back in the Fall. And, as you know, we were derailed by the surge. Right now, while we have more cases than we did in either of the past two years at this time, and we have a more infectious variant than we've had previously. And frankly, we have fewer mitigation measures in place than at other points in the pandemic. We still do have some wind in our sails, as it were. We have vaccines and boosters that still mostly protect against severe disease and hospitalizations and prior infections that also offer some protection. We have diagnostics, including a home test, to help us make decisions about gathering and traveling and when to stay home or seek treatment. We have therapeutics we're working hard to deploy to those in need who are eligible. We've lowered the likelihood that an infection leads to hospitalization or death. Right now, and I stress we don't know what's to come. COVID is not the killer that it was. So, in this context in OPH, we're planning for the future. We've been gathering perspectives and ideas from current and former Health Department staff and from our local health department colleagues to lift up the best practices from the COVID response that we should continue into the future and make sure that we have at the ready for future pandemics or other public health emergencies. We've been reviewing our executive orders and guidance documents to understand what's needed, when and how we can simplify

and streamline the information that we share and how we can strengthen and improve our internal processes. We're creating some approaches to understand the pandemic's trajectory now and into the future and identifying trends and signals that warn us to be ready to take action, to inform the public and to work to protect our health care capacity. As we wrap up our information gathering and synthesizing in June and July, we'll look forward to updating you on our public health approach to the pandemic going forward. Secondly, I'll share that CDC is expected to release a new funding opportunity on strengthening the public health workforce, public health infrastructure and our data systems with a focus on health equity. This is another effort to help rebuild public health and to address some of the challenges that frankly, existed before COVID, but were certainly stressed and exacerbated by the pandemic. We see this as an opportunity to reinforce our core public health capacity, especially our support to local health departments and our efforts to engage with communities. It's also an opportunity to continue and expand some of our data modernization efforts that were begun under the COVID ELC awards and to address many of our NON-COVID data systems, particularly in environmental health. This is one of the few CDC grants that is disease agnostic. It allows us to take a holistic approach to strengthening community health with a focus on cross-cutting efforts to build our public health capacity. We're looking forward to that work in the future. Finally, I'll just mention as a heads up for future discussion at the July and September meetings. The Department, through our Centre for Environmental Health is proposing to revise 10 NYCRR Part 5 Sub Part 51 to adopt maximum contaminant levels or MCL's for additional per and polyfluoroalkyl substances, also known as Pfas and add notification levels and monitoring requirements for 19 Pfas to meet the statutory requirements of Public Health Law Section 1112, which was enacted last year and of course, following the recommendations of our Drinking Water Quality Council.

Dr. Bauer I will leave it at that.

Dr. Bauer Thank you.

Jeff Kraut Thank you, Dr. Bauer.

Jeff Kraut Any questions or comments from the council?

Jeff Kraut I don't think anybody in Albany.

Jeff Kraut So, Dr. Bauer, I just want to thank you. With respect to your reference to making public health data more robust, the only thing I would also suggest is that in constructing those data platforms, that they be constructed in a way that they're open source, that all the data is downloadable. Much like the New York City data is. It be performed at a small area, almost at a census tract level in order to make it actionable. Data given to us at the county level or frankly, at the zip code level is not helpful to try to address and pinpoint issues of health equity. I think to the degree you also include water quality and other what we may not see as many in the health industry. We see a lot of medical and clinical diagnosis, but public health measures would additionally be of great value to the organizations that are really trying every day to deal with this. What we are is data starved in it, particularly at the state level. The data that we get is not timely. Frankly, we're making decisions today based on 2019 Spark's data, because we obviously have to disregard most of 2020. So, anything that we can do to get more of that data into the public domain, make sure we're providing data from health providers, it's bi directional, it comes back to them. Those are all important things. I would just you would find, I think, enormously strong support at the council level for that. And certainly we're going to need it

if we're going to be successful in the 1115 waiver, which we are not speaking about today, just we have a limited amount of time just warning everybody.

Jeff Kraut Thank you, Dr. Bauer.

Jeff Kraut Mr. Robinson, just has a comment.

Mr. Robinson Thank you very much.

Mr. Robinson I particularly want to underscore your comments regarding the public health workforce and perhaps actually push to go beyond that a little bit. I think that probably one of the critical crises in New York State with regard to health care is the workforce issue. When you look at the issue of even the risk to hospitals of being overburdened by COVID patients, probably more people being admitted with COVID than from COVID these days. I would argue that the government's initiative to fund health care workforce initiatives really needs to be reinforced by the Department of Health. I think both from the standpoint of long term care as well as hospital based programs. This is a crisis in New York at the moment, and I think our ability to care for and provide access appropriately is actually being very much challenged right now. I consider that to be a public health issue as significant as the other ones that you've mentioned. So, just wanted to make sure that that was on your radar screen. Recognize the state is trying to do something about it and appreciate the budget decisions that were made that start to make investments in that space.

Mr. Robinson Thank you.

Jeff Kraut Thank you very much.

Jo Boufford Thank you, Dr. Bauer, for the presentation. I just wanted to also reinforce the importance of the broader public health workforce. That was also one of the agenda items. We heard about the very exciting Public Health Fellowship program during our meeting on March 1st. I would really like to go beyond that and think with you about the broader workforce needs and the public health side. And then similarly, a few years ago before anyone, I think you and others were at the department, being around a long time that New York was one of the pilot states to take to do the self-assessment using the essential public health functions with a tool of CDC and Pan-American Health Organization that's been around for a while. I think it could be a really good vehicle. It's a self-assessment that includes local health departments and the Central Health Department on what are the so-called, you know, officially recognized by WHO and CDC, essential public health functions that all departments should be able to perform and could be a really important basis for applying for CDC funding for infrastructure, because it really allows you to identify you mentioned data specifically, but other areas that where help may be needed and to justify requests for additional staffing or additional sort of technical support in that in those areas. I just want to commend it to you. New York had used it very successfully. It's not a big, onerous process. It can be done reasonably quickly and I think might really inform a very, very terrific application, which we hope will be super successful for the federal funds.

Jeff Kraut Thanks, Dr. Boufford.

Jeff Kraut I'm now going to turn to Dr. Morley.

Dr. Morley Thank you very much. I want to thank the members of the committee for the perfect lead in to my report, Mr. Robinson and Dr. Boufford.

Dr. Morley The OPCHSM report, beginning with the Center for Health Care Policy Workforce Initiatives, is at the top of our list. Health care investment in fiscal year 2023 state budget that includes 1.2 billion for investment in frontline health care workers. 2.4 billion is directed to improving health care infrastructure, 3.9 billion in funding to provide aid to hospitals struggling financially from COVID-19 pandemic and 7.7 billion for four years to increase the home care worker minimum wages. These investments will combine to improve working conditions and grow the workforce by 20% over the next five years improving the health care industry considerably. The Nanny program, Nurses Across New York, which is similar to the current Danny or Doctors Across New York program. Nanny will provide loan repayments over a three year period to registered nurses and licensed practical nurses who choose to work in New York's high need health care facilities. 2.5 billion is available for loan repayments in year one. Over the course of the Summer, the department will work with stakeholder groups to develop the program further into identifying further criteria. The next is the public health related legislation, which Mr. Kraut has already covered. Just to remind folks that there is an additional member that will be joining us shortly. We hope. That's the person who will have expertise in women's health and facilities in the area of health equity and inclusion. The legislature has passed a bill public health law 2802B was amended requiring a health equity impact assessment be submitted as part of the Certificate of Need application to the Department. This law adds consideration of projects impact on medically underserved individuals as factors to consider when improving a CON application when considering whether to approve a project. It requires a health equity and inclusion assessment be prepared by an independent entity and include whether a project will improve access to services, health equity or reduce health care disparities with reference to members of medically underserved groups in the applicant service area. The requirement applies to Public Health Article 28 definition of quote hospital, end quote, which includes general hospitals, nursing homes, diagnostic and treatment centers, ambulatory surgery centers and birthing centers. The requirement applies to construction, establishment, changes in establishment, mergers, acquisitions, elimination or substantial reduction, expansion or additions of a hospital or health related service that requires review by the council or Commissioner. This would be full review CON's, administrative reviews and limited reviews. The law does not require an HEI assessment for a diagnostic and treatment center whose population is over 50% Medicaid or uninsured, unless it's a change in a controlling person. Requires posting of the application and assessment by the department on the DOH website, as well as a requirement for the applicant to post the application and assessment on its website within a week of acknowledgement of the application by the Department and requires the Commissioner to make regulations to take other actions, such as issuing guidance reasonably necessary to implement the law. The effective date will be June 21st, 2023, so one year from this month. The Center for Health Care Provider Services and Oversight, the Division of Adult Care Facilities and Assisted Living has developed a new administrator and new surveyor orientation, which is now close to production and will allow individuals new to the ACF platform to be consistently trained in best practices and regulatory expectations specific to the ACF industry. The division has further streamlined its licensure procedures to allow for expeditious onboarding of newly established facilities and new certifications. From the Division of Home and Community based settings, the division recently addressed the issue of local health department licensed home care services that went unregistered during COVID. 12 Local health departments were provided the opportunity to reregister without fines or in some cases where a fine was paid to request refunds. Personal care aide training program documents

are on the website and have recently been updated. From the Division of Hospitals, Transplant Counsel met on the 26th. There were presentations from the presidents and the Review of the National Academy of Sciences recent paper on Equity in Organ Transplantation. From the Bureau of EMS, Governor Hochul issued a proclamation recognizing EMS week on May 15. The proclamation recognized all the great people and work in their field and honored those who had fallen in the line of service. The World University Games will take place in Lake Placid. It's an 11 day international festival that will take place in January of 2023, involving over 1,800 athletes from 15 countries. Twice as many as those who took part in the venue hosted in the 1980 Winter Olympics. The Bureau of the EMS continues to work with the promoter to develop plans and procedures for the events that ensure participant health and safety and also support the local emergency services system. The surge operations center, part of BMS, fielded 98 calls for assistance through the first three weeks of May. That's down from 200 the month before, but still shows that assistance is being requested. From the Bureau of Narcotic Enforcement, they continue to work on the prescription drug monitoring program based on input from focus groups of New York State practitioners, including at adding visual indicators to flag for prescribers, the presence of overlapping opioid and benzodiazepine prescriptions and provider episodes, also known as doctor shopping. The PMP is now interoperable in 33 states the District of Columbia, Puerto Rico, the military health services and the VHA. The drug takeback program. They hope to announce very shortly the approval of two operators for the drug takeback program. We're anticipating its implementation in the coming months. The Opioid Stewardship Program has collected over 80 million in opioid stewardship revenue stemming from the calendar year 2017. Finally, OPCHSM is focused, as is the entire department, on rebuilding our state workforce. We have 76 open positions that we're recruiting and 16 positions, waiting for someone to begin. The people have been identified. We just want a starting date. The executive budget increased OPCHSM FTE's by 164 positions to implement the budget initiatives. Of particular note, we recently posted the position of the Director for the Center for Health Care, Planning, Licensure and Finance, and resumes are being collected. I'd like to thank in particular Shelly Glock, who's been performing her old duties while also filling in in the new duties of that acting role over the course of the last couple of years. She's done a terrific job, and I hope you join me in encouraging her to apply for that position.

Dr. Morley That's my report.

Dr. Morley Thank you very much.

Dr. Morley I'll be happy to take any questions.

Jeff Kraut Well, you've certainly gotten up to speed.

Jeff Kraut Thanks, Dr. Morley.

Jeff Kraut Questions for Dr. Morley?

Jeff Kraut Ann.

Ann Monroe I just would like to first of all thank all of you for your presentations. I have an observation and a request for you at the department. The observation is that we know that we will not advance public health and or service delivery without much better integration between the various delivery systems, whether that's mental health, substance abuse, or

the integration of public health and health care delivery. My concern is that as you report, we hear very good things coming out of each of the groups, but I would like next time to hear more about how you are integrating the things that are happening at the department, so that that can be a model for local departments of health and service delivery. I don't think we can be as successful as we want if we continue to focus on those things as separate. And I would just add with some history and I see Jennifer there. Over three years ago, John Rugge and I chaired a group to integrate mental health, substance abuse and physical health within some kind of limited license. It was in demand then. It's still in demand and nothing has happened. We have no way to really integrate those services within an organization which we know the waiver, which we're not going to talk about, but also regular delivery in public health can't be achieved with these silos. I just would like with the new fresh administration at the department level that in addition to the good work you're doing individually, that you have some joint projects that bring those two things together along with the various other parts of the service delivery system. So, that's an observation and a request to see more integration between the parts of the department that focus on very specific things. So, thank you for listening to me.

Jeff Kraut Nicely said, Ann.

Jeff Kraut Any other questions for Dr. Morley?

Dr. Kalkut Thanks, John, for the presentation. Is there a guidance for the CON assessment of equity inclusion that has already been issued or will be on how that should be structured?

Dr. Morley Fortunately, we still have a little over 12 months and we are working on that guidance. We will be issuing something. I would think there's a chance that there'll be some regulations, but they'll certainly be guidance.

Dr. Kalkut Thank you.

Jeff Kraut And within that guidance, we have to be clear about what applications. If we have an application to relocate to an office space or to build an elevator, there has to be some materiality of that as well.

Jeff Kraut Dr. Rugge, I think you had a question, if I'm not mistaken.

Dr. Rugge Well, really just a comment, and that is I'm here in Albany and able to do the count. There are sixteen senior health department staff with us. You may be outnumbering those of us on the council really appreciate the participation. And again, even in the face of COVID, just you have to recognize how many changes continue to happen in health care with movement toward value based payment. The need for integration as was brought up and also the very special challenges of the long term care that Jim Kline has been very articulate about, about bringing up so many issues so hard to do, especially with a shortage of workforce. Would only say again, as I've been saying offline, this council represents an available workforce to the department. We are eager for planning activities that help us to set priorities, and we will be glad to work with you to find next steps, because without state guidance and state oversight, we're unlikely to have the outcomes that we are hoping for. So, thank you, Dr. Bassett and Crew, very much for being here and joining us.

Jeff Kraut Thank you, Dr. Rugge.

Jeff Kraut Now, I'd like to now welcome and introduce Mr. Brett Friedman. You heard the Commissioner give her appreciation. And thanks for Brett, who is leaving state service. In fact, he was kind enough to arrange to be able to be here to give this presentation. I'm just going to give some context for his why he's here. When we took up a matter with an individual application, we heard a lot of perspectives about the PACE program. I think one of the things we didn't have the benefit of is understand the policy context and the importance of this program in the state's thinking of how it's going to take care, particularly with older populations and the coordination that we've all been just talking about. We asked Mr. Friedman to come here. He has a brief presentation. We're not voting on anything. It certainly is not the subject of any application. As you also I just wanted to mention, as you know, Mr. La Rue was unable to be here today. Today's the white mass that the diocese is undertaking, certainly had to be there. He wanted me to share with you that he is not opposed to a PACE program. He is not opposed to a for profit based program. He hopes that when we have the opportunity to get back together, when we are considering it, he's hopeful these comments that Mr. Friedman is about to make will give him better context for his perspective as well.

Jeff Kraut So, Mr. Friedman, I'll turn it over to you.

Brett Friedman Thank you, Mr. Kraut.

Brett Friedman And just to pick on something that Ms. Monroe said, that PACE is a great example of integrated licensure. I think all of the issues that I'll touch on in this presentation deal with both the challenges and promise of a program that spans multiple regulatory licensure silos. I think some of the complexity that the review committee was struggling with with that single application is a reflection of how to navigate integrated licensure on something like a PACE program. So, as Mr. Kraut mentioned, the purpose of my presentation today is to give an overview of PACE and to discuss the nuts and bolts of how PACE is currently regulated in New York in ways and options that New York could modify, expand, enhance its regulatory licensure process to promote PACE in New York. I have a very short slide presentation with pretty pictures, so I hope that will help everyone for visual learners figure this out.

Brett Friedman Is it working?

Brett Friedman Next slide, please.

Brett Friedman So, it's not me. I also want to say it's auspicious that my last day in state service is talking about PACE.

Brett Friedman There it is.

Brett Friedman So, briefly on the agenda, I'll give a background on PACE, what it is. I'll talk about the current regulatory framework for how New York establishes and authorizes PACE in the state. Very serendipitously or by happenstance, a bill was passed in both the Senate and the Assembly just at the end of last week on PACE. I'll talk about that bill and how it fits into this landscape. I'll discuss three structural options or alternatives for how New York could modify existing law or guidance to help expand PACE. I'm not going to provide a DOH recommendation, but these are the options that exist looking comparatively across states in terms of how New York could do it so that you can have a perspective on ways that it could pursue PACE if it wants to expand it. And then we'll talk about other

ways that DOH in particular, are looking to utilize our administrative flexibilities to expand PACE in New York.

Brett Friedman Next slide, please.

Brett Friedman One more.

Brett Friedman What is PACE? It's a unicorn of a program. People who really love and understand PACE have really good reason to do so. I sit here next to Mr. Thomas, who I believe operated a PACE, and I know Mr. La Rue also currently operates at PACE. There's a lot of experience here in terms of what the PACE model does, but what it is, think of it as an insurance program that spans provider services. It provides comprehensive medical and social services to elderly individuals, most of whom are duly eligible for Medicare and Medicaid. The PACE program is now over 50 years old. It's started with a single provider in California. They developed a model of care that was proven to help seniors age independently in the community, not in a nursing home by integrating every aspect of a person's care, medical care, prescription drugs, transportation, food, socialization, among other benefits. So, if they could control everything that person needs, it was proven effective at keeping that member out of a nursing home. It does so in a few very distinct ways. The hallmark of a PACE program is an interdisciplinary care team. We have care teams and other aspects of service delivery, especially in Medicaid, but PACE is unique. You have the physical therapist, a nurse, a recreational therapist, a dietitian, medical care providers, drivers, all meeting and discussing an individual's case and everything that member needs as part of their care plan to keep them in the community. As I mentioned earlier, it's a comprehensive benefit package. It allows the PACE program to be responsible for everything that member needs, medical or social. I like to think it was the first social care program. It really thought to address social determinants of health. It recognized those were important. It's critical that there be a PACE center. This is really where you and the CON establishment process comes into the picture. A member goes to a PACE center. It's a physical establishment. They receive socialization and medical care in that location and then there's capped financing. By definition, it's an insurance program. They receive a very large, because of what they control, capitated payment to manage all of the services that individual needs under the Medicare and Medicaid benefits. PACE is predominantly a medicare program, but states can elect to provide services to Medicaid members as an optional Medicaid benefit. It is authorized by state plan. It's not necessarily a waiver service. It's done pursuant to primarily. And then once a member joins PACE, PACE becomes the sole source of their benefits. They get everything from the PACE. That is their source of coverage. And critically, there's something that's called the amount that that would otherwise have been paid. So, in the PACE authorizing statute, which is federal, the federal government says we will pay the PACE program, but no more than the amount we otherwise would have paid if the member was receiving services in a nursing home. And that's critical because that's what ensures that PACE is cost neutral to the federal government and to the state.

Brett Friedman Next slide, please.

Brett Friedman Oh, you're there.

Brett Friedman Perfect.

Brett Friedman What are the benefits of PACE? As I mentioned earlier, PACE is a proven model. It's shown and we highlight some of the data sources. It's proven to reduce hospital admissions. It provides better preventative care for PACE members as compared to a fee for service program. It provides high rate of community integration of residents. It's effective at keeping members in the community. Again, these aren't compared to MLTC. New York is a little bit unique, because we have such a robust, managed long term care program. But in states where the primary alternative is fee for service, it's very effective at keeping members in the community and the caregiver satisfaction is extraordinarily high. These data and this support has resulted in many states wanting to both elect PACE, but also increase PACE enrollment. Notwithstanding the benefits of PACE, it has been a very hard program to scale. There are a number of reasons for it. Mainly it's a very expensive program to start. You have to have the PACE center. You have to either employer contract for the interdisciplinary care team, you have to be competent and managing substantial insurance risk. You have to be or contract for direct provision of services, including medical and home care. A PACE model is. It's not for the faint of heart. As a result, there's about 55,000 members nationwide who are at PACE. If you scale that, we have about 270,000 people in New York alone who are on. PACE comparatively is a very small program, but it's one where there is great promise to try and increase. Again, this is full risk, full capitation, full integration of social care in health care, and very effective at keeping high needs members into the community.

Brett Friedman And so if you go to the next slide, what is the status of PACE in New York? New York is 1 of 31 states that have elected to expand the program to their Medicaid benefit for dual eligibles. We were one of the first states to do so beginning in the late 1980's as part of a federal demonstration program. And that program has since been permanently codified in federal statute and in the manual. We, because we don't have a separate PACE authorizing statute, we have treated PACE as a form of managed long term care. If you're a fan of the DOH Medicaid enrollment reports, PACE is a line on the enrollment reports. We did a snapshot here. This was as of December 2021. Of our 5.7 million Medicaid members in managed care, 5,800 were in PACE. It is a small program. About 400 million a year. These numbers actually have increased actually pretty dramatically in the last couple of months, right. About 6,400 currently. If you think about it, for the scale of the entirety of the Medicaid program, we've got 7.4 million members in Medicaid right now. That number may drop a little bit with the unwind. Of those 7.4, we have 5.7 in some form of managed care. 284,000 in managed long term care. 5,800 at PACE. PACE is a critical area of growth. Historically, we have nine non-for-profit plans currently operating in New York there throughout the state. We have two Downstate, we have seven in rest of state, and they're all not for profit entities. I'll talk about why. And then just one plug for work that OHIP has been doing in my time as Medicaid director is we put out a comprehensive roadmap for integrated care for dual eligibles. And in that roadmap and please look at the came out just the other month of all of our initiatives designed to increase integrated care for dual eligibles. Expanding PACE enrollment is a critical initiative. Finding ways to increase PACE enrollment is something that we desperately want to do.

Brett Friedman You can go two slides.

Brett Friedman So, what's the current regulatory framework for PACE in New York? This is really why we have only not for profit PACE. If you think about it, PACE is a federal program, but we have to superimpose that federal program on our state licensure rules, which would did not make for an easy fit. If you look at the benefits and services offered by PACE, it implicates three separate articles of the public health law. Article 40 for licensure

is required, because PACE organizations receive capitated payment and they receive a risk. So, because they bear insurance risk, they have to be licensed as a managed care organization. Because the center is delivering medical care in a clinic environment, we have required that the PACE Center be licensed as an Article 28 Diagnostic and Treatment Center. In addition, because the PACE organization has to deliver and arrange for in-home personal care nursing services, they also have to have an Article 36 license. And so this goes to Ms.. Monroe's point about integrated licensure, right? A PACE is a program that requires integrated licensure. There's a complexity here because under federal rules, which are codified in the manual in Section 50 of Chapter 9, it says that a new operator cannot contract out the center services until it has demonstrated fiscal soundness and competence. This predates my arrival, I think it probably dates back to the 1980's where we have the that requirement to say, if you are seeking new a new PACE application, the Article 28 license and the Article 44 license need to be held by the same legal entity. I tried to sketch it out. On the right side of the slide is what a for profit PACE organization could look like in New York. Starting with the bottom left, that is the operating. That is the PACE organization. It needs to hold integrated Article 44 and Article 28 licenses. Because we regulate on the insurance side. This is what OHIP issues. We regulate the PACE as an Article 4403FMLTC under the qualifying applicant criteria, it needs to be a subsidiary of a nursing home, an Article 28 operator, an existing HMO or other qualifying applicant, which means it needs to be a sub. So, the qualified parent entity, it's a set of a qualifying parent under 4403F. You have to have natural person owners, because those natural person cannot be more than two levels away from the Article 28. So, if you are a for profit national plan, you're not going to have natural person owners two levels in an ownership structure away from the operating entity. You're going to have 50 or 60 or 70. I mean, if you've ever seen a corporate org chart for any for profit managed care organization, it's a hydra. And so that has effectively precluded for profit PACE in New York. But for profit PACE is permissible.

Brett Friedman If you go to the next slide, that's the reason why all nine existing organizations are not for profit entities, because it aligned with historical federal requirements. Beginning in 2009 and fully authorized in 2015, CMS permitted for profit. It was historically a not for profit model federally. It allowed for for profit PACE. I'm a reform corporate attorney. We did a lot of private equity deals in PACE. It was a hot button issue seven or eight years ago, and CMS explicitly stated that they would expect for profit organizations to exist, but to retain all key administrative functions. But as I mentioned, because of our Article 28 44 integrated licensure requirements, based on our interpretation of CMS rules, structurally a for profit PACE couldn't ever get over the hurdle. It's not to say they didn't try or they tried to advance unique interpretations, but I think some of the confusion that came out in the review committee meeting was testing the waters around what structure may work. But the Pace Center, the DNTC under our existing interpretations, needs to be in the same legal entity as the 44 and that can't have more than two levels until natural person ownership in order to pass PACE licensure muster.

Brett Friedman If we can go to the next slide.

Brett Friedman What does the recent legislation do?

Brett Friedman One more, please.

Brett Friedman Passed both houses on May 24th, 2022, and it would create a separate article of the public health law to establish a unified PACE licensure process that is otherwise in compliance with Articles 44, 28 and 36 of the public health law. The

predominant change is that, as opposed to us treating PACE as a form of MLTC, it would allow us to treat it as something different. It pretty much delegates how that would look to the promulgation of regulations enacted by the department that would likely come through as part of the codes review that we heard earlier today. It gives the department authority to think about licensing PACE differently. It doesn't address how to promote for profit PACE. It doesn't address directly those challenges with integrated entity licensure on its face. It just creates, again, authorization. If the bill were to be signed by the Governor to reconsider how the department treats PACE organizations, bring them out of Article 44 in particular, so that we can think about how to prudently develop and support the expansion of PACE in New York. Regulations like that, as you know, we'll take time and we'll have to think about how they align with our requirements under Part 98 of the New York Codes and Rules and Regulations, how they relate to Part 405 and other aspects 10NYCRR. There's a lot there. It's going to be a fairly substantial and owner's regulatory development process. It does reflect the fact that PACE is unique and that we've been struggling to superimpose state licensure on a very innovative and unique federal model. So, apart from the statute, what are structural options for expanding PACE? There's a reflection here that in order to expand PACE, you need to do more to overcome the hurdles for for profit PACE operation in New York. Because PACE is expensive and because it's hard for PACE to scale, it's very difficult for a not for profit organization to raise sufficient capital to meet reserve requirements to do a statewide or a more expansive PACE model. These options overcome that integrated licensure requirement to allow for PACE to expand. Option one is what we call representative governance. The best analogy for this group would be how we currently issue CON's to dialysis clinics and around what would be the normal natural person ownership requirement. This would require a change in Article 28 of the public health law. The current PACE statute as voted on and approved by both houses, doesn't provide for this. We would have to go back to the statute. We'd have to amend and allow specifically for representative governance in connection with a application, so we could keep that integrated entity requirement without the natural persons prohibition or without natural persons restriction. There's pros to this, which is it's a process with which is familiar and that you know how to approve. It preserves the requirement that the same entity hold both licenses, which reflects what CMS has basically stated in this case manual. The cons are it requires a new statutory enactment, which is not been in the current bill. It creates a further expansion of representative governance, which is a change. It's a change from the way that us and DOH typically do it. So, that's option one.

Brett Friedman Option two. If you go to the next slide. Is to adopt a contracted diagnostic and treatment center model. So, as I mentioned, we've traditionally required a PACE entity to hold both licenses, and that's based on a very long standing interpretation of CMS rules by the state. We could go and seek guidance from CMS, as other states have done, to see whether the PACE Center and the DNTC license needs to really be held in the same legal entity, or whether we can permit a new PACE operator from contracting from a limited subset of medical services performed by the DNTC that resides outside of the license PACE entity. We already do that for Article 36 services. I think only six of the nine PACE organizations have an integrated Article 36 license. The other three do not. It's a way to separate out that licensure. You would approve a separately incorporated and established DNTC and then OHIP under its authority to approve contracts with regulated managed care entities, would approve what's likely a provider services agreement between the DNTC and the PACE entity. We would include integration requirements or coordination requirements within that agreement in order to ensure that the PACE model is effectively delivered. The pros about is it preserves the center, as is the DNTC license in accordance with Article 28. It doesn't require any new statutory or regulatory promulgation. We would

simply seek CMS guidance and develop a new contract template. It avoids further expansion of representative governance depending on what you wants to do there. It retains a department approval right of the contract between the PACE Organization and the DNTC to ensure the PACE model of care is delivered appropriately. The cons are we'd have to go back to CMS and make sure it works for them. We've spoken with the National PACE Alliance, and they're hopeful that CMS would approve something like this, as they've done in other states. We would have to ensure that splitting out from voluntary integration doesn't have a programmatic impact. But we think, again, we could probably control that by contract, and it would require further analysis of you to review and approve the DNTC component to ensure that DNTC is capable of delivering services in connection with a PACE model of care. So, that's a little bit different, but it's something that we think is capable of being done. The third option, and just from a full transparency standpoint, I don't particularly like, but it's an option. We're putting on the paper here is to allow the PACE center as opposed to contracting with a third party DNTC, to contract with a physician practice to deliver the medical services in connection with the PACE model. If you think of Article 44 in a contract number 28 instead of 28, it would be a physician practice. We put it on the list because other states, notably California and Colorado, which are probably the other two states with the largest PACE presence, do allow for physician practices to deliver PACE medical services in connection with the PACE model of care. It's simple. It would allow for a PACE organization to have the greatest potential access to medical services. I think it would limit the purview of DOH to surveil and authorize the medical services in connection with the PACE model. In addition, I called into question whether it could really be called a PACE center, because as this group knows well, says you cannot use the term center if you're not authorized DNTC. I think there would be a complexity there that's something that's not an DNTC is using the term center. We'd have to think about whether it implicates other regulations. In terms of those options, any of them would help navigate the challenges with expansion of the PACE model. Of the three, two is probably the simplest. We're just going to put that out there. Apart from this, I'll call it access to capital problem. We are working in other ways to promote and expand PACE.

Brett Friedman And so if you go to the last slide, slide 17, we're doing a lot of different things. The first is pending CMS approval. We've submitted something called an appendix P to the model contract, which would allow PACE organizations to engage in direct enrollment of members of potentially eligible PACE members without perspective review by what's called the Conflict Free Evaluation and Enrollment Center. All MLTC's dating back to I think 2014 or 2015 have to go through which deems a member eligible before that member could be enrolled and receive services from a MLTC. PACE has historically complied, because we treat it as an MLTC, but because PACE is really unique, we would and consistent with CMS permission carve out PACE enrollment from it. That would allow PACE to go in to a nursing home to a hospital upon discharge and more rapidly enroll a member to help improve PACE access and growth. We have excluded PACE from the recently implemented independent assessor process. Those of you who have who closely follow the long term care space, as you know, part M of Chapter 56 of the laws of 2021, which was the budgetary enactment two years ago. The quote unquote MRT2 budget required DOH implement an independent assessor to all of the community health assessments, sometimes called the UAS to which board assesses eligibility, helps determine risk score and then informs the service authorisation. All community health assessments now have to go through the independent assessor, but because of the federal requirements and federal preemption case, organisations are able to retain the authority to do the assessments and reassessments that MLTC's cannot. We are implementing that in connection with the carve out of PACE. In addition, we have carved out from the MLTC benefit non-emergency medical transportation. Historically, was

managed by the 26 or so MLTC's. We brought that back into fee for service. So, the entire Medicaid benefit could be managed by a single statewide transportation broker. PACE is the only managed care product that is able to retain risk for the benefit because it's instrumental to the PACE model. We have exempted PACE from any rate range reductions that have applied to other managed care plans and we are working to increase the quote unquote amount that that would have otherwise been paid calculation. That's an actual calculation done by the state's independent actuaries. We've been working with our actuaries to make sure that our calculation is appropriately done, especially Downstate, where it's been substantially lower than PACE program cost, so that it doesn't become a financial gaiter to PACE expansion just from a rate standpoint. With everything, you know, we have a tremendous number of PACE reforms that are designed to expand PACE, given its uniqueness, given its proven excellence in keeping members in the community and being cost effective. We need to tackle this integrated entity licensure requirement, which, unless change by virtue of statute or guidance, is going to be an effective preclusion to third party sources of capital in the PACE program going forward.

Brett Friedman Thank you, Mr. Friedman.

Jeff Kraut That was enormously cogent and helpful policy framework for us to understand what we were discussing last time, which I don't you know, I wish we would have reversed the order.

Jeff Kraut Let me open the floor for questions.

Jeff Kraut Dr. Berliner and then I'll go to Dr. Boufford.

Dr. Berliner Thank you very much for the presentation.

Dr. Berliner So, as I understand what you said, I mean, the only advantage to having for profit based programs is access to capital. Is that fair?

Brett Friedman I wouldn't say it's the only advantage. I mean, the primary advantage. I think it's the issue that has limited PACE expansion, because PACE is very expensive. But there are many national for profit organizations that want to come in to New York that could do a very good job.

Dr. Berliner Right, but, you know, another way to approach this, rather than New York State having to kind of been to allow access to our services, is to find another way to provide access to capital. You know, for pay for potential programs. We do it for hospitals. We do it for other kinds of organizations in the state.

Brett Friedman It's an interesting point. There is a critical difference. I'll give you a very good example. So, under Section 98 17 of the American Rescue Plan Act, there was 10% enhanced FMAP for HCBS. PACE is qualifying home equity based services that was entitled to enhance death map. It generated an additional 40 million that we said okay pro-rata we're going to put back into PACE and CMS said you can't, because you're already at your amount that would have otherwise been paid. We can't load any more money into rates than we already do. We've been working with CMS quite difficultly, trying to find ways through just pay PACE plans money, capital grants, other things. CMS has said to date that it is an effective bar on that funding. I would have loved to give 40 million or even 80 million if we could find a way to match it right back to PACE for expansion. It's been more difficult than it should be, frankly.

Jeff Kraut Dr. Boufford.

Jo Boufford Yeah, thanks very much for this and thank you for all your great work over the time you've been with us. We're going to miss you. I want to just because you have experience in the investment sector, I kind of want to double down on Howard's question, because I think it really is that important. Maybe let's try to solve the problem in more than one way question. One of the things that's, you know, for example, HUD runs these new development agencies which provide capital to community health centers to expand. You know, as a federal program, provides loan guarantees, etc., funding to give capital for expansion of facilities. I appreciate what you're telling us about CMS not being willing to go there. But on the other hand, you know, in my look at and I think I've been to like tens and scores of seminars in the last three or four years on social investing in private equity. They're looking for opportunities where there is a third party funding stream, and usually that comes from government. I'm thinking with the nine that you have in hand, let's forget about licensing new ones and all these other things while we're waiting for the revolution, which, you know, may have to happen to get these regulations changed. Are there not ways for, say, some of the currently authorized programs who have the license, have dealt with the tough stuff in some ways to get access to capital through some mechanism that would be set up to encourage private investment and or through some other kind of facilities if they have to have a center, a physical center, which obviously is an expense of expanding the scale of the existing providers would be inhibited. I want to push it, because I think there's a lot going on nationally about social investing, leveraging private capital and the missing element in getting a lot of these things done is third party funding streams, which PACE has.

Brett Friedman It's an excellent point. I don't want to imply that for profit investment is the only way to expand PACE. There's social impact bonds, third party subventions. I spent a career for not for profit. I mean, I think there is never one approach. There needs to be a toolbox of efforts. People who are aware of some of my policy initiatives when I was Medicaid Director was I don't want to see more plans than we need in the state. Nine PACE organizations in New York State is a lot of PACE organizations. They're relatively small. It would be great to scale the PACE organizations that we have. Even if the state does nothing, I would expect there to be for profit PACE. I expect some organization will find a way to live within the existing rules because, you know, there is such a demand. And PACE in particular, just thinking about the thesis of investors in the health care space. Investors love a full risk model. PACE is the full list of full risk. You are taking a high cost, high needs population and you are managing everything. I think there's an opportunity here to, you know, at this inflection point with the houses passing the bill, with, you know, various applications coming before the review committees to think critically about how it works currently and whether we as a state want to change it going forward. I love to watch how these things develop from the sidelines. It's not a single solution for sure. I agree with you entirely on that.

Jeff Kraut Ms. Monroe and then Mr. Thomas.

Ann Monroe Thank you.

Ann Monroe As you know, I've been a fan of PACE for a long time and hope that it's available when I'm ready to use it. This is very interesting to me just to educate the committee. When I was President of the Health Foundation for Western and Central New York, we funded the first rural PACE in New York through a revolving loan. And that has

worked really well, because until they built up the balance sheet to repay that loan, they were able to use that capital. I have to believe there are other ways that we could tap philanthropy to do some kind of revolving loan program to allow programs to expand and develop. I don't want to lose this. I'm not opposed to for profit PACE either. But I do think we have a certain standard of quality that we have to maintain and we have to make sure happens. The legislation is a good step, but I agree with my colleagues that there have to be other creative ways to get capital to these programs.

Brett Friedman One point there on the revolving loan. What we typically see in not for profit managed care organizations looking to raise capital. A loan is difficult only because a loan typically doesn't count toward statutory equity requirements unless it's something called the 1307 Surplus Reserve Note, which is such a subordinated form of loan capital that from an insurance law perspective, it's as good as cash. A typical, you know, unless it's coming from a foundation or a real philanthropic advisor or some other non-for-profit looking to expand. 1307 Notes are a hard business, I'll just say, but it's a possible solution. It just needs to be. I just want to make it clear it needs to be a very specific type of loan in order to meet the statutory capital requirements for an insurance entity.

Jeff Kraut Mr. Thomas.

Ann Monroe I'm sure that's true. You lost me at one of those numbers. I think the point is that investor capital in New York is a big jump for what has traditionally been non profit. I'm not opposed to it, but I think it should be one of several options. If we can enrich just specifically Rochester and Syracuse have one PACE with over 600 people enrolled in each. Western New York, Buffalo has three PACE programs with less than 200 in each of them. That's not good. We should look to a different organizational structure. I don't want us to default to investor capital as the only way to expand PACE.

Jeff Kraut Let's not forget the majority of many of the ambulatory applications we've approved here are all investor for profit entities. So, the majority, almost all the ambulatory surgery centers, most of the diagnostic and treatment centers that we've seen, the dialysis centers we've seen, all the nursing homes we see. So, the issue here is and you know, I think you kind of said it at the beginning. The objective here is let's create a pathway. If these are good programs to have a unified licensure, which will refer now is the Monroe Doctrine to have a unified licensure to give comprehensive services. These are means to an end. And so the question is, can we get the expansion of the services? We used to run a PACE many years ago in mental health. Everyone loved the quality of the care, the services you done. I think there'll be reasonable protections to deal with the quality issues, which because we're not going to allow ones, particularly if they're out of the box to be weak ones or that are going to undermine it. Just recognizing, we sometimes lose sight of the fact that almost all of our physicians, the major physician groups that are being acquired, are all equity backed. The urgent care expansion. They're all private investor backed. So, this is another option. I agree. We should be supporting the not for profit in a different way, but we also shouldn't do that at the exclusion of trying to expand the service for like 2009 to 2015. We thought we knew better. This is the only way you could do it. There's different options. We need to be flexible.

Jeff Kraut Mr. Thomas.

Jeff Kraut And I'm mindful of the time, everybody.

Mr. Thomas Thank you.

Mr. Thomas Just a couple of comments and it's terrific, really. I have lived this quite a while and we still do. Just to give you as the council a little perspective, I ran our program personally, actually the first operations I ran for four years, ending in 2010/2011. We've tripled our enrollment since I left, so that's probably a good sign that I should have left. The fact is, we've been able to grow. Now, it's a unique structure for us, because we're in fully integrated delivery system. We have hospitals, DNTC Center, got through Article 36. We have transportation. We don't see the same barriers really. We're continuing to grow. We expanded to a rural county to the West a couple of years ago. I think and that may be unique to us, because we are a fully integrated system with capital. Two comments one on our newer B model, which I tend to share if we're going to do anything. When would we allow a sub cap to a DNTC center and that would get into the insurance side of this. I would say that, Jeff, I agree with you that the vast majority of things that we do in the space is in for profit. Totally agree. This is an interesting animal because of the insurance component of it. There's a lot of money here and a lot of money passing through here. I think that's why I appreciated your conversation, because I think the integration in Albany between the Medicaid and health insurance program and the Article 28 work, which we do here, is very important, because I think what you'll find is there's becomes a huge profit potential inside of that risk, and that creates strange dis alignment or alignment. I think, you know, I think we all know the most profitable and successful health insurance company in the world is in Minneapolis, and they're on to PACE to make 50 billion this year. That's an extreme example of of risk in for profit space. I caution, of course, we don't have shareholders and, you know, extent. And, by the way we're not making huge profit on our risk. We are paid properly thanks to the statutes in the state. My last comment would be, this program is fantastic. If you've ever been in a center, it's really remarkable what goes on there: the socialization, the health care, all of it. It's really fabulous.

Brett Friedman There's tremendous potential to co-locate a PACE center within senior supportive housing.

Mr. Thomas Ours is adjacent to low income housing.

Jeff Kraut Let me just put a context on this. So, you know, you've heard now, I think, the importance and the value of the PACE programs. You've heard different models that may or may not be considered when it comes to the Public Health and Health Planning Council. We are not in the process of approving a PACE program. That is a licensure issue under OHIP. We are in the process of approving is the diagnostic and treatment center model. You saw two models, one representative governance, one a diagnostic and treatment center. Mr. Friedman, I think, expressed a preference for that second one. And then there's a third, which is outside of licensure, which is a contracted physician group which would not come here. The only thing I think I would ask you. Well, I'm not going to ask you, but your successor is that before a application come before us, that the Office of Health Insurance Program, the Office of Hospitals, Health Systems and Primary Care be on the same page as to the model that they would approve to advance to us. It's not our decision to make, but, you know, I'm sure we'll have a preference which model you choose. I think within the diagnostic and treatment center model that is owned by the entity, we certainly have familiarity with that. It's not foreign to us. We've approved it. I think that would be helpful. I just want to close Brett, everybody should know Brett really arranged his last day here. It is literally his last day and he arranged to do that to be able to speak to us as a state official to coincide with this council meeting. I thank you and I thank your family for for extending your state service. And, you know, on behalf of the Public Health Council, on behalf of New York, as you heard the Commissioner say it, the Medicaid program, which

everybody should understand, we insure over 7.3 million people on Medicaid. That's almost 37% of the entire population of the state. This is the single largest, most important program. When we're dealing with issues of health equity and access and coordinated care, there is no better program and no more expensive program than in New York State. The fact of the matter is, that was a conscious decision we made as a state to insure everybody. And we're even expanding it further with additional regulation for undocumented individuals of a certain age to qualify. So, Brett, we owe you so much. We thank you so much for coming here today and we wish you well. And who knows, maybe you'll sit at the other side of the table one day or at this side of the table one day, preferably. He has a bar for a little while, but we'd love to see you back here one day.

Jeff Kraut Thank you very much.

Jeff Kraut You have a replacement, I believe.

Mr. Friedman Yes. I mean, this is I think, to Mr. Kraut's point, right. This is going to live under various pieces of the department. It's my successor, Mr. Carcieri is now fully briefed on these issues. PACE organizations are approved within our Division of Health Plan, contracting oversight. And then OPCHSM will retain its authority over the process. I think Mr. Kraut's point on there being alignment between OPCHSM in applications that go through the process and the model under which they're being licensed is really the immediate next step. But this is, you know, despite this being my swan song, I think there's a lot of people within the department who are aware of the issue and ready to take up the mantle when I leave.

Mr. Friedman Thank you.

Jeff Kraut I'm now going to turn over to Mr. Holt to give the report on Codes, Regulations and Legislation Committee.

Tom Holt Thank you, Mr. Kraft.

Tom Holt Good afternoon. At today's meeting, the Committee on Codes, Regulations and Legislation, the Committee reviewed and voted to recommend adoption of the following emergency regulation proposals for approval to the full council. First, we have COVID-19 vaccinations of nursing home and adult care facility residents and personnel. Mr. Furnish and Mr. Karmel from the Department are present should there be any questions from the members.

Tom Holt Are there any questions?

Tom Holt Dr. Gutierrez.

Tom Holt Question, Dr. Gutierrez?

Tom Holt No.

Jeff Kraut Got pulled away for a sidebar.

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

Jeff Kraut Any discussion?

Jeff Kraut All those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut No abstentions.

Jeff Kraut No opposition.

Jeff Kraut The motion carries.

Tom Holt Hospital and nursing home personnel, protective equipment, PPE requirements. And again, Mr. Furnish, Mr. Karmel and the Department are present should there be any questions of the members. I make a motion to accept this regulation.

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

Jeff Kraut Any questions?

Jeff Kraut Hearing none, all those in favor?

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut The motion carries.

Tom Holt Next, we have the investigation of communicable disease, isolation and quarantine. And again, the department is present should there be any questions of the members. I move the acceptance of the regulation.

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

Jeff Kraut Any questions from the council?

Jeff Kraut Hearing none, all those in favor?

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstention?

Jeff Kraut The motion carries.

Tom Holt Next, we have face coverings for COVID-19 prevention. The department are present should there be any questions of the members. I so move this regulation.

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

Jeff Kraut Any questions for the department?

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

Jeff Kraut All those in favor?

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut None indicated.

Jeff Kraut The motion carries.

Tom Holt Next, we have surge and flex health coordination system. And again, Mr. Furnish and Mr. Karmel of the department are present should there be any questions. I move the acceptance of this regulation.

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

Jeff Kraut Any questions?

Jeff Kraut All those in favor?

Jo Boufford Jeff, I'm sorry.

Jeff Kraut Yes.

Jo Boufford I have a comment, if I may. I just want to since we're in the theme of dot connecting today, I just want to raise again the issue that the council has asked several times to have either a parallel or some integrated approach to COVID, our future pandemic responses that would include connecting the hospital systems with the primary care system with the local health department. I was pleased to hear Dr. Bauer talking about working with local health departments, but I think now that Dr. Morley's in place, really revisiting the connection between local health departments in primary care especially, and then connecting them into a more integrated preparation for and hopefully response to any future pandemic challenges.

Jo Boufford Thanks.

Jeff Kraut Thanks, Jo.

Jeff Kraut Any other comments?

Jeff Kraut Any questions?

Jeff Kraut Hearing no, call for a vote.

Jeff Kraut All those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut Hearing none, the motion carries.

Tom Holt Thank you.

Tom Holt And lastly, today's meeting of the Committee on Codes, Regulations and Legislation, the committee reviewed and voted to recommend adoption of the following regulation proposal for approval to the full Council. And that is prevention of COVID-19 transmission by covered entities. The Department are present should there be any questions. I move the acceptance of this regulation.

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

Jeff Kraut Any questions for the department?

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

Jeff Kraut All those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut None indicated.

Jeff Kraut The motion carries.

Tom Holt Thank you, Mr. Kraut.

Tom Holt This completes the agenda of the Codes, Regulations and Legislation.

Jeff Kraut We're going to turn to Mr. Robinson in a minute, but I need a time out. Go ahead. Use your mic and just bring it close to you.

Dr. Berliner Does the schedule have to be approved?

Dr. Berliner We approved it. We're on a completely different schedule than we used to be in New York verses Albany, right?

Jeff Kraut Yes.

Dr. Berliner We've given up the Saratoga dates.

Jeff Kraut Yes. We removed. This is the issue. I should have made mention of it. We usually scheduled six meetings a year and I asked to schedule five. The reason I asked to schedule five is because inevitably, during the course of the year, we're asked to meet on an emergency basis. I would just assume, try to to space out the meetings a little more, knowing that it's quite likely and I'm trying to preserve a little more of the Summer where we frankly have trouble getting a quorum. I just thought we'd try to do it, but mark my word, I'm not naive. We will have more than five meetings next year. Call me crazy, but it's possible if at least more than five cycles. And frankly, if the department, and I told this to the department just so everybody knows that if they get backed up with a large number of applications and need to move them along because our cycles are the limiting factor, then I think we would call a special meeting to deal with the backlog, so the process keeps moving and we're not the obstacle necessarily. We'll do that.

Jeff Kraut No, I don't want to take a break.

Jeff Kraut We have sixteen people on the meetings right now. We lost Dr. Yang, I think, right? She's here. We have sixteen. We need fourteen to pass.

Jeff Kraut Do we want to take on the two applications?

Jeff Kraut You have an application, which I have to be excused on, but we had two no votes. The question is we need to discuss it to see if we can get that passed. I think you go and do that.

Jeff Kraut Go with the agenda.

Jeff Kraut Just move the agenda.

Jeff Kraut We need everybody to stay in the room for the voting. I just don't want anybody leaving.

Peter Robinson Okay.

Peter Robinson So, as Mr. Kraut mentioned earlier, we're going to be batching applications where appropriate.

Peter Robinson Is there anybody on the council that wants to pull a particular application out of a batch and handle separately, other than those where we have an recusal, which we'd have to do anyway.

Peter Robinson Here we go.

Peter Robinson Application 2 1 2 1 7 4 C, Westchester Medical Center in Westchester County to construct a five story inpatient bed tower on the main campus to house 96 beds, 41 ICU and 55 met surge and with shelf space on the fifth floor with no change in total certified beds. The department and the committee recommend approval with conditions and contingencies. Application 2 2 1 0 6 5 C, Elizabeth Seton Children's Center in Westchester County to certify a 96 bed residential health care facility for a young adult demonstration program to be constructed at 315 North Street in White Plains. Here, the department recommends approval with conditions and contingencies, as does the committee. I move those two applications.

Jeff Kraut I have a motion. I have a second, Dr. Torres.

Jeff Kraut Any questions on these applications?

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

Jeff Kraut All those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstention?

Jeff Kraut The motion carries.

Peter Robinson Noting this next application involves a recusal by Dr. Kalkut, noting that Dr. Lim has expressed an interest and a decision to abstain on this application. This is application 2 1 1 0 9 4 C. I will note that Dr. Kalkut has left the room. 2 1 1 0 9 4 C, New York Presbyterian Hospital, New York Weill Cornell Center in New York County. This is to certify adult heart transplant services and acquire requisite equipment. The department and the committee recommend approval with conditions and a contingency. I so move.

Jeff Kraut I have a motion. I have a second, Dr. Berliner.

Jeff Kraut Any comments or questions from the council?

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

Jeff Kraut All those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut None indicated.

Jeff Kraut The motion carries.

Peter Robinson Thank you.

Peter Robinson Dr. Kalkut remains in conflict with this next application and continues to be recused. Again, Dr. Lim expressed an interest and is abstaining. Application 2 1 2 2 1 2 C, NYU Langone Orthopedic Center in New York County Certified Ambulatory Surgery, a multi-specialty center and perform renovations to an 18 OR ambulatory surgery facility in the extension clinic located at 333 East 38th Street in New York. The department recommends approval with conditions and contingencies, as does the committee. I so move.

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

Jeff Kraut Are there any questions on this applications?

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

Jeff Kraut All those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut None indicated.

Jeff Kraut Motion carries.

Peter Robinson Have Dr. Kalkut return.

Peter Robinson Noting Mr. Thomas is leaving the room, having declared a conflict and is recusing himself. This is application 2 2 1 0 5 4 C, Canton, Potsdam Hospital in St Laurence County. Certify 15 additional med surge beds, construct a four tower addition to include 60 single bedded rooms, an expansion of the emergency department and shelf space and renovate the existing emergency department. Department recommends approval with conditions and contingencies, as does the committee. I so move.

Jeff Kraut I have a motion. I have a second, Dr. Berliner.

Jeff Kraut Any comments?

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

Jeff Kraut All those in favor, aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut None indicated.

Jeff Kraut Could you please check? We're being told that the webcast volume is out.

Jeff Kraut Okay, it's still on.

Jeff Kraut Thank you.

Peter Robinson We're going to continue with the batching of applications. 2 1 2 2 5 8 B, Regal Park Counseling, LLC, doing businesses Regal Park Diagnostic and Treatment Center in Queens County. Establish and construct the Diagnostic and Treatment Center at 6336 99th Street in Regal Park, co-located with mental health and substance abuse disorder services. The department here recommends approval with conditions and

contingencies, as does the committee. Application 2 0 2 1 0 6 E, Montgomery Operating Company, LLC doing business as Montgomery Nursing and Rehabilitation Center in Orange County. This is transferring a total of 99% ownership interest from withdrawing members and one existing member to six new members. The department is recommending approval with a contingency, as does the committee. Application 2 0 2 2 6 9 E, Ross OpCo LLC doing business as Ross Center for Nursing and Rehabilitation in Suffolk County. Establishing Ross OpCo LLC as the new operator of Ross Center for Nursing and Rehabilitation, which is an existing 120 bed nursing facility located at 39 Suffolk Avenue in Brentwood. The department recommends approval with a condition and contingencies, as did the committee. Application 1 9 2 0 2 6 E, East Side OpCo LLC doing business East Side Nursing and Rehab in Wyoming County. This is to establish East Side OpCo LLC as the new operator of the 80 bed residential health care facility located at 62 Prospect Street currently operated as East Side Nursing Home. The department is recommending approval with a condition and contingencies, as did the committee. A Certificate for Amendment of the Certificate of Incorporation for Saint Barnabas Nursing Home Inc, which requests consent for filing a name change and change purposes. The Department and the Committee recommend approval. I'm going to make a motion for those applications.

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

Jeff Kraut Is there any comments or questions on any one of these applications hearing?

Jeff Kraut Hearing no, I'll call for a vote.

Jeff Kraut All those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut None indicated.

Jeff Kraut The motion carries.

Peter Robinson Thank you.

Peter Robinson These two applications involve Mr. La Rue's either interest in the first one or recusal in the second. He's not present, but I just want to note those for the record.

Peter Robinson Application 2 1 1 1 3 9 E, Village Acquisition One LLC Doing business as Lower West Side Rehabilitation and Nursing Center in New York County to establish Village Acquisition One LLC as the new operator of Village Care Rehabilitation Nursing Center, a 105 bed residential health care facility located at 214 West Houston Street in New York. The department and the committee recommend approval with a condition and contingencies and a Certificate of Dissolution for residents. This is where Mr. La Rue has indicated a conflict and recusal request consent for filing to dissolve residents. The department is recommending approval, as does the committee. I move those two applications.

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

Jeff Kraut Any comments or questions on these applications?

Jeff Kraut Hearing none, call for a vote.

Jeff Kraut All those in favor, aye.

All Aye.

Jeff Kraut Opposed?

Jeff Kraut Abstentions?

Jeff Kraut Not indicated.

Jeff Kraut Motion carries.

Peter Robinson Thank you.

Peter Robinson Dr. Boufford, you're going to chair these next two applications, please.

Jo Boufford Yeah. My only problem is I can't see much of what's going on. You have to help me.

Peter Robinson I'll take care of it.

Peter Robinson Thank you.

Peter Robinson These two applications both involve a conflict in recusal by Mr. Kraut. The applications are 2 0 1 2 2 E, True North Three DC LLC doing business as Grand Boulevard Dialysis in Suffolk County. This is to establish True North Three DC LLC as the new operator of the 20 station Chronic Renal Dialysis Center, located at 860 Grand Boulevard in Deer Park that is currently operated as an extension clinic of Bronx Dialysis Center. The department recommends approval with contingencies. The committee recommended approval with conditions and contingencies with two members opposing. Application 2 1 1 2 4 4 E, True North Six DC LLC doing business as Peconic Bay Dialysis in Suffolk County. Again, a conflict and refusal by Mr. Kraut to establish True North Six LLC doing business as Peconic Bay Dialysis as the new operator of Peconic Bay Dialysis, a 13 station chronic renal dialysis facility at 700 Old North Old Country Road, Suite Four Riverhead currently operated by Knickerbocker Dialysis Inc. The department is recommending approval with conditions and contingencies, and the committee is also recommending approval with conditions and contingencies, but with two members opposing. I am going to make that motion.

Peter Robinson May I have a second?

Peter Robinson Thank you, Dr. Berliner.

Peter Robinson I'm going to call the question.

Peter Robinson All in favor?

Jo Boufford Just one second. Sorry, Peter, but I guess I would have. I think it might be reasonable to hear from Dr. Gutierrez and Dr. Berliner about their concerns for the rest of the council.

Peter Robinson Okay.

Jo Boufford If they wish to. If they don't wish to, it's fine.

Jo Boufford You can go ahead.

Dr. Gutierrez I have been concerned with this situation with the dialysis centers that are run by companies that have been questioned in the past about their business practices. I brought that issue up at committee level and evidently my concern is not shared by the people that voted otherwise. I think that the documentation is abundant that in spite of the paper that was presented and we discussed at committee level showing their practices regarding medication, staffing and were questionable, there had been no answers by any of the companies that I would have appreciated to see an attempted rebutting that the paper. I remain opposed to that and that is what my position was at committee level and remains to this day.

Jo Boufford Dr. Berliner.

Dr. Berliner I share Dr. Gutierrez's concerns. Also, the rationale for these applications as for some in the past have been. This dilutes the for profit ownership. I don't see dilution as really addressing any of the concerns that Dr. Gutierrez has has raised about the inimical effects on dialysis patients and staff. So, that's the reason for my opposition.

Jo Boufford This is, it strikes me that I think this is an issue that's been raised before in general terms. Were your concerns specific to this operator just for this application, or generically concerns about the issues that have been brought up before by the council?

Dr. Gutierrez I will answer that first, if I may. You are correct, but it appears that either those of us who have read the article do not feel it powerful enough or the bulk of the legal issues that have been involved that DaVita and Fresenius and the US Renal Care, because it's not just DaVita. The three of them have failed to answer in my estimate. I'm used to seeing open debate to things in medicine. If a big article comes out saying, this is not good practice, this is not good medicine or this is not good treatment. The people that are defending those come out with a rebuttal. You have a healthy discussion between the parties. I have failed to see that. There seems to be an inertia that moves people to just continue approving. I don't like that.

Peter Robinson Mr. Thomas has a comment.

Mr. Thomas Thank you, Mr. Robinson.

Mr. Thomas Just a quick response. In the committee conversation, we did speak extensively and Dr. Gutierrez shared his views. What was also clear, we heard from the Northwell partners at the table, and they were very compelling about what they would bring to these. This is a existing licensed operation owned by DaVita. With a integrated delivery system that has other JV's with them, all of which, by the way, I think seven out of seven are five star. I think at least from my perspective, this is an enhancement of an existing

program through the insertion and the integration and partnership of Northwell and those folks.

Jo Boufford Thanks.

Jo Boufford Are there any other comments?

Peter Robinson If I may? More broadly speaking, at the committee meeting, we did also make a suggestion to the department that we bring this broader issue to the planning committee of the council, so that we rather than resting our actions on individual applications, we review our broader policies with regard to for profit dialysis and how we ought to be relating to that. I think everybody was very cognizant of Dr. Gutierrez's issues. I did think that the applicants did respond well, at least in terms of their own case for the applications they brought forward. I felt reassured that we were moving in a positive direction with regard to these applications, considering where they're currently structured now. I think that probably was the sentiment that resulted in a favorable vote from the committee. I just bring that out as well. With that now, I guess we're ready to vote on the two applications.

Jo Boufford If there aren't any other comments or questions. I appreciate Peter, having, Mr. Robinson having the planning committee, having that put on the agenda. The planning committee, Dr. Rugge is looking attentive. I know it's come up before, so perhaps we can do that. In absence of being able to see, can we have a vote all in favor of the two applications.

All Aye.

Jo Boufford Any opposed?

Jo Boufford Dr. Gutierrez. I assume Dr. Berliner remains opposed.

Jo Boufford Is that correct, Peter? Sorry, I just can't see the other people.

Peter Robinson As a result of Mr. Kraut's recusal and the two votes opposing, we only have thirteen positive votes. We need fourteen in order to approve the application. The application is not able to move forward.

Jo Boufford I thought we had one vote. I'm sorry.

Jo Boufford We don't?

Jo Boufford Okay.

Peter Robinson We need fourteen affirmative votes to move the application forward. We have thirteen in favor, two opposed and one recusal.

Dr. Rugge Excuse me. I'd like to abstain.

Dr. Rugge I would like to abstain, please.

Dr. Rugge I would like to abstain.

Jo Boufford I didn't ask for abstention.

Peter Robinson I would say that clearly we do not have a sufficient number.

Jo Boufford Okay.

Peter Robinson Did we not catch your vote accurately?

Jo Boufford Yeah, I did not. I failed to get to the finish. I didn't ask for abstentions. He's now said he's abstaining. We have two negatives, two nos, one abstention and the rest are pro, so it's twelve. Twelve in favor, two negatives and one abstention.

Peter Robinson And I think the issue here is I don't want to sort of turn to a motion for disapproval of the application, because I think that's going to actually send it in the wrong direction. My feeling is that if we brought it back to the full council at the next cycle where we had a larger attendance, we might end up with a different outcome. My recommendation is that we move this application to the next cycle.

Jo Boufford Is that a formal recommendation, Peter? I'm just asking for guidance from legal counsel as to whether that choice.

Marthe Ngwashi Thank you. I'm an attorney at the Department of Health. I'm just asking if you could all speak into the microphone when you are talking so that your discussion can be heard clearly by everyone and then you can make the determination about what next steps you desire to make, and then a formal motion can be made thereafter.

Peter Robinson I'm not sure. It's not disapproved, because we did not carry sufficient votes to approve it.

Dr. Berliner Right, but I mean, what's the point of voting if a negative vote means it just goes on to another meeting where there might be a different number of pro votes? I mean, it just seems like it's mediating the point of the vote completely.

Jo Boufford Can I ask a question about lacking a quorum, because of their refusal.

Peter Robinson We have a quorum. There are fourteen people that need to be present for a quorum in order for us to act, but we also need fourteen affirmative votes to move an application forward. So, anything off that fourteen doesn't allow us to advance an application.

Dr. Kalkut What would be the next step?

Jo Boufford That's what I'm trying to do.

Dr. Kalkut We don't push it into the next cycle. Certainly one of the steps is this dialysis will continue to operate with DaVita as the sole owner. We're voting against a shared governance or operating for it. I think that's what gets most of the approval votes for this project. Just so we all recognize and everyone I'm sure does. It just remains an operation exclusively for DaVita. That's the outcome if we don't move forward in another way.

Marthe Ngwashi At this juncture, the applications require a formal act by the committee, right? But that formal act by the council would be whatever your motion that was presented

for. Your motion was presented for an approval for these projects. In order for that motion to serve as a formal and final act by statutory purposes, we would have needed to have fourteen affirmative votes for that motion.

Dr. Kalkut Right.

Marthe Ngwashi Right now, because we do not have the fourteen affirmative votes or approval on that motion, the application isn't just going to disappear. The application still needs a formal action by the council, so that's why I was saying the council should now have a conversation and determine the next steps for the project applications that are presented, because right now they're just sitting in limbo, right?

Jo Boufford Well, they're sitting in limbo unless there's a vote that says, you know, I think that's the question are we able then to indicate to have a vote on what the next step might be? That's the question.

Marthe Ngwashi Absolutely, yes. You have a discussion about what your next steps are going to be. Are you going to make another motion? What is that motion going to be? Have a discussion.

Peter Robinson I'm going to make a motion then that this application be deferred for reconsideration at the next full council meeting.

Jo Boufford Second for that.

Jo Boufford Second from Dr. Kalkut.

Jo Boufford Any discussion of that by the council?

Jo Boufford Before we have a vote, questions? I think we discussed it before we got to it, so we know what the implications are.

Jeff Kraut Dr. Boufford, there's a question in the room.

Jo Boufford We can't hear.

Ann Monroe Am I correct that because we only have fourteen people here today and one of them has recused, we don't have enough votes to take it forward.

Peter Robinson We do not have the votes to move this application forward as an approved application.

Ann Monroe Right, so we don't have a choice except to defer it, because even if we all voted for it, there's only thirteen of us.

Peter Robinson You can vote, for example, to turn down the application. We could have everybody voting to sort of say, no.

Marthe Ngwashi You are permitted to have a discussion about what your next step is going to be, right? Because you need to achieve the fourteen votes either way, either in the affirmative approval for the project applications or in the negative. You're disapproving the project application. I think that based on the conversation, it's unlikely that you will get

fourteen votes disapproving the applications. However, I don't know. If someone wants to bring that motion forward for disapproval, you are welcome to do that. However, I believe that Chairman Robinson wanted to defer these to the next full council, so that perhaps there will be additional members there. Otherwise, the applications will continue to just sit in abeyance or in limbo until we have fourteen votes one way or another to make a final action by the council.

Jo Boufford And the vote that's on the floor, the motion on the floor as defer to the next cycle for a vote, correct?

Jo Boufford Dr. Gutierrez.

Dr. Gutierrez I think that procedurally the motion may need to be withdrawn and then proceed with another motion. You cannot just ignore the motion that was made.

Jo Boufford The initial motion for approval, which was seconded and there wasn't a sufficient vote for that.

Peter Robinson We voted on that motion, so the fact is that let's just say the approval was not. We did not carry the approval of it. That was the outcome of that. Now, we're in a position where we can take on a new motion.

Jo Boufford For next steps.

Peter Robinson For next steps. .

Jo Boufford That's what legal counsel is saying in the motion for next step is deferral to the next cycle.

Jo Boufford Seconded by Mr. Kalkut.

Dr. Kalkut The issue with a new motion for deferral and perhaps I'm projecting where I shouldn't be is if the vote remains the same, then that will also not be approved. Where it just hangs in abeyance, as you said. How do we get ourselves out of that? I'm not saying what the votes will be, but that seems like a likelihood, because the current motion would disapprove. If there is one to put it into the next cycle with the idea that there will be a larger group of council members to vote on that and we would not be as constrained we are by attendance now three and a half hours into the meeting that could result in a different outcome.

Jo Boufford The other issue for this vote may be that since some of the concerns have been expressed about general concerns on for profit dialysis and expectations, Mr. Robinson suggested that the planning committee take that up as a general factor, whether our colleagues would be willing to support deferral for a larger number of council members on this vote. Otherwise you are correct, we'll still have a stalemate. So, that would be one argument.

Jo Boufford Are there any other comments for this?

Marthe Ngwashi I'd just like to make one more comment. I think that what I hope has come across from this is the importance of your dialogue, right? It's important to have a discussion, so that you can make a determination about the recommendations and the

motions that you're going to put forward. That said, I welcome whatever motion you're going to put forward now.

Jo Boufford I would argue, I guess one of the reasons. I think we've had a discussion in the sense that I asked specifically for the two colleagues that voted no on both of the proposals to be explicit about their concerns. And then we had other discussion about concerns on the positive side. I think Mr. Thomas actually came back and indicated from his point of view he felt there had been a constructive discussion about the reasons for the positive votes on the resolution. The fact that we ended up with the same vote in the council as was in the committee, I think is the fact. It's just a fact. Now, the suggestion that we have another vote, another vote to defer to the next cycle has been discussed in the context that we don't have a quorum. And also the offering suggestion and Dr. Rugge may want to say something, but the suggestion that some of the concerns are generic to for profit dialysis and failure of those entities to respond to concerns that have been longstanding, not necessarily specific to this application and that that might mitigate the negative votes for that notion, might get the negative votes for the next resolution, which would be to defer to the next cycle.

Jo Boufford I don't know, John, you want to say anything?

Dr. Rugge I would just suggest that I think a broader consideration of the role of for profit centres is in the order, so that we can effectively address this particular application and would prefer to defer the vote until that broader discussion of taking place.

Peter Robinson Dr. Torres has a comment.

Dr. Torres Would it be appropriate, correct me if I'm wrong and guide me to make a motion to remove this application from the batch and defer it so that we can engage in additional discussion about it? Can we just remove it?

Jo Boufford We wouldn't be acting on it by deferring to the next batch. I think that's the same unless there's some legal nicety there.

Peter Robinson Yeah, there's two applications, by the way. I just want to be clear.

Jo Boufford Yeah.

Peter Robinson Dr. Gutierrez had a comment.

Dr. Gutierrez I think we've got to be careful here. I think you have a motion which was received a second. You're counting the votes. And because the motion is not going to pass, you're going to bring it back? It doesn't look good.

Jo Boufford That's right. I think we have a motion on the floor. It is seconded. We're still having discussion about that motion at this point.

Dr. Gutierrez I think the person that made the motion should be prepared to say I withdraw the motion. And that is in a way it needs to be approved. And if everybody says, yeah, let's withdraw it and do something. You cannot leave the motion on the floor and ignore it.

Jo Boufford I'm not.

Jo Boufford Excuse me. I'm not leaving it on the floor.

Peter Robinson Are you asking the motion that I just made, Dr. Gutierrez?

Dr. Gutierrez This is not the first time this has happened while I work.

Peter Robinson Was it my motion that you want me to withdraw?

Dr. Gutierrez I think that that's procedurally what needs to happen.

Jo Boufford Excuse me. I guess I don't agree. Just because Dr. Torres suggested it that might be a way forward. That's part of our conversation. We still have a motion, a seconded motion on the floor, which we haven't voted on. I mean, I don't know. It seems to me that this is a discussion we're having about that before we get to withdrawal. I don't know. Unless Peter, you want to withdraw it. I don't see that that gets us anywhere.

Peter Robinson I mean, my preference would be to actually defer this. I think that would also give time for the planning committee to get into this issue as well, so that we can take a look at our policies. Hopefully, that could be done in an expedited way and that we would have time such that by the time the next cycle shows up, we would have had a planning committee review and set of recommendations that might have an effect on the outcome. So, that's the reason for my motion for deferral.

Jo Boufford Dr. Rugge.

Dr. Rugge I'm no attorney, but it seems to me that there's no need for a motion. We've had a failure to approve, but no motion to disapprove. And therefore, by leaving it as it is, it will be up to the leadership of the committee and the council to bring it back at the appropriate time.

Jo Boufford Advice of counsel, I think she said the opposite.

Marthe Ngwashi Right, right. Absolutely. Yeah. It's more appropriate, if we have a motion on these two projects one way or another.

Jo Boufford Excuse me, I thought we had a vote where we had the number of Dr. Rugge abstained. Dr. Gutierrez and Dr. Berliner continue to say no. And then we had the balance of votes, I guess it was twelve to approve. So, that transaction has happened. And then the issue was, is that we also are authorized to talk about it next step since we didn't have a quorum.

Peter Robinson Should we just maybe make a clarification and vote on the deferral and then see where we stand after that and then we can kind of move forward. So, there is a motion and a second on the floor for deferral of this application. And then, you know, as a not a sidebar, but as a comment, it was noted that this would also give time for the planning committee to conduct a review of the policy regarding for profit dialysis units so that when the application was recycled, we have that as context for our consideration.

Jo Boufford That's where I thought we were.

Peter Robinson We haven't called that vote yet?

Jo Boufford I understand that, but we were still... I was trying to get clarity from our legal counsel. We needed to have a discussion. I think we've had the discussion on that motion. If it's in order, we should move ahead with it. The motion and second for deferral is in order. We could move ahead on that, correct?

Jo Boufford All in favor?

All Aye.

Jo Boufford All opposed?

Jo Boufford Dr. Berliner is opposed. Continues to be opposed.

Peter Robinson Dr. Berliner is in favor of deferral.

Jo Boufford I would say that then I believe that case would be that the deferral is approved.

Peter Robinson That motion would carry.

Jo Boufford All right.

Jo Boufford Dr. Rugge voted yes. So, everyone voted yes, but Dr. Gutierrez.

Peter Robinson We have Mr. Kraut still in recusal.

Colleen This is Colleen. I'm also confirming that the vote had passed.

Peter Robinson The vote has passed.

Jo Boufford Vote for a deferral is passed.

Jo Boufford Thank you.

Peter Robinson Thank you all, colleagues. This is a very, very difficult issue. I appreciate the collegiality with which we managed it. So, thank you, everybody, for that.

Jo Boufford We could call Dr. Kraut back in to finish the meeting, complete the meeting.

Jo Boufford Mr. Kraut, sorry.

Ann Monroe Mr. Robinson.

Ann Monroe What is the status of the Niagara Ambulatory Surgery Center that we postponed at our meeting?

Peter Robinson We would have to ask the department that. I don't know.

Ann Monroe So, it's not coming up?

Shelly Glock Hi. This is Shelly Glock from the department. That application will be brought forward at the July EPRC meeting.

Shelly Glock Thank you.

Jeff Kraut The public portion of the Public Health Council and Planning Council is meeting now adjourned.

Jeff Kraut The next regularly scheduled committee day is going to be held on July 14th. The full council will reconvene on July 28th.

Jeff Kraut We are now adjourned.

Peter Robinson Thank you very much.

State of New York
Public Health and Health Planning Council

Minutes
July 28, 2022

The meeting of the Public Health and Health Planning Council was held on Thursday, July 28, 2022 at the Empire State Plaza, Concourse Level, Meeting Room 6, Albany, New York, and Zoom. Dr. Jo Ivey Boufford, Vice Chair presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner – Zoom	Dr. Mario Ortiz – Zoom
Dr. Jo Boufford - Albany	Mr. Peter Robinson – Albany
Dr. Angel Gutiérrez – Zoom	Dr. John Rugge – Albany
Mr. Thomas Holt – Albany	Dr. Denise Soffel -Zoom
Dr. Gary Kalkut – Zoom	Dr. Theodore Strange - Zoom
Mr. Scott LaRue - Zoom	Mr. Hugh Thomas - Albany
Mr. Harvey Lawrence - Zoom	Dr. Anderson Torres - Zoom
Dr. Roxanne Lewin - Zoom	Dr. Kevin Watkins – Zoom
Dr. Sabina Lim – Zoom	Dr. Patsy Yang – Zoom
Ms. Ann Monroe – Zoom	Commissioner Bassett Ex-Officio - Albany

DEPARTMENT OF HEALTH STAFF PRESENT

Ms. Lynn Baniak - Zoom
Dr. Ursula Bauer - Albany
Mr. Mark Furnish – Albany
Ms. Shelly Glock – Albany
Mr. Michael Heeran – Albany
Mr. Adam Herbst – Zoom
Dr Eugene Heslin – Albany
Mr. Jonathan Karmel - Albany
Ms. Colleen Leonard- Albany
Dr. Emily Lutterloh - Albany
Mr. George Macko - Albany
Ms. Kathy Marks – Zoom
Dr. John Morley - Albany
Ms. Marthe Ngwashi - Albany
Mr. Jason Riegert - Albany
Ms. Claudette Royal - Zoom
Ms. Carol Rodat – Zoom
Mr. William Sacks -Albany
Mr. Michael Stelluti - Albany
Ms. Jennifer Treacy - Albany

INTRODUCTION

Dr. Boufford called the meeting to order and welcomed Council members, Commissioner Bassett, meeting participants and observers.

WELCOME NEW MEMBER DR. DENISE SOFFEL

Dr. Boufford announced that Dr. Soffel has been appointed to serve on the Council and welcomed her to the Council. Please see pages 1 and 2 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

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

Dr. Bassett also welcomed Dr. Soffel to the Council. She began her report by stating that Downstate New York has seen an increase in COVID cases driven by the BA5 variant, which now comprises the larger share of COVID infections in the state. Additionally there has been a case of polio diagnosed in Rockland County, which was confirmed by the CDC. This is the first time that we've had a case of polio in the United States in nearly a decade and in the state much longer than that. Dr. Bassett also noted that New York is in the midst of a surging number of cases of monkeypox, with the State now reporting over 1,200 cases and with our response limited by limited vaccine supply at federal level. She expressed the public the importance of having a strong health department as we seek to respond to all of these communicable disease threats and stated that public health has never been more important than it is today.

Dr. Bassett concluded her report. To review the complete report and members questions and comments please see pages 2 through 5 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report on the Activities of the Office of Public Health

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

Dr. Bauer began her report by giving an update on COVID. In terms of cases reported to the Department, we are at around 5,000 cases a day. This is three times higher than at the same time in 2021 and almost an order of magnitude higher than at the same time in 2020. Yet, from a public perception standpoint, we are nearly post COVID. Newly reported COVID hospitalizations admissions are likewise higher than in previous Summers, at roughly two and a half per 100,000 population, compared to fewer than 0.5 per 100,000 in previous Summers. COVID-19 associated deaths are also at modestly higher levels than in previous Summers. This is in the context of proven mitigation measures, including vaccines now available for all age groups and therapeutics in increasingly robust supplies. With BA5, though now the predominant variant in New York and across the US with its high transmissibility and its ability to evade prior immunity and with the lack of interest on the part of the public and protective measures like masking. The Department is very worried about the Fall. COVID vaccination progress does continue, albeit at a very slow pace. 78% of all New Yorkers and 88% of those 18 or older have completed their COVID vaccine series, and 53% of the eligible population has completed a booster dose. For the six month to four year old age group for whom vaccine was only recently

approved. 45,000 children have received one dose. That is about 4% of the population, of which just over 4,000 have completed the series about 0.2% of the population. Among five to eleven year olds, 43% have received one dose, including 38% who have completed the series. As I said, we are very concerned about the Fall. Those low points that we had reached in previous Summers presaged an uptick in the Fall. We are trying to be prepared.

Dr. Bauer stated that New York is in the midst of a persistent and growing monkeypox outbreak that began in May of this year. She noted that Dr. Bassett advised that of July 27, 2022, we had 1,228 cases. These are mostly in the New York City metro area, about 94% of cases are in New York City. As Dr. Bassett mentioned, sixteen counties outside of New York have reported at least one case, many of which have been associated with recent travel. Monkeypox is not a new virus, and this is not the first outbreak we've had in New York. However, this monkeypox is spreading and cases of monkeypox are presenting in ways not typically seen in past monkeypox outbreaks. Although the current strain of monkeypox that's circulating in the US is rarely fatal and does not usually cause serious illness, symptoms can be painful and people may have permanent scarring from the characteristic rash. There have been no deaths associated. There have been no deaths in the current outbreak in the US.

Dr. Bauer noted that as you probably know, monkeypox is spread by close physical contact, including intimate contact. So far the community most affected has been those who identify as men who have sex with men. Preventive measures include avoiding close contact with those who have MPX and avoiding household items like clothing, towels and bedding that have been used by those who have MPX. The smallpox vaccine is effective at preventing monkeypox and reducing symptoms, as far as we know in those who have been recently infected. We don't have good efficacy data for the current outbreak. As Dr. Bassett noted, the vaccine is in very limited supply. New York State and New York City have each received shipments of the vaccine. New York City has received four shipments. New York State has received three. Those have been distributed to close contacts of known cases and to those who are at high risk of a recent exposure to monkeypox. The Department expects availability of the vaccine to increase in the coming days and weeks. The Department is expecting an announcement of a new allocation shortly. Apparently, it's already been leaked on Twitter and the Department hopes with this much larger allotment that we will be able to meet the at least a higher portion of the need and the demand. The monkeypox vaccine is a two dose vaccine administered 28 days apart. New York has to be cognizant as we alot of our doses, that we have enough to meet that demand that we are now creating for that second dose 28 days after the first administration. To date, the Department has distributed our New York State vaccine to eight counties based on the number of monkeypox cases, based on the proportion of the estimated eligible community, men who have sex with men who are potentially at high risk, based on things like prep prescription for HIV, for example. We hope to be able, per Dr. Watkins question, to expand our distribution of vaccine as we get more in this next shipment and then later on in the year.

Dr. Bauer next reported on polio and advised that there is now have a polio outbreak centered in Rockland County with one confirmed case of vaccine derived paralytic polio in an unvaccinated resident. Sequencing performed by the Wadsworth Center and confirmed by CDC. This indicates a transmission chain from an individual who received the oral polio vaccine, which is no longer administered here in the U.S. Indeed, the Global Polio Laboratory Network has confirmed that the vaccine derived polio virus too isolated from this Rockland County case, is genetically linked to Type Two isolates collected from environmental samples in early June in New York and in Greater Jerusalem, Israel. Further investigations, both genetic and epidemiological are ongoing to determine possible spread of the virus and potential risk associated with these isolates. Polio is a vaccine preventable disease. Completing the vaccine series is required for school entry. Because most people are vaccinated against polio, we consider the public to be at low risk, but we are very concerned about those who are unvaccinated. The State Department of Health is coordinating with the Rockland County Department of Health and with the New York City Department of Health and Mental Hygiene to continue the case investigation and to protect communities against spread by urging vaccination for those who are unvaccinated against polio or those who may have been exposed and may benefit from a booster. The Department has also advised medical practitioners and health care providers to be vigilant for additional cases.

Dr. Bauer next moved to the topic of employment. Dr. Jim McDonald has been appointed to serve as the Medical Director for the Office of Public Health. Dr. Jim McDonald started with us on July 11, 2022 and comes to us from the Rhode Island Department of Health, where he served most recently as the Interim Director of the department and as Medical Director of the COVID unit and as Medical Director for Consumer Services. Dr. McDonald comes with a wealth of experience with the Rhode Island Board of Medical Licensure and Discipline, the Division of Policy, Information and Communications, the Drug Overdose Program, the Medical Marijuana Program, the Prescription Drug Monitoring Program. He is board certified in pediatric medicine and preventive medicine.

Dr. Bauer concluded her report. To view the complete report and Members comments and questions, please see pages 5 through 13 of the transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

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

Dr. Boufford introduced Dr. Morley to give the Report on the activities of the Office of Primary Care and Health Systems Management.

Dr. Morley began his report by stating that on Friday, July 22, 2022, the Department issued a Dear Administrator letter reminding health care facilities to encourage staff not to report to work if they are exhibiting signs or symptoms of any viral illness, e.g. COVID or monkeypox. The week of July 25, 2022, the Department issued an advisory on monkeypox to congregate health care and non-health care facilities on monkeypox precautions, including waste management, infection control and visitation.

Dr. Morley noted that the Department's Bureau of Narcotic Enforcement on June 8, 2022 approved two proposals for Drug Takeback Programs in New York State. They are being operated and will soon be placing drop boxes in chain pharmacies with ten or more locations. They will offer pre-paid envelopes or vouchers for envelopes, so patients can simply mail back their medications from home. They will also give patients safe and environmentally friendly ways to get dangerous medications, especially opioids, out of their medicine cabinets, which are a major source of diversion. The Department is working on improving the Prescription Monitoring Program, using suggestions from focus groups of New York State practitioners, including adding visual indicators to flag for prescribers the presence of overlapping opioid and benzodiazepine prescriptions and multiple provider episodes, also known as doctor shopping. The PMP is now interoperable in thirty-three states, as well as the District of Columbia, Puerto Rico, the Military Health Service and the VHA.

Dr. Morley noted that the Center for Health Care Policy and Resource Development is working on the NANY program, Nurses Across New York. The Loan Repayment Program Stakeholder workgroup is moving forward. They had the first workgroup meeting earlier this month and the next one is scheduled for August 11. 2022 and September 13, 2022. The 2023 budget includes an appropriation of two and a half million dollars for NANY that will provide loan repayment for RN's and LPN's working in underserved areas. The workgroup is comprised of associations representing nurses, general hospitals and other health care organizations and is comprised from representatives from twenty organizations. Stakeholder recommendations are due to the Department on September 30, 2022 and will inform the program in terms of areas of need in the industry and how this loan repayment program may best address the identified needs. Solicitation of interest will be announced in the form.

Dr. Morley advised that the Home Care Division of OPCHSM, Infusion Services, Quorum and Optum, two of the largest infusion providers in New York have determined to limit infusion services to specialty drugs, eliminating parenteral nutrition, antibiotics and cancer drug infusion. Optum completed the transfer of all of their patients has 528 patients awaiting transfer or discharged before the end of September. The Department is working to ensure that care continues. Capacity for service. There has been an increase in requests to add counties to licenses by the licensed home care agencies who are seeking to expand their geographic footprint. The Department is witnessing a decrease in the capacity, however, of certified home health care agencies and hospices due to lack of resources, staff and funding. Two hospices will be closing in Westchester and Putnam, bringing the total to thirty-nine hospices for the state. The moratorium on new has ended and the applications will be posted at the end of August with receiving applications in the future following character and competence and financial feasibility review. The Department expects a lot of activity in this areas, as there are over 1,000 in the state.

Dr. Morley then talked on the topic of EMS. The World University Games scheduled for Lake Placid in 2023. Meetings with event promoters and stakeholders continues. The first draft of the Special Event Emergency Operations Plan will be submitted at the end of July. The New York State Fair plans have been submitted and are under review. Discussions with hospitals regarding the impact in that area, specifically related to ongoing emergency department diversion in Syracuse are ongoing. Meetings have been held in the month of July, the 19th and 20th. The Sustainability Technical Advisory Group reported that they've made considerable progress in the

development of a paper for long term EMS sustainability. Increasing concerns of hospital offload times and ambulances being asked to wait until the ER is ready to initiate contact have increased. Incidents range from thirty minutes to several hours, holding ambulances in the ER are reviewing and will be providing recommendations to the Department. They are currently working on regulation reform for EMS education process. The department continues to work to provide guidance to EMS providers and agencies on the treatment of patients with suspected monkeypox. The EMS Memorial will take place on September 20, 2022. Recent legislation created the Rural Ambulance Task Force. The task force membership will be appointed. Members will be appointed by each house of the Legislature; the Governor's Office, EMS, DOH and the Office of Fire Prevention. The task force will be studying EMS services in the rural counties over the next one to two years.

Lastly, Dr. Morley noted that OPCHSM and participants from most of the other areas of the Department continue to review the statewide transformation grants and continue to hear from hospitals who express concerns related to increase in staffing costs. The Department continues to work with financially distressed hospitals.

Dr. Morley concluded his report. To see the complete report please see pages 13 through 15 of the transcript.

REGULATION

Dr. Boufford 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)
20-07 Addition of Section 2.60 to Title 10 NYCRR (Face Coverings for COVID-19 Prevention)

Mr. Holt introduced for Emergency Adoption of Amendment of Part 2, Section 405.3 and Addition of Section 58-1.14 to Title 10 NYCRR (Investigation of Communicable Disease) and motioned for adoption. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 15 and 16 of the transcript.

Mr. Holt introduced For Emergency Adoption of Addition of Section 2.60 to Title 10 NYCRR (Face Coverings for COVID-19 Prevention). Mr. Holt motions for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see page 16 of the transcript.

Mr. Holt concluded his report. Dr. Boufford thanked Mr. Holt for his report

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

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

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers - Construction

Number	Applicant/Facility	Council Action
212271 C	Ambulatory Surgery Center of Niagara (Niagara County)	Contingent Approval

Mr. Robinson called application 212271 and motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 16 and 17 of the attached transcript.

Residential Health Care Facilities - Construction

Number	Applicant/Facility	Council Action
212105 C	Rutland Nursing Home, Inc. (Kings County) Mr. Lawrence – Recusal	Contingent Approval

Mr. Robinson called application 212105 and noted for the record that Mr. Lawrence has a conflict and exited the Zoom meeting. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion carried with Mr. Lawrence's recusal. Mr. Lawrence returned to the meeting. Please see page 18 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

Number	Applicant/Facility	Council Action
212282 C	Auburn Community Hospital (Cayuga County) Mr. Robinson – Interest	Contingent Approval
221105 C	Strong Memorial Hospital (Monroe County) Mr. Robinson – Recusal Mr. Thomas - Interest	Contingent Approval

Mr. Robinson called application 2122282 and noted for the record that he has interest. Mr. Robinson motioned for approval. Dr. Berliner seconded the motion. The motion carried. Please see pages 18 and 19 of the attached transcript.

Dr. Kalkut called application 221105 and noted for the record that Mr. Robinson has a conflict and exited the meeting room. Dr. Kalkut motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried with Mr. Robinson's recusal. Mr. Robinson returned to the meeting room. Please see pages 19 and 20 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

Number	Applicant/Facility	Council Action
221115 E	Apex Surgical Center (Oneida County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct

Number	Applicant/Facility	Council Action
221070 B	Pinpoint Medical LLC (Kings County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct

Number	Applicant/Facility	Council Action
192027 E	Crest Opco LLC d/b/a Crest Manor Living and Rehabilitation Center (Monroe County)	Contingent Approval
221084 E	Hilaire Farm Skilled Living & Rehabilitation Center, LLC d/b/a Hilaire Rehab & Nursing (Suffolk County)	Approval
192332 E	EDRNC Operating, LLC d/b/a Eden Rehabilitation & Nursing Center (Erie County)	Contingent Approval

192333 E	HORNC Operating, LLC d/b/a Houghton Rehabilitation & Nursing Center (Allegany County)	Contingent Approval

Mr. Robinson next called 221115, 221070, 192027, 221084, 192332, and 192333 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 20 and 21 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

Residential Health Care Facilities – Establish/Construct

Number	Applicant/Facility	Council Action
192335 E	SARNC Operating, LLC d/b/a Salamanca Rehabilitation & Nursing Center (Cattaraugus County) Mr. Holt - Interest Dr. Watkins – Interest/Abstaining	Contingent Approval
192336 E	DURNC Operating, LLC d/b/a Dunkirk Rehabilitation & Nursing Center (Chautauqua County) Mr. Holt – Interest	Contingent Approval
202122 E	Providence Rest, Inc. (Bronx County) Mr. LaRue- Recusal	Contingent Approval

Mr. Robinson called application 192335 and noted for the record that Mr. Holt has declared an interest and also noted for the record that Dr. Watkins has declared an interest and will abstain. Dr. Kalkut seconded the motion. The motion carried with Dr. Watkins abstention. Please see pages 21 through 24 of the transcript.

Mr. Robinson called application 192336 and noted for the record that Mr. Holt has declared an interest. Mr. Robison motions for approval. Dr. Gutiérrez seconds the motion.. The motion to approve carries. Please see pages 24 and 25 of the transcript.

Lastly Mr. Robinson called application 202122 and noted for the record that Mr. LaRue has declared a conflict of interest and has exited the Zoom session. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried with Mr. LaRue's recusal. Mr. LaRue returned to the meeting room. Please see page 25 of the transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

Mr. Robinson concluded his report.

ADJOURNMENT:

Dr. Boufford thanked Mr. Robinson for his report. She then announced the upcoming PHHPC meetings and adjourned the public portion of the meeting. Dr. Boufford motioned to go into Executive Session to consider the Report of the Health Personnel and Interprofessional Relations Committee. Dr. Rugge seconded the motion. Please see page 26 of the transcript.

NEW YORK STATE DEPARTMENT OF HEALTH
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
FULL COUNCIL MEETING
JULY 28, 2022
10:15 AM
ESP, CONCOURSE LEVEL, MEETING ROOM 6, ALBANY
TRANSCRIPT

Dr. Boufford I think we'll begin the formal meeting of the council. I'm Dr. Boufford, the Vice Chair of the council.

Dr. Boufford I have the privilege to call us to order Public Health and Health Planning Council and welcome Commissioner Bassett and other staff, colleagues, participants and observers. Again, as to review the reminders for the audience viewing. This is a public meeting on a webcast. There is a form to be filled out to record your attendance at the meetings that's required by the Commission on Ethics and Lobbying and Government according to Executive Order 166 and it's posted on the Department of Health website under Certificate of Need. You're asked to please email completed form to Colleen Leonard at Colleen.Leonard@Health.NY.Gov. We appreciate your cooperation in this. I'd also like to remind council members, staff and the audience that this is a meeting subject to the Open Meetings Law. It's being broadcast over the internet. Some ground rules, which hopefully we're all familiar with. Please keep yourself on mute when you're not speaking. We ask that you avoid rustling papers next to the microphone and avoiding personal conversations as the device will pick up the chatter. This is synchronized captioning, so people are asked not to talk over each other, which makes it more difficult, if not impossible, to sign. The first time you speak, please state your name and briefly identify yourself as a staff member or a member of the council, which will help the broadcasting colleagues. I want to encourage the members, staff and public to join the Department's Certificate of Need Listserv. The unit regularly sends out important council information and notices such as the agenda, meeting dates and policy matters, etc., which will be of interest. There are printed instructions on the reference table out in the entrance area to this room about how to join. The agenda for today's meeting will involve the following. First, under the Department of Health reports, we'll hear from Commissioner Bassett on an overall report of the department's activities. Dr. Ursula Bauer will then provide a report on the activities of the Office of Public Health, followed by Dr. John Morley, who will provide a report on the activities of the Office of Primary Care and Health Systems Management and then we'll move in to the report from Mr. Holt on the Codes Committee and Project Review Recommendations and Establishment Actions report by Mr. Robinson, who will report on a number of CON applications that were reviewed at a meeting of that committee earlier this month. We will and the council and there will be an Executive Session following the adjournment of the council on a personal matter. A reminder for conflicts, members of the council and any guest who regularly attend the meetings are familiar with re-organizing the agenda by topics and categories. This reorganization can include batching has included batching of CON applications. We hope the council members have taken the time to look at the batches and see if there are any particular projects you'd like to pull out or move into a different category for consideration. I'll hold a minute here to see if anyone on the council on the screen or in the room has any such intervention. It doesn't look like it, so we'll move ahead as printed. It's also a great pleasure for me to announce that we have a new council member virtually with us today, Dr. Denise Soffel, who comes with 30 plus years of experience in health care. She helped

found Medicaid Matters New York, a statewide coalition to bring voices and experience of Medicaid consumers into the policy process. She has served as that group's Coordinator throughout her career. Those of us who especially have been in New York City health policy work have known Denise as a very important source of evidence and advocacy for the underserved. We're delighted to welcome you, Denise, to the council. We are also happy that you've decided to join the Health Planning Committee, the Public Health Committee and the Ad Hoc Committee to lead the prevention agenda. I'll look forward to working with you more closely on those committees as well.

Dr. Boufford Now, if you want to say a word.

Denise Soffel Thank you, Jo.

Denise Soffel I was just saying in the pre-meeting, it's really a pleasure to join this group and come across so many colleagues and friends from many years of working in the health policy arena here in New York, including you. I was telling people my first real job was at HHC in the mid-80's. You were Vice President for Medical and Professional Affairs. I went in for my interview, my final interview, and I was petrified and here we are all these years later. You are a very intimidating and suspicious person in those years when I was very young, just out of graduate school looking to start a career. I'm very delighted to be joining you.

Dr. Boufford I wish I had known myself to be intimidating at that time. It might have been useful. But anyway, thanks very much and welcome. We're happy to have you.

Dr. Boufford I think we'll begin our formal agenda. It's a pleasure to welcome Dr. Bassett and hear from her updating the council on overall departmental activities, which I'm sure are a lot to tell us about.

Commissioner Bassett Should I borrow your microphone?

Commissioner Bassett Thanks very much, Dr. Boufford.

Commissioner Bassett It's a pleasure to have you chairing us today. I'd also like to join in welcoming our newest member. I believe that you occupy the consumer slot and we very much value that voice. I'm going to be brief. As you've heard, I'm Dr. Mary Bassett. I'm the New York State Health Commissioner. All of you know that we have been very busy, particularly in our Office of Public Health and I'll leave it to Dr. Bauer to give you most of that update. As you are all aware, we have been experiencing, particularly Downstate, an increase in COVID cases driven by the BA5 variant, which now comprises the larger share of COVID infections in the state. Additionally, we've had a case of polio diagnosed in Rockland County, which was confirmed by the CDC. This is the first time that we've had a case of polio in the United States in nearly a decade and in the state much longer than that. Additionally, we, of course, are in the midst of a surging number of cases of monkeypox, with the state now reporting over 1,200 cases and with our response limited by limited vaccine supply at federal level. We have been busy with all of these. It's made it clear, I hope, to the public the importance of having a strong health department as we seek to respond to all of these communicable disease threats. Role remains critically important. I hope all of our members understand that public health has never been more important than it is today.

Commissioner Bassett With those brief framing remarks, let me turn it over to Dr. Bauer. I would just like to take a moment to acknowledge how hard the team has been working. We have a shallow bench, and many of the same people who've been responding to COVID for over two years are now responding to monkeypox and most recently, polio. I'd like to acknowledge and thank the selfless, continued hard work of the Health Department staff.

Dr. Bauer Thank you very much, Dr. Bassett.

Ann Monroe May I ask a question?

Dr. Boufford We'll pause before we move into the Public Health Committee report and ask for questions for Dr. Bassett.

Commissioner Bassett Yes, you are most welcome to ask a question.

Commissioner Bassett Yes.

Ann Monroe Thank you, Dr. Bassett.

Ann Monroe I'm Ann Monroe. I sit in the other consumer seat.

Commissioner Bassett Yes.

Ann Monroe I'm very happy to have Denise joining us.

Ann Monroe You mentioned a shallow bench. That's really my question. Are you hiring as fast as you can to fill those slots? How are you going about building back the striped man power or person power of the department?

Commissioner Bassett Well, that's thank you for that question. For the first time, and I understand it quite a long time, the hiring freeze at the department has been lifted and all of our posts are funded posts. That said, hiring in government is not a fast process and it takes some time to bring people into post. We've had some success with leading individuals now recruited. We have some key posts that remain vacant. We do not have the constraint of a hiring freeze, which this department struggled with for years. Our current budget was widely praised including by the legislature as the best budget for public health that's been seen in many years. I don't know if that completely answers your question. We have vacancies and we have the capacity to recruit.

Ann Monroe Well, that's very good news.

Dr. Boufford Other questions for the Commissioner before we move on?

Dr. Boufford Colleagues on the screen?

Dr. Boufford Anyone here?

Harvey Lawrence Yes.

Harvey Lawrence Harvey Lawrence.

Dr. Boufford Harvey Lawrence.

Commissioner Bassett Very nice to see you.

Harvey Lawrence I keep getting a promotion here, but I'm not a doctor. I'm not wanting to offend any of the doctors. I know that the state is confronted. You're confronted with a bunch of challenges. Staffing continues to be a big challenge across in our world, especially in terms of the labor force and nursing and a whole host of challenges. As an FQHC, one of the things that's looming large for us is the 340B carve out. I know there's been a moratorium and it's been delayed for two years and supposed to be released, I guess in April or thereabouts of next year. This is an item that could be essentially a perfect storm for all of us because, you know, without the federal support and funding, I think many of the FQHC's and any of the safety net providers would be on life support today. We have a confluence of essentially increased costs, especially labor costs, as you can attest and anyone on this panel will attest, and especially around nursing and providers, essential providers in and out of services to our community. The 340B revenues been really an opportunity for many of our FQHC's and safety net providers to balance the budget and to provide services that would otherwise not be provided in under-served neighborhoods. The prospect of a 340B program being the carve out proceeding and there not being some way to offset that is it's really it just seems like it's a potential disaster for people or for institutions that are providing much needed primary care in neighborhoods and to people that are generally underserved. I would have I know you're a champion for primary care and for FQHC's, but this is a really important item in terms of the safety net and the potential impact on FQHC's and safety net providers across the state.

Commissioner Bassett I'm not quite sure how to proceed with that comment. Let me just say that we are well aware of the concerns that have been raised both individually by FQHC leaders, as well as by a coalition of providers who are concerned about the legislative determination that the 340B carve out should end. I have met several times with this coalition. I have given my commitment that we hold harmless in any change in funding structures. I think at this meeting it's a little too in the weeds to try and describe 340B. It is a funding mechanism that as the New York City Commissioner we actively promoted to the FQHC, so I am familiar with it and the fact that it gives you unfettered funding, which has been extremely valuable. And as you note, I truly value the important role that the FQHC's play. These discussions have taken place with the Health Department. They have now involved the executive. It is an active matter. My commitment is that these important care providers should not be harmed by the 340B carve out.

Harvey Lawrence Thank you so much.

Dr. Boufford Any other questions?

Dr. Boufford Dr. Watkins.

Dr. Watkins Can I ask the Commissioner a question?

Dr. Watkins Dr. Bassett, I know you spoke quickly about the monkeypox outbreak here in New York State. I'm not sure if you talked a lot about the vaccine itself and when rural counties can particularly start to look forward to receiving some vaccines on their end. I was wondering if you can elaborate a little bit more on that.

Commissioner Bassett I was going to leave the monkeypox update to Dr. Bauer. I'm happy to answer these questions. We've distributed monkeypox vaccine to where we've identified monkeypox cases in sixteen counties outside of New York City. About half of them have had only one case. We have had a limited supply of monkeypox vaccine. This is not a vaccine that you can go to the market and purchase. The distribution of this vaccine is controlled by the federal government, which has now allocated three tranches. If Senator Schumer's tweet is correct, I've just seen a note that an additional 110,000 doses should be coming to the state. We have been distributing these based on our assessment of populations at risk and our observation of cases. I do want to acknowledge that we have not got as much vaccine as all of us would like. This is not only a state problem. Dr. Bauer will shortly be covering all the numbers, where we've sent doses. All of this is on the public record, and we very much want people to understand what the situation is with our ability to procure the vaccine.

Tom Holt Mr. Holt.

Tom Holt Thank you.

Tom Holt Just kind of carrying forward Mr. Lawrence's comments relative to staffing, to speak about what's happening in the long term care sector. And really just a comment, not so much a question, Doctor, but long term care continues to suffer mightily under this staffing crisis. It's gotten probably only marginally better statewide as we're coming into the Fall when it's projected that the minimum staffing penalties start taking effect. There's just a lot of concern within the long term care sector generally. I wanted to make sure that I said on the record that long term care continues to struggle with what's happening on the staffing side clinically and direct care.

Commissioner Bassett Thank you.

Commissioner Bassett Noted.

Dr. Boufford Any other questions for the commissioner?

Dr. Boufford No.

Dr. Boufford Thank you.

Dr. Boufford They may have some other questions.

Dr. Boufford Let me call on Dr. Bauer to present the report of the public health section of department.

Dr. Bauer Thank you very much.

Dr. Bauer Dr. Ursula Bauer, Deputy Commissioner for Public Health. Pleasure to be here. I have several updates from the Office of Public Health to share with you this morning. Let's just start with COVID. In terms of cases reported to the department and we know there is huge under-reporting with the limited testing that people are doing and much of that at home. We're at around 5,000 cases a day. This is three times higher than at the same time in 2021 and almost an order of magnitude higher than at the same time in 2020. Yet, from a public perception standpoint, we're nearly post COVID. Newly reported COVID hospitalizations. Admissions are likewise higher than in previous Summers, at

roughly two and a half per 100,000 population, compared to fewer than 0.5 per 100,000 in previous Summers. COVID-19 associated deaths are also at modestly higher levels than in previous Summers. This is in the context of proven mitigation measures, including vaccines now available for all age groups and therapeutics in increasingly robust supplies. With BA5, though now the predominant variant in New York and across the US with its high transmissibility and its ability to evade prior immunity and with the lack of interest on the part of the public and protective measures like masking, we are very worried about the Fall. COVID vaccination progress does continue, albeit at a very slow pace. 78% of all New Yorkers and 88% of those 18 or older have completed their COVID vaccine series, and 53% of the eligible population has completed a booster dose. For the six month to four year old age group for whom vaccine was only recently approved. 45,000 children have received one dose. That's about 4% of the population, of which just over 4,000 have completed the series about 0.2% of the population. Among five to eleven year olds, 43% have received one dose, including 38% who have completed the series. As I said, we are very concerned about the Fall. Those low points that we had reached in previous Summers presaged an uptick in the Fall. We are trying to be prepared. In terms of monkeypox, as Dr. Bassett mentioned, we are in the midst of a persistent and growing monkeypox outbreak that began in May of this year. Dr. Bassett noted that as of yesterday, we had 1,228 cases. These are mostly in the New York City metro area, about 94% of cases are in New York City. As Dr. Bassett mentioned, sixteen counties outside of New York have reported at least one case, many of which have been associated with recent travel. Monkeypox is not a new virus, and this is not the first outbreak we've had in New York. However, this monkeypox is spreading and cases of monkeypox are presenting in ways not typically seen in past monkeypox outbreaks. Although the current strain of monkeypox that's circulating in the US is rarely fatal and does not usually cause serious illness, symptoms can be painful and people may have permanent scarring from the characteristic rash. There have been no deaths associated.

Dr. Bauer Thank you, Dr. Morley.

Dr. Bauer There have been no deaths in the current outbreak in the US. As you probably know, monkeypox is spread by close physical contact, including intimate contact. So far the community most affected has been those who identify as men who have sex with men. Preventive measures include avoiding close contact with those who have MPX and avoiding household items like clothing, towels and bedding that have been used by those who have MPX. The smallpox vaccine is effective at preventing monkeypox and reducing symptoms, as far as we know in those who have been recently infected. We don't have good efficacy data for the current outbreak. As Dr. Bassett noted, the vaccine is in very limited supply. New York State and New York City have each received shipments of the vaccine. New York City has received four shipments. New York State has received three. Those have been distributed to close contacts of known cases and to those who are at high risk of a recent exposure to monkeypox. We expect availability of the vaccine to increase in the coming days and weeks. We're expecting announcement of a new allocation shortly. Apparently, it's already been leaked on Twitter. We hope with this much larger allotment that we will be able to meet the at least a higher portion of the need and the demand. The monkeypox vaccine is a two dose vaccine administered 28 days apart. We do have to be cognizant as we alot of our doses, that we have enough to meet that demand that we are now creating for that second dose 28 days after the first administration. To date, we have distributed our New York State vaccine to eight counties based on the number of monkeypox cases, based on the proportion of the estimated eligible community, men who have sex with men who are potentially at high risk, based on things like prep prescription for HIV, for example. We hope to be able, per Dr. Watkins

question, to expand our distribution of vaccine as we get more in this next shipment and then later on in the year. I'll turn quickly to polio. Things come in threes, I guess. We now have a polio outbreak centered in Rockland County with one confirmed case of vaccine derived paralytic polio in an unvaccinated resident. Sequencing performed by the Wadsworth Center and confirmed by CDC. This indicates a transmission chain from an individual who received the oral polio vaccine, which is no longer administered here in the U.S. Indeed, the Global Polio Laboratory Network has confirmed that the vaccine derived polio virus too isolated from this Rockland County case, is genetically linked to Type Two isolates collected from environmental samples in early June in New York and in Greater Jerusalem, Israel. Further investigations, both genetic and epidemiological are ongoing to determine possible spread of the virus and potential risk associated with these isolates. As you know, polio is a vaccine preventable disease. Completing the vaccine series is required for school entry. Because most people are vaccinated against polio, we consider the public to be at low risk, but we are very concerned about those who are unvaccinated. The State Department of Health is coordinating with the Rockland County Department of Health and with the New York City Department of Health and Mental Hygiene to continue the case investigation and to protect communities against spread by urging vaccination for those who are unvaccinated against polio or those who may have been exposed and may benefit from a booster. We've also advised medical practitioners and health care providers to be vigilant for additional cases. I think I'll close with an announcement on the bright side. In terms of hiring, I am very pleased to share with you that we now have a Medical Director for the Office of Public Health. Dr. Jim McDonald started with us on July 11th and comes to us from the Rhode Island Department of Health, where he served most recently as the Interim Director of the department and as Medical Director of the COVID unit and as Medical Director for Consumer Services. Dr. McDonald comes with a wealth of experience with the Rhode Island Board of Medical Licensure and Discipline, the Division of Policy, Information and Communications, the Drug Overdose Program, the Medical Marijuana Program, the Prescription Drug Monitoring Program. He is board certified in pediatric medicine and preventive medicine.

Dr. Bauer I think with that, I will open it for questions.

Dr. Bauer Thank you.

Dr. Boufford I have a first question I want to this is a kind of smaller and larger question focusing on the routine childhood vaccinations. I mean, there are some very distressing numbers coming out, I think because of COVID and vaccine resistance movements that some upwards of 20 some odd percent of the population are saying they won't get their kids vaccinated routinely unless the schools require it. I wondered if there's any thought about public information campaigns, school, etc just what your thinking is about trying to prevent that from happening in the state going forward.

Dr. Bauer That is a grave concern. We do have a public education campaign, if you will, and a vaccine hesitancy working group that is creating those messages. Our public affairs group has been disseminating messages. We have a return to school campaign and are working with our school districts to remind parents and guardians that we have these requirements and to be prepared. We do feel as though we've lost ground during COVID, when it was just harder for children to stay current with their routine vaccines, let alone with the COVID vaccine. We do need those reminders to start the school year off on the right foot.

Commissioner Bassett Just to also add to this, we do have school requirements and the ability to exclude children from school if they have not received appropriate vaccinations. In Rockland County, we've looked at both public and nonpublic schools. The vaccination rates are relatively high. We're reminding people that this is a requirement and that children can be excluded from school if they haven't received their vaccines. The problem is that the vaccine schedule for polio begins with very young infants. We begin vaccinating children at two months. When we get to school age children, that's not the time that we want to see children getting vaccinated. We're also concerned, although it's not easy to always have a window on this about delayed vaccination with the result that younger children are being left unvaccinated until they go to school. So, that's also part of what we're looking at as a department.

Dr. Boufford Just one quick follow up. I assume also, again, the other issue would be the sort of supply chain for the routine vaccines is not interrupted. I think this is part of having just spent a week overseas last week this is a big issue globally, but that would not be seem to be an issue here in the U.S. and in New York, one hopes.

Dr. Boufford Other questions for Dr. Bauer?

Dr. Boufford Dr. Kalkut.

Dr. Kalkut Thank you, Jo.

Dr. Kalkut My name is Gary Kalkut. I'm a member of the council. The question I have is about Tesco one of the treatments that is available for monkeypox. Trade name is T Pox. My understanding is decision making at a federal level is necessary to afford greater access to the drug. Right now, it's under an expanded access and requires approval and consenting for each patient which completely sensible until we get to an outbreak like this. I realize it's not a state issue, but I was wondering if you had any insight into how that might change. I think what it requires is a declaration of the public health emergency for monkeypox as the WHO has done, and then an FDA decision making.

Dr. Bauer Thank you very much for that question. I'm going to turn to Dr. Heslin, our Chief Medical Officer, who has been on top of this issue to reply.

Dr. Bauer Thank you, Dr. Heslin.

Dr. Heslin Good to see you again, Dr. Kalkut.

Dr. Heslin The answer is that it is extremely complicated. As you know, this is indicated for smallpox, but not indicated for monkeypox. There have been no randomized, double blind controlled trials done on this medication, and it was approved through an animal study venue. As such, you're right that it could potentially get approved through the FDA process. What we're hearing is, is that that's not going to happen, that the DA IND, which the CDC holds, which is the vehicle under which we're able to now get this out to the community. The five page informed consent form and the multiple visits that are required for this are the same as any other research or investigational medication. They simplified that process from 124 page process and document and multiple persons down to a twenty-one page process with two visits. Those can now be done by telehealth, so it's improved. The CDC from our conversations have indicated that they continue to evaluate that process to make it simpler. In talking both with CDC and with the company that has developed this medication, they think it's going to be months, if not longer, before that

process will be changing. In New York, what we're doing is we've engaged a number of the hospitals as well as other outpatient providers, and frankly, anybody that's interested in becoming an investigator to be able to proceed forward in that path. We're assisting people in both getting signed up and also in forward deploying out to the communities, so that it is available. Unfortunately, we cannot change the process of informed consent or those visits, so it is onerous. I do encourage institutions and community providers who are interested and willing to take that on to make the approach. I think is extremely important to have this forward deployed to communities.

Dr. Kalkut Thank you so much.

Dr. Kalkut That's very helpful. We're doing just that and trying to get people to provide what is needed to prescribe this drug under the CDC IND.

Dr. Kalkut Thanks for the information.

Dr. Boufford I think we have questions from our virtual participants; Dr. Strange, Ms. Monroe, Dr. Gutierrez.

Dr. Strange Thank you, Mary. Thank you to the Commissioner. My question deals with the monoclonal antibody access for COVID-19. As we know, as was stated, we've seen an increase in incidence down here in the Downstate area with the variant coming into California. I know there's been now a shortage of the monoclonal antibody availability. Obviously, I know is the first line of choice, but as a somebody working in acute care setting community, there are indications monoclonal antibody when those that can't be given the medication are there or drug interactions and so on. There is now a major shortage, I'm told, of that. Is there any sort or any way that you would work with the federal government to increase that, especially in areas where we've seen this increase?

Dr. Heslin I'll handle that question as well.

Dr. Heslin You're 100% right. Is currently the only indicated monoclonal antibody for the treatment of COVID. We do have ---, which is a prophylactic monoclonal antibody. Is currently under an EUA and is only distributed through the Federal Government. As you know, through earlier this year, federal funding for treatment was not put through Congress and as such, the federal funding for this particular component, the monoclonal antibodies, has run out. The Federal Government has indicated that they are going to run out of supplies in, I think August 22nd is now the date that they're going to run out of supply. To that end, the amounts that they've been distributing nationally, which is based upon population and disease burden, has become a smaller amount across the entire nation. To put that into perspective, we received this past week 1,500 treatment courses. We received 15,000 requests or --- to be distributed throughout New York State. That is unfortunately a quandary and this is a national problem. What's happening is --- is working with the federal government to be able to offer this as a commercial venue. It is anticipated that it will become commercially available for purchase somewhere around August 15th. That was new information that was just published. We do not have any further details on that published data. As you know, is the first choice, obviously, and with complications and side effects. The second choice currently advocated by the federal government is ---. Third choice is the ---. Again, in your population, the monoclonal are certainly indicated and widely used. As we get more information, we will be updating. That information was literally put out to us yesterday.

Commissioner Bassett Can you just tell the virtual audience and the members of the council about the 1-888 number for access?

Dr. Heslin Oh, yes.

Dr. Heslin Thank you.

Commissioner Bassett Thank you.

Commissioner Bassett This was just reflecting your efforts, so please.

Dr. Heslin Thank you.

Dr. Heslin New York State has engaged in partnership with Health and Hospitals Corporation Development 888 Treat New York. That is the phone number for a virtual care that any person in New York state can access to be able to receive a full virtual emergency care visit, which includes a not only the entry, but also a fifteen to twenty minute clinical visit to determine whether or not you are a candidate for receiving one of the oral antivirals. You are tested by attestation and so that is available. There is also a link on our website that allows you to do this as a web link that is available in over 200 languages to provide language access to anybody who would like to access that as well. We're excited by that. It has been used so far and I will point out that about 40% of people that have access have commercial insurance, but 33% of people have no insurance. We think that this is providing access to the communities.

Dr. Boufford Ms. Monroe.

Ann Monroe Yes.

Ann Monroe Thank you.

Ann Monroe I'm of an age where I don't have to worry about my children or grandchildren getting vaccinated for school, but I just have a clarifying question. Are all schools, public and private, required to have their students vaccinated before they start school? Does that apply to homeschooled children as well? What do you do with a child whose family refuses to vaccinate them? Could you just give me a little nugget about how that works?

Dr. Bauer Yes.

Dr. Bauer Thank you.

Dr. Bauer So, yes, the law does apply to all public, private, charter schools. I don't know the answer to homeschooling and whether it applies there for a child who is schooled at home with no other children invited into the home. When a child is identified as not being up to date on vaccine, of course, the local health department works with the family to provide education and to help them figure out how to get that child up to date. If they refuse, the child is excluded from school.

Ann Monroe Because that's where many of those kids will default, I believe, is to hold the homeschooling. I just didn't know if it applied there as well.

Ann Monroe Thank you.

Dr. Boufford Dr. Gutierrez and then Mr. Lawrence.

Dr. Boufford You had your hand up before, but your mahogany is kind of blending with the color, so it looks like you took it down.

Dr. Boufford Did you have a question?

Dr. Boufford No.

Dr. Boufford Mr. Lawrence.

Harvey Lawrence I guess my question or concerns are around monkeypox and the narrative that apparently, at least at this point, the science is created around. It sounds strikingly familiar to what we heard at the outset of HIV. At some point there was a crossover into the general population. From where I see it in the neighborhoods, we don't want anyone to sort of just say, well, that's just, you know, something for them to be concerned about. Because from what I'm hearing is that the risk here is not just a sort of a sexual transmission, but also I'm hearing about clothing and, you know, bed linens and all of those things. That seems to be something a lot different from what I understood about HIV and also the ease of transmission. At some point I don't know if we want to get ahead of the science, but at some point, there's some concern that failure to educate and to inform people early on that there may be a potential risk here, so that they don't shut that down and say, well, I shouldn't be concerned about this, because it's those folks and these types of behaviors that are at risk. I don't know, you know, what type of public health campaign, education campaign that will reach people in the neighborhoods so that they will understand that this is something that they should be concerned about and should follow and should pay attention to on a daily basis, because it could be a flip of a switch when all of this changes. I guess that sort of gets to an ounce of prevention is worth a pound of cure that we can have all of the medicines and the treatments. Again, if we can just get the word out in neighborhoods and let folks know that, yeah, you need to be concerned. You don't have to be alarmed at this point, but you need to pay attention.

Dr. Bauer Thanks very much.

Dr. Bauer I think you said it exactly. We want all New Yorkers to be aware, but we don't want all New Yorkers to be alarmed. We want New Yorkers to be aware of monkeypox, to be aware of how monkeypox spreads, to be aware of the symptoms of monkeypox. This is where contact tracing becomes particularly important with the cases that have been identified, where we want to make sure that we are educating cases, we are identifying close contacts, we are identifying opportunities for that spread, potential spread through household items, so that we can do the prevention work that we need to do.

Harvey Lawrence What about a public health campaign? Is it too soon to have that kind of an educational campaign?

Dr. Bauer Yes. We are trying to get the word out without alarming the public. We are trying to make sure that the people are aware of what monkeypox is, how it's transmitted and how to prevent it.

Dr. Boufford Mr. Lawrence, are you satisfied with that? Do you have any follow ups or not?

Harvey Lawrence Well, I guess when people in the neighborhood are aware of the risks and the potential risks, then I'll be satisfied. So often what happens is that they're the last to know and to learn and they, as a consequence, suffer as a result of that. So, getting that information down and out into neighborhoods, especially neighborhoods that are already been impacted adversely, I think it's really important that there be an aggressive posture in doing so, not to alarm people, but to alert them that this is a potential risk.

Dr. Boufford Yeah, I think the angle that you emphasized in your question, Mr. Lawrence, is really important, because obviously, to the degree that there are people in apartments, multiple people, crowded apartments, this issue of spread through linen, clothing, etc., is something that isn't getting that much emphasis and probably at least needs to be part of the conversation routinely, not just the sort of diagnostic category or the need for sort of more scientific epidemiologic testing and other things would be really important for prevention, I would think.

Commissioner Bassett I'm not sure where we are on the agenda, but let me just say a few things about this. One is that the department has been careful to point out that skin to skin contact is related to human behavior. It's not a risk only for men who have sex with men. The group that is currently experiencing the vast majority of cases, not only in this country but around the world, so that skin to skin, face to face contact means that anybody can get monkeypox. That said, the group, the social networks in which this virus has taken hold and is spreading is overwhelmingly men who have sex with men. Our department, given our limited supply of vaccination has worked to particularly get the message out to that community and to do so in a way that we hope is non stigmatizing. We want people to be aware that there are high risk situations in which there has been spread. Some analysis suggests that 95% of infections have been spread through sexual contact, often in settings in which their high rates of partner change among people who are having anonymous partners. These are high risk situations that people who live in areas where monkeypox is spreading, which obviously New York City probably has more cases than any city in the world, at least diagnosed cases. People need to be aware that these are high risk situations. We're balancing the need to get the word out to the group that is at highest risk with not alarming everyone. We want people to be aware of monkeypox, but fear has never been a very good public health tool. We want to make sure that we don't approach this with fear. This is difficult. We have a group that has been stigmatized and discriminated against that is experiencing the bulk of infections. We need to reach men who identify as men who have sex with men. At the same time, we need to make it clear that this is not a gay disease. This is a virus that made it into a social network in which it is currently spreading. I agree with you completely that prevention, meaning reduction of exposure, is always the best public health approach. Vaccination and treatment are important, but not getting exposed in the first place is absolutely critical if we're going to address monkeypox and keep it from becoming endemic.

Commissioner Bassett Does that help, Mr. Lawrence?

Harvey Lawrence It helps. I guess what's driving this is that I had a conversation with a colleague, African American women, who also shared that pretty much what happened with HIV was that in essence, they were bisexual men who ended up transmitting the disease to a lot of African American women. That there was a concern that this could potentially, again, follow track that pattern. What I guess I am asking is that whatever aggressive campaign without doing it to still in fear, but education. That people are aware, so that they are on notice that this is a potential risk that they should be mindful of.

Because so often by the time we get the data and we're monitoring an event that has already happened and already in process. It's not like we get ahead of things. We're looking really at collecting information, analyzing that information and then making some determinations. Real people are impacted along the way. That's my only concern that if that we have the information out in such a way that people are at least aware of the potential risk that's involved.

Commissioner Bassett Thanks very much. I appreciate that comment.

Commissioner Bassett My final word is that everyone should be able to have frank conversations with their partners and to talk with them about their health, about the presence of rashes. This is good advice for anyone, regardless of who they have sex with.

Dr. Boufford Any other questions on this for Dr. Bauer?

Dr. Boufford Why don't we move on, then?

Dr. Boufford Thank you very much, Dr. Bauer, Dr. Bassett, for your additional comments.

Dr. Boufford Dr. Morley, who's going to report on the activities of the Office of Primary Care and Health Systems Management.

Dr. Morley Thanks very much, Madam Chairman.

Dr. Morley I will attempt to keep my remarks brief.

Dr. Morley Monkeypox, just to pick up on where we left off. On Friday, we issued a Dear Administrator letter reminding health care facilities to encourage staff not to report to work if they are exhibiting signs or symptoms of any viral illness, e.g. COVID or monkeypox. This week we issued an advisory on monkeypox to congregate health care and non-health care facilities on monkeypox precautions, including waste management, infection control and visitation. Our Bureau of Narcotic Enforcement. On June 8th, the department approved two proposals for Drug Takeback Programs in New York State. They're being operated. They will soon be placing drop boxes in chain pharmacies with ten or more locations. They will offer pre-paid envelopes or vouchers for envelopes, so patients can simply mail back their medications from home. They'll give patients safe and environmentally friendly ways to get dangerous medications, especially opioids, out of their medicine cabinets, which are a major source of diversion. We're working on improving the Prescription Monitoring Program, using suggestions from focus groups of New York State practitioners, including adding visual indicators to flag for prescribers the presence of overlapping opioid and benzodiazepine prescriptions and multiple provider episodes, also known as doctor shopping. The PMP is now interoperable in thirty-three states, as well as the District of Columbia, Puerto Rico, the Military Health Service and the VHA. The Center for Health Care Policy and Resource Development is working on the NANY program, Nurses Across New York. The Loan Repayment Program Stakeholder workgroup is moving forward. They had the first workgroup meeting earlier this month and the next one is scheduled for August 11th and September 13th. The 2023 budget includes an appropriation of two and a half million dollars for NANY that will provide loan repayment for RN's and LPN's working in underserved areas. The workgroup is comprised of associations representing nurses, general hospitals and other health care organizations and is comprised from representatives from twenty organizations. Stakeholder recommendations are due to the department on September the 30th and will inform the

program in terms of areas of need in the industry and how this loan repayment program may best address the identified needs. Solicitation of interest will be announced in the form. From the Home Care Division of OPCHSM, Infusion Services, Quorum and Optum, two of the largest infusion providers in New York have determined to limit infusion services to specialty drugs, eliminating parenteral nutrition, antibiotics and cancer drug infusion. Optum completed the transfer of all of their patients. Has 528 patients awaiting transfer or discharged before the end of September. We're working to ensure that care continues. Capacity for service. There's been an increase in requests to add counties to licenses by the licensed home care agencies who are seeking to expand their geographic footprint. The department is witnessing a decrease in the capacity, however, of certified home health care agencies and hospices due to lack of resources, staff and funding. Two hospices will be closing in Westchester and Putnam, bringing the total to thirty-nine hospices for the state. The moratorium on new has ended and the applications will be posted at the end of August with receiving applications in the future following character and competence and financial feasibility review. The department expects a lot of activity in this areas, as there are over 1,000 in the state. EMS. The World University Games scheduled for Lake Placid in 2023. Meetings with event promoters and stakeholders continues. The first draft of the Special Event Emergency Operations Plan will be submitted at the end of July. The New York State Fair plans have been submitted and are under review. Discussions with hospitals regarding the impact in that area, specifically related to ongoing emergency department diversion in Syracuse are ongoing. Meetings have been held in the month of July, the 19th and 20th. The Sustainability Technical Advisory Group reported that they've made considerable progress in the development of a paper for long term EMS sustainability. Increasing concerns of hospital offload times and ambulances being asked to wait until the ER is ready to initiate contact have increased. Incidents range from thirty minutes to several hours, holding ambulances in the ER. Are reviewing and will be providing recommendations to the department. They are currently working on regulation reform for EMS education process. Are the September 21st and 22nd. The department continues to work to provide guidance to EMS providers and agencies on the treatment of patients with suspected monkeypox. The EMS Memorial will take place on September 20th. Recent legislation created the Rural Ambulance Task Force. The task force membership will be appointed. Members will be appointed by each house of the Legislature; the Governor's Office, EMS, DOH and the Office of Fire Prevention. The task force will be studying EMS services in the rural counties over the next one to two years. OPCHSM and participants from most of the other areas of the department continue to review the statewide transformation grants and continue to hear from hospitals who express concerns related to increase in staffing costs. We continue to work with financially distressed hospitals.

Dr. Morley That ends my report.

Dr. Morley I'll be happy to take any questions you may have.

Dr. Boufford Thank you. Dr. Worley.

Dr. Boufford Any questions from members of council?

Dr. Boufford I just wanted to ask, when you mentioned on the workforce issue, this has been an issue that this council has been concerned about for some time. I wanted to ask and you've talked about activities going on relative to clinical workforce, and we've seen in the budget topping up salaries and others. Can you talk a little bit about plans, discussions

on the public health workforce, or if it hasn't begun yet, what the thinking is about some update of looking at that and looking at some of the needs might be.

Dr. Morley There is some money in the budget. The legislature has forwarded and the Governor signed off on legislation to create the Center for Workforce Innovation. That's a team that will likely be based in the department, but they really making a concerted effort to make sure that it crosses across all of the state agencies. The primary focus being health care. The Empire State Development Office has also got workforce innovation efforts ongoing. We want to make sure that we align with them and not step on anything and work with them as closely as we possibly can. That's in its earliest stages. The office has got an assignment of about nine or ten people assigned to it and resources to support the efforts.

Dr. Boufford That will be something we'll want to hear more about as the progress goes on.

Dr. Boufford Thanks.

Dr. Boufford Other questions for Dr. Morley?

Dr. Boufford I think we're ready to move on.

Dr. Boufford Thank you all very much, Commissioner and Dr. Morley, Dr. Bauer. You're welcome to stay as long as you wish.

Dr. Boufford We're going to move into the regular agenda now.

Dr. Boufford Let me ask Mr. Holt to give a report on Codes, Regulation and Legislation Committee.

Tom Holt Thank you, Dr. Boufford.

Tom Holt Good morning. At today's meeting of the Committee on Codes, Regulations and Legislation, the Committee reviewed and voted to recommend adoption the following emergency regulation proposals for the approval before the full council. First being the investigation of communicable disease. Mr. Jason Riegert and Dr. Emily Lutterloh from the Department are present should there be any questions of the members.

Tom Holt I move the adoption of this regulation.

Dr. Boufford Second from Dr. Gutierrez.

Dr. Boufford Any discussion?

Dr. Boufford Questions, discussion?

Dr. Boufford All in favor, say aye or indicate aye, if you will.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford The motion passes.

Tom Holt Thank you.

Tom Holt The next emergency regulation face coverings for COVID-19 prevention. Mr. William and Dr. Emily Lutterloh from the Department or present should there be any questions of the members of the Council.

Tom Holt I move to accept this regulation for full adoption.

Dr. Boufford Dr. Gutierrez got his hand up first.

Dr. Boufford Any questions or concerns?

Dr. Boufford All in favor, say aye or indicate aye, please.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Seeing none, the motion passes.

Tom Holt And then just to note, the clinical staffing in general hospitals was removed from the agenda this morning.

Tom Holt That concludes my report.

Tom Holt Thank you.

Dr. Boufford Thank you very much.

Dr. Boufford We'll move on now to Project Review. Mr. Robinson to give us a report on the actions of the Establishment and Project Review Committee from their earlier meeting.

Peter Robinson Thank you very much.

Peter Robinson Good morning. Good morning, everyone. As Dr. Boufford mentioned at the start of the meeting, where possible, we're going to be batching the review of these applications at the full council meeting. The first four, though, will be taken individually for reasons related to individual recusals, etc.

Peter Robinson The first application I'm bringing forward is application 2 1 2 2 7 1 C, Ambulatory Surgery Center of Niagara in Niagara County. This is to convert from single specialty, which was ophthalmology, ambulatory surgery to multi-specialty ambulatory surgery and perform requisite renovations. I want to note that the following contingency has been added at the committee's request, which is submission of a signed commitment and a plan by the applicant to increase the utilization of their services by those who are Medicaid and Medicare eligible. The plan should include, but not necessarily be limited to ways in which the facility will identify and reach out to the community resources that serve medically underserved populations. With that, I would note that the department and the committee recommend approval with conditions and contingencies.

Peter Robinson I so move.

Dr. Boufford Is there a second?

Dr. Boufford Dr. Berliner.

Dr. Boufford Any questions?

Dr. Boufford Discussion on this item?

Dr. Boufford Seeing none, all in favor?

Ann Monroe No, wait. I have a question.

Dr. Boufford Oh, I'm sorry. I didn't see you. That little yellow hand is hard to see without a screen. Please, your question before we vote.

Dr. Boufford Ann Monroe.

Ann Monroe I just want to make a comment about how I think this commission can really play in the important role in things that are happening. At the last meeting to make sure that this facility not only take paid folks, but Medicaid as well. I just want to thank my fellow members of the committee for agreeing to that, because it would easily have slipped through the cracks if we had't been playing close attention. I just want to really thank Mr. Robinson and the folks at the committee for bringing that contingency to the front and giving it the formality that it has that took it beyond the comment, but actually to a condition of this approval. I just want to say thank you to my colleagues on the committee for doing that.

Dr. Boufford Thanks for that comment, Ann.

Dr. Boufford I think this had been a focus in most review processes routinely.

Peter Robinson We've been trying to make sure, especially in ambulatory surgery settings, that there is no skimming of the private pay population and that access is afforded to all who need it.

Dr. Boufford That's great. I think in the review, this is an area that has been emphasized historically. We want to be sure it doesn't lose ground. I know with all a lot of churning in the staff support for many of these areas, this is one that I'm glad it was highlighted by the committee.

Dr. Boufford Thank you.

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Seeing none, the motion passes.

Peter Robinson Thank you.

Peter Robinson Dr. Lawrence, if you could step away from your screen for this application. Everybody keeps promoting you. You might as well take the honor.

Dr. Boufford I demoted him afterwards and you promoted him again.

Peter Robinson I know. I did it again.

Peter Robinson This is application 2 1 2 1 0 5 C, Rutland Nursing Home Inc in Kings County. Noting again the conflict and recusal by Mr. Lawrence. To certify an 80 bed young adult demonstration program with no changes in total certified beds and perform requisite renovations. The department and the committee recommend approval with conditions and contingencies.

Peter Robinson I so move.

Dr. Boufford A second motion?

Dr. Boufford Dr. Berliner.

Dr. Boufford Any questions for staff or other concerns?

Dr. Boufford Seeing none, all in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Seeing none, the motion passes.

Peter Robinson Thank you.

Peter Robinson Mr. Lawrence, if you hear me. Come on back.

Peter Robinson Application 2 1 2 2 8 2 C, Auburn Community Hospital. I will note an interest that I have in this application. Construct a radiation oncology center with a linear accelerator on the hospital campus and certify radiation therapeutic outpatient services. The department recommends approval with conditions and contingencies, as did the committee.

Peter Robinson I move that application.

Dr. Boufford Can I have a second, please?

Dr. Boufford Dr. Berliner.

Dr. Boufford Any questions or concerns?

Dr. Boufford Seeing none, all in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Motion passes.

Peter Robinson Thank you.

Peter Robinson Dr. Kalkut, would you take this next application?

Dr. Kalkut Sure thing.

Dr. Kalkut This application is 2 2 1 1 0 5 C, Strong Memorial Hospital in Monroe County. There's a conflict and recusal by Mr. Robinson, who's left the room and an interest by Mr. Thomas. This is to construct an inpatient bed towers, certified nine intensive care beds and thirty-five medical surgical beds and perform renovations to expand and modernize the emergency department. Both the department and the committee recommended approval with conditions and contingencies.

Dr. Kalkut I so move.

Dr. Boufford Dr. Gutierrez.

Dr. Boufford Any questions or concerns from the committee?

Dr. Boufford All in favor, please?

All Aye.

Dr. Boufford Opposed?

Dr. Boufford Any abstentions?

Dr. Boufford I'd like to make one comment about these two applications before we leave them. Having looked at the segment of the acute hospital applications, referring to the prevention agenda. We haven't talked about this in a while, and it was something that this council had requested be attached to acute hospital applications. I thought it was probably worth the, the text was fairly brief. For the Auburn Community Hospital indicating they have not really invested in community benefit, the community health improvement category. I wasn't able to say there was anything wrong with it, because I couldn't remember exactly the level of discussion that's supposed to take place. I wondered if we could plan a briefing next time for the council just to review the document that currently exists asking hospitals to speak to their involvement in the prevention agenda. We had also indicated some time ago the desire to see that conditionality are linked to the prevention agenda, attached to ambulatory care applications and eventually to long term care and obviously in the long term care area. I just want to ask if we can arrange to have that next time.

Dr. Morley I looked at my colleagues across the room from the CON world and they were all nodding yes. We'll take care of that for the next time.

Dr. Boufford Just to make sure we have the sort of original language as it currently exists that you're holding them accountable for, that would be really helpful.

Dr. Boufford A comment, Scott.

Scott La Rue Good morning. Scott La Rue, member of the council. I just wanted to assure you at the committee level, I did ask questions about this and the group had extensive feedback about it that satisfied the committee at that time.

Dr. Boufford I appreciate that. I think the council has been very active in this space, but it's been... Well, it has been about three years since this started. I think probably it may be worth review at any rate. Our original idea that there might be an extension beyond the acute hospital.

Dr. Boufford Thanks for that, Mr. La Rue. I appreciate that.

Dr. Boufford We're going on to our next item here.

Dr. Boufford Mr. Robinson can come back. I guess he's still outside.

Peter Robinson Now, we go through some batching here. Let me just run through them. As Dr. Boufford noted, if you do want to pull out any application for a separate discussion, please indicate so and I'll be glad to do that. Application 2 2 1 1 1 5 E, Apex Surgical Center transferring a total of 48.87% ownership interest from three withdrawing members and four existing members to two new individual members. One New Member LLC comprised of multiple individual members and two existing members. Here, the department recommends approval with a condition and contingencies, as did the committee. Application 2 2 1 0 7 0 B, Pinpoint Medical LLC in Kings County to establish the Diagnostic and Treatment Center at 649 39th Street in Brooklyn. Here again, the department and the committee recommend approval with conditions and contingencies. Application 1 9 2 0 2 7 E, Crest OpCo LLC doing business as Cress Manor Living and Rehabilitation Center in Monroe County to establish Crest OpCo LLC as the new operator of the 80 bed residential health care facility located at 6745 Pittsford Palmira Road in Fairport. Here, the department recommends approval with a condition and contingencies, as does the committee. Application 2 2 1 0 8 4 E, Hilaire Farm Skilled Living and Rehabilitation Center LLC doing business as Hilaire Rehab and Nursing in Suffolk County. This application transfers 33.3% ownership interest from one deceased member to one new member. Department here recommends approval with a condition, as does the committee. Application 1 9 2 3 3 2 E, EDRNC Operating LLC doing business as Eden Rehabilitation and Nursing Center. This is in Erie County to establish EDRNC Operating LLC as the new operator of the 40 bed residential health care facility located at 2806 George Street in Eden, currently operated by Absolute Center for Nursing and Rehabilitation at Eden LLC. Here again, the department and the committee recommend approval with a condition and a contingency. Application 1 9 2 3 3 3 E, HORNC Operating LLC doing business as Houlton Rehabilitation and Nursing Center in Allegheny County establishing HORNC Operating LLC as the new operator of the 100 bed residential health care facility located at 9876 Lucky Drive in Houlton, currently operated by the Absolute Center for Nursing and Rehabilitation. The department recommends approval with a condition and contingencies, as does the committee.

Peter Robinson I move that batch.

Dr. Boufford Thank you very much.

Dr. Boufford Second?

Dr. Boufford Dr. Gutierrez.

Dr. Boufford Any comments or questions about any of these items?

Dr. Boufford Seeing none, all in favor?

Dr. Boufford Any negatives or any nays?

Dr. Boufford Any abstentions?

Dr. Boufford Seeing none, unanimously approved.

Peter Robinson Thank you.

Peter Robinson This next application is 1 9 2 3 3 5 E, SARNC Operating LLC doing business as Salamanca Rehabilitation and Nursing Center. I want to note here Dr. Watkins is expressing an interest and will be abstaining. Also, Mr. Holt expressed an interest. This is to establish SARNCoperating LLC as the new operator of the 120 bed residential health care facility located at 451 Broad Street, Salamanca, currently operated by the Absolute Center for Nursing and Rehabilitation at Salamanca LLC. The department and the committee recommend approval with a condition and contingencies.

Peter Robinson I so move.

Dr. Boufford I see Dr. Kalkut's hand up.

Dr. Boufford Any questions on this item?

Dr. Boufford Ms. Monroe.

Peter Robinson You're on mute, I think.

Peter Robinson There you go.

Ann Monroe I just had a question about how people express an interest. Does that mean that they have a comment to make that we should take into account with our decision. When you express an interest, what does that mean?

Peter Robinson We can let the council answer that.

Marthe Ngwashi Good morning. I'm an attorney at the Department of Health and counsel to the Public Health and Health Planning Council.

Dr. Boufford Please bring the mic closer to your mouth.

Marthe Ngwashi Good morning. I'm an attorney at the Department of Health and also counsel to the Public Health and Health Planning Council. When a member declares an interest, it could be for a financial or otherwise reason, but it relates to something that they may view as potentially giving an appearance of impropriety, but it doesn't fall or rise to the level of requiring the member to abstain or recuse from voting. It's a part of your ethical

duty as a member. We can talk about it a little bit more if you need some additional guidance on when it's appropriate to declare an interest.

Peter Robinson If I can elaborate, Ann.

Dr. Boufford Ms. Monroe, why don't you complete your question.

Ann Monroe What I would say was two relevant people from that area expressed an interest. They are appropriate to comment or to help us give us any guidance on this decision. Is that correct?

Dr. Boufford No.

Peter Robinson Not necessarily. I think the interest would be... I'll sort of explain with my interest in the Auburn application. Our health system at one point recently operated a program at Auburn Memorial Hospital. There was an organizational link that did not from my point of view, create a conflict, but I wanted to declare that there was some kind of a relationship that existed so that there wasn't any misunderstanding of the nature of that relationship. So, that's why I expressed an interest in that application. I felt free to vote on the basis of the merits of the application. It's a connection from my standpoint, but that doesn't create a conflict.

Dr. Boufford Let's go back. Maybe we'll have another lawyer comment.

Dr. Boufford I'm trying to sort of balance the traffic here. Ann, do you want to respond to Peter, because a lawyer's ready to say something else specifically about this question.

Ann Monroe Well, I'm asking only because both of these individuals have a very visible presence in the area where all of these nursing homes are being transferred. And by expressing an interest that they not sharing with the committee or with the council their perspectives on whether or not this is something that should be done or not. I'm just asking what the limits if you declare an interest, what the limits are in terms of your input into the decision that we have to make.

Dr. Boufford I think the interest implies that they are declaring it, but they are able to take part in the conversation, which I think is the question you're asking.

Marthe Ngwashi That's correct. The fact that an interest is declared does not amount to the same thing as that member not being able to have a discussion about the project. So, as Mr. Robinson outlined, he noted his relationship and why he thought it was appropriate to declare an interest and to disclose it. However, he is still able to participate in discussion, dialogue and also vote on the project.

Dr. Boufford Does that answer your question?

Ann Monroe Therefore, my last comment would be asking whether Dr. Watkins or Mr. Holt have anything they want to add at this point in the process.

Marthe Ngwashi So, for one of the projects, Ms. Monroe, Dr. Watkins had to recuse. When there is a motion about the project and the Chair of the committee asked whether or not there is any comment at that time they'll give a comment. If you have a question at that

time, also, you can ask a question. You can ask it directly to the Chair. You can ask it directly to the individual member.

Ann Monroe Well, I've got to let this go. I just would be interested in their perspective, if possible, if it doesn't violate the rule.

Marthe Ngwashi You cannot get the perspective from someone that has a conflict and is recusing. You can only gain the perspective from someone on a particular project if they are able to fully vote or if they have declared an interest.

Dr. Boufford I think what Ms. Monroe's asking for is, do either of these colleagues wish to add any details at this time, because they indicated interest. They certainly are able to add information before the council vote.

Marthe Ngwashi Sure, I understand that. I just wanted to clarify---

Dr. Boufford You were very clear.

Marthe Ngwashi Somebody had to recuse and would not be able to make a comment.

Dr. Boufford That was very clear. I'm just trying to come to closure. I think Ann's just asking if any of the folks that expressed interest have any other information that they like to provide at this point.

Dr. Kalkut I participated in the committee meeting. I did not have comment with regard to this application then and I don't now.

Dr. Boufford Okay.

Dr. Boufford There's no additional information, Ann

Ann Monroe Dr. Watkins.

Dr. Boufford Dr. Watkins.

Dr. Watkins i did express interest as this particular facility is located in the county in which I am a Health Director. Occasionally, this particular facility, we may have complaints of that facility called into the department. At this particular time, I think I need to recuse myself from voting on whether or not this application should go forward.

Dr. Boufford We'll ask you to leave before the council takes its vote.

Ann Monroe Thank you.

Peter Robinson Dr. Watkins, could you just step back?

Dr. Boufford Let's repeat what we're voting on now.

Peter Robinson Just as a reminder, this is the application 1 9 2 3 3 5 E. This is SARNC Operating LLC doing business as Salamanca Rehabilitation and Nursing Center.

Dr. Boufford We were seconded by Dr. Gutierrez.

Dr. Boufford Any other comments or questions on this item?

Dr. Boufford All in favor, indicate aye.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Motion carries.

Dr. Boufford Invite Dr. Watkins back in.

Peter Robinson I just will note to get to Ann Monroe's point, I think we had a very vigorous conversation on that application. Not negative, actually, but just emphasizing the need for cultural sensitivity, because of the indigenous populations that are served by that facility, particularly both from a staffing and from a patient standpoint, and appreciated Dr. Gutierrez's very vigorous input into that conversation.

Marthe Ngwashi Excuse me, Mr. Robinson. I just wanted to just make a note also again to the council members formally that there is no requirement to disclose all of the information about the reasons for a recusal or conflict or an interest. I just want to make that clear. Those are things that the Executive Secretary and the office undertakes and deals with beforehand. That way, when we get to the meeting, then we already know who may participate and who may not participate.

Marthe Ngwashi Thank you.

Peter Robinson Thank you very much.

Peter Robinson I'm going to continue. This is taking this application separately. 1 9 2 3 3 6 E, DURNC Operating LLC doing business as Dunkirk Rehabilitation and Nursing Center. This is in Chautauqua County. Noting the interest by Mr. Holt. To establish DURNC Operating LLC as the new operator of the 40 bed residential health care facility located at 447-449 Lakeshore Drive West in Dunkirk, currently operated by Absolute Center for Nursing and Rehabilitation at Dunkirk LLC. Here the department recommends approval with a condition and contingencies, as did the committee.

Peter Robinson I so move.

Dr. Boufford Can I have a second?

Dr. Boufford Dr. Gutierrez.

Dr. Boufford Any questions or concerns?

Dr. Boufford Seeing none, all in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford Motion passes.

Peter Robinson Thank you.

Peter Robinson Now, application 2 0 2 1 1 2 E, Providence Rest Inc in Bronx County. I want to note here a conflict and recusal by Mr. La Rue, who has already left the room. This is to establish Catholic Health Care System as the active parent and co operator of Providence Rest a 200 bed residential health care facility located at 3304 Waterbury Avenue in the Bronx. Department here recommends approval with a condition and contingencies, as did the committee.

Peter Robinson I so move.

Dr. Boufford Second?

Dr. Gutierrez I second that by with a comment.

Dr. Boufford Thank you, Dr. Gutierrez.

Dr. Boufford Your comment, please.

Dr. Gutierrez Mr. Robinson, you read the number of the application wrong. Is a double two, not a double one.

Peter Robinson 2 0 2 1 2 2 E.

Dr. Gutierrez That's correct now.

Peter Robinson Thank you for the correction. I appreciate that.

Dr. Boufford Thank you.

Dr. Boufford Any other comments?

Dr. Boufford Questions about this item?

Dr. Boufford All in favor, please indicate aye.

Dr. Boufford Negative?

Dr. Boufford Abstentions?

Dr. Boufford The motion passes.

Peter Robinson That concludes unless I have it wrong, the report of the Establishment and Project Review Committee.

Peter Robinson I turn it back to you, Dr. Boufford.

Dr. Boufford Thank you very much.

Dr. Boufford This is the public portion of the Public Health and Health Planning Council meeting. Will be adjourned in a moment. Next regularly scheduled committee day and special full council is on September 15th and the regularly scheduled Codes and full council will convene on October 6th.

Dr. Boufford Let me declare the Public Health and Health Planning Council adjourned.

Dr. Boufford We will now move into Executive Session to consider a health personnel case. I ask council members to remain and any other staff critical to the discussion here to remain in the room.

Marthe Ngwashi Formally, Dr. Boufford, you do have to make a motion to go into Executive Session.

Dr. Boufford I'm sorry.

Marthe Ngwashi It's required that you make a motion to go into Executive Session prior to adjourning the meeting.

Dr. Boufford Thank you.

Dr. Boufford May I move to go into Executive Session?

Dr. Boufford Dr. Rugge has seconded it.

Dr. Boufford All in favor?

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford We have agreed to go to Executive Session.

State of New York
Special Public Health and Health Planning Council

Minutes
September 15, 2022

The meeting of the Public Health and Health Planning Council was held on Thursday, September 15, 2022 at the Empire State Plaza, Concourse Level, Meeting Rooms 2-4, Albany, and 90 Church Street, 4th Floor CR 4A/B, New York City. Chairman Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner – NYC	Mr. Peter Robinson – NYC
Dr. Jo Ivey Boufford - NYC	Dr. Denise Soffel - NYC
Mr. Thomas Holt – NYC	Ms. Nilda Soto – NYC
Dr. Gary Kalkut – NYC	Mr. Hugh Thomas - NYC
Mr. Jeffrey Kraut – NYC	Dr. Anderson Torres – Zoom
Mr. Scott LaRue – NYC	Dr. Kevin Watkins - Albany
Mr. Harvey Lawrence - NYC	Dr. Patsy Yang – NYC
Dr. Sabina Lim – NYC	
Ms. Ann Monroe – NYC	

DEPARTMENT OF HEALTH STAFF PRESENT

Ms. Lynn Baniak - Zoom
Ms. Valarie Deetz - Albany
Ms. Shelly Glock – NYC
Mr. Ken Evans - Albany
Mr. Mark Furnish - Albany
Mr. Michael Heeran – Albany
Mr. Adam Herbst - NYC
Dr Eugene Heslin – Zoom
Mr. Jonathan Karmel - Albany
Ms. Colleen Leonard- NYC
Mr. George Macko - Albany
Ms. Karen Madden - Albany
Ms. Kathy Marks – Albany
Dr. John Morley - Zoom
Ms. Marthe Ngwashi - NYC
Mr. Jason Riegert - Zoom
Ms. Jaclyn Sheltry - Albany
Ms. Angela Smith - Albany
Mr. Michael Stelluti - NYC
Ms. Jennifer Treacy - Albany

INTRODUCTION

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

COMMITTEE ON CODES, REGULATIONS AND LEGISLATION ACTIONS

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

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

For Emergency Adoption

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

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)

Mr. Holt introduced for Emergency Adoption of Amendment of Sections 405.11 and 415.19 of Title 10 NYCRR (Hospital and Nursing Home Personal Protective Equipment (PPE) Requirements). Mr. Holt motioned for adoption. Dr. Yang seconded the motion. The motion carried. Please see page 1 of the transcript.

Mr. Holt introduced For Emergency Adoption of 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). Mr. Holt motions for approval. Dr. Berliner seconded the motion. Dr. Boufford stated for the record that the issue of surge and flex arrangement only applies to acute car hospitals and has not taken into account an integrated response to emergencies from primary care facilities or local health departments. She further stated that this Council had a series of meetings, public meetings a couple of years ago laying out the issues there and she had requested on several occasions that if this could not be amended and it was, I think the sense from staff was that it was focused on hospitals, that there would be a complementary or hopefully an integrated approach for future emergency response that would include providing things like PPE solutions, vaccines and others to primary care and local health departments integrated with hospital action. Dr. Boufford also agreed with Mr. Lawrence's comment that this issue is for primary care and local health departments that would need to be first coverage by the state, probably because there would need to be some financing mechanism that was looked at rather than assuming that they could buy and hold in storage that kind of whatever the reserve would need to be for them. Mainly, I think the distribution issue was the key issue. I want to raise it yet again. Dr. Boufford inquired if staff comment on whether those conversations have begun or if they could begin and we could get a report back at a future council meeting.
Mr. Kraut asked the Department to address Dr. Boufford's concerns at a future meeting.
Mr. Kraut called the vote. The motion to adopt passed. Please see pages 1 through 3 of the attached transcript.

For Adoption

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

Lastly Mr. Holt called Addition of Subpart 66-4 to Title 10 NYCRR (COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel) and motioned for permanent adoption. Dr. Yang seconded the motion. The motion carried. Please see pages 3 and 4 of the transcript.

Mr. Holt concluded his report.

ADJOURNMENT:

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

NEW YORK STATE DEPARTMENT OF HEALTH
SPECIAL PUBILC HEALTH AND HEALTH PLANNING COUNCIL
SEPTEMBER 15, 2022 10:15 AM
ESP, CONCOURSE LEVEL, MEETING ROOMS 2-4, ALBANY
90 CHURCH STREET, 4TH FLOOR, CONFERENCE ROOMS 4A AND 4B, NYC
TRANSCRIPT

Jeffrey Kraut Just to let the audience know, we're going to call a special Public Health and Health Planning Council meeting to take up one item and then at the conclusion of that meeting we'll return to the normal committee day agenda for the Establishment Committee.

Jeffrey Kraut I'm calling now the September 15th special Public Health and Health Planning Council meeting, welcoming members, participants, and observers. You heard at the outset of today's events about that we're broadcasting under the open meeting law. Have synchronized captioning. Not to speak over each other. That we've asked everybody who is in attendance to make sure that their presence is recorded on a form which is outside the meeting rooms in both Albany and in New York. I have one item on today's agenda. I'm going to turn the meeting over for to Mr. Holt to give us a report on the actions of the Committee on Codes, Regulation and Legislation.

Jeffrey Kraut Mr. Holt.

Tom Holt Thank, Mr. Kraut.

Tom Holt At today's meeting of the Committee on Codes, Regulations and Legislation, the committee reviewed and voted to recommend adoption of the following emergency regulations for approval before the full council. First up, the hospital and nursing home personnel protective equipment requirements. Ms. Jacqueline Sheltry and Jonathan Karmel from the Department have presented this regulation to the committee on Codes and are available to the Council should there be any questions of the members. I so move to accept this regulation.

Jeffrey Kraut I have a motion from Mr. Holt. I have a second from Dr. Yang.

Jeffrey Kraut Was there any comments or questions from the counsel for the Department?

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

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut I don't see anything in Albany.

Jeffrey Kraut The motion carries.

Tom Holt Second was surge and flex health coordination system. Jacqueline Sheltry and Jonathan Karmel of the department have presented this regulation to the committee on

Codes and are available to the council should there be any questions of the members. I so move the adoption of this regulation.

Jeffrey Kraut I have a motion from Mr. Holt and I have a second by Dr. Berliner.

Jeffrey Kraut Are there any questions from the council?

Jeffrey Kraut Dr. Boufford.

Dr. Boufford Thanks.

Dr. Boufford I have one relative to this. I've raised in the council a couple of times the issue that this surge and flex arrangement is only applies to acute care hospitals and has not taken into account an integrated response to emergencies from primary care facilities or local health departments. This council had a series of meetings, public meetings a couple of years ago laying out the issues there. I had requested on several occasions that if this couldn't be amended and it was, I think the sense from staff was that it was focused on hospitals, that there would be a complementary or hopefully an integrated approach for future emergency response that would include providing things like PPE solutions, vaccines and others to primary care and local health departments integrated with hospital action. Secondly, I think the point that Mr. Lawrence made. This issue for long term care in local health, I mean, I'm sorry for primary care and local health departments that would need to be first coverage by the state, probably because there would need to be some financing mechanism that was looked at rather than assuming that they could buy and hold in storage that kind of whatever the reserve would need to be for them. Mainly, I think the distribution issue was the key issue. I want to raise it yet again. I haven't seen and maybe in this there could be a staff comment on whether those conversations have begun or if they could begin and we could get a report back at a future council meeting.

Dr. Boufford Thank you.

Jeffrey Kraut So, you know, right now you've heard Dr. Boufford's comments and Mr. Lawrence's comments. Could we have a response at the next meeting on October 6th, so we can kind of see where the department is. I don't know who I'm directing that at, but Colleen, could you please put that on the list when you do discuss the agenda and have one of, I think we're going to have four or so reports from the Commissioner, the deputy commissioners. Just find out who has that responsibility and just have it discussed.

Jeffrey Kraut Is that acceptable?

Dr. Boufford Yes.

Jeffrey Kraut Thanks, Dr. Boufford.

Jeffrey Kraut Yes, Dr. Torres.

Jeffrey Kraut Make sure it's turned on and get close.

Dr. Torres Just for clarity. At the next meeting, we would then review any updates so that we could finally vote at the full council.

Jeffrey Kraut Well, I think between answering the question and drafting regulations, there's a little work to be done. I'd just be happy to get an answer. Just what's the current thinking on this and that's the issue. I don't know. The answer might be the state maintains a stockpile, you know, because the state was maintaining a stockpile. I just don't know how much is rotated and stuff like that.

Dr. Boufford Just to add, I think the evidence was that my deeper concern was economics, primary health care facilities and local health departments were not included in the planning or the implementation response to the COVID emergency. It was very hospital focused and no criticism of the hospital's response, but it seems to me our responsibility and I've raised this probably on a couple of council meetings over the last several months to understand what the thinking, what the plan might be around a more integrated response plan for going forward or something that was complementary to this relative to non-hospitals.

Jeffrey Kraut It's really planning for the third wave of whatever variation may occur.

Dr. Boufford Natural disaster. It doesn't have to be...

Jeffrey Kraut I don't think it'll be a definitive answer, but it will at least be responsive to Dr. Boufford's request is what are you thinking about? And then between thinking and making it a reality, there's some process issues the department has to go through.

Dr. Torres Does this tie back to Mr. La Rue's comments earlier regarding the timeframe on the stockpile?

Jeffrey Kraut No, I think that's a separate issue that we've asked them to respond to. And that, we asked that before it returns to us, which would be 60 or 90 days, that that issue is addressed.

Dr. Torres I'm just making sure that this vote has nothing to do with that.

Jeffrey Kraut No, no. This vote stands on the regulations as proposed and placed in our book untouched.

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 The motion carries.

Jeffrey Kraut One more.

Jeffrey Kraut Sorry.

Tom Holt Thank you, Mr. Kraut.

Tom Holt Lastly, we have the COVID-19 vaccinations of nursing home and adult care facility residents and personnel. Mr. Karmel and Ms. Dietz from the department presented this regulation to the committee on Codes and are available to the council should there be any questions of the member. I so move the adoption of this regulation.

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

Jeffrey Kraut Are there any questions on this motion?

Jeffrey Kraut Any comments from the council?

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

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut The motion carries.

Tom Holt That concludes my report.

Jeffrey Kraut Thanks, Mr. Holt, and thank you, members of the committee and the council.

Jeffrey Kraut The next full meeting of the Public Health and Health Planning Council is going to be held on Thursday, October 5th. I'm sorry. You write five. I thought it was six. It's my brother's birthday, so I know I'm going to see him because I was going to call him and say I can't come. It's going to be on Thursday, October 6th, both in Albany, in New York City, and now I'll adjourn the council and turn over the meeting to Dr. Kalkut, who will run the Establishment committee.

Jeffrey Kraut Thank you very much.

Dr. Kalkut Thank you.

Dr. Kalkut And Mr. Thomas.

Dr. Kalkut The motion carries.

Dr. Kalkut Thank you.

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 2.6 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is repealed and a new Section 2.6 is added, Section 405.3 is amended and a new Section 58-1.14 is added, to be effective upon filing with the Secretary of State, to read as follows:

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.

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.

* * *

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.

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.

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 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.

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.

Legislative Objectives:

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

The legislative objective of PHL § 2803 includes, among other objectives, authorizing PHHPC, 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.

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.

Needs and Benefits:

These regulations update, clarify and strengthen the Department's authority as well as that of local health departments to take specific actions to monitor the spread of disease, including actions related to investigation and response to a disease outbreak.

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

Part 2 Amendments:

- Repeal and replace current section 2.6, related to investigations, to clarify existing local health department authority.
    - Sets forth specific actions that local health departments must take to investigate a case, suspected 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.
- Codify in regulation the requirement that local health departments send reports to the Department during an outbreak.

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).

Part 58 Amendments

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

- Requires the Commissioner to designate those communicable diseases that require prompt action, and to make available a list of such diseases 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 results, including negative and indeterminate results, for communicable diseases identified as requiring prompt attention, via the Electronic Clinical Laboratory Reporting System (ECLRS).

COSTS:

Costs to Regulated Parties:

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.

The requirement that hospitals submit syndromic surveillance reports when requested 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 imposes any substantial additional costs beyond those costs that laboratories 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 imposes any substantial additional costs beyond those costs that laboratories would incur in the absence of these regulations.

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. 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 imposes 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
Broome County
Cattaraugus County
Cayuga County
Chautauqua County
Chemung County
Chenango County
Clinton County
Columbia County
Cortland County
Delaware County
Essex County
Franklin County
Fulton County
Genesee County
Greene County
Hamilton County
Herkimer County
Jefferson County
Lewis County
Livingston County
Madison County
Montgomery County
Ontario County
Orleans County
Oswego County
Otsego County
Putnam County
Rensselaer County
Schenectady County
Schoharie County
Schuyler County
Seneca County
St. Lawrence County
Steuben County
Sullivan County
Tioga County
Tompkins County
Ulster County
Warren County
Washington County
Wayne County
Wyoming County
Yates 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
Dutchess County	Niagara County	Saratoga County
Erie County	Oneida County	Suffolk County
	Onondaga 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, 405 and 58.

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.

As stated in the declaration of the State disaster emergency in Executive Orders No. 20 through 20.1 (July 29, 2022, through September 27, 2022), New York continues to experience one of the highest rates of monkeypox transmission in the country. New York State outside New York City has had 307 diagnosed cases as of September 21, 2022, and New York City has 3480 diagnosed cases as of September 18, 2022. Furthermore, as stated in the declaration of the State disaster emergency Executive Order 21, a polio outbreak has affected multiple counties in the State of New York, with one paralytic case and detections of genetically related virus in four counties, indicating circulation and transmission of the virus likely in hundreds of people. Additionally, New York continues to experience high rates of COVID-19 transmission as well. The constant threat of a possible resurgence of COVID-19 or another communicable disease outbreak alongside the recent outbreaks of monkeypox and polio necessitate the adoption of these regulatory amendments on an emergency basis. The emergency regulations are needed to continue requiring clinical laboratories to report all test results, including negative and indeterminate results, for communicable diseases such as monkeypox, polio and COVID-19; mandate hospitals to report syndromic surveillance data; and permit the Commissioner to direct hospitals to take patients during a disease outbreak such as monkeypox, polio and COVID-19.

Based on the ongoing burden of multiple outbreaks seen across the state, 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 monkeypox, polio and 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 adding a new Section 2.60, to be effective upon filing with the Secretary of State, to read as follows:

Section 2.60 is added 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 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 Americans 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) Penalities 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, more than two years after the first cases were identified in the United States COVID-19 continues to impact New York State. Beyond the ongoing COVID-19 burden in communities, certain settings such 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 COVID-19, 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 COVID-19, 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, 60 days from the date of filing. As COVID-19 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 60-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 COVID-19, 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 COVID-19, 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 COVID-19, 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 COVID-19, 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 COVID-19, 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, more than two years after the first cases were identified in the United States COVID-19 continues to impact New York State. Beyond the ongoing COVID-19 burden in communities, certain settings such as 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 Public Health and Health Planning Council and the Commissioner of Health by sections 225(4), 2304, 2305 and 2311 of the Public Health Law, Section 23.1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon filing with the Secretary of State, to read as follows:

Group B of Section 23.1 is amended to read as follows:

Group B

Facilities referred to in section 23.2 of this Part must provide diagnosis and treatment, including prevention services, as provided in section 23.2(d) of this Part for the following STDs:

Human Papilloma Virus (HPV)

Genital Herpes Simplex

Human Immunodeficiency Virus (HIV)

<u>Monkeypox Virus (MPV)</u>

Regulatory Impact Statement

Statutory Authority:

Pursuant to sections 225(4), 2304, 2305 and 2311 of the Public Health Law (PHL), the Commissioner of Health and the Public Health and Health Planning Council have the authority to adopt regulations that list the sexually transmitted diseases (STDs) for which PHL Article 23 is applicable and, in particular, that establish requirements for local health departments (LHDs) concerning STD services.

Legislative Objectives:

PHL section 2311 requires the Commissioner of Health to promulgate a list of STDs. The purpose of Article 23 of the PHL, and its associated regulations, is to ensure that persons at risk for or diagnosed with an STD have access to diagnosis and treatment, including prevention services, thereby improving their health and public health in New York State. Additionally, providing STD diagnosis and treatment, including prevention services, is vital to protecting the health of newborn children whose mothers may have an STD.

Needs and Benefits:

This amendment adds monkeypox virus to Group B of the existing list of STDs. County LHDs already have an obligation to control the spread of monkeypox under PHL Article 6 communicable disease guidance. Consistent with such guidance, this regulation requires STD clinics operated by LHDs or providing services through contractual arrangements to provide diagnosis and treatment, including prevention services, to persons diagnosed or at risk for

monkeypox, either directly or through referral. Further, minors will be able to consent to their own monkeypox testing, prevention services (including vaccine), and treatment.

This amendment supports the Department's plan to control the current and future monkeypox outbreaks by connecting persons diagnosed with, exposed to, or at risk of monkeypox with testing, vaccine, treatment, and prevention services. Young people currently face barriers that can prevent or delay access to care, including denial and fear of their monkeypox infection, misinformation, monkeypox-related stigma, low self-esteem, lack of insurance, homelessness, substance use, mental health issues, and lack of adequate support systems. Because of these factors, many young people need the ability to consent to monkeypox diagnosis and treatment, including prevention services.

These regulations will help ensure that more young people have optimal health outcomes and do not transmit the virus to others. In addition, young people will have the ability to consent to monkeypox related preventive services, including those who have been exposed to STDs or who are at high risk for monkeypox. Under the amended regulation, such individuals will be able to obtain monkeypox vaccine so they can remain monkeypox negative. These amendments are necessary to provide appropriate health care rights and protections to minors and remove the barriers that can prevent or delay access to diagnosis and treatment, including prevention services.

Costs to Regulated Parties:

LHDs may diagnose patients for monkeypox by offering monkeypox testing. In regard to monkeypox treatment, including prevention services, some LHDs may experience up-front costs

associated with providing treatment to additional individuals. However, these regulations do not mandate that an LHD provide treatment directly. As with the other conditions already listed in Group B, LHDs may fulfill their obligation to provide monkeypox treatment by referring the patient to another provider; they are not required to pay for treatment.

Providing diagnosis and treatment, including monkeypox vaccine, to persons diagnosed or at risk for monkeypox may increase the use of monkeypox vaccine. It is anticipated that any increase in monkeypox vaccination will decrease the number of people who become monkeypox positive, thereby greatly decreasing the cost of providing care to individuals who are monkeypox positive. The monkeypox vaccine is provided by the federal government at no cost to the State.

Generally, LHDs and other providers that provide monkeypox treatment must seek to offset any costs by billing insurance for rendered services. At this time, treatment for monkeypox, including Tecovirimat (also known as TPOXX or ST-246), is provided under an expanded access Investigational New Drug (EA-IND) protocol, which allows for the use of TPOXX for primary or early empiric treatment of non-variola orthopoxvirus infections, including monkeypox, in adults and children of all ages. The treatment is provided at no cost.

Costs to State Government:

There are no direct costs to the State or the Department. The Department will continue to work with LHDs using existing resources to provide guidance regarding the control of communicable diseases using STD clinics and other methods as required by the PHL Article 6 State aid rules and these regulations.

Local Government Mandates:

As discussed above, these amendments will require STD clinics operated by LHDs to provide monkeypox diagnosis and treatment, including prevention services, either directly or by referral. LHDs are not, however, required to provide monkeypox treatment directly; they may refer patients to other providers for treatment.

Paperwork:

LHDs will be required to bill public and commercial third-party payers to the extent practicable to offset the costs of providing monkeypox treatment services.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that conflict with this rule. Like other STDs (syphilis, gonorrhea, etc.), since MPV will be listed on both the state communicable disease list and the STD list, two sets of Article 6 guidance documents for LHDs will apply to MPV.

Alternatives:

The alternative is to continue not to list monkeypox as an STD in New York. However, to advance the goal of controlling monkeypox outbreaks, monkeypox should be listed as an STD. This will not only reduce morbidity and mortality, but will also decrease health care costs statewide by lowering the prevalence of monkeypox and the cost of providing care to monkeypox-positive individuals.

Federal Standards:

There are no Federal standards in this area.

Compliance Schedule:

The amendment will take effect when it is filed with the Secretary of State. The Department will assist affected entities in compliance efforts.

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

Regulatory Flexibility Analysis
for Small Businesses and Local Governments

Effect of the Rule:

The proposed amendments to 10 NYCRR Part 23 will impact the 58 local health departments (LHDs) and the New York City Department of Health and Mental Hygiene, which are required to provide STD services as a condition of State Aid pursuant to Article 6 of the Public Health Law. In addition, local governments are responsible for the local share of the cost of the Medicaid program. The amendments will not impact small businesses (i.e., small private practices or clinics) any differently from other health care providers.

This mandate does not create new costs for local government. Currently, since monkeypox is listed as a communicable disease in 10 NYCRR §2.1, and since LHDs are responsible for controlling the spread of communicable diseases, LHDs are already required to treat monkeypox. Therefore, this regulation adding monkeypox to the list of STDs will not create any unfunded mandate for local government.

Increasing vaccination rates will decrease the number of monkeypox cases and will reduce Medicaid costs to care for Medicaid recipients with monkeypox, thereby reducing the local share of the cost of the Medicaid program. Since the vaccine is provided for free, this regulation implements a public health measure that will save money for local governments that are supported by property taxpayers.

Compliance Requirements:

Pursuant to these amendments, LHDs must provide monkeypox diagnosis and treatment, including prevention services, either directly in an STD clinic, or by making a written or electronic prescription or referral to another health care provider. Implementation of this rule will require recordkeeping and reporting by LHDs.

Professional Services:

Those LHDs that provide monkeypox treatment services directly or through contract may be required to ensure the development or updating of billing systems to comply with the obligation to seek payment from insurance providers to the extent practicable.

Compliance Costs:

LHDs diagnose patients for monkeypox by offering monkeypox testing. In regard to monkeypox treatment, including prevention services, some LHDs may experience up-front costs associated with providing treatment to additional individuals. However, these regulations do not mandate that an LHD provide treatment directly. As with the other conditions already listed in Group B, LHDs may fulfill their obligation to provide monkeypox treatment by referring the patient to another provider; they are not required to pay for treatment.

Providing diagnosis and treatment, including prevention services, to persons diagnosed or at risk for monkeypox may increase the use of monkeypox vaccine. It is anticipated that any increase in the use of prophylactic services will decrease the number of people who become monkeypox positive, thereby greatly reducing the cost of providing care to individuals who are monkeypox positive.

In addition, LHDs and other providers that provide monkeypox treatment must seek to offset any costs by billing insurance for rendered services to the extent practicable. Remaining costs may be eligible for reimbursement from other sources that fund monkeypox treatment in New York.

Economic and Technological Feasibility:

The requirement to seek insurance recovery and the availability of other funding sources make this requirement economically feasible. There are no new technology requirements. The Department will also provide technical advice and support as needed.

Minimizing Adverse Impact:

LHDs and other providers that provide monkeypox treatment must seek to offset any costs by billing insurance for rendered services. Remaining costs may be eligible for reimbursement from other sources that fund monkeypox treatment in New York.

Small Business and Local Government Participation:

Community stakeholders, representative of regions and businesses across New York State, have been engaged in the response to the monkeypox outbreak, including ensuring that minors have the right to consent to monkeypox treatment and prevention services. The recommendation to amend regulations to ensure minors have the right to consent to monkeypox treatment and prevention services has been supported by community stakeholders. The Department sought and received input from local health departments, including the New York City Department of Health and Mental Hygiene.

This regulation does not have the effect of imposing a mandate. Rather, it permits local governments to expand access to monkeypox vaccine, which will result in cost savings, because less money will need to be spent on treatment. LHDs are already providing monkeypox vaccine. The reason minors should be permitted to access monkeypox vaccine is that it will prevent minors from getting monkeypox, which furthers the Department's mission to decrease morbidity and mortality.

Cure Period:

Chapter 524 of the Law of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed amendments to 10 NYCRR Part 23 will impact clinicians in rural areas no differently than throughout New York State.

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

This rule imposes no mandates upon entities in rural areas outside those entities noted in Article 23 of the Public Health Law. As stated, local health departments (LHDs) must provide monkeypox treatment, including prevention services, either directly in an STD clinic, or by making a written or electronic prescription or referral to another health care provider. Implementation of this rule will require recordkeeping and reporting by LHDs.

Costs:

Some clinicians may experience up-front costs associated with providing monkeypox treatment services, including prevention services, to additional individuals. However, these regulations do not mandate health care providers to provide monkeypox treatment services. Any provider that does provide monkeypox treatment for additional patients can offset any costs by billing for services rendered.

Minimizing Adverse Impact:

As discussed above, the ability to recover costs will minimize the impact of these regulations.

Rural Area Participation:

Community stakeholders, representative of regions and businesses across New York State, including those in rural areas, have been engaged in the response to the monkeypox outbreak, including ensuring that minors have the right to consent to monkeypox treatment and prevention services. The recommendation to amend regulations to ensure minors have the right to consent to monkeypox treatment and prevention services has been supported by community stakeholders in rural areas.

Statement in Lieu of
Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendments, that it will not have an adverse impact on jobs and employment opportunities.

Emergency Justification

Compliance with the requirements of the State Administrative Procedure Act for filing of a 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.

Monkeypox virus is a rare, viral infection that does not usually cause serious illness. However, it can result in hospitalization or death. Monkeypox can result in individuals experiencing severe pain requiring isolation and significant life disruptions as well as stigma. Health officials in New York State, the federal government, and in countries around the world are monitoring cases of monkeypox in areas that do not usually report monkeypox infections, including in New York State. Monkeypox spreads through close, physical contact between people. This means anyone can get monkeypox. However, based on the current outbreak, certain populations are being affected by monkeypox more than others, including gay/bisexual men and other men who have sex with men, transgender individuals, and non-binary individuals, among others.

As of August 26, 2022, there are 47,652 confirmed cases of monkeypox reported to the World Health Organization from 99 countries, of which 92 have not historically reported monkeypox.

On July 23, 2022, the World Health Organization designated monkeypox a public health emergency of international concern.

On August 4, 2022, the Secretary of Health and Human Services determined that as a result of the consequences of an outbreak of monkeypox cases across multiple states in the United States, a public health emergency exists nationwide. As of August 22, 2022, there are

17,432 confirmed monkeypox cases across all 50 states, the District of Columbia, and Puerto Rico.

On July 28, 2022, with the increase in monkeypox cases in New York State and more counties reporting cases, the New York State Commissioner of Health determined that monkeypox is communicable, rapidly emergent and a significant threat to the public health. Further, as one in five monkeypox cases in the country are in New York State, Governor Hochul declared a State Disaster Emergency on July 29, 2022. As of August 26, 2022, New York State reports 3,124 cases.

This emergency regulation is necessary to confirm the Commissioner's designation of monkeypox as a sexually transmitted disease and to permit the Department to take necessary and appropriate action to prevent the spread of this communicable disease.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 225(4), 2304, 2305 and 2311 of the Public Health Law, Section 23.1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the State Register, to read as follows:

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Regulatory Impact Statement

Statutory Authority:

Pursuant to sections 225(4), 2304, 2305 and 2311 of the Public Health Law (PHL), the Commissioner of Health and the Public Health and Health Planning Council have the authority to adopt regulations that list the sexually transmitted diseases (STDs) for which PHL Article 23 is applicable and, in particular, that establish requirements for local health departments (LHDs) concerning STD services.

Legislative Objectives:

PHL section 2311 requires the Commissioner of Health to promulgate a list of STDs. The purpose of Article 23 of the PHL, and its associated regulations, is to ensure that persons at risk for or diagnosed with an STD have access to diagnosis and treatment, including prevention services, thereby improving their health and public health in New York State. Additionally, providing STD diagnosis and treatment, including prevention services, is vital to protecting the health of newborn children whose mothers may have an STD.

Needs and Benefits:

This amendment adds monkeypox virus to Group B of the existing list of STDs. County LHDs already have an obligation to control the spread of monkeypox under PHL Article 6 communicable disease guidance. Consistent with such guidance, this regulation requires STD clinics operated by LHDs or providing services through contractual arrangements to provide diagnosis and treatment, including prevention services, to persons diagnosed or at risk for

monkeypox, either directly or through referral. Further, minors will be able to consent to their own monkeypox testing, prevention services (including vaccine), and treatment.

This amendment supports the Department's plan to control the current and future monkeypox outbreaks by connecting persons diagnosed with, exposed to, or at risk of monkeypox with testing, vaccine, treatment, and prevention services. Young people currently face barriers that can prevent or delay access to care, including denial and fear of their monkeypox infection, misinformation, monkeypox-related stigma, low self-esteem, lack of insurance, homelessness, substance use, mental health issues, and lack of adequate support systems. Because of these factors, many young people need the ability to consent to monkeypox diagnosis and treatment, including prevention services.

These regulations will help ensure that more young people have optimal health outcomes and do not transmit the virus to others. In addition, young people will have the ability to consent to monkeypox related preventive services, including those who have been exposed to STDs or who are at high risk for monkeypox. Under the amended regulation, such individuals will be able to obtain monkeypox vaccine so they can remain monkeypox negative. These amendments are necessary to provide appropriate health care rights and protections to minors and remove the barriers that can prevent or delay access to diagnosis and treatment, including prevention services.

Costs to Regulated Parties:

LHDs may diagnose patients for monkeypox by offering monkeypox testing. In regard to monkeypox treatment, including prevention services, some LHDs may experience up-front costs

associated with providing treatment to additional individuals. However, these regulations do not mandate that an LHD provide treatment directly. As with the other conditions already listed in Group B, LHDs may fulfill their obligation to provide monkeypox treatment by referring the patient to another provider; they are not required to pay for treatment.

Providing diagnosis and treatment, including monkeypox vaccine, to persons diagnosed or at risk for monkeypox may increase the use of monkeypox vaccine. It is anticipated that any increase in monkeypox vaccination will decrease the number of people who become monkeypox positive, thereby greatly decreasing the cost of providing care to individuals who are monkeypox positive. The monkeypox vaccine is provided by the federal government at no cost to the State.

Generally, LHDs and other providers that provide monkeypox treatment must seek to offset any costs by billing insurance for rendered services. At this time, treatment for monkeypox, including Tecovirimat (also known as TPOXX or ST-246), is provided under an expanded access Investigational New Drug (EA-IND) protocol, which allows for the use of TPOXX for primary or early empiric treatment of non-variola orthopoxvirus infections, including monkeypox, in adults and children of all ages. The treatment is provided at no cost.

Costs to State Government:

There are no direct costs to the State or the Department. The Department will continue to work with LHDs using existing resources to provide guidance regarding the control of communicable diseases using STD clinics and other methods as required by the PHL Article 6 State aid rules and these regulations.

Local Government Mandates:

As discussed above, these amendments will require STD clinics operated by LHDs to provide monkeypox diagnosis and treatment, including prevention services, either directly or by referral. LHDs are not, however, required to provide monkeypox treatment directly; they may refer patients to other providers for treatment.

Paperwork:

LHDs will be required to bill public and commercial third-party payers to the extent practicable to offset the costs of providing monkeypox treatment services.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that conflict with this rule. Like other STDs (syphilis, gonorrhea, etc.), since MPV will be listed on both the state communicable disease list and the STD list, two sets of Article 6 guidance documents for LHDs will apply to MPV.

Alternatives:

The alternative is to continue not to list monkeypox as an STD in New York. However, to advance the goal of controlling monkeypox outbreaks, monkeypox should be listed as an STD. This will not only reduce morbidity and mortality, but will also decrease health care costs statewide by lowering the prevalence of monkeypox and the cost of providing care to monkeypox-positive individuals.

Federal Standards:

There are no Federal standards in this area.

Compliance Schedule:

The amendment will take effect upon publication of a Notice of Adoption in the State Register.

The Department will assist affected entities in compliance efforts.

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(518) 473-2019 (FAX)
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Regulatory Flexibility Analysis
for Small Businesses and Local Governments

Effect of the Rule:

The proposed amendments to 10 NYCRR Part 23 will impact the 58 local health departments (LHDs) and the New York City Department of Health and Mental Hygiene, which are required to provide STD services as a condition of State Aid pursuant to Article 6 of the Public Health Law. In addition, local governments are responsible for the local share of the cost of the Medicaid program. The amendments will not impact small businesses (i.e., small private practices or clinics) any differently from other health care providers.

This mandate does not create new costs for local government. Currently, since monkeypox is listed as a communicable disease in 10 NYCRR §2.1, and since LHDs are responsible for controlling the spread of communicable diseases, LHDs are already required to treat monkeypox. Therefore, this regulation adding monkeypox to the list of STDs will not create any unfunded mandate for local government.

Increasing vaccination rates will decrease the number of monkeypox cases and will reduce Medicaid costs to care for Medicaid recipients with monkeypox, thereby reducing the local share of the cost of the Medicaid program. Since the vaccine is provided for free, this regulation implements a public health measure that will save money for local governments that are supported by property taxpayers.

Compliance Requirements:

Pursuant to these amendments, LHDs must provide monkeypox diagnosis and treatment, including prevention services, either directly in an STD clinic, or by making a written or electronic prescription or referral to another health care provider. Implementation of this rule will require recordkeeping and reporting by LHDs.

Professional Services:

Those LHDs that provide monkeypox treatment services directly or through contract may be required to ensure the development or updating of billing systems to comply with the obligation to seek payment from insurance providers to the extent practicable.

Compliance Costs:

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Providing diagnosis and treatment, including prevention services, to persons diagnosed or at risk for monkeypox may increase the use of monkeypox vaccine. It is anticipated that any increase in the use of prophylactic services will decrease the number of people who become monkeypox

positive, thereby greatly reducing the cost of providing care to individuals who are monkeypox positive.

In addition, LHDs and other providers that provide monkeypox treatment must seek to offset any costs by billing insurance for rendered services to the extent practicable. Remaining costs may be eligible for reimbursement from other sources that fund monkeypox treatment in New York.

Economic and Technological Feasibility:

The requirement to seek insurance recovery and the availability of other funding sources make this requirement economically feasible. There are no new technology requirements. The Department will also provide technical advice and support as needed.

Minimizing Adverse Impact:

LHDs and other providers that provide monkeypox treatment must seek to offset any costs by billing insurance for rendered services. Remaining costs may be eligible for reimbursement from other sources that fund monkeypox treatment in New York.

Small Business and Local Government Participation:

Community stakeholders, representative of regions and businesses across New York State, have been engaged in the response to the monkeypox outbreak, including ensuring that minors have the right to consent to monkeypox treatment and prevention services. The recommendation to amend regulations to ensure minors have the right to consent to monkeypox treatment and prevention services has been supported by community stakeholders. The Department sought and

received input from local health departments, including the New York City Department of Health and Mental Hygiene.

This regulation does not have the effect of imposing a mandate. Rather, it permits local governments to expand access to monkeypox vaccine, which will result in cost savings, because less money will need to be spent on treatment. LHDs are already providing monkeypox vaccine. The reason minors should be permitted to access monkeypox vaccine is that it will prevent minors from getting monkeypox, which furthers the Department's mission to decrease morbidity and mortality.

Cure Period:

Chapter 524 of the Law of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed amendments to 10 NYCRR Part 23 will impact clinicians in rural areas no differently than throughout New York State.

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

This rule imposes no mandates upon entities in rural areas outside those entities noted in Article 23 of the Public Health Law. As stated, local health departments (LHDs) must provide monkeypox treatment, including prevention services, either directly in an STD clinic, or by making a written or electronic prescription or referral to another health care provider. Implementation of this rule will require recordkeeping and reporting by LHDs.

Costs:

Some clinicians may experience up-front costs associated with providing monkeypox treatment services, including prevention services, to additional individuals. However, these regulations do not mandate health care providers to provide monkeypox treatment services. Any provider that does provide monkeypox treatment for additional patients can offset any costs by billing for services rendered.

Minimizing Adverse Impact:

As discussed above, the ability to recover costs will minimize the impact of these regulations.

Rural Area Participation:

Community stakeholders, representative of regions and businesses across New York State, including those in rural areas, have been engaged in the response to the monkeypox outbreak, including ensuring that minors have the right to consent to monkeypox treatment and prevention services. The recommendation to amend regulations to ensure minors have the right to consent to monkeypox treatment and prevention services has been supported by community stakeholders in rural areas.

Statement in Lieu of
Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendments, that it will not have an adverse impact on jobs and employment opportunities.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221218-C
United Memorial Medical Center

Program: **Hospital**
Purpose: **Construction**

County: **Monroe**
Acknowledged: **July 8, 2022**

Executive Summary

Description

United Memorial Medical Center (UMMC), an existing Article 28 not-for-profit corporation, requests approval to construct and certify a new extension clinic at 8103 Oak Orchard Road, Batavia (Genesee County). UMMC has two hospital campuses in Batavia. The main hospital site at 127 North Street has 111 beds and the Bank Street Campus at 16 Bank Street has 20 chemical dependency beds. The proposed site, to be known as the RRH Batavia Destination Campus, will also contain extension clinics operated by The Unity Hospital of Rochester (Unity) and Rochester General Hospital (RGH). All three hospitals are operated by Rochester Regional Health (RRH). The Unity and RGH administrative review applications are being reviewed contemporaneously.

The new UMMC extension clinic will provide Primary Medical Care, Other Medical Specialties, and Ambulatory Surgery Single Specialty-Gastroenterology.

Rochester Regional Hospital (RRH) will lease space to UMMC through a related non-Article 28 organization, the GRHS Foundation, Inc. (GRHSF).

Robert R. Mayo, M.D., who is board certified in Nephrology and Internal Medicine, will serve as Medical Director. RRH Batavia Destination Campus will be located 2.2 miles and six minutes from UMMC's main campus.

OPCHSM Recommendation

Contingent Approval

Need Summary

The extension clinic, located in a health professional shortage area of primary care, will provide a variety of medical services to the residents of Genesee, Orleans, and Wyoming Counties.

Program Summary

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

Financial Summary

The total project cost of $33,776,631 will be 90% funded via bond issuance with a fixed rate of approximately 2.50% - 3.50% at a 30-year term and 30-years payout period. The remaining project cost of $3,377,663 will be met with RRH funds.

Budget	Year One	Year Three
Revenues	$6,732,037	$13,960,371
Expenses	$10,236,628	$15,941,509
Net Income/(Loss)	($3,504,591)	($1,981,138)

Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Approval

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of a bond resolution, acceptable to the Department of Health. Included with the submitted bond resolution must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]

Approval conditional upon:

1. This project must be completed by **September 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 **May 1, 2023,** and construction must be completed by **June 1, 2024**, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the approved start date this shall constitute abandonment of the approval. [PMU]
3. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, is required prior to the applicant's start of construction. [AER]

Council Action Date

October 6, 2022

Need and Program Analysis

Background

The proposed extension clinic will add and/or expand current hospital programs from other sites including captive PC sites and outpatient clinics on the UMMC campus. The clinic will provide a wide array of services including primary care (including pediatric care), otolaryngology, allergy, rheumatology, endocrinology, infusion, neurology, neurosurgery, pain management, urgent care, gastroenterology (office visits and ambulatory surgery), orthopedics, imaging, and lab. The extension clinic will include nine procedure rooms, of which two will be used for ambulatory surgery. The other procedure rooms will be used for outpatient procedures that can be performed safely in an outpatient treatment room. The proposed site will also contain extension clinics operated by The Unity Hospital of Rochester (Unity) and Rochester General Hospital (RGH). All three hospitals are operated by Rochester Regional Health (RRH) and the property will be known as the RRH Batavia Destination Campus.

Staffing is expected to be 37.1 FTEs at Year One and 60.3 FTEs by Year Three.

Service Area

The primary service area (PSA) is Genesee, Orleans, and Wyoming Counties. All three counties are designated as Health Professional Shortage Areas for Primary Care Services (Medicaid Eligible). Additionally, Orleans County is a Medically Underserved Area (MUA), and in Wyoming County, the towns of Arcade and Castile are MUAs. See the BPNR Attachment for maps of the service area, including locations of other Article 28 sites.

Genesee County

The population of Genesee County in 2020 was 58,388 and is estimated to decrease slightly to 56,956 by 2025. According to Data USA, in 2019, 96.5% of the population in Genesee County has health coverage as follows.

Employer Plans	51.8%
Medicaid	16.7%
Medicare	14%
Non-Group Plans	13%
Military or VA	1.05%

Orleans County

The population of Orleans County in 2020 was 40,343 and is estimated to decrease slightly to 39,735 by 2025. According to Data USA, in 2019, 94.9% of the population in Orleans County has health coverage as follows.

Employer Plans	44.8%
Medicaid	21.8%
Medicare	13.3%
Non-Group Plans	13.4%
Military or VA	1.55%

Wyoming County

The population of Wyoming County in 2020 was 40,531 and is estimated to decrease slightly to 39,318 by 2025. According to Data USA, in 2019, 95.8% of the population in Wyoming County has health coverage as follows.

Employer Plans	50%
Medicaid	16.8%
Medicare	14.3%
Non-Group Plans	13.4%
Military or VA	1.4%

The following table is the demographic composition of Genesee, Orleans, and Wyoming Counties (separately) and the Primary Service Area (PSA), as compared to New York State.

Population Characteristics	Genesee	Orleans	Wyoming	PSA Total	New York State	PSA Comparison with NYS
2021 Population est.	57,853	40,191	40,491	138,535	19,835,913	-
2020 Population	58,388	40,343	40,531	139,262	20,201,249	-
Percent Growth (2020 – 2021)	-0.9%	-0.4%	-0.1%	-0.5%	-1.8%	Higher
White persons	92.9%	90.1%	92.2%	91.4%	69.6%	Higher
Black persons	3.2%	6.4%	5.6%	4.8%	17.6%	Lower
Asian persons	0.7%	0.6%	0.5%	0.6%	9.0%	Lower
Persons of Hispanic or Latino origin	3.5%	5.1%	3.3%	3.9%	19.3%	Lower
Foreign born persons	2.4%	2.9%	2.0%	2.4%	22.4%	Lower
Language other than English spoken at home	3.6%	6.1%	3.5%	4.3%	30.3%	Lower
High school graduates	92.2%	87.7%	90.5%	90.4%	87.2%	Higher
Persons 65 years old and over	19.3%	18.4%	18.6%	18.8%	16.9%	Higher
Persons below Poverty Level	10.2%%	13.2%	9.6%	10.9%	12.7%	Lower
Median Household Income	$60,635	$52,958	$58,746	$57,812	$71,117	Lower

The three-county PSA for this project is comprised of 138,535 residents. In 2012, the PSA contained 21,991 residents aged 65 and older, representing approximately 15.2% of the total PSA population. In 2021, the PSA contained 26,092 residents aged 65 and older, an increase of 18.6% over 2012. In 2021, the 65+ population represented approximately 18.8% of the total PSA population compared with 15.2% 10 years prior. As a comparison, the 65+ population comprised only 16.9% of the total New York State population in 2021. Per data from the Program on Applied Demographics (PAD) of Cornell University, the 65+ population within the PSA is projected to grow to 33,781 residents in 2030, representing a growth of 29.5% from 2021. As a comparison, the 65+ population within New York State is expected to grow by only 10.0% from 2021 to 2030.

Utilization (Visits)

Hospital	Existing Volume	Incremental Year 1 Volume	Total Year 1 Volume	Incremental Year 3 Volume	Total Year 3 Volume
UMMC	**89,025**	**24,748**	**113,773**	**54,561**	**143,586**
Rochester General *(CON 221219)*	5,140	8,526	13,666	9,921	15,061
Unity Hospital *(CON 221217)*	0	1,418	1,418	2,481	2,481
Grand Total	94,165	34,691	128,856	66,963	161,128

The existing volume in the table above represents 2021 activity at various practice sites operated by UMMC and RGH in the service area. While this will be a new site of service, the existing volumes are shown here to demonstrate that a majority of visits to the RRH Batavia Destination Campus are being relocated from currently spread-out, old, and inefficient existing practices and clinics. In the first year after completion, 78.2% of the projected volume will consist of existing visits that are currently being seen at these locations. The majority of the to-be-relocated visits are currently taking place on UMMC's North Street campus, which is facing a severe parking problem. Following completion of the project, it is anticipated that one or two old medical office buildings on the North Street campus will be demolished to mitigate the parking issue with the majority of providers currently seeing patients in those buildings relocating to the new site, which is 2.2 miles from the hospital campus.

It should be noted that the volume listed above includes new patient office visits, follow-up physician visits, procedures, including endoscopy procedures discussed above, lab tests, and imaging services, such as X-rays. An individual patient may experience numerous encounters contributing to the volume totals in the above table.

The breakdown of existing and projected volume for the UMMC clinic, by service line, is as follows:

Service Line	Current Volume	Percent Current	Year 1 Volume	Percent Year 1	Year 3 Volume	Percent Year 3
General Surgery	1,688	1.90%	2,225	1.96%	2,602	1.81%
Otolaryngology (ENT)	0	0	484	0.43%	958	0.67%
Allergy/Rheumatology	0	0	2,634	2.31%	8,104	5.64%
Endocrinology	799	0.90%	2,016	1.77%	4,718	3.29%
Infusion	0	0	2,057	1.81%	4,114	2.87%
Neurology, Neurosurgery, Pain Management	4,060	4.60%	6,876	6.04%	15,060	10.49%
Gastroenterology (office visits)	151	0.20%	1,392	1.22%	1,109	0.77%
Gastroenterology (ambulatory surgery)	0	0.00%	1,200	1.05%	2,400	1.67%
Urgent Care	12,701	14.30%	12,701	11.16%	12,701	8.85%
Imaging	27,629	31.00%	35,526	31.22%	35,773	24.91%
Lab	0	0	1,034	0.91%	1,422	0.99%
Primary Care & Peds	23,515	26.40%	25,465	22.38%	31,503	21.94%
Orthopedics	18,501	20.80%	20,181	17.74%	21,141	14.72%
TOTAL	**89,025**	**100%**	**113,791**	**100.00%**	**143,586**	**100.00%**

Note: General surgery visits are not ambulatory surgery cases, but rather office visits.

The breakdown of incremental visits by payor is as follows:

	Year One		Year Three	
Payor	**Visits**	**Percent**	**Visits**	**Percent**
Commercial MC	8,343	33.71%	18,393	33.71%
Medicare FFS	3,894	15.73%	8,586	15.74%
Medicare MC	5,796	23.42%	12,778	23.42%
Medicaid FFS	347	1.40%	765	1.40%
Medicaid MC	4,668	18.86%	10,292	18.86%
Private Pay	327	1.32%	720	1.32%
Charity Care	133	0.54%	294	0.54%
All Other	1,240	5.01%	2,734	5.01%
TOTAL	**24,748**	**100.00%**	**54,562**	**100.00%**

Compliance with Applicable Codes, Rules, and Regulations

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

Prevention Agenda

The Prevention Agenda priorities selected for action in UMMC's most recent community service plan include:

- Prevent Chronic Diseases
- Promote Well-Being and Prevent Mental and Substance Use Disorders

While the proposed project does not directly address these Prevention Agenda priorities, UMMC reports implementation and maintenance of a smoking cessation policy utilizing their electronic medical record (EMR) platform to make direct referrals to NYS Smokers Quitline for those self-reporting tobacco/nicotine use. Additionally, UMMC maintains an ongoing partnership with the county through its Cancer Service Program (CSP) to improve cancer screening access and engagement among eligible patients through the use of education sessions and mobile mammography events. Furthermore, UMMC has worked with local law enforcement departments to offer multiple 'Drug Take Back' events and has provided staff with training in engaging patients entering the Emergency Department under the influence of substances with the option to meet with peer advocate staff for additional substance use treatment resources.

United Memorial Medical Center reported $239,750 in spending on community health improvement.

Conclusion

The new extension clinic will relocate and expand current United Memorial Medical center programs from other sites to provide a wide spectrum of medical services to the residents of Genesee, Orleans, and Wyoming Counties. Based on the results of this review, a favorable recommendation can be made regarding the facility's current compliance pursuant to 2802-(3) of the New York State Public Health Law.

Financial Analysis

Total Project Cost and Financing

Total project costs for new construction, equipment, and fees are estimated at $33,776,631 with the following allocation:

New Construction	$23,071,073
Design Contingency	1,153,553
Construction Contingency	1,153,553
Fixed Equipment (NIC)	1,164,862
Architect/Engineering Fees	1,614,975
Other Fees	461,421
Moveable Equipment	1,852,362
Telecommunications	1,655,138
Interim Interest Expense	854,971
Financing Costs	607,979
CON Fee	2,000
Additional Processing Fee	184,744
Total Project Cost	**$33,776,631**

The applicant's financing plan is as follows:

RRH's Equity	$3,377,663
Bond Issuance (Approximately 2.50% - 3.50% fixed rate at 30-year term and 30-years payout period)	30,398,968
Total Financing	**$33,776,631**

The 2020-2021 certified financial statements and internal quarterly report of RRH as of March 31, 2022, reveal sufficient liquid resources available to meet the equity portion of the total project cost (BFA Attachment B). Raymond James, a multinational independent investment bank and financial services company has provided a letter of interest for the bond at the stated terms.

Operating Budget

The applicant submitted an operating budget for the first and third years, in 2022 dollars:

	Year One (2023)		Year Three (2025)	
	Per Visit	**Total**	**Per Visit**	**Total**
Revenues				
Commercial MC	$399.63	$3,334,144	$375.91	$6,914,085
Medicare FFS	$155.16	604,204	$145.93	1,252,952
Medicare MC	$255.34	1,479,939	$240.18	3,068,981
Medicaid FFS	$86.86	30,142	$81.71	62,506
Medicaid MC	$178.71	834,220	$168.09	1,729,940
Private Pay	$268.87	87,920	$253.23	182,322
All Other*	$291.51	361,468	$274.17	749,585
Net Revenues		$6,732,037		$13,960,371
Expenses				
Operating	$317.70	$7,862,518	$248.66	$13,567,399
Capital	$95.93	2,374,110	$43.51	2,374,110
Total Expenses	$413.63	$10,236,628	$292.17	$15,941,509
Net Income/(Loss)		($3,504,591)		($1,981,138)
Visits		24,748		54,562
Cost Per Visit		$413.63		$292.17

**All other revenue represents worker's comp, no-fault, essential plans, child health plus, and family health plus.*

The following is noted for the submitted operating budget:

- UMMC's existing volume of 89,025 visits will be relocated from current practice sites to the proposed extension clinic site.
- Revenue assumptions are based upon current reimbursement methodologies and previous experience for the proposed services at the hospital's existing sites.
- Staffing is based on the historical experience of the applicant in providing the proposed services at its existing sites and is increased based on the expected utilization. The recruitment strategy includes adding specialties not currently available and introducing employed specialists where private specialists are nearing retirement or not fully aligned with the RRH mission.
- Projected expenses and revenues for the first and third years of operation for the extension clinic are based on UMMC's actual expenses for the proposed services at the hospital's existing sites.
- The decrease in costs per visit from Year One to Year Three is due to economies of scale.
- The applicant has provided a letter indicating that the anticipated losses in Years One through Three will be funded through the operations of UMMC.

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

	Year One (2023)		Year Three (2025)	
Payor	Visits	%	Visits	%
Commercial MC	8,343	33.71%	18,393	33.71%
Medicare FFS	3,894	15.74%	8,586	15.74%
Medicare MC	5,796	23.42%	12,778	23.42%
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Medicaid MC	4,668	18.86%	10,292	18.86%
Private Pay	327	1.32%	720	1.32%
Charity Care	133	0.54%	294	0.54%
All Other	1,240	5.01%	2,734	5.01%
Total	24,748	100.00%	54,562	100.00%

Lease Agreement

The applicant has submitted a draft lease agreement for the site to be occupied as summarized below.

Premises:	134,482 square feet located at 8103 Oak Orchard Drive, Batavia, New York
Landlord:	GRHS Foundation, Inc.
Tenant:	United Memorial Medical Center
Term:	30 years
Rent:	Years 1-7: $1,983,609.50 ($165,300.70 per month) Years 8-30: $1,647,404.50 ($137,283.71 per month)
Provisions:	The tenant is responsible for Insurance, maintenance, repairs, utilities, and property taxes.

The applicant has submitted an affidavit attesting that the lease is a non-arm's length agreement in that RRH is the active parent of GRHS Foundation, Inc (GRHSF). The landlord, GRHSF, is a related entity of UMMC through RRH therefore the rental cost is based on the actual costs to GRHSF.

Capability and Feasibility

Total project costs of $33,776,631 will be 90% funded via bond issuance with approximately 2.50% - 3.50% fixed rate at a 30-year term and 30-years payout period. Raymond James, a multinational independent investment bank and financial services company has provided a letter of interest for the bond at the stated terms. The remaining balance of $3,377,663 will be met with RRH funds. The 2020-2021 certified financial statements, and the Internal quarterly report of RRH as of March 31, 2022, reveal sufficient liquid resources available to meet the equity portion of the total project cost (BFA attachment B).

The March 31, 2022, internal quarterly report for RRH reflects a positive working capital position of $277,403,000, a positive net asset position of $913,966,000, and a net operating income of $7,655,000. The 2020-2021 certified financial statements of RRH show the entity had an average positive working capital position of $285,548,500, an average positive net asset position of $734,506,500, and an operating income of $32,498,500.

BFA Attachment C is the March 31, 2022, internal quarterly report for UMMC which reflects a positive working capital position of $60,894,000, a positive net asset position of $58,108,000, and a net operating income of $613,000. The 2021 Certified financial statements of UMMC show the entity had a positive working capital position of $62,790,000, a positive net asset position of $58,364,000, and an operating income of $3,632,000.

The working capital requirement is estimated at $4,613,600 based on two months of Year Three expenses and will be provided via the ongoing operations of UMMC. The March 31, 2022 internal quarterly report, reveals sufficient liquid resources available to meet the equity portion of the working capital requirement.

The submitted budget projects net losses of ($3,504,591) and ($1,981,138) for the first and third years of operation, respectively. The applicant has provided a letter indicating that the anticipated losses will be funded by UMMC operations. The financial statements of UMMC reveal sufficient liquid resources available to absorb these losses. The applicant has indicated that the "downstream revenue" generated through patient referrals for other services at UMMC will offset the projected direct loss from operations on the project. After the inclusion of downstream revenue, UMMC projects a Year One financial loss of ($2,279,041) and a Year Three financial gain of $25,878. The submitted budget appears reasonable.

Conclusion

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

Attachments

HSA Attachment	Finger Lakes Health Systems Agency Review
BPNR Attachment	Maps
BFA Attachment A	Organizational chart for Rochester Regional Health
BFA Attachment B	Rochester Regional Health March 31, 2022, Internal Quarterly Report and 2020-2021 Certified Financial Statements
BFA Attachment C	United Memorial Medical Center March 31, 2022, Internal Quarterly Report and 2021 Certified Financial Statements

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221199-B
Yaldeinu Health

Program: **Diagnostic and Treatment Center** ***County:*** **Kings**
Purpose: **Establishment and Construction** ***Acknowledged:*** **June 22, 2022**

Executive Summary

Description
Yaldeinu Health Inc. (Yaldeinu), a not-for-profit corporation, is requesting approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to provide primary care and other medical specialty services. The proposed center will be in renovated leased space at 1600 63rd Street, Brooklyn (Kings County).

Yaldeinu has seven board members including the proposed medical director, Raphael Kellman, MD.

Yaldeinu Health, Inc.
Board Members
Moshe Erlich
Jacob Bar Horin
Raphael Kellman, M.D.
Shulamis Peltz, Esq
Yidel Pearlstein
Rivky Reich
Arye Ringel

The proposed clinic is affiliated with Yaldeinu School, which operates under charter from the Board of Regents of the NY State Education Department to operate a school for children ages 5-21 diagnosed with an autism spectrum disorder and/or pervasive developmental disorder. The establishment of this D&TC is part of an overall plan to provide comprehensive care to a community that is underserved and experiences poor health outcomes for both children and adults. Yaldeinu's goal is to reduce preventable hospital admissions for persons in the community through treatment and education.

The target service area includes the neighborhoods of Borough Park and Bensonhurst. Yaldeinu Health will also serve residents in adjoining neighborhoods and the entire Brooklyn borough.

Maimonides Medical Center, which is 1.8 miles and 8 minutes away, is expected to serve as the backup hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary
The center will provide primary care and other medical specialties in a Health Professional Shortage Area for Primary Care. The applicant projects 3,932 visits in Year One and 5,180 in Year Three with Medicaid utilization at 72% 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)(b).

Financial Summary
The total project cost of $547,295 will be funded by a cash gift from Yaldeinu School, a related entity of the applicant. Yaldeinu School is a charter school that is also a not-for-profit with common board members between the two entities.

Budget	Year One	Year Three
Revenues	$552,066	$726,921
Expenses	$463,302	$626,631
Net Income	$88,764	$100,290

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]
6. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of amended and executed Bylaws, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Certificate of Incorporation, acceptable to the Department. [CSL]

Approval conditional upon:

1. This project must be completed by **March 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 **September 1, 2023,** and construction must be completed by **December 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
October 6, 2022

Need and Program Analysis

Program Description

Proposed Operator	Yaldeinu Health Inc.
To Be Known As	Yaldeinu Health
Site Address	1600 63rd Street Brooklyn, New York 11204 (Kings County)
Services	Medical Services-Primary Care Medical Services-Other Medical Specialties Cardiology Endocrinology Gastroenterology Gynecology Oncology Ophthalmology Orthopedic Urology
Hours of Operation	Monday through Friday 8:00 am to 7:00 pm Hours may be expanded as demand increases.
Staffing (1st Year / 3rd Year)	4.60 FTEs / 7.20 FTEs
Medical Director(s)	Raphael Kellman, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Expected to be provided by Maimonides Medical Center 1.8 miles / 8 minutes away

The proposed clinic is affiliated with Yaldeinu School, which operates under charter from the Board of Regents of the NY State Education Department to operate a school for children ages 5-21 diagnosed with an autism spectrum disorder and/or pervasive developmental disorder. The Yaldeinu School operates OPWDD programming and recently received approval from OMH to provide CMHRS-licensed services. They are also a designated provider of children's HCBS services.

The Board of the Yaldeinu School and the board of the proposed D&TC are mirror boards. The proposed diagnostic treatment center will be housed in a space separate and distinct from the Yaldeinu School. It will have its own means of entrance and egress, separate bathrooms, and will have no shared spaces with the school. The following are the other operational and/or functional components of the project:

- Yaldeinu Health Inc. is a separate legal corporation from Yaldeinu School
- The D&TC will serve the entire community, including both adults and children.
- The D&TC will be operationally independent from Yaldeinu School, however, the Yaldeinu School will provide start-up funding, deficit funding, and project cost funding.

Analysis

The primary service area is the neighborhoods of Bensonhurst and Borough Park in Kings County, and the center will focus primarily on serving the Orthodox Hasidic Jewish population. Borough Park is an HRSA-designated Health Professional Shortage Area for Primary Care and Medically Underserved Population.

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 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 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 primary service area is lower than the New York State rate.

Hospital Admissions per 100,000 Adults for Overall PQIs		
PQI Rates: 2017	Kings	New York State
All PQIs	1,358	1,431

The applicant projects 3,932 visits in Year One and 5,180 in Year Three with a Medicaid utilization at 72% and charity care at 2%. The applicant is committed to serving all persons in need without regard to the ability to pay or the source of payment.

Character and Competence

The board of Yaldeinu Health, Inc. is:

Board Member	Role
Moshe Erlich	Board Member
Jacob Bar Horin	Board Member
Raphael Kellman M.D.	Board Member/ Medical Director
Shulamis Peltz, Esq	Board Member
Yidel Pearlstein	Board Member
Rivky Reich	Board Member
Arye Ringel	Board Member

Dr. Raphael Kellman is a Board Member and the proposed Medical Director. He is a Physician of Integrative and Functional Medicine and is the Owner of the Kellman Wellness Center. He received his medical degree from the Albert Einstein College of Medicine and completed his residency in Internal Medicine at St. John Episcopal Hospital, Lenox Hill Hospital, and Beth Israel Medical Center.

Moshe Erlich is a Proprietor at Exclusive Tax and Bookkeeping Services and is a Primary Bookkeeper at Zichron Emanual Foundation. He is a Board Member and Finance Director of the Yaldeinu School for Children with Autism and he is the Treasurer of Beth Medrsh Chasidai Amshinov.

Jacob Bar Horin is the Chief Financial Officer of The Yaldeinu School where his key duties include budget creation and development, implementation of strategic fundraising, oversight of all fiscal policies and procedures, expanding and managing relationships, and communication with donors and foundations.

Shulamis Peltz, Esq. is a Senior Associate Attorney at Jacob Laufer, P.C. where her responsibilities include preparing motions, attending court appearances, hearings and conducting depositions, reviewing and analyzing documents and agreements, participating in negotiations and conferences with federal and state prosecutors, legal research, counseling clients through civil and criminal processes.

Yidel Perlstein is the Chief of Staff of Brock Pierce and the CEO of Lucky Truck Rental. He is the Executive Director of Eitz Chaim and is a Member of the Executive Board at BPJCC. He is the Chairman of the Board of Community Board 12 where he manages the board office including four full-time employees, presides over 50 board members, and ensures the board represents the interests of the 50,000 families it represents. He serves as the Secretary of the Board of Directors at the Yaldeniu School.

Rivky Reich is the Program Director of HASC/Gan Ezra, a school for children with special needs. where he is responsible for staff supervision, staff development and quality assurance, staff hiring and training, program support and guidance, and communication between staff. He also supervises and trains staff in Individualized Education Plans.

Arye Ringel is a Tax Accountant at Barry Strauss Associates where he facilitates financial planning and long-term goals for clients and specializes in tax filing, laws, regulations, and legalities. He is the Treasurer of the Board of Directors of The Yaldeinu School.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the 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 Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3). The new diagnostic and treatment center will provide primary care and other medical specialties including in a Health Professional Shortage Area for Primary Care.

Financial Analysis

Total Project Cost and Financing

The total project cost, which is for renovation and the acquisition of moveable equipment, is estimated at $547,295 further broken down as follows:

	Costs
Renovation & Demolition	$260,000
Design Contingency	26,000
Construction Contingency	26,000
Planning Consultant Fees	5,000
Architect/Engineering Fees	20,000
Other Fees (Consultant, etc.)	75,000
Movable Equipment	117,780
Telecommunications	12,532
CON Fee	2,000
Additional Processing Fee	2,983
Total Project Costs	$547,295

The applicant's financing plan appears as follows:

Cash Gift from Yaldeinu School	$547,295
Total	$547,295

Operating Budget

The applicant has submitted an operating budget for Yaldeinu in 2022 dollars, for Year One (2024) and Year Three (2026), summarized below. The submitted budget appears reasonable.

	Year One (2024)		Year One (2026)	
Revenues	Per Visit	Total	Per Visit	Total
Commercial FFS	$165.00	$103,785	$165.00	$136,950
Medicare FFS	150.00	29,550	150.00	38,850
Medicare MC	120.00	9,480	120.00	12,480
Medicaid FFS	188.00	14,852	188.00	19,552
Medicaid MC	135.22	371,979	135.22	490,969
Private Pay	$190.00	22,420	$190.00	28,120
Total Revenues		$552,066		$726,921
Expenses				
Operating	92.83	$365,006	102.00	$528,335
Capital	25.00	$98,295	18.98	$98,295
Total Expenses	117.83	$463,302	120.97	$626,631
Net Income		$88,764		$100,290
Utilization (Visits)		3,932		5,180

The following is noted concerning the submitted budget:

- Revenues are based on current reimbursement rates for primary care and other medical specialty services the applicant proposes to offer.
- The applicant confirmed that there will be no commercial managed care visits.
- Utilization assumptions are based on evaluating community needs, facility capacity, network relationships in the community, hospital affiliations, and marketing efforts.
- The expense assumptions are based on the operating experience of existing Article 28 D&TC centers
- Maimonides Medical Center will assist in referring patients from the hospital emergency room to the D&TC, when appropriate, as well as, minimizing the readmission of patients to the hospital due to the significant absence of primary care.
- The proposed operator will have an extensive marketing plan to attract clinical staff and patients to the D&TC upon opening.

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

Payor	Year One (2024)	Year Three (2026)
Commercial FFS	18.80%	18.84%
Medicare FFS	5.35%	5.34%
Medicare MC	1.72%	1.72%
Medicaid FFS	2.69%	2.69%
Medicaid MC	67.38%	67.54%
Private Pay	4.06%	3.87%
Charity Care	0.00%	0.00%
Total	100.00%	100.00%

Lease Rental Agreement

The applicant has provided the proposed lease rental agreement for the site that they will occupy, which is summarized below:

Premises	1,310 square feet located at 600 63rd Street, Brooklyn, New York
Lessor	63rd Street Realty
Lessee	Yaldeinu Health, Inc.
Term	5-year term, commencing on September 1, 2022
Rental	$4,000 monthly / $48,000 annually ($36.64 per sq. Ft.)
Provisions	The lessee shall be responsible for all utilities.

The tenant, Yaldeinu, and landlord, 3rd Street Realty, have entered into a proposed lease agreement for site control of the facility. The applicant has submitted an affidavit that there is no relationship between the parties other than landlord and tenant; therefore, this is an arms-length arrangement. The terms of the lease have been finalized and will be executed upon notification of contingent approval. The applicant submitted two real estate broker letters attesting to the reasonableness of the per square foot cost.

Capability and Feasibility

Total project costs of $547,295 will be funded by a cash gift from Yaldeinu School, a related entity of the applicant. The applicant provided a gift letter from Yaldeinu School that confirms their intention to provide all necessary project costs and working capital as a gift for the establishment and construction of the proposed D&TC.

The working capital requirement of approximately $104,439 is equivalent to two months of third-year expenses. The June 30, 2021 Certified Financial Statements of Yaldeinu School (BFA Attachment A) show the school has a positive working capital position, a positive net asset position, and an excess of revenues over expenses of $10,115,328 with a cash balance of $2,033,291. The March 31, 2022 Internal Financial Statements of the Yaldeinu School show the entity continued to have positive working capital, net asset, and excess revenues over expenses position. The financial statement for this period indicates the availability of sufficient funds to meet the equity contribution and any working capital needs.

The submitted budget indicates a net income of $88,764 and $100,290 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for the type of services they are providing, and expenses are based on operations of existing Article 28 D&TC centers. Yaldeinu Health, Inc. submitted a pro forma balance sheet (BFA Attachment B) as of the first day of operations, which indicates a positive net asset position of $651,733. The submitted budget appears reasonable.

Conclusion

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

Attachments

BHFP Attachment	Map
BFA Attachment A	June 30, 2021 Certified Financial Statements and March 31, 2022 Internal Financial Statements of the Yaldeinu School
BFA Attachment B	Yaldeinu Health, 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 6th day of October 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 new diagnostic and treatment center at 1600 63rd Street, Brooklyn, to provide Primary Care and Other Medical Specialties 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:
221199 B	Yaldeinu Health Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
4. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
5. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0 [AER]
6. Submission of a photocopy of an amended and executed Lease Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of amended and executed Bylaws, acceptable to the Department. [CSL]
8. Submission of a photocopy of an amended and executed Certificate of Incorporation, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **March 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 **September 1, 2023,** and construction must be completed by **December 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.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221212-E
Smile New York Outreach, LLC

Program: **Diagnostic and Treatment Center** ***County:*** **Bronx**
Purpose: **Establishment** ***Acknowledged:*** **July 8, 2022**

Executive Summary

Description

Smile New York Outreach, LLC (Smile), a proprietary Article 28 diagnostic and treatment center (D&TC) with a fixed site at 1808 Crotonia Parkway, Bronx (Bronx County), requests approval to transfer 100% ownership interest in the D&TC to one new member. The current sole member of Smile, Dr. Stephen Marshall, proposes to transfer his membership interest to new member Smile Outreach Holdings, LLC, whose sole member is Dr. Craig Abramowitz. Smile provides in-school preventive dental services (exams, cleanings, and sealants) and restorative care to underprivileged children in New York City schools. They are currently authorized through the School-Based Health Center Dental Program to serve children in Bronx, Kings, New York, Queens, Richmond, and Westchester Counties.

Smile's fixed site is for the delivery of restorative care that cannot be provided at the school sites and where referral to Smile's community dentist network is not preferable or practical for parents/guardians.

The ownership, before and after is as follows:

Smile New York Outreach, LLC Current	
Member	%
Stephen Marshall, DDS	100%
Proposed	
Member	%
Smile Outreach Holdings, LLC Craig Abramowitz, DDS (100%)	100%

Dr. Elliot Schlang will continue to serve as the facility's Dental Director.

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be no need review per Public Health Law §2801-a(4).

Program Summary

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

Financial Summary

There are no project costs associated with this proposal. The purchase price for the facility operations is $2,600,000. Reachout Healthcare America, Ltd., will be providing the funding for the purchase and will be paid back through a 10-year promissory note at a 6% interest rate.

(in 000's)	Current Year (2019)	Year One (2023)	Year Three (2025)
Revenues	$11,919	$17,009	$21,517
Expenses	$13,726	$16,422	$17,766
Gain/(Loss)	($1,808)	$587	$3,750

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]

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

October 6, 2022

Program Analysis

Program Description
There will be no change in services, staffing, or the dental director as a result of this application.

Character and Competence
The proposed membership Smile New York Outreach, LLC is provided in the chart below.

Member Name/Title	Current	Proposed
Stephen Marshall, DDS	100.00%	0%
Smile Outreach Holding, LLC	0%	100.00%
*Craig Abramowitz, DDS (100%)		
Total	**100%**	**100%**

**Subject to Character and Competence*

Dr. Craig Abramowitz is the Vice Chairman of Dental Care Alliance where he helps support and strategize with the executive management team. He was the previous Co-CEO of Dental Care Alliance and was responsible for the day-to-day operations of dental practices. Previously, he was the CEO of Northeast Dental Management. He received his dental degree from the New York University College of Dentistry.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the 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 Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

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

Financial Analysis

Operating Budget
The following is a summary of the submitted operating budget, presented in 2022 dollars, for the current year and years one and three after the change in membership:

	Current Year (2019)		Year One (2023)		Year Three (2025)	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
Revenues						
Medicaid FFS	$152.16	$9,054,353	$166.00	$13,159,339	$166.00	$16,646,592
Medicaid MC	$152.15	$691,990	$157.70	$955,455	$157.70	$1,208,652
Commercial	$152.16	$2,172,481	$152.16	$2,894,103	$152.16	$3,661,046
Total		$11,918,824		$17,008,896		$21,516,290

	Current Year (2019)		Year One (2023)		Year Three (2025)	
	Per Visit	Total	Per Visit	Total	Per Visit	Total
Expenses						
Operating	$145.30	$13,428,151	$131.59	$16,200,824	$112.66	$17,545,266
Capital	$3.23	$298,294	$1.79	$220,853	$1.42	$220,853
Total	$148.53	$13,726,445	$133.38	$16,421,677	$114.08	17,766,119
Net income/(loss)		($1,807,621)		$587,219		$3,750,172
Utilization (Visits)		92,418		123,116		155,742

The following is noted for the submitted operating budget:

- Smile New York was closed from March 2020 until November 2020 and reopened at a very reduced capacity from November 2020 through December 31, 2021, due to the COVID-19 pandemic. As such, Smile New York is choosing to use 2019 as the basis for the current year. Smile New York expects to be operating at 100% capacity by the fall of 2022. It is also important to note that, since 2019, Smile New York has added 15 schools to their roster.
- Years One and Three budgets are based on the historical performance of the facility and the return to normalization (post-Covid 19 operations).
- Projected Medicaid revenue for Years One and Three are based on the facility's current 2022 Medicaid payor rates.
- Commercial payor rates for Years One and Three are based on Smile New York's current year rates.

Utilization by payor source for current and future years is expected to remain the same, as follows:

Payor	%
Medicaid FFS	64.39%
Medicaid MC	4.92%
Charity Care	15.24%
Commercial	15.45%
Total	100.00%

Membership Interest Purchase Agreement

The applicant submitted an executed Membership Interest Purchase Agreement for the transfer of ownership, to be effectuated upon PHHPC approval. The terms of the agreement are as follows:

Date:	March 23, 2022
Seller:	Stephen Marshall, DDS
Buyer:	Smile Outreach Holdings, LLC
Assets Assumed:	100% Membership interest in Smile New York Outreach, LLC
Excluded Assets:	None
Liabilities Assumed:	All liabilities associated with the business
Excluded Liabilities	N/A
Purchase Price:	$2,600,000
Payment of Purchase Price:	Cash ($1,300,000 paid on execution date of agreement (non-refundable) and $1,300,000 upon closing)

Promissory Note

The funding for the purchase will come from a promissory note, the applicant has submitted a draft promissory note. The terms of the note are detailed below:

Date:	March 17, 2022
Payor	Smile Outreach Holdings, LLC
Payee	Reachout Healthcare America, Ltd.
Term	10 years at 6% interest
Amount:	$2,600,000

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement, or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. There are currently no outstanding Medicaid liabilities for the facility as of August 12, 2022.

The applicant indicated that the facility currently has a software license and services agreement with Reachout Healthcare America, Ltd. that will continue to be in effect upon PHHPC approval of this application, and there are no consulting or administrative agreements.

Capability and Feasibility

Smile Outreach Holdings, LLC will acquire 100% membership interest in Smile New York Outreach, LLC for $2,600,000 as detailed in the Membership Interest Purchase Agreement. There are no project costs associated with this proposal. Smile Outreach Holdings, LLC's sole member is Dr. Craig Abramowitz.

Working capital requirements are estimated at $2,736,946 based on two months of Year One expenses. The proposed member will provide $2,736,946 from his net worth. BFA Attachment A is the net worth statement for the proposed new owner, which shows that the applicant has sufficient resources to meet the working capital requirements.

BFA Attachment C is the Pro-forma balance sheet of Smile New York Outreach, LLC, which indicates a negative member's equity of $2,962,675 as of the change of ownership. The negative member's equity situation is primarily the result of Smile New York being closed from March 2020 until November 2020 and upon reopening in November 2020 was operating at significantly reduced capacity due to the COVID-19 pandemic and its effects on New York City schools Smile New York's financial results have significantly improved in the first half of the calendar year 2022 with a positive $1.1M net income for Smile New York for the period of January 1, 2022 through July 31, 2022. The sole member of the proposed buyer, Dr. Abramowitz, is aware of the negative equity circumstance and believes the post-COVID recovery and financial position of Smile New York will continue to improve allowing him to continue meeting the dental care needs of underserved school children in the service area.

The budget indicates a net income of $587,219 and $3,750,172 will be achieved during Years One and Three respectively. The budget appears reasonable.

BFA Attachment B is Smile New York Outreach, LLC's 2020-2021 certified financial statements and their 1/1/2022-7/31/2022 internal financial statements. The facility generated an average operating loss of $829,612 and had average negative net asset and working capital positions of $3,373,366 and $287,437, respectively for the 2020-2021 period shown. The 1/1/2022-7/31/2022 internal financial statements show that the entity generated an operating gain of $1,086,798 and had a negative net asset position and a positive working capital position of $2,704,301 and $363,005, respectively for the period shown. The losses for 2020-2021 are due to the impact of Covid-19 and as of July 31, 2022, the facility has begun to improve operations and has achieved a positive net income.

Conclusion

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

Attachments

BFA Attachment A	Net Worth of Proposed Member of Smile New York Outreach, LLC
BFA Attachment B	2020 - 2021 certified and the 1/1/2022-7/31/2022 internal financial statements for Smile New York Outreach, LLC
BFA Attachment C	Pro Forma Balance Sheet for Smile New York Outreach, 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 6th day of October 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 of 100% ownership interest from one withdrawing member to a new member within the sole member 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:
221212 E	Smile New York Outreach, LLC

APPROVAL CONTINGENT UPON:

1. Submission of an executed promissory note, acceptable to the Department of Health. [BFA]

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]

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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

MEMORANDUM

To: Public Health and Health Planning Council

From: Kathy Marks, General Counsel

Date: September 2, 2022

Subject: Proposed Dissolution of J.G.B. Health Facilities Corporation

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The J.G.B. Health Facilities Corporation ("JGB") requests Public Health and Health Planning Council ("PHHPC") approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law § 1002(c), § 1003 and 10 NYCRR Part 650.

JGB is a New York not-for-profit corporation incorporated on November 14, 1974, under the name J.G.B. Nursing Home Corporation with a corporate purpose to operate an Article 28 Nursing Home. The filing of an Amended and Restated Certificate of Incorporation by JGB on September 18, 1979, changed its name to J.G.B. Health Facilities Corporation and also promulgated a change in the corporate purpose to improve the physical and mental conditions of adult blind persons as well as to operate a skilled nursing facility catering to those same persons.

In 2007, JGB sought to voluntarily downsize since the nursing home facility required a significant amount of capital improvements to safely operate and the 'Commission on Health Care Facilities in the 21st Century' issued its report finding that its nursing home county, Westchester County, was over-bedded by 653 RHCF beds. Based on the foregoing, JGB entered into a partnership with Jewish Home & Hospital ("JHH") to carry out its mission on a smaller scale (downsizing from 219 RHCF beds and relocating 38 RHCF beds). This arrangement, as proposed in certificate of need application number 071111-C, was approved by the Public Health Council on December 19, 2007.

Due to the partnership between JGB and JHH, the Board of Directors of JGB recommended to its sole corporate member, Jewish Guild for the Blind, that it should sell the nursing home facility. The member approved of this action on July 28, 2008. JGB entered a Contract of Sale in July 2008. The State of New York Supreme Court authorized the sale in Order Index No. 116458/08 which was Amended in 2010. Dissolution of JGB was not contemplated even after the sale of substantially all of its assets since four Adult Day Health Care Programs remained operational. Thereafter, an affiliated entity, J.G.B Rehabilitation Corporation ("JGB Rehab"), requested and received approval of certificate of need application number 171364 (final approval dated August 14, 2017) to allow JGB Rehab to take over operation of the four JGB Adult Day Health Care programs.

On September 28, 2017, JGB Rehab undertook all remaining operations formerly carried out by JGB and, subsequently, JGB no longer had any revenue or assets. The Board of Directors of JGB approved and authorized dissolution and authorized the filing of the Certificate of Dissolution by unanimous written consent dated April 27, 2021.

Currently, JGB has no assets or liabilities.

Attached is an electronic letter dated September 8, 2021, from Nicholas P. Hopeck which explains the intent of J.G.B. Health Facilities Corp. to dissolve. The required documents: a proposed Verified Petition to the Attorney General, a Plan of Dissolution, a proposed Certificate of Dissolution, and a resolution of the board of directors of JGB authorizing the dissolution are included.

There is no legal objection to the proposed Verified Petition, Plan of Dissolution, or the Certificate of Dissolution.

Attachments.

DELANEY CORPORATE SERVICES, LTD.
99 Washington Ave., Ste. 805A, Albany, NY 12210
800-717-2810 • 518-465-9242 • 518-465-7883 (fax)
nick@delaneycorporate.com

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"For service as good as gold"

September 8, 2021

STATE OF NEW YORK DEPARTMENT OF HEALTH
Colleen M. Leonard, Executive Secretary
Public Health and Health Planning Council
Corning Tower, Room 1805
Albany, New York 12237
518-402-0964

RE: J.G.B. HEALTH FACILITIES CORPORATION

Dear Ms. Leonard,

I hereby respectfully request your consent to the filing of the attached certificate of dissolution for the above reference NYS Not-for-Profit Corporation. A copy of all charter documents from the New York Secretary of State and supporting documents are attached.

If you have any questions or require further information, please do not hesitate to contact me. Otherwise, please issue your consent to the undersigned at your earliest convenience.

Sincerely,

Nicholas P. Hopeck
Vice President
nick@delaneycorporate.com

In the Matter of Application of	)	
	)	
J.G.B. HEALTH FACILITIES CORPORATION	)	VERIFIED PETITION
	)	
	)	
For Approval of Certificate of Dissolution pursuant to N.Y. Not-for-Profit Corp. Law § 1002	)	

TO THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,
OFFICE OF THE ATTORNEY GENERAL at_____

Petitioner J.G.B. HEALTH FACILITIES CORPORATION by its General Counsel and Chief Compliance Officer, JOEL LEVI, ESQ., respectfully alleges:

1. That the Petitioner, J.G.B. HEALTH FACILITIES CORPORATION, whose principal address is 250 West 64th Street, New, York County of New York, State of New York, is a charitable corporation duly organized and existing under and by virtue of the Not-for-Profit Corporation Law of the State of New York, its certificate of incorporation having been filed by the Department of State on November 14, 1974 under the name J.G.B. NURSING HOME CORPORATION and upon the filing of an amended certificate of incorporation dated September18, 1979, the corporation changed its name to J.G.B. HEALTH FACILITIES CORPORATION. A copy of the certificate of incorporation and all amendments thereto and a copy of the current by-laws are attached as **EXHIBIT A.**

2. That its amended certificate of incorporation designates the petitioner corporation as a Type B corporation, its purposes being to improve physical and mental condition of adult blind persons. There are no specific requirements in said certificate with respect to distribution of assets in the certificate of incorporation except that Article V of the amended and restated certificate of Incorporation requires that upon dissolution, the assets be distributed to and entity exempt from Tax under IRC sections 170(b)(1)(A) and 501(c)(3) and which has been in existence for at least 60 calendar months;

3. That the names and addresses of all the Directors and Officers of said J.G.B. HEALTH FACILITIES CORPORATION are as follows:

Directors

Name	Office Address
James M. Dubin Chairman	250 West 64th Street, New York, NY
Calvin W. Roberts, MD, President & CEO	250 West 64th Street, New York, NY
Lawrence E. Goldschmidt, Dep.Chair,Treas	250 West 64th Street, New York, NY _

Pauline Raiff, Immediate Past Chair	250 West 64th Street, New York, NY
.	
Marios Damianides, Asst Treasurer	250 West 64th Street, New York, NY
Eric Maidenberg, Secretary	250 West 64th Street, New York, NY
Thomas S.T. Gimbel	250 West 64th Street, New York, NY
Thomas G. Kahn	250 West 64th Street, New York, NY
Ronald Weiner, Deputy Chair	250 West 64th Street, New York, NY

Officers [other than those noted above]

Name and Title	Office Address
Paul Misiti, Chief of Staff	250 West 64th Street, New York, NY
Himanshu Shah, Chief Financial Officer	250 West 64th Street, New York, NY
Maura Sweeney, Chief Program Officer	250 West 64th Street, New York, NY
Joel Levi, Gen. Counsel, Chief Compliance Officer	250 West 64th Street, New York, NY
Sarah Spicehandler, Assistant Secretary	250 West 64th Street, New York, NY
Esmeralda Ballate, Assistant Secretary	250 West 64th Street, New York, NY

4. That the purposes of the corporation are set forth in Article II of the amended certificate of incorporation and are generally to improve the mental and physical condition of blind persons.

5. That from the date of its incorporation, the petitioner conducted its activities and did in fact fulfill its functions and carry out the purposes for which it was formed until on or about September 27, 2017, J.G.B. HEALTH FACILITIES CORPORATION, subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, operated adult day healthcare programs in New York City, Buffalo, Albany and Niagara Falls until September 27, 2017. During 2017, J.G.B REHABILITATION CORPORATION, another subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, requested and received approval from NYSDOH to take over operation of J.G.B. HEALTH FACILITIES CORPORATION's programs., and transfer the four adult healthcare day programs to J.G.B REHABILITATION CORPORATION. Commencing on September 28, 2017 J.G.B REHABILITATION CORPORATION undertook all the operations formerly carried out by J.G.B. HEALTH FACILITIES CORPORATION. J.G.B. HEALTH FACILITIES CORPORATION's sources of revenue had been payments from Medicaid and other

third-party providers. When the operation of the programs were transferred, J.G.B. HEALTH FACILITIES CORPORATION no longer had revenue or assets and ceased to operate.

6. That by reason of the foregoing the petitioner corporation necessarily suspended its activities and has become totally inoperative and for all intents and purposes has ceased to function and has no assets and plans to dissolve.

7. That on the May 14, 2021, at a special meeting of the Board of Directors, duly called for the purpose of formulating and adopting a plan for the dissolution and distribution of assets of J.G.B. HEALTH FACILTIES CORPORATION, at which meeting the full board was present, such a plan was formulated and adopted. A resolution of the Board of Directors of petitioner corporation favoring dissolution and the adoption of the plan as aforesaid was placed on the record of said corporation, which resolution recommended to the members that said corporation be dissolved and its affairs wound up and, further directed that a special meeting of the sole corporate member be held to vote on the question as to whether said corporation should be dissolved and its assets distributed in accordance with the aforesaid plan. A copy of said plan and Board resolution adopting same, with a statement of the vote thereon certified by the Secretary, is annexed hereto as **EXHIBIT B**.

8. Thereafter a special meeting of the sole corporate member was held on the [date of special meeting], in accordance with a notice of meeting directed to the membership, and at said special meeting of the sole corporate member, the aforesaid plan for the dissolution of J.G.B. HEALTH FACILTIES CORPORATION was approved by the affirmative vote of two-thirds of the votes cast by the sole corporate member entitled to vote thereon, said votes so cast being at least equal to the requisite quorum, and a resolution was duly adopted to that effect. A copy of said resolution, with a statement of the vote thereon certified by the Secretary of the sole corporate member, is annexed hereto as **EXHIBIT C**.

9. That J.G.B. HEALTH FACILTIES CORPORATION has filed a financial report on Form CHAR500 for the year 2017, with all required attachments, with the Charities Bureau showing no assets or liabilities as of the date hereof.

.

10. That annexed hereto as **EXHIBIT D** is a complete and detailed financial statement of J.G.B. HEALTH FACILTIES CORPORATION as of December 31, 2017 together with the consolidated Financial Statement of LIGHTHOUSE GUILD INTERNATIONAL, INC and AFFILIATES for the same period, the date on which the corporation last had assets.

11. No property of the corporation was held for a specific use.

12. The approval of the aforesaid plan by NYS Department of Health whose approval was required for the formation of the corporation is attached to the Certificate of Dissolution a copy of which is annexed hereto as **EXHIBIT E**. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-For-Profit Corporation Law Section 1003.

13. That no previous application has been made for the relief prayed for herein.

WHEREFORE, petitioner requests that the Attorney General approve the Certificate of Dissolution of J.G.B. HEALTH FACILTIES CORPORATION a not-for-profit corporation pursuant to Not-For-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, J.G.B. HEALTHFACILTIES CORPORATION has caused this Petition to be executed the ____ day of _____, 2021 by

_____
JOEL LEVI, ESQ., General Counsel and Chief Compliance Officer

Verification and Certification

STATE OF NEW YORK)
Ss:
COUNTY OF NEW YORK)

JOEL LEVI, ESQ , being duly sworn, deposes and says:

I am the General Counsel and Chief Compliance Officer of J.G.B. HEALTH FACILTIES CORPORATION, the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except any matters that are stated on information and belief and, as to those matters, I believe them to be true, and I hereby certify under penalties of perjury that the Plan of Dissolution was duly authorized and adopted by the Board of Directors and by the sole corporate member of the Corporation.

_____
JOEL LEVI, ESQ

Sworn to before me
this ____day of _____, 2021

_____
Notary Public

Elisabeth St. B. McCarthy, Esq.
Attorney for Petitioner
Gordon, Herlands & Randolph LLP
355 Lexington Avenue, 10th Floor
New York, NY 10017
212-986-1200
emccarthy@gordonherlands.com

CERTIFICATE OF DISSOLUTION

OF

J.G.B. HEALTH FACILITIES CORPORATION

Under Section 1003 of the Not-for-Profit Corporation Law

I, Calvin W. Roberts Director and President and CEO of J.G.B. HEALTH FACILITIES CORPORATION, hereby certify:

FIRST: The name of the corporation is J.G.B. HEALTH FACILITIES CORPORATION, (the "Corporation").

SECOND: The Certificate of Incorporation of the Corporation was filed by the New York State Department of State on November 14, 1974 under the name J.G.B. NURSING HOME CORPORATION. By the filing of an Amended and Restated Certificate of Incorporation on September 18, 1979, the Corporation changed its name to J.G.B. HEALTH FACILITIES CORPORATION.

THIRD: The names, titles and addresses of each of the directors and officers of the Corporation are as follows:

Directors

Name	Title	Address
Calvin W. Roberts	President and CEO	250 West 64th Street New York, New York 10023
James M. Dubin	Chairman	250 West 64th Street New York, New York 10023
Lawrence E. Goldschmidt	Deputy Chairman, Treasurer	250 West 64th Street New York, New York 10023
Marios Damianides	Assistant Treasurer	250 West 64th Street New York, New York 10023

Eric Maidenberg	Secretary	250 West 64th Street New York, New York 10023
Pauline Raiff	Immediate Past Chair	250 West 64th Street New York, New York 10023
Thomas S.T.Gimbel	Director	250 West 64th Street New York, New York 10023
Thomas G. Kahn	Director	250 West 64th Street New York, New York 10023
Ronald Weiner	Deputy Chair	250 West 64th Street New York, New York 10023

Officers [other than those noted above]

Name	Title	Address
Paul Misiti	Chief of Staff	250 West 64th Street New York, New York 10023
Himanshu Shan	Chief Financial Officer	250 West 64th Street New York, New York 10023
Maura Sweeney	Chief Program Officer	250 West 64th Street New York, New York 10023
Joel Levi	Gen. Counsel, Chief Compliance Officer	250 West 64th Street New York, New York 10023
Sarah Spicehandler	Assistant Secretary	250 West 64th Street New York, New York 10023
Esmeralda Ballate	Assistant Secretary	250 West 64th Street New York, New York 10023

FOURTH: At the time of dissolution, the Corporation is a Type B New York Not-for-Profit corporation.

FIFTH: At the time of the authorization of its Plan of Dissolution, the Corporation did not hold any assets that are legally required to be used for a particular purpose pursuant to the Not-for-Profit Corporation Law.

SIXTH: The Corporation elects to dissolve. A Plan of Dissolution was authorized by the unanimous vote of the Board of Directors at a meeting on April 27, 2021. The Corporation has one corporate member. The Plan of Dissolution was authorized by the unanimous consent of the Board of Directors of the sole member at a meeting on April 27, 2021.

SEVENTH: At the time of dissolution, the Corporation had no assets and no liabilities.

EIGHTH: Approval of the dissolution of the Corporation is required to be obtained from the New York State Department of Health, whose approval is attached hereto.

NINTH: Prior to the delivery of this Certificate of Dissolution to the Department of State for filing, the dissolution of the Corporation is required to be approved by the Attorney General of the state of New York. Said approval is attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of J.G.B. HEALTH FACILITIES CORPORATION, this 2nd day of June, 2021.

Name: Calvin W. Roberts
Title: President and CEO

EXHIBIT A

PLAN OF DISSOLUTION
AND
DISTRIBUTION OF ASSETS
OF
J.G.B. HEALTH FACILITIES CORPORATION

TO BE RECOMMEATION TO MEMBERSHIP

The Board of Directors of J.G.B. HEALTH FACILITIES CORPORATION at a special meeting duly convened on the 27th of April, 2021 to consider the advisability of voluntarily dissolving this corporation and it being the unanimous opinion of the Board that it is advisable and in the best interests of the corporation to effect such a resolution, and the Board having adopted, by unanimous vote, a plan for a voluntary dissolution of this corporation, does hereby recommend to the membership that this corporation be dissolved in accordance with the following plan:

A. The corporation has no assets to distribute, and no liabilities at the time of dissolution.

B. Upon resolution of the Board of Directors adopting this Plan of Dissolution, the Board must submit it to a vote of the sole corporate member for approval.

C. After the adoption of this Plan by the Board of Directors and the approval of this Plan by the affirmative vote of at least two-thirds of the votes cast at a meeting of the sole corporate member, said votes so cast at said meeting being equal to the requisite quorum, the Plan of Dissolution, the Certificate of Dissolution with requisite approvals noted thereon, and a Petition of Dissolution with appropriate attachments, including corporate governing documents, a final financial report and Board and Membership approvals shall be filed with the Attorney General of the State of New York pursuant to the Not-for-Profit Corporation Law of the State of New York.

D. The Board recommends the following plan be approved by the membership:

1. The corporation has fulfilled and discharged its contracts, and discharged its liabilities and no assets or liabilities remain.

2. All outstanding debts owing to the corporation have been collected.

3. There are no: (i) holders of certificates of subvention; (ii) holders of capital certificates; and (iii) members entitled to assets

4. There is no creditor or member who is unknown or cannot be found, and no assets need be distributed to the Comptroller of the State of New York pursuant to the Abandoned Property Law of such State.

5. J.G.B. HEALTH FACILITIES CORPORATION was incorporated on November 14, 1974 as J.G.B. NURSING HOME CORPORATION and on September18, 1979 changed its name to J.G.B. HEALTH FACILITIES CORPORATION and operated adult day healthcare programs in New York City, Buffalo, Albany and Niagara Falls until September 27, 2017. During 2017, J.G.B. REHABILITATION CORPORATION, another subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, requested and received approval from NYSDOH to take over operation of J.G.B. HEALTH FACILITIES CORPORATION's programs, and transfer, the four adult healthcare day programs to J.G.B REHABILITATION CORPORATION. Commencing on September 28, 2017 J.G.B REHABILITATION CORPORATION undertook all the operations formerly carried out by J.G.B. HEALTH FACILITIES CORPORATION. J.G.B. HEALTH FACILITIES CORPORATION's sources of revenue had been payments from Medicaid and other third-party providers. When the operation of the programs were transferred, J.G.B. HEALTH FACILITIES CORPORATION no longer had revenue or assets and ceased to operate.

E. The corporation shall carry out the plan of dissolution as expeditiously as possible.

F. A Certificate of Dissolution shall be executed, and all approvals required under N.Y. Not-for-Profit Corp. Law §1002 shall be obtained prior to filing the certificate of dissolution with the Department of State of the State of New York as required by law.

G. The approval of the dissolution of the corporation shall be obtained from governmental agencies or officers as follows: New York State Department of Health, the NYS Department of Taxation and local Departments of Finance, and the Office of the Attorney General of the State of New York

CERTIFICATION

State of New York)
) ss.:
County of New York)

I, Eric J. Maidenberg, Secretary of J.G.B. HEALTH FACILITIES COPORATION hereby certify that a special meeting of the Board of Directors of the Corporation was held at 5:15 PM on April 27, 2021 at 250 West 64th Street, New York, New York, at which a quorum was present and the within resolution was duly submitted and passed by a unanimous vote of the Directors.

Dated: May 14, 2021

Eric Maidenberg (May 14, 2021 14:36 EDT)

Eric J. Maidenberg
Secretary

Resolution of the
Board of Directors of
J.G.B. Health Facilities Corporation

WHEREAS, J.G.B. HEALTH FACILITIES CORPORATION was incorporated on November 14, 1974 as J.G.B. NURSING HOME CORPORATION and on September18, 1979 changed its name to J.G.B. HEALTH FACILITIES CORPORATION and operated adult day healthcare programs in New York City, Buffalo, Albany and Niagara Falls until September 27, 2017. During 2017, J.G.B REHABILITATION CORPORATION, another subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, requested and received approval from NYSDOH to take over operation of J.G.B. HEALTH FACILITIES CORPORATION's programs, and transfer, the four adult healthcare day programs to J.G.B REHABILITATION CORPORATION. Commencing on September 28, 2017 J.G.B REHABILITATION CORPORATION undertook all the operations formerly carried out by J.G.B. HEALTH FACILITIES CORPORATION. J.G.B. HEALTH FACILITIES CORPORATION's sources of revenue had been payments from Medicaid and other third-party providers. When the operation of the programs were transferred, J.G.B. HEALTH FACILITIES CORPORATION no longer had revenue or assets and ceased operation.

WHEREAS, the President and CEO of J.G.B. HEALTH FACILITIES CORPORATION has submitted a report recommending dissolution of this corporation because said corporation is no longer active and has no assets of liabilities, and

WHEREAS, a plan for the dissolution of J.G.B. HEALTH FACILITIES CORPORATION and for the distribution of its assets, annexed to this Resolution as **Exhibit A**, has been submitted to the Board of Directors at its April 27, 2021 meeting, and

WHEREAS the Secretary has previously notified the entire Board of Directors of J.G.B. HEALTH FACILITIES CORPORATION of the contemplated Dissolution and each of said Directors of J.G.B. HEALTH FACILITIES CORPORATION having either waive or/acknowledge receipt of due notice of said meeting, and

WHEREAS, the Board after due consideration of the report and plan has determined the validity thereof and in their unanimous opinion deemed it advisable to dissolve this corporation forthwith, and after its unanimous vote favoring adoption of the plan of dissolution of the Corporation, be it

RESOLVED, that the Board of Directors does hereby adopt said plan of dissolution and does recommend to the members, that in the best interests of all, this corporation be dissolved and its affairs wound up, and be it further

RESOLVED, that a special meeting of the sole corporate member of this corporation, the Jewish Guild for the Blind, be held at 250 W 64th Street, New York, New York on April 27, 2021, at such time as immediately follows this meeting, to vote on the question as to whether this corporation shall be dissolved and its assets distributed in accordance with the plan adopted by the Board of Directors, and that the Secretary has

previously notified the entire Board of Directors of the Jewish Guild for the Blind, the sole Corporate Member, of the contemplated Dissolution of J.G.B. HEALTH FACILITIES CORPORATION and each of said Directors of Jewish Guild for the Blind having either waive or/acknowledge receipt of due notice of said meeting, having been duly apprised of the purpose of said meeting.

Resolution of the
Sole Corporate Member of
J.G.B. Health Facilities Corporation

WHEREAS, J.G.B. HEALTH FACILITIES CORPORATION was incorporated on November 14, 1974 as J.G.B. NURSING HOME CORPORATION and on September18, 1979 changed its name to J.G.B. HEALTH FACILITIES CORPORATION and operated adult day healthcare programs in New York City, Buffalo, Albany and Niagara Falls until September 27, 2017. During 2017, J.G.B REHABILITATION CORPORATION, another subsidiary of LIGHTHOUSE GUILD INTERNATIONAL, requested and received approval from NYSDOH to take over operation of J.G.B. HEALTH FACILITIES CORPORATION's programs, and transfer, the four adult healthcare day programs to J.G.B REHABILITATION CORPORATION. Commencing on September 28, 2017 J.G.B REHABILITATION CORPORATION undertook all the operations formerly carried out by J.G.B. HEALTH FACILITIES CORPORATION. J.G.B. HEALTH FACILITIES CORPORATION's sources of revenue had been payments from Medicaid and other third-party providers. When the operation of the programs were transferred, J.G.B. HEALTH FACILITIES CORPORATION no longer had revenue or assets and ceased operation.

WHEREAS, the Board of Directors has adopted a plan of dissolution and distribution of assets of J.G.B. HEALTH FACILITIES CORPORATION and has recommended that this corporation be dissolved accordingly and a special meeting of the members having been duly called to consider the matter, and

WHEREAS, after considering the report of the President and the plan as adopted by the Board of Directors for the dissolution of this corporation and the distribution of its assets, it appears that said corporation no longer conducts activities and has no assets of liabilities,

Now, THEREFORE, by at least two-thirds of the votes cast at this meeting of the sole corporate member, the affirmative votes cast in favor of the action being at least equal to the quorum, blank votes and abstentions not being counted in the number of votes cast, it is

RESOLVED, that the plan of dissolution and distribution of assets be and the same hereby is approved; that a copy of the plan be made a part of the minutes of this meeting; and that the board and officers are hereby directed and authorized to take all steps required by law and otherwise necessary and appropriate to carry out the plan and wind up the affairs of the corporation.

CERTIFICATION

State of New York)
) ss.:
County of New York)

I, Eric J. Maidenberg, Secretary of JEWISH GUILD FOR THE BLIND, the sole corporate member of J.G.B. HEALTH FACILITIES COPORATION hereby certify that a special meeting of the Board of Directors of the JEWISH GUILD FOR THE BLIND was held at 5:25 PM on April 27, 2021 at 250 West 64th Street, at which a quorum was present, and the within Plan of Dissolution was duly submitted and passed by a unanimous vote of the Directors.

Dated: May 14, 2021

Eric Maidenberg (May 14, 2021 14:36 EDT)

Eric Maidenberg
Secretary

BY-LAWS

OF

J.G.B. HEALTH FACILITIES CORPORATION

ARTICLE I

OFFICE

Section 1.01 Office. The principal offices of J.G.B. Health Facilities Corporation (the "Corporation") shall be located at 15 West 65th Street, New York, New York 10023 and 111 East 59th Street, New York, New York 10022. The Corporation may change the location of the offices or maintain additional offices at such other places as the board of directors of the Corporation (collectively, the "Board of Directors" or the "Board") may from time to time determine.

ARTICLE II

MEMBER

Section 2.01 Member. The Corporation shall have a single member, which is The Jewish Guild for the Blind (the "Member").

Section 2.02 Annual Meeting. An annual meeting of the Member to consider yearly Corporation reports and to consider such other matters as may be appropriate, shall be held in May of each year, at a date, place and time as is fixed by the Chair, or in his or her absence, the Vice-Chair.

Section 2.03 Annual Report of Directors. The Board shall present at each annual meeting of the Member a report in accordance with Section 519 of the Not-for-Profit Corporation Law (the "NPCL").

Section 2.04 Special Meetings of the Member. The Member may in accordance with the NPCL hold special meetings at such place, date and time and for such purpose or purposes as the Member may determine, and the Chair or the Board may in any event call a special meeting in accord with the provisions of the NPCL. Any action that the Member may or must take by vote may also be taken without a meeting on written consent of the Member. All written consents and accompanying resolutions shall be filed with the minutes of the proceedings of the Corporation which are maintained by the Secretary.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01 Powers. The Board of Directors shall have general power to control and to manage the affairs and property of the Corporation in accordance with the purposes and limitations set forth in the Certificate of Incorporation, as may be amended from time to time, and as set forth in these By-Laws.

Section 3.02 Election and Term of Office. The sole members of the Board of Directors shall consist at all times of the following: All of the members of the Executive Committee of the Board of Directors of Lighthouse Guild International, Inc. ("Lighthouse Guild International") in office from time to time shall serve as *ex officio* Directors of the Corporation. In addition, the President of the Corporation, if such individual is not a member of such Executive Committee, shall serve as an *ex officio* Director of the Corporation.

Section 3.03 Meetings. There shall be an annual meeting and three (3) other quarterly, regular meetings of the Board of Directors at a place, date and time designated by the Chair. Special meetings of the Board of Directors may be called by the Chair, Vice-Chair, or the Chief Executive Officer and shall be held on the date and at the place designated by the person calling the meeting, except that the Chair may designate an alternate time that is within twenty-one (21) days of the requested date; in the event that the Chair designates an alternate date, the Chair will promptly so advise the person calling the meeting.

Section 3.04 Notice of Meetings. Notice of each meeting of the Board of Directors or any committee thereof shall be given personally or sent by mail, facsimile transmission, e-mail or other electronic means permitted by New York law to each Director, addressed to him or her at his or her address as it appears on the books and records of the Corporation, at least one (1) day before the day on which a Board or committee meeting is to be held. Such notice shall state the location, date and time of such meeting, and to the extent possible, the purpose or purposes for which the meeting is called. Notice of any adjournment of a meeting of the Board of Directors to another time or place shall be given to any Directors who were not present at the time of the adjournment. No notice of any meeting of the Board of Directors need be given to any Director who attends such meeting without protesting prior to or at the commencement of the meeting the lack of notice of such meeting, or to any Director who submits a signed waiver of notice whether before or after the meeting.

Section 3.05 Quorum and Voting. Unless a greater proportion is required by law, a majority of the total number of Directors entitled to vote if there were no vacancies (the "Entire Board") shall constitute a quorum for the transaction of business or of any specified item of business. Except as otherwise provided by law or by these By-Laws, the vote of a majority of the Entire Board shall be the act of the Board of Directors. If at any meeting of the Board of Directors there shall be less than a quorum present, the Directors present may adjourn the meeting until a quorum is obtained.

Section 3.06 Actions in Writing. Any action required or permitted under these By-Laws to be taken by the Board of Directors or by any committee thereof may be taken without a meeting if all members of the Board or the committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents shall be filed with the minutes of the proceedings of the Board of Directors or the committee, as applicable.

Section 3.07 Participation by Telephone. Any one or more Directors may participate in a meeting of the Board of Directors or any committee thereof by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE IV

OFFICERS

Section 4.01 Officers. The Officers of the Corporation shall be the Chair, the Vice-Chair, the Chief Executive Officer, the President, the Secretary, the Treasurer and such other Officers as shall be determined by the Chair with the ratification of the Board of Directors. With the exception of the Chair, the Vice-Chair, the Chief Executive Officer, the President and the Treasurer, Officers need not be Directors. One person may hold any two (2) or more of said Offices, except that the Offices of President and Chief Executive Officer cannot be held by the same person who holds the Office of Secretary.

Section 4.02 Election, Removal, Resignation, Vacancies. Except as specifically provided herein, the Officers shall be appointed by the Board of Directors for a term of one (1) year at the annual meeting of the Board of Directors. Each Officer so appointed shall hold such Office until the next annual meeting of the Board of Directors and until a successor shall have been appointed and ratified and shall qualify, or until his or her earlier death or resignation, or removal. Any Officer may resign his or her Office at any time. Any Officer may be removed at any time, with or without cause by the vote of the Board of Directors. A vacancy in any Office may be filled by the vote of the Board of Directors.

Section 4.03 Chair of the Board. The Chair shall be a member of the Board of Directors and shall preside at all meetings of the Board of Directors, shall have general charge and supervision of the affairs of the Corporation, shall be responsible for stimulating public understanding and support for the programs of the Corporation and its affiliates, shall assist in enlisting leadership for the Corporation, shall call meetings in accordance with these By-Laws and shall perform such other duties as may be assigned from time to time by the Board of Directors or the Member. James M. Dubin shall serve as the initial Chair for a term expiring on January 1, 2022. Prior to January 1, 2022, if the Office of the Chair becomes vacant by resignation or for any other reason, the Member shall appoint a successor to complete the then current term expiring on January 1, 2022, but such action may only be taken by the Member upon the majority vote of the individuals who are identified in the bylaws of Lighthouse Guild International as Guild Appointee Members.

Section 4.04 Vice-Chair of the Board. The Vice-Chair shall be a member of the Board of Directors and in the absence of the Chair, the Vice-Chair shall preside at all meetings of the Board of Directors. The Vice-Chair shall perform such other duties as may be assigned from time to time by the Chair or the Member. If the Chair is unable to perform his or her duties or is removed for any reason, the Vice-Chair shall succeed the Chair until a new Chair is elected. Joseph A. Ripp shall serve as the initial Vice-Chair for a term expiring on January 1, 2022. Prior to January 1, 2022, if the Office of the Vice-Chair becomes vacant by resignation or for any other reason, the Member shall appoint a successor to complete the then current term expiring on January 1, 2022, but such action may only be taken by the Member upon the majority vote of the individuals who are identified in the bylaws of Lighthouse Guild International as Lighthouse Appointee Members.

Section 4.05 Chief Executive Officer. The Chief Executive Officer shall exercise general supervision of the management of the affairs of the Corporation, subject, however, to the control of the Chair and the Board of Directors. The Chief Executive Officer shall from time to time make such reports concerning the affairs and operations of the Corporation as the Board of Directors may direct. The Chief Executive Officer shall have such other powers and perform such other duties as from time to time may be assigned to him or her by the Chair or the Board of Directors by contract or otherwise. Alan R. Morse shall serve as the initial Chief Executive Officer.

Section 4.06 President. The President shall report to the Chief Executive Officer, shall serve as Chief Executive Officer in the Chief Executive Officer's absence and shall perform such of the Chief Executive Officer's duties and such other duties as from time to time may be assigned to him or her by the Chief Executive Officer by contract or otherwise. Mark G. Ackermann shall serve as the initial President.

Section 4.07 Secretary and Assistant Secretaries. The Secretary and any Assistant Secretary shall keep the minute books and seal of the Corporation, and shall perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President by contract or otherwise.

Section 4.08 Treasurer and Assistant Treasurers. The Treasurer and any Assistant Treasurer shall perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him or her by the Board of Directors, the Chief Executive Officer or the President by contract or otherwise.

ARTICLE V

COMMITTEES

Section 5.01 Standing Committees. The standing committees of the Board shall be the Audit and Compliance Committee and such other standing committees as may be created by the Board.

Section 5.02 Audit and Compliance Committee. The Audit and Compliance Committee shall review and approve the annual audited financial statements of the Corporation and present such annual audited financial statements to the Board of Directors (such statements may be on a consolidated basis with affiliates of the Corporation) and shall oversee the compliance by the Corporation with applicable Federal, State and local laws and regulations, particularly those applicable to government supported services provided by the Corporation. The Chair, Vice-Chair and Treasurer shall be voting *ex officio* members of the Audit and Compliance Committee. The Chief Executive Officer and the President shall be non-voting *ex officio* members of the Audit and Compliance Committee.

Section 5.03 Special Committees. The Chair, with the ratification of the Board of Directors, may create and appoint the members of such special committees as may be deemed desirable. Special committees shall only have the powers specifically delegated to them by the Chair. Each such committee shall serve at the pleasure of the Board.

Section 5.04 Removal. Except with respect to *ex officio* members, any committee member may be removed at any time, with or without cause, by the Board.

Section 5.05 Vacancies. Except with respect to *ex officio* members, if any vacancy shall occur in any committee for any reason, including an increase in the number of members of such committee, the vacancy may be filled by the Board.

Section 5.06 Quorum, Vote. At all meetings of any committee, the presence in person of members constituting a majority of the membership of the entire committee shall be necessary and sufficient to constitute a quorum, and except as otherwise provided by law or by these By-Laws, the act of a majority of the members present at a meeting where a quorum is present shall be the act of the committee.

Section 5.07 Minutes. Each committee shall keep minutes of its proceedings to be filed in the minute books of the Corporation and shall report thereon to the Board of Directors at the request of the Board of Directors.

ARTICLE VI

RELATED PARTY TRANSACTIONS

Section 6.01 Related Party Contracts or Transactions. No contract or other transaction between the Corporation and one or more of its Directors or Officers, or between the Corporation and any other corporation, firm, association or other entity in which one or more of its Directors

or Officers are directors, officers or employees, or have a substantial financial interest is permitted other than a contract or other transaction with an entity that is an affiliate of the Corporation. Notwithstanding the foregoing, the Board may authorize such contract or transaction if the involved Director, Officer or employee fully discloses in good faith all material facts as to such Director's, Officer's or employee's interest in such contract or transaction and as to any such common directorship, officership or financial interest, or such facts are known to the Board, and if the Board authorizes such contract or transaction by a vote sufficient for such purpose without counting the vote or votes of any interested Director.

Section 6.02 When Avoidable. If there was no such good faith disclosure to, or knowledge of, the Board, as set forth above, or if the vote of such interested Director was necessary for the authorization of such contract or transaction, the Corporation may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the Corporation at the time it was authorized by the Board.

Section 6.03 Quorum. Common or interested Directors may be counted only for the purposes of determining the presence of a quorum at a meeting of the Board which authorizes such contract or transaction.

ARTICLE VII

INDEMNIFICATION

Section 7.01 Indemnification. The Corporation shall indemnify each Member and former Member, each Director and former Director, each of its Officers and former Officers, and such of its employees and agents (if any) as have been designated for indemnification by the Board in its discretion, and each person serving at the request of the Corporation as a Director, Officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (each, an "Indemnitee"), who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such Indemnitee was or is a person as described herein, whether by or in the right of the Corporation or not, in a manner and to the fullest extent now or hereafter permitted by law. Indemnitees shall be indemnified (a) against all expenses (including, without limitation, attorneys' and other experts' fees and disbursements), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any actual or threatened action, suit or other proceeding, whether civil, criminal, administrative, investigative or an arbitration, or in connection with any appeal therein, or otherwise, and (b) against all expenses (including, without limitation, attorneys' and other experts' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of any action, suit or other proceeding by or in the right of the Corporation or in connection with any appeal therein, or otherwise; and no provision of these By-Laws is intended to be construed as limiting, prohibiting, denying or abrogating any of the general or specific powers or rights conferred under the Not-for-Profit Corporation Law upon the Corporation to furnish, or upon any court to award, such indemnification, or such other indemnification as may otherwise be authorized pursuant to the Not-for-Profit Corporation Law or any other law now or hereafter in effect, including, without limitation, indemnification of any employees or agents of the Corporation or another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

Section 7.02 Advances of Expenses. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding in the specific case upon receipt of an undertaking by or on behalf of the Member, the member of the Board or an Officer, employee or agent of the Corporation to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Corporation as authorized by the Not-for-Profit Corporation Law, and then, only to the extent such advances do not exceed the indemnification to which such person is entitled.

Section 7.03 Determinations. If and to the extent such indemnification shall require a determination whether the relevant person met the applicable standard of conduct set forth in the Not-for-Profit Corporation Law, such determination shall be made expeditiously at the cost of the Corporation after a request for the same from the person seeking indemnification. If indemnification is to be given or an advance of expenses is to be made upon a determination by independent legal counsel, such counsel may be the regular counsel to the Corporation. In rendering such opinion, such counsel shall be entitled to rely upon statements of fact furnished to

them by persons reasonably believed by them to be credible, and such counsel shall have no liability or responsibility for the accuracy of the facts so relied upon, nor shall such counsel have any liability for the exercise of their own judgment as to matters of fact or law forming a part of the process of providing such opinion. The fees and disbursements of counsel engaged to render such opinion shall be paid by the Corporation whether or not such counsel ultimately are able to render the opinion that is the subject of their engagement.

Section 7.04 Insurance. Subject to the New York Not-for-Profit Corporation Law, the Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a Member, a member of the Board or an Officer, employee or agent of the Corporation against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of these By-Laws or otherwise.

Section 7.05 Applicability and Non Exclusivity. The right of indemnification herein provided for shall be in addition to any and all rights to which any Indemnitee otherwise might be entitled, and the provisions hereof shall neither impair nor adversely affect such rights.

Section 7.06 Limitation. No amendment, modification or rescission of this Article VII shall be effective to limit any person's right to indemnification with respect to any alleged cause of action that accrues or other incident or matter that occurs prior to the date on which such modification, amendment or rescission is adopted.

ARTICLE VIII

AMENDMENTS

Section 8.01 Members. Subject to any limitations set forth in these By-Laws, the Certificate of Incorporation and applicable law, any By-Law may be adopted, amended, modified, restated or repealed only by the Member. Notwithstanding the foregoing, any amendment to the By-Laws that would diminish the protections for Lighthouse International contained in these By-Laws prior to January 1, 2022 shall not be authorized by the Member without the affirmative vote of seven (7) individuals on the board of directors of the Member, and further provided that one of such seven (7) individuals is a person who is an Independent Lighthouse Appointee as such term is defined in the bylaws of Lighthouse Guild International.

Section 8.02 Notice of Meeting to Amend. Notice of any such meeting to adopt, amend, modify, restate or repeal any By-Law shall set forth the nature of the changes proposed to be made to these By-Laws.

Adopted by the Member

STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12208

PUBLIC HEALTH COUNCIL

September 5, 1974

193951

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after due inquiry and investigation at a meeting of the Public Health Council held on the 30th day of August, 1974, I hereby certify that the Certificate of Incorporation of J.G.B. Nursing Home Corporation is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams
MARIANNE K. ADAMS
Secretary

Sent to: Morton Pepper, Esq.
Pepper and Pepper
55 Liberty Street
New York, New York 10005

J.G.B. Nursing Home Corporation
15 West 65th Street
New York, New York 10023

CERTIFICATE OF INCORPORATION

of

J.G.B. NURSING HOME CORPORATION

Under Section 402 of the Not-For-Profit Corporation Law and the Public Health Law

We, the undersigned, for the purpose of forming a Nursing Home Corporation pursuant to the Not-For-Profit Corporation Law and the Public Health Law of the State of New York hereby certify:

I

The name of the proposed Corporation is J.G.B. NURSING HOME CORPORATION (hereinafter referred to as the "Corporation").

II

The Corporation is not formed for pecuniary profit or financial gain.

All income and earnings of the Corporation shall be used exclusively for its corporate purposes.

The Corporation is a corporation as defined in subparagraph (A)(5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law.

III

The purpose for which the Corporation is formed is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a

nursing home project pursuant to the terms and provisions of the Public Health Law.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be "Type D".

IV

The territory in which the operations of the Corporation will be principally conducted is the State of New York.

V

The principal office of the Corporation is to be located in the City of New York, County of New York, and State of New York.

VI

The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation.

VII

The names and residences of the initial Directors are:

Name	Address
John Mosler	250 Park Avenue New York, N.Y. 10017
Jerry I. Speyer	Tishman Realty & Construction 666 Fifth Avenue New York, N.Y. 10019
Roger J. King	Lincoln Avenue Port Chester, N.Y. 10573
Morton Pepper	55 Liberty Street New York, N.Y. 10005

VIII

The duration of the Corporation shall be two years from the date of the filing of this Certificate by the Secretary of State.

IX

The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law and the Not-For-Profit Corporation Law.

X

The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law.

XI

The Corporation is organized and shall be operated as a non-profit organization, and shall not have power to issue certificates of stock or to declare or pay dividends,

and shall be operated exclusively for the purposes enumerated in Articles II and III hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Corporation shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Corporation shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties.

Upon the dissolution of the Corporation the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation distribute all of the remaining assets of the Corporation exclusively for the purposes of the Corporation or for a similar public use or purpose, to such organization or organizations organized and operated exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c)(3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provisions of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a

local government within the State of New York, as the Board of Directors shall determine, or in the absence of such determination by the Board of Directors such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of the Corporation. In no event shall the assets of this Corporation upon dissolution be distributed to a director, officer, employee or member of the Corporation.

The dissolution of this Corporation and any distribution of the assets of this Corporation incident thereto shall be subject to such laws, if any, then in force as may require the approval thereof or consent thereto by any court or judge thereof having jurisdiction or by any governmental department or agency or official thereof.

XII

All of the incorporators of this corporation are natural persons over the age of 19 years.

XIII

All the consents and approvals required are endorsed upon and annexed hereto.

The following consents and approvals are annexed hereto.

1. The consent of the Commissioner of Health to the filing of this Certificate of Incorporation with the Secretary of State.

2. The approval of a Justice of the Supreme Court, who serves in the district wherein the Corporation is to have an office, to the formation of this Corporation.

3. The approval of the Public Health Council.

XIV

The post office address to which the Secretary of State shall mail a copy of any notice required by law is: 15 West 65th Street, New York, N.Y. 10023.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 21st day of May, 1974.

John Mosler
250 Park Avenue, New York, N.Y.
10017

Jerry I. Speyer
666 Fifth Avenue, New York, N.Y.
10019

Roger J. King
Lincoln Avenue, Port Chester, N.Y.
10573

Morton Pepper
55 Liberty Street, New York, N.Y.
10005

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 6th day of May, 1974, before me personally came JOHN MOSLER, to me known and known to me to be one of the persons described in and who executed the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and he duly acknowledged to me that he executed the same.

Notary Public

SHIRLEY ROTHSTEIN
NOTARY PUBLIC, State of New York
No. 03-8681065 Qual. in Bronx Co.
Cert. filed in New York County
Commission Expires March 30, 1976

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 3rd day of May, 1974, before me personally came JERRY I. SPEYER, to me known and known to me to be one of the persons described in and who executed the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and he duly acknowledged to me that he executed the same.

Notary Public

MICHAEL J. HUGHES
NOTARY PUBLIC, STATE OF NEW YORK
No. 1890273
Qualified in Kings County
Term Expires March 30, 1975

STATE OF NEW YORK)
COUNTY OF)
ss.:

On this 6 day of May, 1974, before me personally came ROGER J. KING, to me known and known to me to be one of the persons described in and who executed the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and he duly acknowledged to me that he executed the same.

Notary Public

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

On this 1st day of May, 1974, before me personally came MORTON PEPPER, to me known and known to me to be one of the persons described in and who executed the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and he duly acknowledged to me that he executed the same.

WILLIAM E. FROST
Notary Public - State of New York
No. 41-6124100 - Queens County
Commission Expires March 30, 1976

CONSENT TO INCORPORATION
BY COMMISSIONER OF HEALTH

I, Hollis S. Ingraham, M.D., Commissioner of Health of the State of New York, do this 30th day of August, 1974, pursuant to Article 28-A of the Public Health Law hereby certify that I consent to the filing of the foregoing Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, with the Secretary of State of the State of New York.

HOLLIS S. INGRAHAM, M.D.
COMMISSIONER OF HEALTH

By Donald B. Dickson M.D.
DEPUTY COMMISSIONER

Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated: 10/1/74

LOUIS J. LEFKOWITZ
Attorney General

By Lawrence J. Rivers
Assistant Attorney General

Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated:

LOUIS J. LEFKOWITZ
Attorney General

By
Assistant Attorney General

The undersigned, a Justice of the Supreme Court of the State of New York, First Judicial District, wherein is located the principal office of J.G.B. NURSING HOME CORPORATION, hereby approves the within Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and the filing hereof.

Dated: NOV 6 - 1974, 1974.

JUSTICE OF THE SUPREME COURT
BIRDIE AMSTERDAM

The undersigned, a Justice of the Supreme Court of the State of New York, First Judicial District, wherein is located the principal office of J.G.B. NURSING HOME CORPORATION, hereby approves the within Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and the filing hereof.

Dated: NOV 6 - 1974 1974.

JUSTICE OF THE SUPREME COURT
BIRDIE AMSTERDAM

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193951 — 11

CERTIFICATE OF INCORPORATION

of

J.G.B. NURSING HOME CORPORATION

Under Section 402 of the Not-For-Profit Corporation Law and the Public Health Law.

Dated: May 1, 1974

PEPPER & PEPPER
ATTORNEYS AT LAW
55 LIBERTY STREET
NEW YORK, N. Y. 10005
WO 4-0285

11

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED NOV 14 1974
TAX $ none
FILING FEE $ 50

Secretary of State

31 ny
Type D

A345028

CERTIFICATE OF AMENDMENT
of
CERTIFICATE OF INCORPORATION
of

J.G.B. NURSING HOME CORPORATION

Under Section 803 of the
Not-For-Profit Corporation Law.

We, the undersigned, being the President and Secretary of J.G.B. NURSING HOME CORPORATION, do certify and state:

1. The name of the Corporation is J.G.B. NURSING HOME CORPORATION.

2. The Certificate of Incorporation was filed by the Department of State on the 14th day of November, 1974. The Corporation was formed under the Not-For-Profit Corporation Law and the Public Health Law.

3. The Corporation is a corporation as defined in subparagraph (A)(5) of Section 102. The corporation is a Type D corporation under Section 201, and it will be a Type B corporation after the amendments stated herein.

4. The post office address to which the Secretary of State shall mail a copy of any notice required by law is

15 West 65th Street
New York, N. Y. 10023.

5. The amendments effected are:

(a) The heading of the certificate of incorporation now reads as follows:

"CERTIFICATE OF INCORPORATION
of
J.G.B. NURSING HOME CORPORATION

Under Section 402 of the Not-For-Profit Corporation Law and the Public Health Law"

The heading which is to be substituted reads as follows:

"CERTIFICATE OF INCORPORATION
of
J.G.B. NURSING HOME CORPORATION

Under Section 402 of the Not-For-Profit Corporation Law"

(b) The opening paragraph of the certificate of incorporation now reads as follows:

"We, the undersigned, for the purpose of forming a Nursing Home corporation pursuant to the Not-For-Profit Corporation Law and the Public Health Law of the State of New York hereby certify:"

The opening paragraph of the certificate of incorporation which is to be substituted reads as follows:

"We, the undersigned, for the purpose of forming a Nursing Home Corporation pursuant to the Not-For-Profit Corporation Law of the State of New York hereby certify:"

(c) Article III of the Certificate of Incorporation now reads as follows:

"The purpose for which the Corporation is formed is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be 'Type D'."

Article III of the Certificate of Incorporation which is to be substituted reads as follows:

"The purpose for which the Corporation is formed is to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home.

This Corporation, pursuant to Section 201 of the Not-For-Profit Corporation Law, shall be 'Type B'."

(d) Article VI of the Certificate of Incorporation now reads as follows:

"The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation. One additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the 'Commissioner'). In the absence of fraud or bad faith said additional director appointed by the Commissioner shall not be personally liable for the debts, obligations or liabilities of the Corporation."

Article VI of the Certificate of Incorporation which is to be substituted reads as follows:

"The number of directors of the Corporation shall be not less than three nor more than fifteen. Directors shall be elected by the members of the Corporation."

(e) Article VIII of the Certificate of Incorporation now reads as follows:

"The duration of the Corporation shall be two years from the date of the filing of this Certificate by the Secretary of State."

Article VIII of the Certificate of Incorporation which is to be substituted reads as follows:

"The duration of the Corporation shall be perpetual."

(f) Article IX of the Certificate of Incorporation now reads as follows:

"The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Public Health Law and the Not-For-Profit Corporation Law."

Article IX of the Certificate of Incorporation which is to be substituted reads as follows:

"The real property of the Corporation shall not be sold, transferred, encumbered or assigned except as permitted by the provisions of the Not-For-Profit Corporation Law."

(g) Article X of the Certificate of Incorporation now reads as follows:

> "The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision and control of the Commissioner pursuant to the provisions of the Public Health Law."

Article X of the Certificate of Incorporation is to be deleted.

(h) Articles XI, XII, XIII and XIV of the Certificate of Incorporation are renumbered Articles X, XI, XII and XIII respectively.

6. The amendment of the Certificate of Incorporation was authorized by majority vote of the members entitled to vote thereon. at a meeting held on December 15, 1975.

7. The consent of the Commissioner of Health and the approval of the Public Health Council and of a Justice of the Supreme Court of the State of New York were annexed to the Certificate of Incorporation. Before this Certificate of Amendment is delivered to the Department of State, the approval of the Public Health Council and of a Justice of the Supreme Court of the State of New York, First Judicial Department and the consent of the Commissioner of Health, will be endorsed upon or annexed to the Certificate of Amendment.

8. The office of the Corporation is located in New York County.

IN WITNESS WHEREOF we have made, subscribed and verified this Certificate this 15th day of December, 1975.

President
IRVING G. KAUFMANN

Secretary
ZELLA BUTLER

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

IRVING G. KAUFMANN being duly sworn, deposes and says that he is the President of J.G.B. NURSING HOME CORPORATION; that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION and knows the contents thereof; and that the same is true to his own knowledge.

Sworn to before me this
15 day of December, 1975

Notary Public

JOHN F. HEIMERDINGER
Notary Public, State of New York
No. 60-1741190 Westchester County
Certificate filed in New York Co.
Term Expires March 30, 1977

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ZELLA BUTLER being duly sworn, deposes and says that he is the Secretary of J.G.B. NURSING HOME CORPORATION; that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION and knows the contents thereof; and that the same is true to his own knowledge.

Sworn to before me this
15 day of December, 1975

Notary Public

JOHN F. HEIMERDINGER
Notary Public, State of New York
No. 60-1741190 Westchester County
Certificate filed in New York Co.
Term Expires March 30, 1977

The undersigned, a Justice of the Supreme Court of the State of New York, First Judicial District, wherein is located the principal office of J.G.B. NURSING HOME CORPORATION, hereby approves the within Certificate of Amendment of the Certificate of Incorporation of J.G.B. NURSING HOME CORPORATION, and the filing hereof.

Dated: NEW YORK, N.Y.

AUG 25 1976

Alfred M. Ascione
Justice of the Supreme Court
ALFRED M. ASCIONE

Notice of Application Waived
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of activities otherwise limited by law.)

Dated: August 25 1976

LOUIS J. LEFKOWITZ
Attorney General

By _____
Assistant Attorney General

-8-

I, Robert P. Whalen, M.D., Commissioner of Health of the State of New York, do this 27th day of July, 1976, pursuant to Section 804 (a) of the Not-for-Profit Corporation Law hereby certify that I consent to the filing of the foregoing Certificate of Amendment of the Certificate of Incorporation of J.G.B. Nursing Home Corporation with the Secretary of State of the State of New York.

ROBERT P. WHALEN, M.D.
Commissioner

BY: Edward D. Coates
EDWARD D. COATES, M.D.
Deputy Commissioner

MD

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

July 26, 1976

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 23rd day of July, 1976, I hereby certify that the Certificate of Amendment of the Certificate of Incorporation of J.G.B. Nursing Home Corporation is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams
MARIANNE K. ADAMS
Secretary

Sent to: Morton Pepper, Esq.
Pepper and Pepper
55 Liberty Street
New York, New York 10005

cc: J.G.B. Nursing Home Corporation
15 West 65th Street
New York, New York 10023

-10-

A349028

CERTIFICATE OF AMENDMENT
of
CERTIFICATE OF INCORPORATION
of

J.G.B. NURSING HOME CORPORATION

Under Section 803 of the Not-For-Profit Corporation Law.

Dated: December , 1975

PEPPER & PEPPER
ATTORNEYS AT LAW
55 LIBERTY STREET
NEW YORK, N. Y. 10005
WO 4-0255

STATE OF NEW YORK
DEPARTMENT OF STATE
FEE $ none
FILING FEE $ 30
FILED OCT 15 1976
Secretary of State

31 mj

-11

-11

AUG 5 - 1976

usc usc

RESTATED CERTIFICATE OF INCORPORATION

of

J.G.B. NURSING HOME CORPORATION

Under Section 805 of the Not-for-Profit Corporation Law

A607069

The undersigned, BERNARD H. MENDICK and MRS. JACK E. BUTLER, being the President and the Secretary, respectively, of the J.G.B. NURSING HOME CORPORATION, hereby certify that:

1. The name of the Corporation is J.G.B. NURSING HOME CORPORATION.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on November 14, 1974 and the Corporation is currently a Type B Corporation. The Public Heath Council, the Commission of Health and a Justice of the Supreme Court, First Judicial Department, approved, and the Attorney General waived notice of, the filing of the Certificate of Incorporation.

3. The Certificate of Incorporation of the Corporation is hereby amended to effect the following changes authorized by the Not-for-Profit Corporation Law:

A. To change the name of the Corporation from J.G.B. NURSING HOME CORPORATION to J.G.B. HEALTH FACILITIES CORPORATION.

B. To restate Article II of the Certificate of Incorporation.

C. To amend Article III of the Certificate of Incorporation to amend and restate the corporate purposes of the Corporation.

D. To amend the provisions of Article IV of the Certificate of Incorporation respecting the territory in which the operations of the Corporation will be principally conducted and renumber it as Article VII thereof.

E. To renumber Article V of the Certificate of Incorporation as Article IV thereof.

F. To renumber Article VI of the Certificate of Incorporation as Article VIII thereof.

G. To strike out, as surplusage, the provisions respecting the original directors of the Corporation now set forth in Article VII of the Certificate of Incorporation.

H. To renumber Article VIII of the Certificate of Incorporation as Article IX thereof.

I. To strike out Article IX of the Certificate

of Incorporation relating to the sale, transfer, encumbrance or assignment of real property.

J. To amend the provisions set forth in Article X of the Certificate of Incorporation respecting compensation, liquidation and distribution of assets and to set forth the substance thereof in Article II and new Articles V and XIII of the Certificate of Incorporation.

K. To strike out, as surplusage, the provision respecting the ages of the incorporators now set forth in Article XI of the Certificate of Incorporation.

L. To amend Article XII of the Certificate of Incorporation respecting required consents and approvals.

M. To renumber Article XIII of the Certificate of Incorporation as Article X thereof.

N. To add a new Article VI of the Certificate of Incorporation prohibiting certain propaganda and lobbying activities.

O. To add a new Article XI of the Certificate of Incorporation permitting the Board of Directors of the Corporation or any committee thereof to execute a written consent in lieu of a meeting.

4. To accomplish the foregoing, the Certificate of Incorporation, as hereby amended and changed, is hereby restated to read as follows:

"CERTIFICATE OF INCORPORATION

of

J.G.B. HEALTH FACILITIES CORPORATION

Under Section 402 of the Not-for-Profit Corporation Law

I. The name of the Corporation is J.G.B. HEALTH FACILITES CORPORATION.

II. The Corporation described herein is a corporation as defined in Section 102(a)(5) of the Not-for-Profit Corporation Law. The Corporation shall not be conducted or operated for profit and no part of the net earnings of the Corporation shall inure to the benefit of any member or individual, nor shall any of the profits or assets of the Corporation be used other than for the purposes of the Corporation.

III. A. The purposes of the Corporation are:

(i) To improve the physical and mental condition of adult blind persons; to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a home for adult blind persons consisting of a skilled nursing facility

for those adult blind persons who require the services of licensed professional nurses and a health related facility for those adult blind residents who are unable to live in the community and need an institutional environment; apartment housing for those adult blind persons who can no longer live in the community but do not require services of nurses or an institutional environment; and housing for staff members of these facilities.

(ii) To obtain and utilize technical and other resources to assist the Corporation in the achievement of its purposes.

(iii) To promote and assist in coordinating other organizations and agencies, either public or private, to better serve the members of the Corporation and the community.

(iv) To render financial assistance to any corporation, community chest, fund, foundation, agency or institution which is organized and operated exclusively for, and devoted to the realization of, charitable, scientific, religious, literary, artistic or educational purposes and is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of

1954, as amended (hereinafter referred to as the "Code").

(v) To solicit, accept and receive, by gift, bequest, devise or benefit of trust; and to hold, own and administer, any property, real, personal, tangible or intangible, wherever located.

(vi) In furtherance of the purposes of the Corporation, to be a member, associate or manager of other non-profit activities, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations.

(vii) In furtherance of the purposes of the Corporation, to purchase, lease, or otherwise acquire, to hold, and to mortgage, sell or otherwise dispose of or encumber, real and personal property or any share or interest therein, and to invest, reinvest and deal with the same.

(viii) To borrow money, to make, accept, endorse, execute and issue promissory notes and other obligations for money borrowed, property acquired or services received.

(ix) To make and perform contracts and incur liabilities.

(x) In furtherance of the purposes of the Corporation, to become a member of any committee or other organization.

(xi) To receive and maintain a fund or funds, to have, hold, control, manage, sell and exchange the same, to change the investment thereof, to invest and reinvest the same and the income therefrom, and to apply the income therefrom and the principal thereof to any of the purposes of the Corporation.

(xii) To do all the things permitted by Section 202 of the Not-for-Profit Corporation Law necessary and useful to fulfill and promote its purposes; provided, however, that, notwithstanding any provision of this Certificate of Incorporation or the By-Laws of the Corporation, the Corporation shall not carry on any activities which are not permitted to be carried on by an organization described in Section 501(c)(3) of the Code.

B. Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Section 404(b)-(n) and (p)-(s) of the Not-for-Profit Corporation Law.

C. The Corporation shall be considered a Type B Corporation as that term is defined in Section 201 of the Not-for-Profit Corporation Law.

IV. The principal office of the Corporation is to be located in the City of New York, County of New York and State of New York.

V. In the event of liquidation, dissolution or winding up of the Corporation, whether voluntary, involuntary or by operation of law, the property or other assets of the Corporation remaining after the payment, satisfaction and discharge of liabilities or obligations, shall be distributed entirely to or among one or more organizations which shall have received notice that it is or they are an organization or organizations exempt from taxation under Section 170(b)(1)(A) of the Code (other than clauses (vii) and (viii) thereof) and described in Section 501(c)(3) of the Code (each of which has been in existence and so described for a continuous period of at least sixty (60) calendar months preceding such distribution) subject to the order of the Supreme Court as and when provided by law. No member of the Corporation or other individual shall have any right, title or interest in or to any of the remaining assets of the Corporation.

VI. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in, any political campaign on behalf of any candidate for public office.

VII. The territory in which the operations of the Corporation are principally to be conducted is the United States of America.

VIII. The number of directors of the Corporation shall be not less than three (3) nor more than fifteen (15). Directors shall be elected by the members of the Corporation.

IX. The duration of the Corporation shall be perpetual.

X. The post office address to which the Secretary of State shall mail any notices required by law is:

15 West 65th Street
New York, New York 10023

XI. Any action required or permitted to be taken by the Board of Directors of the Corporation or any committee thereof may be taken without a meeting if all members of the Board of Directors or any such committee consent in writing to the adoption of a resolution authorizing the action. The resolution and the written consents thereto by the members of the Board of Directors or any such committee shall be filed with the minutes of the proceedings of the Board of Directors or such committee.

XII. Prior to the delivery to the Department of State for filing, all necessary consents required by law will be

endorsed upon or annexed to this Certificate.

XIII. The Corporation may pay to any director, officer or any other person only reasonable compensation for services actually rendered to it in furtherance of the Corporation's charitable purposes and only upon the approval of the Board of Directors of the Corporation or any appropriate committee thereof."

5. This Restated Certificate of Incorporation of the Corporation was authorized by the affirmative vote of a majority of the members of J.G.B. NURSING HOME CORPORATION entitled to vote thereon in person or by proxy at a meeting duly called and held for that purpose at which a quorum was present and acting throughout, at 15 West 65th Street, New York, New York, on August 23, 1978.

IN WITNESS WHEREOF, we have made and signed this Restated Certificate of Incorporation this 18th day of September, 1978, and affirm that the statements made herein are true under the penalties of perjury.

Bernard H. Mendick
President

Mrs. Jack E. Butler
Secretary

CERTIFICATE OF APPROVAL

XAVIER C. RICCOBONO

I, the undersigned, a Justice of the Supreme Court of the State of New York in the First Judicial District in which the principal office of J. G. B. NURSING HOME CORPORATION is to be located, do hereby approve of the foregoing RESTATED Certificate of Incorporation of J. G. B. NURSING HOME CORPORATION and the filing thereof.

New York, New York

JUL 25 1979

Justice of the Supreme
Court of the State of New York

XAVIER C. RICCOBONO

The undersigned has no objection to the foregoing Certificate.

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE

Attorney General of the State of New York

7/18/79

By: _____
Assistant Attorney General
of the State of New York

ROBERT ABRAMS
ATTORNEY GENERAL
STATE OF NEW YORK

RICHARD J. ROSENTHAL
ASSISTANT ATTORNEY GENERAL

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STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

KNOW ALL MEN BY THESE PRESENTS:

In accordance with action taken after inquiry and investigation at a meeting of the Public Health Council held on the 25th day of May, 1979, I hereby certify that the Restated Certificate of Incorporation of J.G.B. Nursing Home Corporation is APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Marianne K. Adams
MARIANNE K. ADAMS
Secretary

Sent to: Mr. Richard H. Gilden
Rosenman, Colin, Freund,
Lewis and Cohen
Attorneys at Law
757 Madison Avenue
New York, New York 10022

cc: J.G.B. Nursing Home Corporation
15 West 65th Street
New York, New York 10023

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RESTATED CERTIFICATE OF INCORPORATION

of

J.G.B. NURSING HOME CORPORATION

Under Section 805 of the Not-for-Profit Corporation Law

A607069

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED SEP 18 1979
AMT OF CHECK $ 39
FILING FEE $ 30
TAX $
COPY $ 9
CERT $
REFUND $
BY:

408018

Type B

ROSENMAN COLIN FREUND LEWIS & COHEN
575 MADISON AVENUE, NEW YORK, N.Y. 10022
(212) 644-7000

CERTIFICATE OF AMENDMENT

of

CERTIFICATE OF INCORPORATION

of

J.G.B. HEALTH FACILITIES CORPORATION

Under Section 803 of the Not-for-Profit Corporation Law

488321

The undersigned, Robert H. Haines and Diane Levine being the President and the Assistant Secretary, respectively, of the J.G.B. HEALTH FACILITIES CORPORATION, hereby certify that:

1. The name of the Corporation is J.G.B. HEALTH FACILITIES CORPORATION.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on November 14, 1974 under the Not-for-Profit Corporation Law and the Public Health Law. A Certificate of Amendment of the Certificate of Incorporation was filed on October 15, 1976 under the Not-for-Profit Corporation Law. A Restated Certificate of Incorporation was filed on September 18, 1979 under the Not-for-Profit Corporation Law.

3. The corporation is a corporation as defined in subparagraph (a)(5) of section 102 of the Not-for-Profit Corporation Law. The Corporation is a Type B corporation under section 201 and will be a Type B corporation after the amendment stated herein.

4. The post office address to which the Secretary of State shall mail any notices required by law is:

15 West 65th Street
New York, New York 10023

5. The amendment effected is:

(a) Article III of the Certificate of Incorporation now reads as follows:

"A. The purposes of the Corporation are:

(i) To improve the physical and mental condition of adult blind persons; to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a home for adult blind persons consisting of a skilled nursing facility for those adult blind persons who require the services of licensed professional nurses and a health related facility for those adult blind residents who are unable to live in the community and need an institutional environment; apartment housing for those adult blind persons who can no longer live in the community but do not require services of nurses or an institutional environment; and housing for staff members of these facilities.

(ii) To obtain and utilize technical and other resources to assist the Corporation in the achievement of its purposes.

(iii) To promote and assist in coordinating other organizations and agencies, either public or private, to better serve the members of the Corporation and the community.

(iv) To render financial assistance to any corporation, community chest, fund, foundation, agency or institution which is organized and operated exclusively for, and devoted to the realization of, charitable, scientific, religious, literary, artistic or educational purposes and is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (hereinafter referred to as the "Code").

(v) To solicit, accept and receive, by gift, bequest, devise or benefit of trust; and to hold, own and administer, any property, real, personal, tangible or intangible, wherever located.

(vi) In furtherance of the purposes of the Corporation, to be a member, associate or manager of other non-profit activities, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations.

(vii) In furtherance of the purposes of the Corporation, to purchase, lease, or otherwise acquire, to hold, and to mortgage, sell or otherwise dispose of or encumber, real and personal property or any share or interest therein,

and to invest, reinvest and deal with the same.

(viii) To borrow money, to make, accept, endorse, execute and issue promissory notes and other obligations for money borrowed, property acquired or services received.

(ix) To make and perform contracts and incur liabilities.

(x) In furtherance of the purposes of the Corporation, to become a member of any committee or other organization.

(xi) To receive and maintain a fund or funds, to have, hold, control, manage, sell and exchange the same, to change the investment thereof, to invest and reinvest the same and the income therefrom, and to apply the income therefrom and the principal thereof to any of the purposes of the Corporation.

(xii) To do all the things permitted by Section 202 of the Not-for-Profit Corporation Law necessary and useful to fulfill and promote its purposes; provided, however, that, notwithstanding any provision of this Certificate of Incorporation or the By-Laws of the Corporation, the Corporation shall not carry on any activities which are not permitted to be carried on by an organization described in Section 501(c)(3) of the Code.

B. Nothing herein contained shall authorize the Corporation,

directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Section 404(b)-(n) and (p)-(s) of the Not-for-Profit Corporation Law.

C. The Corporation shall be considered a Type B Corporation as that term is defined in Section 201 of the Not-for-Profit Corporation Law."

Article III of the Certificate of Incorporation which is to be substituted reads as follows:

"A. The purposes of the Corporation are:

(i) To improve the physical and mental condition of adult blind persons; to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a home for adult blind persons consisting of a skilled nursing facility for those adult blind persons who require the services of licensed professional nurses and a health related facility for those adult blind residents who are unable to live in the community and need an institutional environment; apartment housing for those adult blind persons who can no longer live in the community but do not require services of nurses or an institutional environment; and housing for staff members of these facilities.

(ii) To establish, operate and maintain community residences and intermediate care facilities for developmentally and mentally disabled multi-handicapped persons, providing program, care services, habilitation, home-like environment and social activities in community based programs for this population, or any combination of such programs.

(iii) To obtain and utilize technical and other resources to assist the Corporation in the achievement of its purposes.

(iv) To promote and assist in coordinating other organizations and agencies, either public or private, to better serve the members of the Corporation and the community.

(v) To render financial assistance to any corporation, community chest, fund, foundation, agency or institution which is organized and operated exclusively for, and devoted to the realization of, charitable, scientific, religious, literary, artistic or educational purposes and is exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1954, as amended (hereinafter referred to as the "Code").

(vi) To solicit, accept and receive, by gift, bequest, devise or benefit of trust; and to hold, own and administer, any property, real, personal, tangible or intangible, wherever located.

(vii) In furtherance of the purposes of the Corporation, to be a member, associate or manager of other non-profit activities, or to the extent permitted in any other jurisdiction to be an incorporator of other corporations.

(viii) In furtherance of the purposes of the Corporation, to purchase, lease, or otherwise acquire, to hold, and to mortgage, sell or otherwise dispose of or encumber, real and personal property or any share or interest therein, and to invest, reinvest and deal with the same.

(ix) To borrow money, to make, accept, endorse, execute and issue promissory notes and other obligations for money borrowed, property acquired or services received.

(x) To make and perform contracts and incur liabilities.

(xi) In furtherance of the purposes of the Corporation, to become a member of any committee or organization.

(xii) To receive and maintain a fund or funds, to have, hold, control, manage, sell and exchange the same, to change the investment thereof, to invest and reinvest the same and the income therefrom, and to apply the income therefrom and the principal thereof to any of the purposes of the Corporation.

(xiii) To do all the things permitted by Section 202 of the Not-for-Profit Corporation Law necessary and useful to fulfill and promote its purposes; provided, however, that, notwithstanding any provisions of this Certificate of Incorporation or the By-laws of the Corporation, the Corporation shall not carry on any activities which are not permitted to be carried on by an organization described in Section 501(c)(3) of the Code.

B. Nothing herein contained shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes, any of the activities mentioned in Section 404(b)-(n) and (p,r & s) of the Not-for-Profit Corporation Law.

C. The Corporation shall be considered a Type B Corporation as that term is defined in Section 201 of the Not-for-Profit Corporation Law."

6. The foregoing amendment to the Certificate of Incorporation was authorized by the unanimous written consent of all of the members of the Corporation entitled to vote thereon dated April 15th, 1982.

7. The Public Health Council and a Justice of the Supreme Court, First Judicial Department, approved, the Commissioner of Health consented to, and the Attorney General waived notice of the filing of the Certificate of Incorporation. The Public Health Council and a Justice of the Supreme Court, First Judicial Department, approved, the Commissioner of Health consented to, and the Attorney General waived notice of the filing of the Certificate of Amendment of the Certificate of Incorporation. The Public Health Council and a Justice of the Supreme Court, First Judicial Department approved, and the Attorney General waived notice of the filing of the Restated Certificate of Incorporation. Before this Certificate of Amendment is delivered to the Department of State, the approval of the Public Health Council, the Commissioner of Mental Retardation and Developmental Disabilities, and of a Justice of the Supreme Court of the State of New York, First Judicial Department, and a waiver of notice by the Attorney General, will be endorsed upon or annexed to this Certificate of Amendment.

8. The Secretary of State is hereby designated as agent of

the Corporation upon which process against the Corporation may be served and the post-office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

15 West 65th Street
New York, New York 10023

IN WITNESS WHEREOF, we have made and signed this Certificate of Amendment this 15th day of APRIL, 1982, and affirm that the statements made herein are true under the penalties of perjury.

President
ROBERT H. HAINES

Assistant Secretary
DIANE LEVINE

ANTHONY MERENDINO
Commissioner of Deeds
City of New York No. 3-6015
Certificate Filed in Richmond County
Commission Expires June 6, 1984

April 15, 1982

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CERTIFICATE OF APPROVAL

I, DONALD J. SULLIVAN, the undersigned, a Justice of the Supreme Court of the State of New York in the First Judicial District in which the principal office of J.G.B. HEALTH FACILITIES CORPORATION is located, do hereby approve of the foregoing Certificate of Amendment to the Certificate of Incorporation of J.G.B. HEALTH FACILITIES CORPORATION and the filing thereof.

DATED:
New York, New York
June 29th, 1982

Justice of the Supreme Court
of the State of New York
DONALD J. SULLIVAN

The undersigned has no objection to the approval of the foregoing Certificate of Amendment.

Attorney General of the State of
New York

By: Assistant Attorney General
of the State of New York

New York, New York
June 23, 1982

STATE OF NEW YORK
DEPARTMENT OF HEALTH
ALBANY 12237

PUBLIC HEALTH COUNCIL

Theodore B. Liban, Esq.
325 Broadway
Suite 304
New York, New York 10007

Re: Certificate of Amendment of the
Certificate of Incorporation of
J.G.B. Health Facilities Corporation

Dear Mr. Liban:

Pursuant to a review by the staff of the Public Health Council, it has been determined that the above referenced certificate of amendment dated April 15, 1982 neither alters the corporation's purposes relating to activities subject to the Public Health Council's jurisdiction nor changes the corporation's name.

Under § 804(a) of the Not-for-Profit Corporation Law, a certificate of amendment shall not be filed if it adds or changes a purpose which requires Public Health Council approval or changes the corporation's name that had received the Council's approval, unless the Public Health Council's approval is attached to the certificate.

Since the subject certificate of amendment proposes only to add a purpose not subject to the Public Health Council's jurisdiction, its formal approval is not required.

Sincerely,

Shirley M. Parham

Shirley M. Parham
Executive Secretary

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STATE OF NEW YORK

OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

ALBANY, NEW YORK

KNOW ALL MEN BY THESE PRESENTS:

Pursuant to the provisions of Section 31.22 of the Mental Hygiene Law and Section 803 of the Not-for-Profit Corporation Law, approval is hereby given to the filing of the annexed Certificate of Amendment dated April 15 of 1982.

J.G.B. HEALTH FACILITIES CORPORATION

This approval shall not be construed as an authorization for the corporation to engage in any activity for which the provisions of Article 31 of the Mental Hygiene Law require an Operating Certificate issued by the Office of Mental Retardation and Developmental Disabilities in the Department of Mental Hygiene unless said corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said corporation to meet any and all of the requirements and conditions precedent set forth in Article 31 of such law and the regulations promulgated thereunder for the issuance of said Operating Certificate.

IN WITNESS WHEREOF this instrument is executed and the seal of the Department of Mental Hygiene is affixed this 11th day of May, 1982.

ZYGMOND L. SLEZAK
ACTING COMMISSIONER

By ELIN M. HOWE
ASSOCIATE COMMISSIONER
OFFICE OF MENTAL RETARDATION
AND DEVELOPMENTAL DISABILITIES

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

J.C.B. HEALTH FACILITIES CORPORATION

Under Section 803 of the Not-for-Profit Corporation Law

FILED BY: Ted Liban
325 Broadway
Suite 304
New York, N.Y. 10007

FILED
JUL 2 12 45 PM '82

NEW YORK STATE OF OPPORTUNITY.

Division of Corporations, State Records and Uniform Commercial Code

170829000 110

New York State
Department of State
DIVISION OF CORPORATIONS, STATE RECORDS AND UNIFORM COMMERCIAL CODE
One Commerce Plaza
99 Washington Ave.
Albany, NY 12231-0001
www.dos.ny.gov

CERTIFICATE OF CHANGE OF

J.G.B. Health Facilities Corporation

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is:
J.G.B. Health Facilities Corporation

If the name of the corporation has been changed, the name under which it was formed is:
J.G.B. Nursing Home Corporation

SECOND: The certificate of incorporation was filed by the Department of State on:
November 14, 1974

THIRD: The change(s) effected hereby are: *(Check appropriate statement(s))*

☐ The county location, within this state, in which the office of the corporation is located, is changed to: _____

☑ The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to read in its entirety as follows:

250 West 64th Street, New York, NY 10023

☐ The corporation hereby: *(Check One)*

☐ Designates _____ as its registered agent upon whom process against the corporation may be served.

The street address of the registered agent is:

_____.

☐ Changes the designation of its registered agent to: _____

The street address of the registered agent is:

_____.

☐ Changes the address of its registered agent to:

_____.

☐ Revokes the authority of its registered agent.

170829000110

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FOURTH: The change was authorized by the board of directors.

X _____ Mark G. Ackermann
(Signature) *(Name of Signer)*

President
(Title of Signer)

CERTIFICATE OF CHANGE
OF
J.G.B. Health Facilities Corporation

(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name: J.G.B. Health Facilities Corporation

Address: 250 West 64th Street

City, State and Zip Code: New York, NY 10023

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED AUG 29 2017
TAX $ 0
BY:

NOTES:

1. The name of the corporation and its date of incorporation provided on this certificate must exactly match the records of the Department of State. This information should be verified on the Department of State's website at www.dos.ny.gov.
2. This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores.
2. The Department of State recommends that all documents be prepared under the guidance of an attorney.
3. The certificate must be submitted with a $20 filing fee.

For Office Use Only

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RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 6th day of October 2022, approves the filing of the Certificate of Dissolution of J.G.B. Health Facilities Corporation dated June 2, 2021.

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 211143-E
AMSC, LLC d/b/a Downtown Bronx ASC

Program: **DTC** ***County:*** **Bronx**
Purpose: **Establishment** ***Acknowledged:*** **April 13, 2021**

Executive Summary

Description

AMSC, LLC d/b/a Downtown Bronx ASC, an existing Article 28 multi-specialty ambulatory surgery diagnostic and treatment center at 951 Brook Avenue, Bronx, requests approval to transfer 100% of its current members' interests to Peoples ASC, LLC whose members are listed below.

Current Membership	
Member	**Interest**
Abdo Balikcioglu, MD	23.622%
Joshua Schwartz	14.626%
Robert Slingsby	14.626%
Louis Rose, MD	14.626%
Brian Haftel	10.000%
Biren Patel	10.000%
William Jones, MD	10.000%
Indira Kairam, MD	2.500%
Total	**100%**

Proposed Membership	
Member	**Interest**
Peoples ASC, LLC	100%
Nidhi Sahgal, MD (33.34%)	
Lawrence J. Ottaviano, MD (16.665%)	
Ganga Mukkavilli, CPA (16.665%)	
Katherine Tallaj, DVM (8.3325%)	
Ines Hernandez (8.3325%)	
Alex Damiron (8.3325%)	
Paul Tallaj, MD (8.3325%)	

The center began operations in December 2016. The physicians at the center have performed gastroenterology and pain management procedures, as well as orthopedic, plastic, and podiatry surgeries. The incoming members intend to bring on additional specialties, including vascular, general, urology, and gynecology. The center is current with its SPARCS reporting through June 2022. Lawrence J. Ottaviano, MD, who is Board-certified in Internal Medicine and Gastroenterology will serve as Medical Director. AMSC, LLC has negotiated a Transfer Agreement for emergency and backup services with Montefiore Medical Center 4.4 miles (14 minutes travel time) from the center.

OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate three years from the date of the completion of the application.

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

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

Financial Summary

There are no project costs associated with this application. The total purchase price for the 100% ownership interest is $6,150,000, which will be funded via the proposed new members' personal equity. The proposed budget is as follows:

	Current Year	Year One	Year Three
Revenues	$1,712,009	$8,855,125	$9,740,638
Expenses	$4,130,816	7,835,492	8,317,089
Net Income / Loss	($2,418,807)	$1,019,633	$1,423,549

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval with an expiration of the operating certificate three years from the date of the completion of the application, contingent upon:

1. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Reports should include:
   a. Data displaying actual utilization including procedures;
   b. Data displaying the breakdown of visits by payor source;
   c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
   d. Data displaying the number of emergency transfers to a hospital;
   e. Data displaying the percentage of charity care provided;
   f. The number of nosocomial infections recorded during the year reported;
   g. A list of all efforts made to secure charity cases; and
   h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of an executed transmission and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a photocopy of an executed written consent of the members, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed certificate of amendment of the articles of organization of AMSC, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed amendment of the amended and restated operating agreement of AMSC, LLC, acceptable to the Department. [CSL]
6. Submission of photocopy of an executed certificate of amendment of the articles of organization of Peoples ASC, LLC, acceptable to the Department [CSL]
7. Submission of a photocopy of an executed amended and restated operating agreement of Peoples ASC, LLC, acceptable to the Department. [CSL]
8. Submission of an amended and executed amendment of the services 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]
2. The submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. (RNR)

Council Action Date

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in ownership:

Member	Current	Proposed
Abdo Balikcioglu, MD	23.622%	0.000%
Joshua Schwartz	14.626%	0.000%
Robert Slingsby	14.626%	0.000%
Louis Rose, MD	14.626%	0.000%
Brian Haftel	10.000%	0.000%
William Jones, MD	10.000%	0.000%
Indira Kairam, MD	2.5000%	0.000%
Peoples ASC, LLC	0.000%	100.000%
**Nidhi Sahgal, MD (33.340%)		
**Lawrence J. Ottaviano, MD (16.665%)		
**Ganga Mukkavilli, CPA (16.665%)		
**Katherine Tallaj, DVM (8.3325%)		
**Ines Hernandez (8.3325%)		
**Alex Damiron (8.3325%)		
**Paul Tallaj, MD (8.3325%)		
TOTAL	**100%**	**100%**

***Subject to Character and Competence*

Nidhi Sahgal, MD is a Breast Surgeon and a Practicing Physician at Essen Medical Associates. She previously owned Bronx Treatment Center, an Article 28 diagnostic and treatment center, and Nidhi Saghal MD PLLC, a Breast Surgery Practice. She was previously employed as a Breast Surgeon at 21st Century Oncology. She received her medical degree from Georgetown University School of Medicine in Washington and completed her residency in General Surgery at North Shore University Hospital. Dr. Sahgal is board certified in General Surgery.

Lawrence Ottaviano, MD is a Gastroenterologist and the proposed Medical Director. He is the Owner and President of Gramercy Park Gastroenterology, P.C. He received his medical degree from St. George's Medical School in Grenada, and is board certified in Internal Medicine and Gastroenterology. Dr. Ottaviano disclosed ownership interest in the following healthcare facility:

Gramercy Park Digestive Disease Center, LLC 2008-present

Ganga Mukkavilla is a Certified Public Accountant with years of fiscal, accounting, and tax management of professionals in the health care industry from physician providers to practices. He is the owner of Ganga V. Mukkavilli, CPA, P.C. where his responsibilities include preparing accounts and tax returns; administering payrolls and controlling income and expenditure; auditing financial information; compiling and presenting reports, budgets, business plans, and financial statements; analyzing accounts and business plans; providing tax planning services regarding current legislation; financial forecasting and risk analysis; negotiating the terms of business transactions with clients; meeting and interviewing clients, and managing staff, workloads and deadlines. He received his bachelor's degree from City University of New York, Queens College.

Ines Hernandez is the Practice Administrator for Academy Medical Care, P.C. and AW Medical Office, P.C., private medical practices, where she oversees the administrative day-to-day operations of the medical practice. She received her medical degree from Universidad Autonoma de Santo Domingo in the Dominican Republic; however, she is not licensed to practice medicine in the United States.

Alex Damirion is the current Executive Vice President of Operations and Chief of Staff of Somos Community Care, a Performing Provider System in the Medicaid DSRIP program. His responsibilities include business development and organizational design including staffing, team building, and

performance assessment. He was previously employed as the Manager of Health System Development at Mount Sinai Hospital where he presented and promoted Mount Sinai specialist services available at the hospital to medical facilities in Upper Manhattan and the Bronx. Prior to that, he was the Executive Assistant to the CEO at Corinthian Medical IPA where he assisted with the development and preparation of budgets for different projects related to the IPA and managed multiple projects as assigned by the CEO related to diverse lines of business, community, and personal interest with inter-related activities and relationships.

Katherine Tallaj, DVM is a Critical Care Specialist Veterinarian at NorthStar Veterinary Emergency Trauma & Specialty Center. She completed her Small Animal Emergency and Surgery rotating internship at Oradell Animal Hospital, her Veterinary Student Extern at VCA Brentwood in California, and her Veterinary Student Extern at the Philadelphia Zoo. She received her degree in Veterinary Medicine from Western University of Health Sciences College of Veterinary Medicine in California.

Dr. Paul Tallaj, MD is a Medical Doctor who is in his third-year residency in General Surgery at Flushing Hospital Medical Center. He received his medical degree from Universidad Iberoamericana Medical School in Santo Domingo.

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.

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)(b). Approval of this project will maintain access to this center's services for the residents of Bronx County.

Financial Analysis

Operating Budget

The applicant has provided the latest current year operations and an operating budget, in 2022 dollars, for the first and third years after the change of ownership. The budget is summarized below:

	Current Year (2020)		Year One (2023)		Year Three (2025)	
	Per Proc	Total	Per Proc	Total	Per Proc	Total
Revenues						
Commercial FFS	$1,983	$237,908	$1,968	$1,462,184	$1,968	$1,607,856
Medicare FFS	$1,544	43,220	$1,492	435,544	$1,492	478,932
Medicare MC	$0	0	$1,418	1,661,573	$1,418	1,827,802
Medicaid FFS	$1,617	236,043	$1,617	405,848	$1,617	446,292
Medicaid MC	$0	0	$1,405	3,574,858	$1,406	3,932,930
Private Pay	$1,462	271,927	$1,442	145,653	$1,442	160,062
All Other	$1,242	846,073	$1,241	1,169,465	$1,241	1,286,764
Non-Operating Rev		76,838		0		0
Total Revenue		$1,712,009		$8,855,125		$9,740,638

	Current Year (2020)		Year One (2023)		Year Three (2025)	
	Per Proc	Total	Per Proc	Total	Per Proc	Total
Expenses						
Operating	$1,772	$2,057,515	$1,075	$6,631,480	$1,040	$7,058,847
Capital	$1,786	2,073,301	$195	1,204,012	$185	1,258,242
Total	$3,558	$4,130,816	$1,270	$7,835,492	$1,225	$8,317,089
Excess/(Deficiency) Revenues		($2,418,807)		$1,019,633		$1,423,549
Procedures		1,161		6,170		6,787

Utilization by payor source is as follows:

Payor	Current Year (2020)	Year One (2023)	Year Three (2025)
Commercial FFS	10.34%	12.04%	12.04%
Commercial MC	0.00%	0.00%	0.00%
Medicare FFS	2.41%	4.73%	4.73%
Medicare MC	0.00%	19.00%	18.99%
Medicaid FFS	12.58%	4.07%	4.07%
Medicaid-MC	0.00%	41.23%	41.23%
Private Pay	16.02%	1.64%	1.64%
Charity Care	0.00%	2.03%	2.03%
All Other	58.66%	15.27%	15.28%
Total	100.0%	100.0%	100.0%

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

- The shift in patient payor mix from the current year to the third year is based on low utilization of services when the facility shut down in early 2020, as a result of the Governor's Executive Order in response to the COVID-19 pandemic.
- With a different approach to the future management of the facility, the new owners anticipate bringing in more physicians that will bring in many more procedures, thereby attracting a more diverse patient and payor mix, hence the increase in Medicare MC and Medicaid MC utilization from the current year to years one and three.
- Revenue assumptions are based on prior years' actual operations, as well as, several Article 28 D&TCs operating in the same geographical location with similar square footage, specialties, and projected and/or anticipated patient flow.
- In the post-COVID environment, utilization in Years One and Three will be achieved by robust marketing plans by incoming LLC members, which include outreach to new patient markets, more physicians performing procedures at the center, and expanding the existing network of providers and third-party payors with whom the facility currently contracts. The number of procedures that have been projected for Year One following this change of ownership is comparable to the level of activity at other neighboring freestanding ambulatory surgery centers (FASCs) of similar size and scope.
- The applicant's expense and utilization assumptions are based on a review of the cost reports of other local FASCs with similar space and capacity.
- The applicant has provided physician referral letters and support for the increased utilization projections from the current year to the third year. The applicant provided the names of 14 physicians and projected utilization for year one for those physicians.

Lease Agreement

The applicant has submitted an executed assignment and assumption of lease agreement for the existing site, as summarized below.

Date:	March 5, 2021
Premises:	19,750 square feet of building at 951 Brook Avenue, Bronx, NY 10451
Landlord:	MBX Acquisition Holdings, LLC
Assignor:	ASMC, LLC
Assignee:	Peoples ASC, LLC
Term:	Ten years with a 10-year extension option
Rent:	$950,000 Annually with a 4% annual increase
Provisions:	Tenant is responsible for Insurance, maintenance, repairs, utilities, and property taxes.

The lease agreement is an arm's length agreement, as there is no relationship between any of the principals of the landlord and the members of the applicant.

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement (MIPA), to be effectuated upon PHHPC approval as summarized below.

Date:	March 5, 2021
Buyer:	Peoples ASC, LLC
Seller/Company:	AMSC, LLC
Purchase:	Purchase 100% Membership Interest
Buyer Deliverables at Closing:	1) Assignment and assumption agreements; 2) Purchase Price; 2) Other documents, instruments, and writings reasonably requested.
Purchase Price:	$6,150,000
Payment of Purchase Price	$565,000 was paid on the date of execution of this agreement $5,585,000 to be paid at closing.

The applicant submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 23, 2022, the facility has no outstanding liabilities.

Capability and Feasibility

There are no project costs associated with this application. The total purchase price for the 100% ownership interest is $6,150,000. The purchase price will be funded via the proposed new members' personal equity. BFA Attachment A is the proposed members' net worth summary, which indicates sufficient equity overall to fund the total purchase price. Lawrence Ottaviano has submitted a disproportionate share affidavit attesting that the incoming LLC members with liquid assets in excess of their minimum percentage obligation(s) will cover the shortfall of the members with insufficient liquid assets to meet their minimum out-of-pocket financial obligations relative to their individual percentage of ownership in this CON transaction.

The working capital requirement is estimated at $1,305,915 based on two months of first-year expenses and will be funded via the proposed new members' personal equity. BFA Attachment B is the Pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of $1,590,816.

BFA Attachment C is a summary of December 31, 2021, Internal Financial Statements and 2019 -2020 Certified Financial Statements for AMSC, LLC. As of December 31, 2021, the D&TC had a negative net asset position of $758,592 and a net operating loss of $773,592. The applicant has indicated that the

D&TC shows a reduction in the historical operating deficit and an improvement in the facility's revenue position compared to financial year 2020. In 2020, the facility had a net operating loss of $2,418,807.

The D&TC had a positive working capital in 2019 and a negative working capital position in 2020, a negative net asset position in both 2019 and 2020, and a net operating loss of $909,742 in 2019, and $2,418,807 in 2020. The negative working capital, net asset, and operating loss were a result of the slow negotiations related to Medicare and Medicaid Managed care contracts and COVID interruptions in operations. The facility shut down for a period during the pandemic and patients were slow to return once the facility reopened.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement of Proposed New Members
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	December 31, 2021, Internals and 2019-2020 Certified Financial Statement for AMSC, 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 6th day of October 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 100% of membership interest in AMSC, LLC d/b/a Downtown Bronx ASC, 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:
211143 E	AMSC, LLC d/b/a Downtown Bronx ASC

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate three years from the date of the completion of the application, contingent upon:

1. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Reports should include:
   a. Data displaying actual utilization including procedures;
   b. Data displaying the breakdown of visits by payor source;
   c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
   d. Data displaying the number of emergency transfers to a hospital;
   e. Data displaying the percentage of charity care provided;
   f. The number of nosocomial infections recorded during the year reported;
   g. A list of all efforts made to secure charity cases; and
   h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
2. Submission of an executed transmission and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
3. Submission of a photocopy of an executed written consent of the members, acceptable to the Department. [CSL]
4. Submission of a photocopy of an executed certificate of amendment of the articles of organization of AMSC, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the executed amendment of the amended and restated operating agreement of AMSC, LLC, acceptable to the Department. [CSL]
6. Submission of photocopy of an executed certificate of amendment of the articles of organization of Peoples ASC, LLC, acceptable to the Department [CSL]
7. Submission of a photocopy of an executed amended and restated operating agreement of Peoples ASC, LLC, acceptable to the Department. [CSL]
8. Submission of an amended and executed amendment of the services 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]
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 th*e Contingencies Tab in NYSE-CON.*

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221095-B
Empire CSS, LLC d/b/a Empire Center for Special Surgery

Program: **Diagnostic and Treatment Center** ***County:*** **Richmond**
Purpose: **Establishment and Construction** ***Acknowledged:*** **April 8, 2022**

Executive Summary

Description

Empire CSS, LLC d/b/a Empire Center for Special Surgery (Empire CSS), an existing New York State limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a multi-specialty Freestanding Ambulatory Surgical Center (FASC). Upon approval by the Public Health and Health Planning Council (PHHPC), Empire CSS will occupy leased space at 4855 Hylan Boulevard, Staten Island (Richmond County). The facility will consist of four operating rooms and will initially provide general surgery, gynecology, orthopedic, otolaryngology, pain management, podiatry, and urologic surgery services.

The proposed membership of Empire CSS, LLC is as follows:

Empire CSS, LLC	
Gabriel Figueroa	5%
Ornos ASC Holdings, LLC *Jason Kofinas, M.D (100%)*	95%
Total	**100%**

Jason Kofinas, M.D., who is board certified in Obstetrics and Gynecology, will serve as the Center's Medical Director and Managing Member. The applicant entered into a transfer and affiliation agreement with Staten Island University Hospital which is 6.4 miles and 18 minutes from the proposed FACS.

OPCHSM Recommendation

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

Need Summary

There is only one operational and one pending FASC in Richmond County. The applicant projects 4,700 procedures in Year One and 7,100 in Year Three with Medicaid at 5% and charity care at 2% each year.

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)(b).

Financial Summary

Total project costs of $6,676,577 will be funded from four sources: Members' equity of $884,655 proportional to interest; a bank loan up to $2,965,250 with a variable rate of approximately 4% during the construction period and a fixed rate at 4.5% for a term of 15 years after construction is completed; an equipment loan of up to $2,196,627 with a fixed rate of approximately 5% for a 5-year term for which a bank letter of interest was provided; and a Tenant Improvement Allowance contribution of $630,045.

Budget	Year One	Year Three
Revenues	$11,431,363	$17,316,028
Expenses	5,943,338	8,333,552
Net Income	$5,488,025	$8,982,476

Recommendations

Health Systems Agency
There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management
Approval with an expiration of the operating certificate five years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
    a. Data displaying actual utilization including procedures;
    b. Data displaying the breakdown of visits by payor source;
    c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
    d. Data displaying the number of emergency transfers to a hospital;
    e. Data displaying the percentage of charity care provided;
    f. The number of nosocomial infections recorded during the year reported;
    g. A list of all efforts made to secure charity cases; and
    h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed equipment loan agreement, acceptable to the Department. [BFA]
5. Submission of an executed working capital agreement, acceptable to the Department. [BFA]
6. Submission of an executed construction loan agreement, acceptable to the Department. [BFA]
7. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

Approval conditional upon:

1. This project must be completed by **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 **April 1, 2023,** 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 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 submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https:www.health.ny.gov/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

Council Action Date

October 6, 2022

Need and Program Analysis

Program Description

Proposed Operator	Empire CSS, LLC
Doing Business As	Empire Center for Special Surgery
Site Address	4855 Hylan Boulevard Staten Island, New York 10312 (Richmond County)
Surgical Specialties	Multi-Specialty, including but not limited to: General Surgery Gynecology Orthopedic Otolaryngology Pain Management Podiatry Urology
Operating Rooms	4
Procedure Rooms	0
Hours of Operation	Monday through Saturday 7:00 am to 7:00 pm
Staffing (1st Year / 3rd Year)	21.0 FTEs / 29.0 FTEs
Medical Director(s)	Jason Kofinas, M.D.
Emergency, In-Patient, and Backup Support Services Agreement and Distance	Staten Island University Hospital 6.4 Miles / 18 minutes
On-call service	Patients who require assistance during off-hours will engage the 24-hour answering service to reach the on-call surgeon during hours when the facility is closed.

Analysis

The service area consists of Richmond County, which had a population of 495,747 in 2020 and is estimated to decline slightly to 486,008 by 2025. According to Data USA, in 2019, 96% of the population of Richmond County has health coverage as follows:

Employer Plans	57.3%
Medicaid	17.5%
Medicare	12.6%
Non-Group Plans	8.23%
Military or VA	0.347%

Currently, Richmond Pain Management ASC is the only operating ASC in Richmond County. The center opened in 2016 as a single-specialty ASC, and in 2021 converted to a multi-specialty ASC. The center had visits of 4,370 in 2019; 2,897 in 2020; and 2,615 in 2021. A second ASC, Specialty Surgery Center of Staten Island (a multi-specialty ASC) is under construction.

The applicant projects 4,700 procedures in Year One and 7,100 in Year Three with Medicaid at 5% and charity care at 2% each year. These projections are based on the current practices of participating surgeons. The applicant states that approximately 75% of the procedures are currently being performed in an office-based setting, with 20% being performed in other ASCs and the remaining 5% being performed in a hospital setting.

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

	Year One		Year Three	
Payor	**Volume**	**%**	**Volume**	**%**
Commercial FFS	3,166	67.36%	4,782	67.35%
Medicare FFS	1,205	25.64%	1,821	25.65%
Medicaid MC	235	5.00%	355	5.00%
Charity Care	94	2.00%	142	2.00%
Total	4,700	100.00%	7,100	100.00%

Empire CSS initially plans to obtain contracts with the following Medicaid Managed care plans: Affinity, EmblemHealth (HIP), Fidelis Care, Healthfirst PHSP, HealthPlus, Metroplus, United Healthcare Community Plan, and WellCare. The center will work collaboratively with local Federally Qualified Health Centers (FQHC) such as Beacon Christian Community Health Center and Community Health Care of Richmond to provide service to the under-insured in their service area. The FASC has developed a financial assistance policy with a sliding fee scale to be utilized when the center is operational.

Character and Competence

The ownership of Empire CSS, LLC is:

Member	Proposed
Gabriel Figueroa	5.00%
Ornos ASC Holdings, LLC *Jason Kofinas, MD (100%)*	95.00%
TOTAL	**100%**

Dr. Jason Kofinas is the sole member of Ornos ASC Holdings and the proposed Medical Director of the center. He is the Associate Medical Director, Associate Tissue Bank Director, Director of Invitro Fertilization, and Director of Research at NYMHB Fertility Services PC. In these roles, he directs daily operations of the practice and tissue bank, evaluates research project proposals, approves projects, and monitors the progress of the research projects. He is also the Associate Medical Director of Manhattan Reproductive Surgery. He completed his medical degree at George Washington University in Washington DC, completed his residency in OB/Gyn at New York Presbyterian, and completed his fellowship in Reproductive, Endocrine, and Infertility at NYU Langone. Dr. Kofinas is board certified in Obstetrics and Gynecology with a sub-certification in Reproductive Endocrinology and Infertility.

Gabriel Figueroa is the Chief Operating Officer and Administrator of Manhattan Reproductive Surgery Center where he is responsible for directing all provisions of services to patients and physicians within the operational, organizational, regulatory, and clinical areas. Previously, he was the Chief Operating Officer of Gramercy Healthcare Management where he was responsible for overseeing the day-to-day operations of the Ambulatory Surgery Center. He was also the Vice President of Operations of Gramercy Surgery Center where he directed, supervised, and coordinated all aspects of the business office personnel supporting eight ASC operating room operations.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the 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 Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Integration with Community Resources
For those patients who do not identify a primary care provider (PCP), the applicant plans to establish a patient referral relationship with local primary care physicians for any patient who presents themselves to the facility without a current primary care physician who can evaluate the patient before surgery and may need a physician after ASC discharge. The FASC is committed to serving all persons in need without regard to race, sex, age, religion, creed, sexual orientation, source of payment, ability to pay, or other personal characteristics, and to the development of a formal outreach program directed to the members of the local community. The applicant had been in discussions with two home-based FQHCs, Beacon Christian Community Health Center and Community Health Care of Richmond, to establish a reciprocal patient referral relationship. The purpose of the program will be to inform the community of the benefits derived from, and the latest advances made in pain management, orthopedic surgery, and podiatry. The applicant will partner with churches and other community organizations that regularly interact with medically underserved populations including food banks, homeless shelters, and immigrant support groups. They will also develop customized outreach materials and resources to connect with targeted populations and will engage experienced consultants for professional managed care contracting support. The applicant will develop and implement an outreach strategy to secure contracts for participation in both Medicaid and national Medicare Managed Care Organization networks and other related activities. The FASC intends on using an Electronic Medical Record (EMR) program.

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)(b). Approval of the multi-specialty ambulatory surgery center will provide additional choices to the residents of Richmond County, which currently only has one operational and one pending FASC.

Financial Analysis

Total Project Costs and Financing
Total project costs are estimated at $6,676,577 broken down as follows in 2022 dollars:

	Total Project Costs
New Construction	$3,064,250
Design Contingency	297,500
Construction Contingency	148,750
Architect/Engineering Fees	225,000
Construction Manager Fees	60,000
Movable Equipment	2,745,783
Interim Interest Expense	96,785
CON Application Fee	2,000
Additional CON Processing Fee	36,509
Total Project Cost	$6,676,577

The applicant's financing plan is as follows:

Cash – Member Equity	$884,655
Construction Loan at a rate of approximately 4% for a 15-year term.	$2,965,250
Equipment Loan 5-year at a rate of 5% fixed with a 5-year term.	$2,196,627
Tenant Improvement Allowance	$630,045
Total Project Cost	$6,676,577

BFA Attachment A, the Net Worth Statements of the applicant members, indicates sufficient liquid resources to fund the equity requirement, which will be split proportionally among the members. In addition, Atlantic Bank submitted a letter of interest for two construction and equipment loans in the amounts of $2,965,250 and $2,196,627, respectively. Lastly, the landlord will provide $630,045 toward

construction costs in equity as part of the lease agreement and has submitted an affidavit to support this commitment.

Operating Budget

The applicant submitted their first-and third-year operating budgets, in 2022 dollars, summarized below:

	Year One (2023)		Year Three (2026)	
Revenues	Per Proc.	Total	Per Proc.	Total
Commercial MC	$2,478	$7,845,348	$2,486	$11,888,052
Medicare MC	$2,496	3,007,680	$2,501	4,554,321
Medicaid MC	$2,461	578,335	$2,461	873,655
Total Revenues		$11,431,363		$17,316,028
Expenses				
Operating	$1,083,86	$5,094,150	$1,018.41	$7,526,100
Capital	180.68	849,188	113.83	807,452
Total Expenses	$1,331.86	$5,943,338	$1,132.24	$8,333,552
Net Income		$5,488,025		$8,982,476
Utilization (Procedures)		4,700		7,100
Cost Per Procedure		$1,265.00		$1,173.74

With respect to the budget:

- Revenue projections are based on the current participating surgeons performing office-based procedures in an office setting.
- Volume estimates are based on participating physician referrals from physicians committed to performing procedures at the center. Most of the proposed center's patients will be referred to the center by the participating physicians and independent physicians practicing in the Staten Island and Southeast Brooklyn communities.
- Commercial rates were derived from the extensive experience of the physicians who provided commitment letters to perform procedures at the center in conducting direct payer contracting for FASCs in the NY Metro market. Consideration was given to the makeup of specialties and a median rate was applied given historical negotiated rates for the scope of procedures projected.
- Medicare rates were derived using published CMS rates for the specific geographical area.
- Medicaid rates were derived from a direct review of contracted rates with Managed Medicaid plans and the NY Medicaid Rates assigned to other similar facilities in the NY Metro Market.
- Expenses we derived using benchmarks data provided by the National and State ASC Association on current salaries, benefits, and commensurate with positions with the FASCs with the Metro Market.
- All other expenses such as medical and surgical supplies were applied to each specialty based on costs and depreciation was broken out in the budget, as well as lease expenses from the agreement.

The applicant projected first- and third-year utilization procedures based on current office-based practice experience. Projected utilization by the payor is as follows.

Payor	Years One (2023)	Year Three (2026)
Commercial MC	67.36%	67.35%
Medicare MC	25.64%	25.65%
Medicaid MC	5.00%	5.00%
Charity Care	2.00%	2.00%
Total Procedures	100%	100%

Lease Rental Agreement

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

Date:	September 1, 2020
Premises:	8,530 sq. ft. located at 4855 Hyland Blvd, Staten Island, NY
Landlord:	JDK HYLAN Properties, LLC
Tenant:	Empire CSS, LLC
Term:	15 year (Renewal with a 5-year option)
Rent:	Year 1 thru 5 - $415,857 or $39.00 per sq. ft. Year 6 thru 10-$447,846 or 42.00 per sq. ft. Year 11 thru 15 - $479,835 or $45.00 per sq. ft. Year 16 thru 20 (Renewal Term) $48.00 per sq. ft.
Provisions:	Tenant shall be responsible for repairs; electricity; heating and air conditioning and cleaning of demised premises. Additionally, the landlord will provide a tenant improvement allowance of $630,045.

The lease agreement is a non-arm's length agreement, meaning there is a relationship between the two parties. Dr. Jason Kofinas, the sole member of Ornos ASC Holdings, LLC, is the Managing Member of Empire CSS, LLC. Empire CSS, LLC entered into a lease with JDK HYLAN Properties, LLC, which has common ownership of the property. The applicant submitted two letters of rent reasonableness from NYS Licensed realtors.

Billing Services Agreement

The applicant has submitted an executed billing and service agreement, to be effective upon PHHPC approval of the application. The terms of the agreement are summarized below.

Consultant:	Liberty Health Partners, LLC
Operator:	Empire CSS, LLC
Services:	Response to inquiries; referrals to collection agents; reports; safeguarding records; ensuring qualified personnel and compliance with laws; audit rights;
Term:	3 years from the effective date and will automatically renew unless either party decides not to continue the agreement. Either party must give a 90-day notice of termination.
Fee:	$56,400 annually plus a $30 flat fee per bill collected and paid monthly.

Empire CSS, LLC shall retain all reserve powers and full authority over all decisions recommended by the Billing Services agreement. Gabriel Figueroa is the sole member of Liberty Healthy Partners, LLC.

Development and Administrative Service Agreement

The applicant has submitted an executed Administrative Service Agreement (ASA) agreement, to be effective upon PHHPC approval of this application. The terms of the agreement are summarized below.

Consultant:	Liberty Health Partners, LLC
Operator:	Empire CSS, LLC
Services:	Liberty will ensure all workers are provided sufficient working space; all medical care providers and physicians are duly licensed to provide services delivered; development and administrative services; measure performance standards to be efficient in operations; ensure regulatory matters are up to code;
Term:	3 years from the effective date and will automatically renew unless either party decides not to continue the agreement. Either party must give a 30-day notice of termination.
Fee:	$7,500 per month before the completion of the construction and $25,000 per month upon completion of the AAAHC survey. $20,000 per month for administrative services fee.

Empire CSS, LLC shall retain all reserve powers and full authority over all decisions recommended by the Development and Administrative agreement. Gabriel Figueroa is the sole member of Liberty Healthy Partners, LLC.

Capability and Feasibility

Total project costs of $6,676,577 will be funded through four sources: Members' equity of $884,655 split proportionally by membership interest; a construction bank loan of up to $2,965,250; an equipment loan of up to $2,196,627; and a Tenant Improvement Allowance of $630,045 from the landlord. Atlantic Bank of New York submitted an LOI for two loans: a construction loan of $2,965,250, at a rate of approximately 4% for a 15-year term, and an equipment loan of $2,196,627 at a fixed rate of 5% for a 5-year term.

Working capital requirements estimated at $1,388,925 are based on two months of third-year expenses. The working capital will be funded through bank financing of $669,846 at a fixed rate of 4% for a term of 5 years term and $719,079 from members' equity. Atlantic Bank of New York submitted an LOI for working capital financing. BFA Attachment A shows that the members have sufficient liquid resources to cover their contribution to equity which will be split proportionally by their membership interest percent.

BFA Attachment B is a pro forma balance sheet for Empire CSS, LLC, which shows operations will start with $2,193,379 in members' equity on the first day of operations.

The submitted budget for Years One and Three estimates a net income of $5,488,025 and $8,982,476, respectively. Revenue and volume projections are based on the current participating surgeons performing office-based procedures in an office setting who are committed to performing procedures at the center. The budget appears reasonable.

Conclusion

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

Supplemental Information

DOH Comment

The Department reached out to proximate hospitals asking for information on the impact of the proposed ambulatory surgery center (ASC). None of the hospitals submitted an objection.

Attachments

BHFP Attachment	Map
BFA Attachment A	Members' Net Worth Statements
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 6th day of October 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 new multi-specialty ambulatory surgery center at 4855 Hylan Boulevard, Staten Island, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:	FACILITY/APPLICANT:
221095 B	Empire CSS, LLC d/b/a Empire Center for Special Surgery

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations, and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women, and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include a commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside, independent entity satisfactory to the Department
   to provide annual reports to DOH. Reports are due no later than April 1st for the prior year and are to be based upon the calendar year. Submission of annual reports will begin after the first full or, if greater or equal to six months after the date of certification, partial year of operation. Reports should include:
   a. Data displaying actual utilization including procedures;
   b. Data displaying the breakdown of visits by payor source;
   c. Data displaying the number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
   d. Data displaying the number of emergency transfers to a hospital;
   e. Data displaying the percentage of charity care provided;
   f. The number of nosocomial infections recorded during the year reported;
   g. A list of all efforts made to secure charity cases; and
   h. A description of the progress of contract negotiations with Medicaid managed care plans. [RNR]
4. Submission of an executed equipment loan agreement, acceptable to the Department. [BFA]
5. Submission of an executed working capital agreement, acceptable to the Department. [BFA]
6. Submission of an executed construction loan agreement, acceptable to the Department. [BFA]
7. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]
8. The submission of Engineering (MEP) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-1.0. [AER]

APPROVAL CONDITIONAL UPON:

1. This project must be completed by **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 **April 1, 2023,** 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 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 submission of annual reports to the Department as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
5. The staff of the facility must be separate and distinct from the staff of other entities; the signage must clearly denote the facility is separate and distinct from other entities; the clinical space must be used exclusively for the approved purpose; and the entrance must not disrupt any other entity's clinical program space. [HSP]
6. The applicant must ensure registration for and training of facility staff on the Department's Health Commerce System (HCS). The HCS is the secure web-based means by which facilities must communicate with the Department and receive vital information. Upon receipt of the Operating Certificate, the Administrator/director that has day-to-day oversight of the facility's operations shall submit the HCS Access Form at the following link to begin the process to enroll for HCS access for the first time or update enrollment information as necessary: https:www.health.ny.gov/facilites/hospitals/docs/hcs_access_forms_new_clinics.pdf. Questions may be directed to the Division of Hospitals and Diagnostic &Treatment Centers at 518-402-1004 or email: hospinfo@health.ny.gov [HSP]

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221224-E
21 Reade Place ASC, LLC d/b/a Bridgeview Endoscopy

Program: **Diagnostic and Treatment Center** ***County:*** **Dutchess**
Purpose: **Establishment** ***Acknowledged:*** **July 13, 2022**

Executive Summary

Description

21 Reade Place ASC, LLC, d/b/a Bridgeview Endoscopy (Bridgeview or the Center), an existing single-specialty (gastroenterology) freestanding ambulatory surgery center (FASC) at 21 Reade Place, Poughkeepsie, seeks approval to transfer 41.6665% membership interest from seven existing members to five new members of KVBDA, LLC, the sole member of 21 Reade Place ASC, LLC.

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 membership after approval of this application is shown below:

Members	Current	Proposed
Sunil K. Khurana, MD	14.2866%	8.3333%
Salvatore Buffa, MD	14.2866%	8.3333%
Peter Varunok, MD	14.2866%	8.3333%
Robert Dean, MD	14.2866%	8.3333%
Khurram Ashraf, DO	14.2866%	8.3333%
Farshad Elmi, MD	14.2866%	8.3333%
Zana Nikolla, MD	14.2866%	8.3333%
Farahnaz Toyerskani, MD	0.0000%	8.3333%
Simona Meca, MD	0.0000%	8.3333%
Madhavi Gaddam, MD	0.0000%	8.3333%
Tamer Sargios, MD	0.0000%	8.3333%
Elizabeth Williams, DO	0.0000%	8.3333%
Total	**100%**	**100%**

The center began operations in July 2014 with two procedure rooms. There are no programmatic changes as a result of this request. The applicant is current with their SPARCS reporting. The Center has a hospital transfer agreement with Vassar Brothers Medical Center, which is located next to the Center. Sunil K. Khurana MD will continue to serve as the Medical Center Director and managing member of the Center.

The existing lease dated March 2023, between Vassar Brothers Hospital d/b/a Vassar Brothers Medical Center and 21 Reade Place ASC, LLC will continue unchanged. The applicant uses contract employees, many for physician staff and others from SKK Management, LLC, which will continue.

OPCHSM Recommendation

Approval

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

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

Financial Summary

There are no project costs associated with this application. Four of the five new physician members will pay $244,800 each for their 8.3333% membership interest. The remaining additional member, Dr. Elizabeth Williams, purchased and paid for her membership interest through a joinder agreement executed in 2019 for $250,000.

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

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed changes in the membership of KVBDA, LLC, the sole member of 21 Reade Place ASC, LLC:

Member	Current	Proposed
Sunil K. Khurana, MD	14.2866%	8.3333%
Salvatore Buffa, MD	14.2866%	8.3333%
Peter Varunok, MD	14.2866%	8.3333%
Robert Dean, MD	14.2866%	8.3333%
Khurram Ashraf, D.O.	14.2866%	8.3333%
Farshad Elmi, MD	14.2866%	8.3333%
Zana Nikolla, MD	14.2866%	8.3333%
Farahnaz Toyerskani, MD**	0.0000%	8.3333%
Simona Meca, MD**	0.0000%	8.3333%
Madhavi Gaddam, MD**	0.0000%	8.3333%
Tamer Sargios, MD**	0.0000%	8.3333%
Elizabeth Williams, DO**	0.0000%	8.3333%
Total	**100%**	**100%**

***Members Subject to Character and Competence*

Dr. Madhavi Gaddam is a Gastroenterologist at Premier Medical Group of the Hudson Valley and is a Staff Gastroenterologist at Mid-Hudson Regional Hospital and Vassar Brothers Medical Center. He was previously an Attending Gastroenterology Physician at Lincoln Medical And Mental Health Center and a Gastroenterologist at Digestive Disease Center of the Hudson Valley for 16 years. Dr. Gaddam completed his medical degree at Rangaraya Medical College in India, his residency in Internal Medicine and fellowship in Gastroenterology at Bronx Lebanon Hospital, and his Liver Transplant rotation at Westchester Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Simona Meca is a Gastroenterologist at Premier Medical Group of the Hudson Valley. She was previously employed as a Gastroenterologist at the Digestive Disease Center of the Hudson Valley. Dr. Meca received her medical degree from the University of Medicine Carol Davila in Romania, completed her residency in Internal Medicine at Long Island Jewish Medical Center, and her fellowship in Gastroenterology at the University of Buffalo. She is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Tamer Sargios is a Gastroenterologist at Premiere Medical Group of Hudson Valley and a Staff Gastroenterologist at Mid-Hudson Regional Hospital and Vassar Brothers Medical Center. He is the Associate Chief of Gastroenterology and Hepatobiliary Diseases at Mid-Hudson Regional Hospital and the Assistant Clinical Professor of Internal Medicine of NY Medical College. He was previously a Gastroenterologist at the Digestive Disease Center of the Hudson Valley, a Staff Gastroenterologist at King's Daughters Medical Center and Our Lady of Bellefonte Hospital, and an Instructor of Medicine at Albert Einstein College of Medicine. Dr. Sargios received his medical degree from Ain Shams University in Egypt and completed his residency in Internal Medicine and fellowship in Digestive Diseases at Beth Israel Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Sargios discloses ownership interest in the following healthcare facilities:

Hudson Valley Endoscopy Center *09/2009-12/2019*

Dr. Farahnaz Toyerskani is a Gastroenterologist at Premier Medical Group of Hudson Valley. He was previously a Gastroenterologist at the Digestive Disease Center of the Hudson Valley. Dr. Toyerskani received his medical degree from the Tehran University of Medical Sciences in Iran, completed his residency in Internal Medicine at New York Methodist Hospital, and his fellowship in Gastroenterology at

the University of Arkansas for Medical Sciences. He discloses ownership interest in the following healthcare facility:

Hudson Valley Endoscopy Center *09/2009-12/2019*

Dr. Elizabeth Williams is a Gastroenterologist at Premier Medical Group of the Hudson Valley and is affiliated with Mid-Hudson Regional Hospital. She received her medical degree from the University of New England College of Osteopathic Medicine and completed her residency in Internal Medicine and Gastroenterology and Hepatology fellowship at Minneola University Hospital. Dr. Williams is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the State 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 Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

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

Financial Analysis

Joinder Agreement

The applicant has submitted the executed Joinder Agreement for the proposed members, the terms of which are summarized below:

Date:	January 11, 2022
Description:	Purchase of 8.333% of the membership interest
Company:	KVBDA, LLC
Purchasers:	Tamer Sargios, MD, Madhavi Gaddam, MD, Farahnaz Toyserkani, MD, Simon Meca, MD, Elizabeth Williams, DO*
Purchase Price:	$244,800 per proposed new member
Payment of Purchase Price:	All the proposed members will pay from personal equity resources.

**Dr. Elizabeth Williams purchased and paid for her membership interest through a joinder agreement executed in 2019 for $250,000*

Capability and Feasibility

There are no project costs associated with this application. All membership interests will be identical for both KVBDA, LLC and 21 Reade Place ASC, LLC. Four out of five new members will pay $244,800 for their 8.3333% membership interest totaling $979,200. The additional member, Dr. Elizabeth Williams, purchased and paid for her membership interest through a joinder agreement executed in 2019 for $250,000. The remaining four new physician members will fulfill their purchase price through equity from the proposed members' cash resources, as shown in BFA Attachment A. The applicant states that payments from incoming members will be distributed proportionately to the existing members.

A review of BFA Attachment B, the 2020 Certified Financial Statement, and the full year 2021 Financial Statement shows a positive working capital position and equity position, and that the Center achieved a net income of $2,849,418 and $4,106,751, respectively. Internal Financial Statements as of March 31, 2022, show a positive working capital and equity position and the facility achieved a net income of $1,192,905, thus reinforcing healthy operations.

Conclusion

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

Attachments

BFA Attachment A	Net Worth Statement Proposed Members
BFA Attachment B	2020 Certified Financial Statements, 2021 Annual Financial Statements, and March 31, 2022, Internal Financial Statements for 21 Reade Place ASC, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October 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 41.6665% ownership interest to five new members of the sole member 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:
221224 E	21 Reade Place ASC, LLC d/b/a Bridgeview Endoscopy

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]

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221267-E
Advanced Endoscopy LLC d/b/a
Advanced Endoscopy Center

Program:	**Diagnostic and Treatment Center**	***County:***	**Bronx**
Purpose:	**Establishment**	***Acknowledged:***	**July 14, 2022**

Executive Summary

Description

Advanced Endoscopy Center, LLC (AEC or the Center), an existing single-specialty (gastroenterology) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 5500 Broadway, Suite A, Bronx (Bronx County), is seeking approval to transfer 10.71213% membership interest in the Center to PE Healthcare Associates, LLC (PEHA).

AEC's current ownership consists of three member classes:

- Class A: 13 physician members (60.2%)
- Class B: three non-physician members (10.7%)
- Class C: MMC GI Holdings West, Inc., a not-for-profit entity with Montefiore Medical Center as its passive sole corporate member (29.1%)

The application is a legal restructuring and there are no new individuals associated with the ownership of the Center. Upon approval of this project, AEC's Class A and Class C membership remain the same. The three existing individual Class B members of AEC will transfer their entire membership interest in the Center (10.71213% combined) to PEHA. PEHA has three members, the current individual Class B members of AEC.

The Center, which has five procedure rooms, began operations in May 2007 and is current with its SPARCS reporting. There will be no change in services, location or location served. David Stein, M.D is the current medical director and will remain as the medical director.

This application is being processed concurrently by the Department with five other PEHA ownership change applications. Upon approval by PHHPC, PEHA will have membership interests in 16 FASCs in New York State.

OPCHSM Recommendation

Approval

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

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

Financial Summary

There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

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

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A MEMBERS		
David Stein	4.63061%	4.63061%
Isadore Gutwein	4.63061%	4.63061%
Robert Sable	4.63061%	4.63061%
Ira Tepler	4.63061%	4.63061%
Henry Katz	4.63061%	4.63061%
Michael Ader	4.63061%	4.63061%
Albert Kramer	4.63061%	4.63061%
Ammon Gotian	4.63061%	4.63061%
Dan Reich	4.63061%	4.63061%
Jeremy Gutwein	4.63061%	4.63061%
Ian Hamik	4.63061%	4.63061%
Neil Herbsman	4.63061%	4.63061%
Jonathan Rieber	4.63061%	4.63061%
CLASS B MEMBERS		
Barry Tanner	3.75897%	0.00000%
Christina Morrison	3.47658%	0.00000%
David Young	3.47658%	0.00000%
PE Healthcare Associates, LLC ***Barry Tanner (48%) ***David Young (26%) ***Christina Morrison (26%)	0.00000%	10.71213%
CLASS C MEMBERS		
MMC GI Holdings West, Inc	29.08888%	29.08888%
Total	**100%**	**100%**

****Subject to Character and Competence*

PE Healthcare Associates, in accordance with the terms of the Center's Operating Agreement, proposes to appoint Lara Jordan as an outside manager to serve on the Center's Board of Managers.

Lara Jordan is the Vice President of Operations of PE GI Solutions where she has oversight of operations of nine GI and one multispecialty ASC. She was previously employed as the Vice President of Operations of Ambulatory Surgery Centers of America where she had oversight of five ASCs.

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*

Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*
Advanced Surgery Center of Long Island	*2021-present*
Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

William "Barry" Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO's discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

Atlantic Gastro Surgicenter	*2016-present*
Augusta Endoscopy Center	*2010-present*
Berks Center for Digestive Health	*2001-present*
Bethesda Endoscopy Center	*2018-present*
Burlington County Endoscopy Center	*2008-present*
Carnegie Hill Endoscopy	*2010-present*
Central Arizona Endoscopy	*2006-present*
Central Jersey ASC	*2017-present*
Dekalb Endoscopy Center	*2016-present*
DHA Endoscopy	*2012-present*
Digestive Disease Endoscopy Center	*2012-present*
Digestive Disease & Endoscopy Center	*2020-present*
Digestive Health Specialist Endoscopy Ctr	*2018-present*
East Side Endoscopy	*2010-present*
The Endoscopy Center at Bainbridge	*2007-present*
University Suburban Endoscopy Ctr	*2013-present*
Emerson Endoscopy and Digestive Health Ctr	*2021-present*
Endoscopy Associates of Valley Forge	*2018-present*
Endoscopy Center at Robinwood	*2012-present*
Endoscopy Center at St. Mary's	*2016-present*
Endoscopy Center of Bucks County	*2013-present*
Endoscopy Center of Niagara	*2014-present*
Endoscopy Center of West Central Ohio	*2015-present*
Endoscopy Center of Western New York	*2004-present*
Eastside Endoscopy Center	*2005-present*
EEC-Issaquah	*2012-present*
Elgin Gastroenterology Center	*2012-present*
Fredericksburg Endoscopy	*2020-present*
Garden State Endoscopy and Surgery Ctr	*2015-present*
Gastrointestinal Endoscopy Center	*2018-present*
Island Digestive Health Center	*2014-present*
Kalamazoo Endo Center	*2006-present*
Laredo Digestive Health Center	*2009-present*
Long Island Center for Digestive Health	*2006-present*
Michigan Endoscopy Center	*2013-present*
Michigan Endoscopy Center at Providence Park	*2013-present*
Northern New Jersey for Advanced Endoscopy	*2016-present*
Northwest Endoscopy Center	*1998-present*
PGC Endoscopy Center for Excellence	*2015-present*
Princeton Endoscopy Center	*2022-present*
S. Broward Endoscopy	*2005-present*

Surgical Centers of Michigan	*2016-present*
UH North Ridgeville Endoscopy Center	*2019-present*
Mid-Bronx Endoscopy Center	*2017-present*
Lone Star Endoscopy	*2006-present*
Lone Star Endoscopy Satellite Office 1	*2014-present*
Lone Star Endoscopy Satellite Office 2	*2017-present*
South Brooklyn Endoscopy Center	*2017-present*
Great South Bay Endoscopy Center	*2017-present*
Liberty Endoscopy	*2017-present*
Advanced Surgery Center	*2017-present*
Manhattan Endoscopy Center	*2017-present*
Putnam Gastroenterology	*2017-present*
Queens Endoscopy ASC	*2017-present*
Yorkville Endoscopy	*2017-present*
Endo-surgical Center of Florida	*2010-2014*
AZ West Endoscopy Center	*2010-2019*
Greater Gaston Endoscopy Center	*2014-2019*
Delmarva Endoscopy Center	*2019-2020*
Flushing Endoscopy Center	*2017- 2021*
Queens Boulevard ASC	*2017-2021*
West Side GI	*2017-2020*
Hudson Valley Center for Digestive Health	*2012-2018*
AMSC	*2017-2018*
Mulberry ASC	*2017-2019*
Chesapeake Eye Surgery Center	*04/2022-present*
Columbia Surgery Center	*04/2022-present*
Bergman Eye Surgery Center	*04/2022-present*
Baltimore Eye Surgery Center	*04/2022-present*
Carroll County Eye Surgery	*04/2022-present*
The Surgery Center	*04/2022-present*
Eyes of York Surgery Center	*04/2022-present*
NEI ASC	*04/2022-present*
Pennsylvania Eye Surgery Center	*04/2022-present*
Ophthalmic Associates Surgery and Laser Ctr	*04/2022-present*
Surgery Specialty Center of Northeastern PA	*04/2022-present*
Denali United	*01/2022-present*
Pearl Road Surgery Center	*2019-present*
PET Imaging VI	*2019-present*
PET Imaging VIII	*2019-present*
PET Imaging IX	*2019-present*
PET Imaging XII	*2019-present*
PET Imaging XVII	*2019-present*

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*

Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*
Advanced Surgery Center of Long Island	*2021-present*
Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the 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 Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Membership Interest Transfer Agreement

The applicant has submitted three executed Membership Interest Transfer Agreements for the proposed members, the terms of which are summarized below:

Date:	12/21/2021
Description:	Transfer a combined 10.71213% ownership interest of three Class B members in AEC to PEHA
Transferors:	Barry Tanner, Christina Morrison, and David Young
Transferee:	PE Health Care Associates, LLC
Purchase Price:	$0
Percentage Interest:	Barry Tanner (3.75897%), Christina Morrison (3.47658%), and David Young (3.47658%)
Total Transfer:	PE HealthCare Associates, LLC (10.71213%)

Capability and Feasibility

There are no project costs associated with this application. There is no purchase price for the transfer of 10.71213% Class B membership interest in the Center to PE Healthcare Associates, LLC (PEHA).

As shown in BFA Attachment A, AEC had an average positive working capital position and a positive net asset position in 2020 and 2021. The Center achieved a net income of $2,945,930 and $6,724,524, in 2020 and 2021, respectively. The facilities' financial statements reflect strong financial performance.

Conclusion

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

Attachments

BFA Attachment A	Financial Summary – 2020 and 2021 Certified Financial Statements for AEC

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 6th day of October 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 of 10.71213% ownership interest from three withdrawing Class B members to one new member 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:
221267 E	Advanced Endoscopy LLC d/b/a Advanced Endoscopy Center

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221270-E
Endoscopy Center of Niagara, LLC

Program:	**Diagnostic & Treatment Center**	***County:***	**Niagara**
Purpose:	**Establishment**	***Acknowledged:***	**July 26, 2022**

Executive Summary

Description

Endoscopy Center of Niagara, LLC (ECNI), an existing single-specialty (gastroenterology) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 6930 Williams Road, Niagara Falls (Niagara County), is seeking approval to change the composition of its Class A membership.

ECNI's current ownership consists of two membership classes:

- Class A: Endoscopy Center of Western New York, LLC (ECWNY) (49%).
- Class B: Northtowns Venture, LLC (51%). Northtowns Venture, LLC is comprised of two entities, Kaleida Health (50%) and Niagara Falls Memorial Medical Center (50%).

The current Class A member, ECWNY, is divesting from the facility, and the entire 49% Class A ownership in ECNI will be transferred to two new LLCs as depicted in the Character and Competence section of the Program review, whereby 60 Holdco, LLC will acquire 37.21% and PE Healthcare Associates, LLC will acquire 11.79% interest. All members of the two new member LLCs are current members of ECWNY

The Center, which has two procedure rooms, began operations in February 2014 and is current with its SPARCS reporting.

There will be no change in service. Dr. Yogesh Maheshwari will continue as the Medical Director of the facility.

This application is being processed concurrently by the Department with five other FASC ownership change applications. Upon approval of these applications by PHHPC, PEHA will have membership interest in 16 FASCs in New York State.

OPCHSM Recommendation

Approval

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

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

Financial Summary

There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price.

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

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A MEMBERS		
Endoscopy Center of Western New York, LLC Class A Members Christopher Bartolone, MD (8.4301%) David Garson, MD (8.4301%) Richard Kaplan, MD (8.4301%) Siddhartha Shah, MD (8.4301%) Yogesh Maheshwari, MD (8.4301%) Peter Bloom, MD (7.4123%) Stanley Pietrak, MD (7.4123%) Naima Mian, DO (7.4123%) Shahid Mehboob, MD (4.5223%) Ognian Pomakov, MD (4.5223%) Benjamin Schaus, MD (1.25%) Craig Keller, MD (1.25%) Class B Members Barry Tanner (8.0226%) Christina Morrison (8.0226%) David Young (8.0226%)	**49.00%**	**0.00%**
PE Healthcare Associates** Barry Tanner (48%) David Young (26%) Christina Morrison (26%)	**0.00%**	**11.79%**
60 Holdco, LLC** Christopher Bartolone, MD (11.1022%) David Garson, MD (11.1022%) Richard Kaplan, MD (11.1022%) Siddhartha Shah, MD (11.1022%) Yogesh Maheshwari, MD (11.1022%) Peter Bloom, MD (9.7618%) Stanley Pietrak, MD (9.7618%) Naima Mian, DO (9.7618%) Shahid Mehboob, MD (5.9557%) Ognian Pomakov, MD (5.9557%) Benjamin Schaus, MD (1.6462%) Craig Keller, MD (1.6462%)	**0.00%**	**37.21%**
CLASS B MEMBERS		
Northtown Ventures, LLC Kaleida Health (50%) Niagara Falls Memorial Medical Center (50%)	51.00%	51.00%
Total	**100%**	**100%**

**Members subject to Character and Competence Review

PE Healthcare Associates, in accordance with the terms of the Center's Operating Agreement, proposes to appoint Robert Estes as an outside manager to serve on the Center's Board of Managers.

Robert Estes is the Senior Vice President of Operations of Physicians Endoscopy LLC. He is responsible for outside oversight of administrators for all operational activities, growth, and strategic planning, and acting as a liaison between the company and its partners.

Dr. Christopher Bartolone is a Managing Partner at Gastroenterology Associates, LLP and the Medical Director of the Endoscopy Center of Western New York. He received his medical degree from SUNY Buffalo School of Medicine and Biomedical Sciences. He completed his residency in Internal Medicine at SUNY Buffalo and his fellowship in Gastroenterology at the University of Illinois at Chicago Section of Digestive and Liver Disease. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Bartolone discloses ownership interest in the following healthcare facility:

The Endoscopy Center of Western New York *03/2001-present*

Dr. Peter Bloom is a partner at Gastroenterology Associates, LLP and is a Staff Physician in Gastroenterology at Millard Filmore Suburban Hospital, Mt. St. Mary's Hospital, and Sisters of Charity Hospital. He received his medical degree from SUNY Buffalo School of Medicine and Biomedical Sciences. He received his diploma in International Health from Case Western Reserve University Metrohealth Medical Center. He completed his residency in Internal Medicine at Case Western Reserve University Metrohealth Medical Center. He completed his fellowship in Gastroenterology at the University of Maryland School of Medicine. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Bloom discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York *11/2012-present*

Dr. David Garson is a Gastroenterologist at Gastroenterology Associates, LLP. He is a Staff Physician at Niagara Falls Hospital, Millard Filmore Suburban Hospital, Mt. St. Mary's Hospital, and Sister of Charity Hospital. He is an Assistant Clinical Instructor of Medicine at SUNY Buffalo. He received his medical degree from SUNY Downstate. He completed his residency in Internal Medicine at Long Island Jewish Hospital and his fellowship in Gastroenterology at SUNY Buffalo. Dr. Garson discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York *03/2001-present*

Dr. Richard Kaplan is a Managing Partner of Gastroenterology Associates, LLP. He is a Staff Gastroenterologist at Mt. St. Mary's Hospital, Kaleida Health, and Sisters of Charity Hospital. He is a Clinical Assistant Professor of Medicine at SUNY Buffalo. He received his medical degree from the University of Torino in Italy. He completed his residency in Internal Medicine at Interfaith Medical Center. He completed his fellowship and Clinical Instructor in Medicine at SUNY Buffalo. Dr. Kaplan discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York *03/2001-present*

Dr. Craig Keller is a Gastroenterologist at Gastroenterology Associates, LLP. He received his medical degree At SUNY Buffalo School of Medicine and Biomedical Sciences. He completed his residency in Internal Medicine and his fellowship in Gastroenterology at SUNY Buffalo in 2017. Dr. Keller discloses ownership interest in the following healthcare facility:

The Endoscopy Center of Western New York *12/2020-present*

Dr. Yogesh Maheswari is a Gastroenterologist at Gastroenterology Associate, LLP. He is a Gastroenterologist at Sisters of Charity Hospital, Mt. St. Mary's, Millard Filmore Suburban Hospital, and Niagara Falls Memorial Hospital for approximately. He received his medical degree from Maulana Azad Medical College in India. He completed his residency in Internal Medicine and fellowship in Gastroenterology, Hepatology, and Nutrition at SUNY Buffalo. Dr. Maheswari discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York, LLC *10/2005-present*

Dr. Shahid Mehboob is a Gastroenterologist at Gastroenterology Associates, LLP. He is also a Gastroenterologist at Kaleida Health. He is a Clinical Associate Professor of Medicine at SUNY Buffalo. He received his medical degree from King Edward Medical College in Pakistan. He completed his residency in Internal Medicine at Muhlenberg Regional Medical Center in New Jersey. He completed his fellowship in Gastroenterology at Albany Medical Center and in Hepatology-Transplant at the University

of Pittsburgh Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Mehboob discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York	*08/2018-present*

Dr. Naima Mian is a Partner in Gastroenterology Associates, LLP. She received her medical degree from the New York College of Osteopathic Medicine. She completed her residency in Internal Medicine and fellowship in Gastroenterology at North Shore University Hospital. She is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Mian discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York	*11/2012-present*

Dr. Stanley Pietrak is a Gastroenterologist at Gastroenterology Associates, LLP. He is a Clinical Assistant Professor of Medicine at SUNY Buffalo Affiliated Hospitals. He received his medical degree from Albany Medical College. He completed his residency in Internal Medicine and fellowship in Gastroenterology at SUNY Buffalo. Dr. Pietrak discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York	*11/2012-present*

Dr. Ognian Pomakov is a Gastroenterologist at Gastroenterology Associates, LLP, Sister of Charity of Hospital, and Millard Fillmore Suburban Hospital. He received his medical degree from the Higher Institute of Medicine of Pleven in Bulgaria. He completed his residency in Internal Medicine and fellowship in Gastroenterology at SUNY Buffalo. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Pomakov discloses ownership interest in the following healthcare facilities:

The Endoscopy of Western New York	*08/2018-present*

Dr. Benjamin Schaus is a Gastroenterologist at Gastroenterology Associates, LLP. He received his medical degree from the New York College of Osteopathic Medicine. He completed his residency in Internal Medicine at the Cleveland Clinic and his fellowship in Gastroenterology at Millcreek Community Hospital. He is board certified in Internal Medicine with a subspeciality in Gastroenterology. Dr. Schaus discloses ownership interest in the following healthcare facility:

The Endoscopy Center of Western New York	*12/2020-present*

Dr. Siddartha Shah is a Gastroenterologist at Gastroenterology Associates, LLP. He received his medical degree from the University of Bombay in India. He completed his residency in Internal Medicine at Wayne State University Hospital. He completed his fellowship in Gastroenterology at SUNY Buffalo and a special fellowship in Endoscopic Ultrasonography at Memorial Sloan-Kettering Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Shah discloses ownership interest in the following healthcare facilities:

The Endoscopy Center of Western New York	*03/2001-present*

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*
Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*
Advanced Surgery Center of Long Island	*2021-present*

Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

William "Barry" Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO's discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

Atlantic Gastro Surgicenter	*2016-present*
Augusta Endoscopy Center	*2010-present*
Berks Center for Digestive Health	*2001-present*
Bethesda Endoscopy Center	*2018-present*
Burlington County Endoscopy Center	*2008-present*
Carnegie Hill Endoscopy	*2010-present*
Central Arizona Endoscopy	*2006-present*
Central Jersey ASC	*2017-present*
Dekalb Endoscopy Center	*2016-present*
DHA Endoscopy	*2012-present*
Digestive Disease Endoscopy Center	*2012-present*
Digestive Disease & Endoscopy Center	*2020-present*
Digestive Health Specialist Endoscopy Ctr	*2018-present*
East Side Endoscopy	*2010-present*
The Endoscopy Center at Bainbridge	*2007-present*
University Suburban Endoscopy Ctr	*2013-present*
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S. Broward Endoscopy	*2005-present*
Surgical Centers of Michigan	*2016-present*
UH North Ridgeville Endoscopy Center	*2019-present*
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Lone Star Endoscopy	*2006-present*
Lone Star Endoscopy Satellite Office 1	*2014-present*

Lone Star Endoscopy Satellite Office 2	*2017-present*
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Great South Bay Endoscopy Center	*2017-present*
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PET Imaging VI	*2019-present*
PET Imaging VIII	*2019-present*
PET Imaging IX	*2019-present*
PET Imaging XII	*2019-present*
PET Imaging XVII	*2019-present*

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
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Long Island Center for Digestive Health	*2021-present*
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Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

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

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

Recommendation

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

Financial Analysis

Unit Transfer Agreement

The applicant has submitted the executed Unit Transfer Agreement, the terms of which are summarized below:

Date:	May 1, 2022
Description:	Transfer of the current 49 units of class A membership in Endoscopy of Niagara, LLC
Transferor	Endoscopy Center of Western New York, LLC
Transferee	All the individual members of Endoscopy Center of Western New York, LLC
Transferee Reimbursement	Pro rata to their ownership percentage in the Transferor.
Payment of Purchase Price:	N/A

Contribution Agreement

The applicant has submitted an executed Contribution Agreement for the proposed members. The contribution agreement is being used to allow the individual members of ECNI to transfer their interest to 60 Holdco, LLC for an equivalent ownership percentage in 60 Holdco. The terms of the agreement are summarized below:

Date:	May 1, 2022
Description:	Contribution of 37.21% Class A ownership interest in Endoscopy of Niagara, LLC
Contributors:	12 of the individual members of Endoscopy Center of Western New York, LLC
Contributees:	60 Holdco, LLC
Contribution Reimbursement	Pro rata percentage shares in 60 Holdco, LLC.

Membership Interest Transfer Agreement

The applicant has submitted three executed Membership Interest Transfer Agreements for the proposed members, the terms of which are summarized below:

Date:	December 21, 2021
Description:	Transfer of 11.79% Class A ownership interest in Endoscopy of Niagara, LLC
Transferors:	Barry Tanner, Christina Morrison, and David Young
Transferee:	PE Healthcare Associates, LLC
Purchase Price	$0
Percentage Interest	Barry Tanner 5.66%, Christina Morrison 3.065%, and David Young 3.065%
Total Transfer	PE Health Associates 11.79%

The transferors did not have direct ownership of the 11.79% interest in Endoscopy of Niagara, LLC at the time of execution but did have indirect ownership via their ownership of Endoscopy Center of Western New York, LLC. Endoscopy Center of Western New York, LLC intends to distribute its interest in Endoscopy of Niagara, LLC to the individual members of the facility, which is detailed under the unit transfer agreement.

Capability and Feasibility

There are no project costs or purchase prices associated with this application. The exchange of 49% Class A membership interest in ECNI to PE Healthcare Associates, LLCs (PEHA) 11.79% and 60 Holdco, LLC 37.21% is being transferred at no cost.

BFA Attachment A presents 2020-2021 certified and 2022 internal financial statements of Endoscopy Center of Niagara, LLC. As shown, the facility had both average positive working capital and net asset positions of $870,234 and $1,476,168, respectively for the period 2020-2021. Also, the facility achieved a net income of $1,490,955 and $1,584,063 in 2020 and 2021, respectively. The facility also achieved both positive working capital and net asset positions of $532,090 and $1,108,039, respectively for the period 1/1/22-6/30/2022. Also, the facility achieved a net income of $765,837 for the period 1/1/2022-6/30/2022.

Conclusion

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

Attachments

BFA Attachment A	2020-2021 Certified and the 1/1/2022-6/30/2022 internal financial statements of Endoscopy Center of Niagara, 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 6th day of October 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 49% ownership interest from one withdrawing Class A member LLC to two new Class A member LLCs, 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:
221270 E	Endoscopy Center of Niagara, 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]

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221271-E
Endoscopy Center of Western New York, LLC

Program: **Diagnostic and Treatment Center** ***County:*** **Erie**
Purpose: **Establishment** ***Acknowledged:*** **July 14, 2022**

Executive Summary

Description
Endoscopy Center of Western New York, LLC (ECWNY), a proprietary limited liability company that operates an existing single-specialty (gastroenterology) Article 28 freestanding ambulatory surgery center (FASC) at 60 Maple Road, Williamsville (Erie County), is seeking approval to transfer 100% membership interest from 15 withdrawing members to two new member LLCs.

ECWNY's current ownership consists of two member classes:
- Class A: 12 physician members (75.9320%)
- Class B: three non-physician members (24.0678%)

Upon approval of this project, ECWNY will have one Class A member and one Class B member, both comprised of subsets of the current individual members. See the Character and Competence section of the Program Review for the exact proposed membership structure.

The Center, which has five procedure rooms, began operations in March 2004 and is current with its SPARCS reporting. There will be no changes to services. Christopher J. Bartolone, M.D., a Class A member who is board-certified in Internal Medicine and Gastroenterology, will continue to serve as the Medical Director. Millard Fillmore Suburban will continue to provide transfer and backup services (three miles and seven minutes travel time).

This application is being processed concurrently by the Department with five other PEHA change of ownership applications. Upon approval of these applications by PHHPC, PEHA will be a member of 16 FASCs in New York State.

OPCHSM Recommendation
Approval

Need Summary
There will be no need review per Public Health Law §2801-a (4).

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

Financial Summary
There are no project costs or purchase prices for this application.

(in 000's)	Current Year	Year One	Year Three
Revenues	$17,398	$15,293	$15,293
Expenses	8,856	$9,021	$9,134
Net Income	$8,542	$6,272	$6,159

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

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A		
Christopher Bartolone, M.D	8.4301%	0.0000%
David Garson, M.D.	8.4301%	0.0000%
Richard Kaplan, M.D.	8.4301%	0.0000%
Siddhartha Shah, M.D.	8.4301%	0.0000%
Yogesh Maheshwari, M.D.	8.4301%	0.0000%
Peter Bloom, M.D.	7.4123%	0.0000%
Stanley Pietrak, M.D.	7.4123%	0.0000%
Naima Mian, D.O.	7.4123%	0.0000%
Shahid Mehboob, M.D.	4.5223%	0.0000%
Ognian Pomakov, M.D.	4.5223%	0.0000%
Benjamin Schaus, M.D.	1.2500%	0.0000%
Craig Keller, M.D.	1.2500%	0.0000%
60 Holdco, LLC **Christopher Bartolone, M.D. (11.1022%) **David Garson, M.D. (11.1022%) **Richard Kaplan, M.D. (11.1022%) **Siddhartha Shah, M.D. (11.1022%) **Yogesh Maheshwari, M.D. (11.1022%) **Peter Bloom, M.D. (9.7618%) **Stanley Pietrak, M.D. (9.7618%) **Naima Mian, M.D. (9.7618%) **Shahid Mehboob, M.D. (5.9557%) **Ognian Pomakov, M.D. (5.9557%) **Benjamin Schaus, M.D. (1.6462%) **Craig Keller, M.D. (1.6462%)	0.0000%	**75.9320%**
CLASS B		
Barry Tanner	8.0226%	0.0000%
David Young	8.0226%	0.0000%
Christina Morrison	8.0226%	0.0000%
PE Healthcare Associates, LLC **Barry Tanner (48%) **David Young (26%) **Christina Morrison (26%)	0.0000%	**24.0678%**
Total	**100%**	**100%**

***Subject to Character and Competence*

Dr. Christopher Bartolone is a Managing Partner at Gastroenterology Associates, LLP and is the Medical Director of Endoscopy Center of Western New York. He is also a Partner of Gastroenterology Associates, LLP. Previously, he was an Associate of WNY Gastroenterology, LLP and an Assistant Clinical Professor of Medicine. He received his medical degree from SUNY Buffalo School of Medicine and Biomedical Sciences, completed his residency in Internal Medicine at SUNY Buffalo, and his fellowship in Gastroenterology at the University of Illinois at Chicago Section of Digestive and Liver Disease. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Peter Bloom is currently employed at Gastroenterology Associates, LLP and is a Staff Physician in Gastroenterology at Millard Filmore Suburban Hospital, Mt. St. Mary's Hospital, and Sisters of Charity

Hospital. He was previously the Assistant Professor for the Division of Digestive Diseases, the Staff Gastroenterologist at Gastroenterology Consultants, PC, Saint Joseph's Hospital, Northside Hospital, Emory Dunwoody Medical Center, and Emory Adventist Medical Center, the Chief of Gastroenterology at the VA Medical Center, a Staff Gastroenterologist at the VA Medical Center, an Attending Physician at Grady Memorial Hospital, a Clinical Instructor at the University of Maryland School of Medicine, and an Associate Investigator and Attending Physician at the Department of Veteran's Affairs. Dr. Bloom received his medical degree from SUNY Buffalo School of Medicine and Biomedical Sciences and received his diploma in International Health from Case Western Reserve University Metrohealth Medical Center. He completed his residency in Internal Medicine at Case Western Reserve University Metrohealth Medical Center and completed his fellowship in Gastroenterology at the University of Maryland School of Medicine. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. David Garson is a Gastroenterologist at Gastroenterology Associates, LLP. In addition to this, he is a Staff Physician at Niagara Falls Hospital, Millard Filmore Suburban Hospital, and Mt. St. Mary's Hospital, a Staff Physician at Sister of Charity Hospital, and an Assistant Clinical Instructor of Medicine at SUNY Buffalo. He was previously a Gastroenterologist at WNY Gastroenterology, LLP and a Staff Physician at Buffalo General Hospital. He received his medical degree from SUNY Downstate, completed his residency in Internal Medicine at Long Island Jewish Hospital, and his fellowship in Gastroenterology at SUNY Buffalo.

Dr. Richard Kaplan is a Managing Partner of Gastroenterology Associates, LLP. In addition, he is a Staff Gastroenterologist at Mt. St. Mary's, Kaleida Health, and Sisters of Charity Hospital, and is a Clinical Assistant Professor of Medicine at SUNY Buffalo for 34 years. He was previously a Gastroenterologist employed in private practice. He received his medical degree from the University of Torino in Italy, completed his residency in Internal Medicine at Interfaith Medical Center, and completed his fellowship and Clinical Instructor in Medicine at SUNY Buffalo.

Dr. Craig Keller is a Gastroenterologist at Gastroenterology Associates, LLP. He received his medical degree at SUNY Buffalo School of Medicine and Biomedical Sciences and completed his residency in Internal Medicine and his fellowship in Gastroenterology at SUNY Buffalo.

Dr. Yogesh Maheswari is a Gastroenterologist at Gastroenterology Associate, LLP, Sisters of Charity Hospital, Mt. St. Mary's, Millard Filmore Suburban Hospital, and Niagara Falls Memorial Hospital. He was previously a Staff Physician at Kenmore Mercy Hospital and Dartmouth Hitchcock Medical Center. He was also previously the Chief of Gastroenterology at the VA Medical Center and a Staff Gastroenterologist before becoming Chief. In addition, he was the Assistant Professor of Clinical Medicine at Dartmouth Medical School and an Instructor in Clinical Medicine at SUNY Buffalo. He received his medical degree from Maulana Azad Medical College in India and completed his residency in Internal Medicine and fellowship in Gastroenterology, Hepatology, and Nutrition at SUNY Buffalo.

Dr. Shahid Mehboob is a Gastroenterologist at Gastroenterology Associates, LLP, Kaleida Health, and Erie County Medical Center. He is also a Clinical Associate Professor of Medicine at SUNY Buffalo. Previously, he was an Associate Program Director of Gastroenterology at SUNY Buffalo and a Clinical Instructor at Albany Medical College. He received his medical degree from King Edward Medical College in Pakistan, completed his residency in Internal Medicine at Muhlenberg Regional Medical Center in New Jersey, and completed his fellowship in Gastroenterology at Albany Medical Center and in Hepatology-Transplant at the University of Pittsburgh Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Naima Mian is a Partner in Gastroenterology Associates, LLP. She received her medical degree from the New York College of Osteopathic Medicine and completed her residency in Internal Medicine and fellowship in Gastroenterology at North Shore University Hospital. She is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Stanley Pietrak is a Gastroenterologist at Gastroenterology Associates, LLP and a Clinical Assistant Professor of Medicine at SUNY Buffalo Affiliated Hospitals. Previously, he was a Physician at Buffalo Internal Medicine Associates, a Gastroenterologist at Williamsville Gastroenterology, the Director of the Medical Emergency Department of Erie County Medical Center, and the Acting Chief and the Chief of the

Division of Gastroenterology of Sister's Hospital. He received his medical degree from Albany Medical College and completed his residency in Internal Medicine and fellowship in Gastroenterology at SUNY Buffalo.

Dr. Ognian Pomakov is a Gastroenterologist at Gastroenterology Associates, LLP, Sister of Charity of Hospital, and Millard Fillmore Suburban Hospital. Previously, he was a Gastroenterologist at Buffalo Gastroenterology Associates, LLP and Mercy Hospital of Buffalo, a Clinical Associate Professor of Gastroenterology at SUNY Buffalo, and an Attending Gastroenterologist at WYNHCS, Buffalo Veteran's Administration Medical Center. He received his medical degree from the Higher Institute of Medicine of Pleven in Bulgaria and completed his residency in Internal Medicine and fellowship in Gastroenterology at SUNY Buffalo. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Dr. Benjamin Schaus is a Gastroenterologist at Gastroenterology Associates. He was previously a Partner at Buffalo Gastroenterology Associates, an Associate Faculty Member at LECOM, and a Clinical Associate in the Department of Internal Medicine at the Cleveland Clinic. He received his medical degree from the New York College of Osteopathic Medicine, completed his residency in Internal Medicine at the Cleveland Clinic, and his fellowship in Gastroenterology at Millcreek Community Hospital. He is board certified in Internal Medicine with a subspeciality in Gastroenterology.

Dr. Siddartha Shah is a Gastroenterologist at Gastroenterology Associates, LLP. Previously, he was a Gastroenterologist at Buffalo Medical Group and a Physician at Academic Medicine Services at SUNY Buffalo. He received his medical degree from the University of Bombay in India, completed his residency in Internal Medicine at Wayne State University Hospital, completed his fellowship in Gastroenterology at SUNY Buffalo, and a special fellowship in Endoscopic Ultrasonography at Memorial Sloan-Kettering Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology.

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
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William "Barry" Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO's discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

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PET Imaging XII	*2019-present*
PET Imaging XVII	*2019-present*

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*
Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*
Advanced Surgery Center of Long Island	*2021-present*
Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the 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 Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in

the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Operating Budget

	Current Year (2021)		Year One (2023)		Year Three (2025)	
	Per Proc.	Total (in 000's)	Per Proc.	Total (in 000's)	Per Proc.	Total (in 000's)
Revenues						
Commercial FFS	$1,098.47	$10,685	$1,098.42	$11,056	$1,098.42	$11,056
Medicare FFS	$523.62	$682	$523.63	$695	$523.63	$695
Medicare MC	$685.28	$2,699	$685.24	$2,753	$685.24	$2,753
Medicaid FFS	$207.64	$3	$211.79	$3	$211.79	$3
Medicaid MC	$540.81	$677	$540.82	$691	$540.82	$691
Private Pay	$8,210.88	$66	$8,375.13	$67	$8,375.13	$67
All Other[1]	$531.43	$27	$531.63	$28	$531.63	$28
Total Patient Rev.		$14,839		$15,293		$15,293
Other Income[2]		$1,783		$0		$0
Income from LLC[3]		$776		$0		$0
Total Revenue		$17,398		$15,293		$15,293
Expenses						
Operating	$505.33	$8,250	$496.73	$8,415	$550.56	$8,528
Capital	37.17	$606	35.75	$606	48.85	$606
Total Expenses	$543.50	$8,856	$532.48	$9,021	$599.41	$9,134
Net Income		$8,542		$6,272		$6,159
Procedures		16,294		16,941		16,932
Cost/Procedure		$543.50		$532.48		$539.43

[1] *All Other includes other government payors and self-pay.*

[2] *Other Income includes CARES Act funding ECWNY received in 2021*

[3] *ECWNY's share of income received from Endoscopy Center of Niagara, LLC, in which ECWNY owns a 49% membership interest.*

The following is noted for the submitted budget:

- The current year reflects the facility's 2021 revenues and expenses.
- The staffing mix reflects 2021 staffing levels based on ongoing operations; staffing changes are not anticipated in Years One and Three.
- Medicare Managed Care revenue is based upon negotiated rates.
- Utilization, revenue, and expense projections are conservatively estimated based historical experience of ECWNY LLC.
- Charity care utilization is based on a forecasted return to normalized operations, as well as, ECWNY's community outreach and education efforts related to colon cancer awareness.
- The increase in cost per procedure in Year Three is driven by an increase in professional fees, medical supplies, and purchased services.

- As of August 16, 2022, the facility had no outstanding Medicaid overpayment liabilities.

Utilization by payor source during the current, first, and third years is broken down as follows:

Payor	Current Year	Year One	Year Three
Commercial FFS	59.70%	59.45%	59.45%
Medicare FFS	7.99%	7.84%	7.84%
Medicare MC	24.17%	23.73%	23.73%
Medicaid FFS	0.09%	0.08%	0.08%
Medicaid MC	7.68%	7.54%	7.54%
Private Pay	0.05%	0.05%	0.05%
Charity Care	0.01%	1.00%	1.00%
All Other	0.31%	0.31%	0.31%
Total	100.00%	100.00%	100.00%

Executed Third Amendment to Lease Agreement

The applicant has submitted an executed third amendment to the lease agreement for the existing site, the terms of which are summarized below:

Date:	October 12, 2017
Premises:	60 Maple Road, Williamsville, New York, 14221
Landlord:	60 Maple Road L.L.C.
Tenant:	Endoscopy Center of Western New York, L.L.C.
Term:	10 years, renewed for three (3) additional terms of five (5) years.
Rent:	Base rent for total leased space is $121,000 ($10,083.33 per month) Rent will increase at 5% of the base year rent on the second anniversary of the Commencement, and 3% for the remaining years. The landlord shall provide 1,640 additional square feet of adjacent usable space to the Tenant
Provisions:	The tenant is responsible for insurance, utilities, maintenance and repair, and property taxes.

Amended and Restated Administrative Services Agreement

The applicant has submitted an executed First Amendment to the Amended and Restated Administrative Services Agreement (ASA), summarized as follows:

Date:	December 1, 2015
Contract Provider:	Physicians Endoscopy, LLC
Facility Operator:	Williamsville Consulting, LLC an affiliate of ECWNY, LLC
Terms:	12 years, and automatic renewal for three additional three-year terms
Administrative Services Provided:	Billing, collection services, financial management services, strategic planning and development, policies and procedures, contracting services, personnel, supplies, utilities/waste management, operating licenses, and banking.
Annual Fee:	$81,167 ($6,763.92 per month) and a $30.15 flat rate charge per procedure.

Williamsville Consulting, LLC was established to assist in the design, construction, and operation of ECWNY and has been retained by ECWNY to provide development, administrative, and consulting services to ECWNY. Williamsville Consulting retained Physicians Endoscopy, LLC on its behalf to provide administrative services necessary for the day-to-day operations of ECWNY.

Membership Interest Transfer Agreement
The applicant has submitted an executed Membership Interest Transfer Agreement (MITA), effectuated on December 21, 2021, and summarized as follows:

Date:	December 21, 2021
Transferors:	Barry Tanner; Christina Morrison; David Young
Transferee:	PE Healthcare Associates, LLC
Transfer:	Transfer 24.06780 units of ownership interest, constituting 24.06780% ownership interest in ECWNY, LLC.
Purchase Price:	N/A

Contribution Agreement
The applicant has submitted an executed Contribution Agreement (CA), effectuated on May 1, 2022, and summarized as follows:

Date:	May 1, 2022
Transferors:	Christopher Bartolone; David Garson; Richard Kaplan; Siddhartha Shah; Yogesh Maheshwari; Peter Bloom; Stanley Pietrak; Naima Mian; Shahid Mehboob; Ognian Pomako; Benjamin Schaus; Craig Keller
Transferee:	60 Holdco, LLC
Transfer:	Transfer 75.93215 units of ownership interest, constituting 75.93215% ownership interest in ECWNY, LLC.
Purchase Price:	N/A

Capability and Feasibility
There are no project costs associated with this application. Working capital will be funded through ongoing operations. The submitted budget indicates an excess of revenues over expenses of $6,271,812 and $6,158,971 during the first and third year of operations, respectively.

BFA Attachment A is ECWNY's 2021 Certified Financial Statements during which the center reported positive working capital and positive net assets and an operating gain of $5,997,371. ECWNY's operating gain was increased by $776,193 in income received from Endoscopy Center of Niagara, LLC in which ECWNY owns 49% membership interest, and by $1,783,008 in other income from CARES Act grants ECWNY received during 2021, resulting in an excess of revenues over expenses of $8,542,159. ECWNY has met the requirements for CARES Act funding and does not anticipate refunds. BFA Attachment B is a summary of ECWNY's June 2022 Internal Financial Statements, which show a positive working capital position and a positive net asset position, and an operating income of $4,511,546, which was offset by other expenses resulting net income of 3,247,938 for the period.

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

Attachments

BFA Attachment A	2021 Audited Financial Statements for Endoscopy Center of Western New York
BFA Attachment B	June 2022 Internal Financial Statements for Endoscopy Center of Western New York, 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 6th day of October 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 100% ownership interest from 15 withdrawing members to two new member LLCs, 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:
221271 E	Endoscopy Center of Western New York, 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]

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221272-E
Island Digestive Health Center, LLC

Program:	**Diagnostic and Treatment Center**	***County:***	**Suffolk**
Purpose:	**Establishment**	***Acknowledged:***	**July 14, 2022**

Executive Summary

Description
Island Digestive Health Center LLC (IDHC), an existing single-specialty (gastroenterology) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 471 Montauk Highway, West Islip (Suffolk County), is seeking approval to transfer 10.00% membership interest in IDHC to PE Healthcare Associates, LLC (PEHA).

IDHC's current ownership consists of three member classes:

- Class A: Advanced GI Endoscopy, LLC, an entity comprised of five physicians (39%)
- Class B: three non-physician members (10%)
- Class C: Good Samaritan Hospital Medical Center whose sole corporate member and established co-operator is Catholic Health System of Long Island, Inc. (51%).

Upon approval of this project, IDHC's Class A and Class C membership remain the same. The three existing individual Class B members of IDHC will transfer their entire membership interest in the Center (10% combined) to PEHA. PEHA has three members who are the current individual Class B members of IDHC.

The Center, which has three procedure rooms, began operations in May 2014 and is current with its SPARCS reporting.

There will be no change in services. Babak Danesh, MD will continue as the medical director.

This application is being processed concurrently by the Department with five other FASC change of ownership applications. Upon approval by PHHPC, PEHA will have membership of 16 FASCs in New York State.

OPCHSM Recommendation
Approval

Need Summary
There will be no need review per Public Health Law §2801-a (4).

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

Financial Summary
There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price.

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

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A MEMBER		
Advanced GI Endoscopy Kouroush Adhami, M.D. (25.64%) Neil Lobo, M.D.(25.64%) James Kohlroser, M.D.(20.51%) Krishnaiyer Subramani, M.D. (20.51%) Babak Danesh, M.D. (7.70%)	39.00%	39.00%
CLASS B MEMBERS		
Barry Tanner	3.33%	0.00%
David Young	3.33%	0.00%
Christina Morrison	3.33%	0.00%
PE Healthcare Associates **Barry Tanner (48%) **David Young (26%) **Christina Morrison (26%)	0.00%	10.00%
CLASS C MEMBER		
Good Samaritan Hospital Medical Center	51.00%	51.00%
Total	**100%**	**100%**

***Subject to Character and Competence*

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*
Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*
Advanced Surgery Center of Long Island	*2021-present*
Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

William "Barry" Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO's discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of

Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

Atlantic Gastro Surgicenter	*2016-present*
Augusta Endoscopy Center	*2010-present*
Berks Center for Digestive Health	*2001-present*
Bethesda Endoscopy Center	*2018-present*
Burlington County Endoscopy Center	*2008-present*
Carnegie Hill Endoscopy	*2010-present*
Central Arizona Endoscopy	*2006-present*
Central Jersey ASC	*2017-present*
Dekalb Endoscopy Center	*2016-present*
DHA Endoscopy	*2012-present*
Digestive Disease Endoscopy Center	*2012-present*
Digestive Disease & Endoscopy Center	*2020-present*
Digestive Health Specialist Endoscopy Ctr	*2018-present*
East Side Endoscopy	*2010-present*
The Endoscopy Center at Bainbridge	*2007-present*
University Suburban Endoscopy Ctr	*2013-present*
Emerson Endoscopy and Digestive Health Ctr	*2021-present*
Endoscopy Associates of Valley Forge	*2018-present*
Endoscopy Center at Robinwood	*2012-present*
Endoscopy Center at St. Mary's	*2016-present*
Endoscopy Center of Bucks County	*2013-present*
Endoscopy Center of Niagara	*2014-present*
Endoscopy Center of West Central Ohio	*2015-present*
Endoscopy Center of Western New York	*2004-present*
Eastside Endoscopy Center	*2005-present*
EEC-Issaquah	*2012-present*
Elgin Gastroenterology Center	*2012-present*
Fredericksburg Endoscopy	*2020-present*
Garden State Endoscopy and Surgery Ctr	*2015-present*
Gastrointestinal Endoscopy Center	*2018-present*
Island Digestive Health Center	*2014-present*
Kalamazoo Endo Center	*2006-present*
Laredo Digestive Health Center	*2009-present*
Long Island Center for Digestive Health	*2006-present*
Michigan Endoscopy Center	*2013-present*
Michigan Endoscopy Center at Providence Park	*2013-present*
Northern New Jersey for Advanced Endoscopy	*2016-present*
Northwest Endoscopy Center	*1998-present*
PGC Endoscopy Center for Excellence	*2015-present*
Princeton Endoscopy Center	*2022-present*
S. Broward Endoscopy	*2005-present*
Surgical Centers of Michigan	*2016-present*
UH North Ridgeville Endoscopy Center	*2019-present*
Mid-Bronx Endoscopy Center	*2017-present*
Lone Star Endoscopy	*2006-present*
Lone Star Endoscopy Satellite Office 1	*2014-present*
Lone Star Endoscopy Satellite Office 2	*2017-present*
South Brooklyn Endoscopy Center	*2017-present*
Great South Bay Endoscopy Center	*2017-present*
Liberty Endoscopy	*2017-present*
Advanced Surgery Center	*2017-present*
Manhattan Endoscopy Center	*2017-present*
Putnam Gastroenterology	*2017-present*
Queens Endoscopy ASC	*2017-present*

Yorkville Endoscopy	*2017-present*
Endo-surgical Center of Florida	*2010-2014*
AZ West Endoscopy Center	*2010-2019*
Greater Gaston Endoscopy Center	*2014-2019*
Delmarva Endoscopy Center	*2019-2020*
Flushing Endoscopy Center	*2017- 2021*
Queens Boulevard ASC	*2017-2021*
West Side GI	*2017-2020*
Hudson Valley Center for Digestive Health	*2012-2018*
AMSC	*2017-2018*
Mulberry ASC	*2017-2019*
Chesapeake Eye Surgery Center	*04/2022-present*
Columbia Surgery Center	*04/2022-present*
Bergman Eye Surgery Center	*04/2022-present*
Baltimore Eye Surgery Center	*04/2022-present*
Carroll County Eye Surgery	*04/2022-present*
The Surgery Center	*04/2022-present*
Eyes of York Surgery Center	*04/2022-present*
NEI ASC	*04/2022-present*
Pennsylvania Eye Surgery Center	*04/2022-present*
Ophthalmic Associates Surgery and Laser Ctr	*04/2022-present*
Surgery Specialty Center of Northeastern PA	*04/2022-present*
Denali United	*01/2022-present*
Pearl Road Surgery Center	*2019-present*
PET Imaging VI	*2019-present*
PET Imaging VIII	*2019-present*
PET Imaging IX	*2019-present*
PET Imaging XII	*2019-present*
PET Imaging XVII	*2019-present*

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*
Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*
Advanced Surgery Center of Long Island	*2021-present*
Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care

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

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Membership Interest Transfer Agreement

The applicant has submitted an executed Membership Interest Transfer Agreement (MITA), effectuated on December 21, 2021, and summarized as follows:

Date:	December 21, 2021
Transferors:	Barry Tanner; Christina Morrison; David Young
Transferee:	PE Healthcare Associates, LLC
Transfer:	Transfer 10 units of ownership interest, constituting 10% ownership interest in IDHC, LLC
Purchase Price:	$0

Capability and Feasibility

There are no project costs associated with this application. Working capital will be funded through ongoing operations. There is no purchase price for the transfer of 10% of Class B membership interest in the IDHC to PE Healthcare Associates, LLC.

BFA Attachment A is the summary of the 2020 Certified Financial Statements for Island Digestive Health Center, LLC. The 2020 Certified Financial Statements show positive working capital, net asset positions, and a positive operating income of $1,928,730. The facility's net income for 2020 was offset by other income of $1,110,945, which includes CARES Act stimulus funding and interest expense of $3,307, resulting in a net income of $3,036,368. BFA Attachment B presents a summary of the 2021 Certified Financial Statements for Island Digestive Health Center, LLC, LLC, which shows positive working capital and net asset positions, and an operating income of $3,063,001. Operating income was offset by $588,511 reported as other income that includes CARES Act stimulus funding, and $23,104 in interest expenses, resulting in a net income of $3,628,408. BFA Attachment C presents financial statements for the Center for the period ended June 30, 2022, during which IDHC reported positive working capital and net asset positions and a net income of $1,857,089.

Conclusion

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

Attachments

BFA Attachment A	2020 Certified Financial Statements for Island Digestive Health Center, LLC
BFA Attachment B	2021 Certified Financial Statements for Island Digestive Health Center, LLC
BFA Attachment C	June 2022 Internal Financial Statements for Island Digestive Health Center, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 6th day of October 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 10% ownership interest from three withdrawing members to one new member 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:
221272 E	Island Digestive Health Center

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221268-E
Carnegie Hill Endoscopy, LLC

Program:	**Diagnostic and Treatment Center**	***County:***	**New York**
Purpose:	**Establishment**	***Acknowledged:***	**July 14, 2022**

Executive Summary

Description

Carnegie Hill Endoscopy, LLC (CHE or the Center), an existing single-specialty (gastroenterology) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 1516 Lexington Avenue, New York, New York 10029 is seeking approval to transfer an 18.66% Class B membership interest in the Center to PE Healthcare Associates, LLC (PEHA).

CHE's current ownership consists of three member classes:

- Class A has 21 physician owners and one entity owner (74%)
- Class B has three non-physician members consisting of (19%)
- Class C is Mount Sinai Ambulatory Ventures, Inc. (7%), a wholly-owned subsidiary of Mount Sinai Health System.

This application is a legal restructuring and there are no new individuals associated with the ownership. Upon approval of this project, CHE's Class A and Class C membership remain the same. The three existing individual Class B members of CHE (Barry Tanner, Christina Morrison, and David Young) will transfer their entire membership interest in the Center (18.66% combined) to PEHA. PEHA has three members, each of whom is currently an individual member of CHE, with the following ownership: Barry Tanner (48.0%); David Young (26.0%); and Christina Morrison (26.0%). PEHA's ownership structure will not change as a result of this project.

The Center, which has five procedure rooms, began operations in March 2012 and is current with its SPARCS reporting. There will be no change in services or location as a result of this application. Blair Lewis, MD is the current medical director and will remain as the medical director.

This application is being processed concurrently by the Department with five other PEHA ownership change applications. Upon approval by PHHPC, PEHA will have membership interests in 16 FASCs in New York State.

OPCHSM Recommendation

Approval

Need Summary

There will be no need review per Public Health Law §2801-a (4).

Program Summary

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

Financial Summary

There are no project costs associated with this application. Operating budget projections are not included as part of this application as it is limited to a change in membership, with no purchase price.

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
October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member/Class	Current	Proposed
CLASS A MEMBERS		
Angie Eng, MD	4.55%	4.55%
Anthony Weiss, MD	3.21%	3.21%
Asher Kornbluth, MD	1.87%	1.87%
Audrey Woolrich, MD	1.47%	1.47%
Barry Jaffin, MD	3.54%	3.54%
Blair Lewis, MD	7.69%	7.69%
Bradley Connor, MD	3.01%	3.01%
Charles Saha, MD	1.83%	1.83%
David Berman, MD	1.98%	1.98%
James George, MD	4.67%	4.67%
Jeffrey Loria, MD	3.07%	3.07%
LH& DG Holding Company, LLC Dov Z. Grant, MD (40%) Lawrence Herman, MD (60%)	5.49%	5.49%
Moshe Rubin, MD	2.02%	2.02%
Paul Miskovitz, MD	1.90%	1.90%
Paul Basuk, MD	3.28%	3.28%
Peter Chang, MD	4.82%	4.82%
Peter Legnani, MD	4.95%	4.95%
Robert Cooper, MD	2.96%	2.96%
Ron Palmon, MD	3.90%	3.90%
Susan Lucak, MD	1.74%	1.74%
Steven Naymagon, MD	1.57%	1.57%
Jennifer Bonheur, MD	4.79%	4.79%
CLASS B MEMBERS		
Barry Tanner	6.22%	0.00%
Christina Morrison	6.22%	0.00%
David Young	6.22%	0.00%
PE Healthcare Associates, LLC ***Barry Tanner (48.00%) ***David Young (26.00%) ***Christina Morrison (26.00%)	0.00%	18.13%
CLASS C MEMBER		
Mount Sinai Ambulatory Ventures	7.01%	7.01%
Total	**100%**	**100%**

****Subject to Character and Competence*

PE Healthcare Associates, LLC, in accordance with the terms of the Center's Operating Agreement, proposes to appoint Robert Estes as an outside manager to serve on the Center's Board of Managers.

Robert Estes is the Senior Vice President of Operations of Physicians Endoscopy LLC. He is responsible for outside oversight of administrators for all operational activities, growth, and strategic planning, and acting as a liaison between the company and its partners.

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*
Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*
Advanced Surgery Center of Long Island	*2021-present*
Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

William "Barry" Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO's discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

Atlantic Gastro Surgicenter	*2016-present*
Augusta Endoscopy Center	*2010-present*
Berks Center for Digestive Health	*2001-present*
Bethesda Endoscopy Center	*2018-present*
Burlington County Endoscopy Center	*2008-present*
Carnegie Hill Endoscopy	*2010-present*
Central Arizona Endoscopy	*2006-present*
Central Jersey ASC	*2017-present*
Dekalb Endoscopy Center	*2016-present*
DHA Endoscopy	*2012-present*
Digestive Disease Endoscopy Center	*2012-present*
Digestive Disease & Endoscopy Center	*2020-present*
Digestive Health Specialist Endoscopy Ctr	*2018-present*
East Side Endoscopy	*2010-present*
The Endoscopy Center at Bainbridge	*2007-present*
University Suburban Endoscopy Ctr	*2013-present*
Emerson Endoscopy and Digestive Health Ctr	*2021-present*
Endoscopy Associates of Valley Forge	*2018-present*
Endoscopy Center at Robinwood	*2012-present*
Endoscopy Center at St. Mary's	*2016-present*
Endoscopy Center of Bucks County	*2013-present*
Endoscopy Center of Niagara	*2014-present*
Endoscopy Center of West Central Ohio	*2015-present*
Endoscopy Center of Western New York	*2004-present*
Eastside Endoscopy Center	*2005-present*
EEC-Issaquah	*2012-present*
Elgin Gastroenterology Center	*2012-present*
Fredericksburg Endoscopy	*2020-present*

Garden State Endoscopy and Surgery Ctr	*2015-present*
Gastrointestinal Endoscopy Center	*2018-present*
Island Digestive Health Center	*2014-present*
Kalamazoo Endo Center	*2006-present*
Laredo Digestive Health Center	*2009-present*
Long Island Center for Digestive Health	*2006-present*
Michigan Endoscopy Center	*2013-present*
Michigan Endoscopy Center at Providence Park	*2013-present*
Northern New Jersey for Advanced Endoscopy	*2016-present*
Northwest Endoscopy Center	*1998-present*
PGC Endoscopy Center for Excellence	*2015-present*
Princeton Endoscopy Center	*2022-present*
S. Broward Endoscopy	*2005-present*
Surgical Centers of Michigan	*2016-present*
UH North Ridgeville Endoscopy Center	*2019-present*
Mid-Bronx Endoscopy Center	*2017-present*
Lone Star Endoscopy	*2006-present*
Lone Star Endoscopy Satellite Office 1	*2014-present*
Lone Star Endoscopy Satellite Office 2	*2017-present*
South Brooklyn Endoscopy Center	*2017-present*
Great South Bay Endoscopy Center	*2017-present*
Liberty Endoscopy	*2017-present*
Advanced Surgery Center	*2017-present*
Manhattan Endoscopy Center	*2017-present*
Putnam Gastroenterology	*2017-present*
Queens Endoscopy ASC	*2017-present*
Yorkville Endoscopy	*2017-present*
Endo-surgical Center of Florida	*2010-2014*
AZ West Endoscopy Center	*2010-2019*
Greater Gaston Endoscopy Center	*2014-2019*
Delmarva Endoscopy Center	*2019-2020*
Flushing Endoscopy Center	*2017- 2021*
Queens Boulevard ASC	*2017-2021*
West Side GI	*2017-2020*
Hudson Valley Center for Digestive Health	*2012-2018*
AMSC	*2017-2018*
Mulberry ASC	*2017-2019*
Chesapeake Eye Surgery Center	*04/2022-present*
Columbia Surgery Center	*04/2022-present*
Bergman Eye Surgery Center	*04/2022-present*
Baltimore Eye Surgery Center	*04/2022-present*
Carroll County Eye Surgery	*04/2022-present*
The Surgery Center	*04/2022-present*
Eyes of York Surgery Center	*04/2022-present*
NEI ASC	*04/2022-present*
Pennsylvania Eye Surgery Center	*04/2022-present*
Ophthalmic Associates Surgery and Laser Ctr	*04/2022-present*
Surgery Specialty Center of Northeastern PA	*04/2022-present*
Denali United	*01/2022-present*
Pearl Road Surgery Center	*2019-present*
PET Imaging VI	*2019-present*
PET Imaging VIII	*2019-present*
PET Imaging IX	*2019-present*
PET Imaging XII	*2019-present*
PET Imaging XVII	*2019-present*

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services.

He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*
Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*
Advanced Surgery Center of Long Island	*2021-present*
Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the 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 Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Membership Interest Transfer Agreement

The applicant has submitted three executed Membership Interest Transfer Agreements for the proposed members, the terms of which are summarized below:

Date:	12/21/2021
Description:	Transfer a combined 18.66% ownership interest of Class B members in CHE to PEHA.
Transferors:	Barry Tanner, Christina Morrison, and David Young
Transferee:	PE Healthcare Associates, LLC
Purchase Price:	$0
Percentage Interest:	Barry Tanner (6.22%); Christina Morrison (6.22%); and David Young (6.22%)
Total Transfer:	PE Healthcare Associates (18.66%)

Capability and Feasibility

There are no costs associated with this application. The exchange of 18.66% Class B membership interest from the three individuals to PE Healthcare Associates, LLC is being transferred at no cost.

Carnegie Hill Endoscopy had an average positive working capital position and an average positive net asset position in 2020 and 2021 as shown in BFA Attachment A. The entity achieved income from operations of $8,489,486 and $14,423,769 in 2020 and 2021, respectively. The facility's financial statements have reflected strong financial performance. The applicant has indicated that the reason for the cash balance decrease was due to a large contract/billing issue with Blue Cross/Blue Shield that started in late 2020. In early 2022, the Center received this disputed amount of cash in the settlement of these issues. The reason for the increase in accounts receivable from 2020 to 2021 is that the increase was due to utilization increasing during the same period. In addition, the Center's Accounts Receivable balance was inflated during 2021 as a result of the Blue Cross/Blue Shield outlined above that were not satisfied until Quarter One of 2022.

Conclusion

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

Attachments

BFA Attachment A	2020 and 2021 Certified Financial Statements of Carnegie Hill Endoscopy, 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 6th day of October 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 of 18.66% ownership interest from three withdrawing Class B members to one new member 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:
221268 E	Carnegie Hill Endoscopy, 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]

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221269-E
East Side Endoscopy, LLC d/b/a
East Side Endoscopy and Pain Management Center

Program:	**Diagnostic and Treatment Center**	***County:***	**New York**
Purpose:	**Establishment**	***Acknowledged:***	**July 14, 2022**

Executive Summary

Description

East Side Endoscopy, LLC (ESNY), an existing dual-single-specialty (gastroenterology and pain management) Article 28 Freestanding Ambulatory Surgery Center (FASC) at 380 Second Avenue, Concourse A, New York, New York, is seeking approval to transfer 40.3648% membership interest from three withdrawing Class B members and an additional 1.5612% membership interest distributed from withdrawing Class A members (collectively 41.9260%) to PE Healthcare Associates, LLC (PEHA). In addition, the ownership interest is being transferred from two withdrawing members to existing members within two member LLCs and 9.306% is being transferred from an existing member to a new member within a member LLC.

ESNY's current membership consists of three member classes:

- Class A: eight physician owners and three physician-owned LLCs (42.3572%)
- Class B: three non-physician members (40.3648%)
- Class C: Mount Sinai Ambulatory Ventures, Inc. (17.2779%), a not-for-profit entity that is a wholly-owned subsidiary of Mount Sinai Health System.

Upon approval of the proposed transaction, there will be:

- Class A: eight physician owners and three physician-owned LLCs (40.1266%)
- Class B: a non-physician-owned LLC whose members are the current Class B individual members (41.926%)
- Class C: Mount Sinai Ambulatory Ventures, Inc. (17.946%), a not-for-profit entity that is a wholly-owned subsidiary of Mount Sinai Health System.

In summary, three Class B members are transferring their interests to an existing LLC of which they are the three members. Additionally, two individuals are leaving the ownership and a new individual is joining. A before and after listing of operator membership is included in the Program Analysis section.

The Center, which has four procedure rooms, began operations in January 2010 providing gastroenterology surgery services, later adding pain management as a second specialty. ESNY is current with its SPARCS reporting. There will be no change in services or location served associated with this application. Brett Bernstein, MD, a Class A member, who is board-certified in Internal Medicine and Gastroenterology, will continue to serve as the Center's Medical Director. The Center will continue to have a Hospital Transfer Agreement with Mount Sinai Beth Israel, which is located 0.6 miles and 4 minutes travel time from the Center.

This application is being processed concurrently by the Department with five other FASC membership change applications. Upon approval of these applications by PHHPC, PEHA will have membership interests in 16 FASCs in New York State.

OPCHSM Recommendation
Approval

Need Summary
There will be no need review per Public Health Law §2801-a (4).

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

Financial Summary
There are no project costs associated with this application. Dr. Kasmin and Dr. Siegel will redeem their combined 3.6516% indirect interest in ESNY within class A membership for $954,672. ESNY will fund the combined purchase price of $954,672 via accumulated cash. Dr. Sanghavi's purchase price of $261,457 for the acquisition of 9.3060% membership interest in Gramparknorth, LLC will be funded via his personal resources.

Operating budget projections are not included as part of this transaction as it is limited to a change in membership with no changes in services offered or location served.

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

October 6, 2022

Program Analysis

Character and Competence

The table below details the proposed change in membership:

Member /Class	Current	Proposed
CLASS A MEMBERS		
Howard Antosofsky, M.D	3.8380%	3.9860%
Larry Attia, MD	3.2553%	3.3810%
Michael Blechmand, MD	5.1423%	5.3410%
Ira Breiti, MD	3.2553%	3.3810%
CKB Partners, LLC *Seth Cohen, MD* *Franklin Kasmin, MD*	2.5214%	1.3260%
David Feldman, MD	3.5762%	3.7150%
Lexington Endo, LLC *Howard Antosofsky, MD* *Ruvan Shien, MD* *Howard Seigel, MD*	7.1726%	4.8740%
Babak Mohajer, MD	5.1423%	5.3410%
Moushumi Sanghavi, MD	5.3391%	5.5460%
Gramparknorth, LLC *Moushumi Sanghavi, MD* ***Bharat Sanhavi, MD*	1.1357%	1.1800%
Brett Bernstein, MD	1.9791%	2.0556%
CLASS B MEMBERS		
Barry Tanner	16.1824%	0.0000%
Christina Morrison	12.0912%	0.0000%
David Young	12.0912%	0.0000%
PE Healthcare Associates, LLC ***Barry Tanner (48.00%)* ***David Young (26.00%)* ***Christina Morrison (26.00%)*	0.0000%	41.9260%
CLASS C MEMBERS		
Mount Sinai Ambulatory Ventures, Inc.	17.2779%	17.9460%
Total	100%	100%

***Subject to Character and Competence*

The following charts show the current and proposed memberships interests within the member LLCs of ESNY:

CKB Partners, Inc.

Member	Current	Proposed
Seth Cohen, MD	50%	100%
Franklin Kasmin, MD	50%	0%
Total	**100%**	**100%**

Lexington Endo, LLC

Member	Current	Proposed
Howard Antosofsky, MD	33.333%	50%
Ruvan Shein, MD	33.333%	50%
Howard Siegel, MD	33.333%	0%
Total	**100%**	**100%**

Gramparknorth, LLC

Member	Current	Proposed
Moushumi Sanghavi, MD	100%	90.694%
Bharat Sanghavi, MD	0%	9.306%
Total	**100%**	**100%**

PE Healthcare Associates, LLC

Member	Current*	Proposed*
Barry Tanner	48%	48%
David Young	26%	26%
Christina Morrison	26%	26%
Total	**100%**	**100%**

**PEHA is an existing LLC and the membership will not change as a result of this application.*

PE Healthcare Associates, in accordance with the terms of the Center's Operating Agreement, proposes to appoint Larry Trenk as an outside manager to serve on the Center's Board of Managers.

Larry Trenk is the Vice President of Operations of Physicians Endoscopy where he is responsible for the management of eight GI ambulatory surgery centers in the New York and New Jersey markets. He spearheaded COVID-19 reopening plans that resulted in meeting or surpassing pre-pandemic utilization and profitability targets. He serves as the point person for collaborating with Mount Sinai. Previously, he was the Vice President and Chief Administrative Officer of Trinity Health of New England where he had administrative oversight of approximately 500 providers. He was formerly the Market President and Regional Vice President of United Surgical Partners International and he was also previously the COO of SurgeM, LLC

Dr. Bharat Sanghavi is a Gastroenterologist at Gastroenterology on Gramercy Park and an Attending Physician at Cabrini Medical Center. He is also a Consulting Physician at New York Downtown Hospital. He received his medical degree from Baroda Medical College in India and completed his residency in Internal Medicine and his fellowship in Gastroenterology at Cabrini Medical Center. He is board certified in Internal Medicine with a subspecialty in Gastroenterology. Dr. Sanghavi is affiliated with Mount Sinai Beth Israel.

Christina Morrison is the Chief Financial Officer of Physicians Endoscopy where she manages finance and accounting, payor contracting, revenue cycle management, IT, Project Management, implementation and integration of acquisitions, and operations support. Previously, she was the Interim Chief Financial Officer of Biograph, the Executive in Residence of Strategic Exit Advisors, the Senior Vice President of Finance of Aramark, and the Senior Vice President of Merck & Co., Inc. Christina Morrison declares ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
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Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*
Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*

Advanced Surgery Center of Long Island	*2021-present*
Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

William "Barry" Tanner is the Non-Executive Chairman of PE GI Solutions where his role was to assist the CEO at the CEO's discretion. This was a continuation of the nearly two-year transition from being the CEO for nearly 20 years to the new CEO. Previously, he was the Co-Founder, CFO, and acting COO of Navix Radiology. After he organized the company, he served as CFO and COO and was responsible for business development, due diligence, leading the finance and accounting operations, debt placement, and providing leadership to all functional areas of the organization. William Tanner discloses ownership interest in the following healthcare facilities:

Atlantic Gastro Surgicenter	*2016-present*
Augusta Endoscopy Center	*2010-present*
Berks Center for Digestive Health	*2001-present*
Bethesda Endoscopy Center	*2018-present*
Burlington County Endoscopy Center	*2008-present*
Carnegie Hill Endoscopy	*2010-present*
Central Arizona Endoscopy	*2006-present*
Central Jersey ASC	*2017-present*
Dekalb Endoscopy Center	*2016-present*
DHA Endoscopy	*2012-present*
Digestive Disease Endoscopy Center	*2012-present*
Digestive Disease & Endoscopy Center	*2020-present*
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Endoscopy Center at St. Mary's	*2016-present*
Endoscopy Center of Bucks County	*2013-present*
Endoscopy Center of Niagara	*2014-present*
Endoscopy Center of West Central Ohio	*2015-present*
Endoscopy Center of Western New York	*2004-present*
Eastside Endoscopy Center	*2005-present*
EEC-Issaquah	*2012-present*
Elgin Gastroenterology Center	*2012-present*
Fredericksburg Endoscopy	*2020-present*
Garden State Endoscopy and Surgery Ctr	*2015-present*
Gastrointestinal Endoscopy Center	*2018-present*
Island Digestive Health Center	*2014-present*
Kalamazoo Endo Center	*2006-present*
Laredo Digestive Health Center	*2009-present*
Long Island Center for Digestive Health	*2006-present*
Michigan Endoscopy Center	*2013-present*
Michigan Endoscopy Center at Providence Park	*2013-present*
Northern New Jersey for Advanced Endoscopy	*2016-present*
Northwest Endoscopy Center	*1998-present*
PGC Endoscopy Center for Excellence	*2015-present*
Princeton Endoscopy Center	*2022-present*
S. Broward Endoscopy	*2005-present*
Surgical Centers of Michigan	*2016-present*
UH North Ridgeville Endoscopy Center	*2019-present*
Mid-Bronx Endoscopy Center	*2017-present*
Lone Star Endoscopy	*2006-present*

Lone Star Endoscopy Satellite Office 1	*2014-present*
Lone Star Endoscopy Satellite Office 2	*2017-present*
South Brooklyn Endoscopy Center	*2017-present*
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Liberty Endoscopy	*2017-present*
Advanced Surgery Center	*2017-present*
Manhattan Endoscopy Center	*2017-present*
Putnam Gastroenterology	*2017-present*
Queens Endoscopy ASC	*2017-present*
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Delmarva Endoscopy Center	*2019-2020*
Flushing Endoscopy Center	*2017- 2021*
Queens Boulevard ASC	*2017-2021*
West Side GI	*2017-2020*
Hudson Valley Center for Digestive Health	*2012-2018*
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Columbia Surgery Center	*04/2022-present*
Bergman Eye Surgery Center	*04/2022-present*
Baltimore Eye Surgery Center	*04/2022-present*
Carroll County Eye Surgery	*04/2022-present*
The Surgery Center	*04/2022-present*
Eyes of York Surgery Center	*04/2022-present*
NEI ASC	*04/2022-present*
Pennsylvania Eye Surgery Center	*04/2022-present*
Ophthalmic Associates Surgery and Laser Ctr	*04/2022-present*
Surgery Specialty Center of Northeastern PA	*04/2022-present*
Denali United	*01/2022-present*
Pearl Road Surgery Center	*2019-present*
PET Imaging VI	*2019-present*
PET Imaging VIII	*2019-present*
PET Imaging IX	*2019-present*
PET Imaging XII	*2019-present*
PET Imaging XVII	*2019-present*

David Young is the President and Chief Executive Officer of Physicians Endoscopy where he is responsible for company strategy and development of the leadership team, including expanding services. He is also responsible for all operational services including implementation, performance management, credentialing, revenue cycle management, clinical IT and workflow, EHR vendor management, customer service, corporate operations, strategic sourcing, and IT. Lastly, he is responsible to grow and develop key leadership roles and company governance. Previously, he was the COO and Executive Vice President of Privia Health Inc., and the CFO and Interim President of Smile Brands Inc. David Young discloses ownership interest in the following healthcare facilities:

Advanced Endoscopy Center	*2020-present*
Carnegie Hill Endoscopy	*2021-present*
East Side Endoscopy	*2021-present*
Endoscopy Center of Niagara	*2021-present*
Endoscopy Center of Western New York	*2020-present*
Island Digestive Health	*2021-present*
Long Island Center for Digestive Health	*2021-present*
Mid-Bronx Endoscopy Center	*2021-present*
South Brooklyn Endoscopy Center	*2021-present*
Great South Bay Endoscopy Center	*2021-present*
Liberty Endoscopy Center	*2021-present*

Advanced Surgery Center of Long Island	*2021-present*
Manhattan Endoscopy Center	*2021-present*
Putnam Gastroenterology	*2021-present*
Queens Endoscopy ASC	*2021-present*
Yorkville Endoscopy	*2021-present*

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas, employment history, a record of legal actions, and disclosure of the applicant's ownership interest in other health care facilities. Licensed individuals were checked against the 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 Division of Certification & Surveillance reviewed the ten-year surveillance history of all associated facilities. Sources of information included the files, records, and reports found in the Department of Health. Included in the review were the results of any incident and/or complaint investigations, independent professional reviews, and/or comprehensive/focused inspections. The review found that any citations were properly corrected with appropriate remedial action.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §2801-a(3)(b). There will be no change in services as a result of this application.

Financial Analysis

Membership Interest Transfer Agreement

The applicant has submitted three executed Membership Interest Transfer Agreements for the proposed members, the terms of which are summarized below:

Date:	12/21/2021
Description:	Transfer a combined 41.926% membership interest of Class B members in ESNY to PEHA
Transferors:	Barry Tanner, Christina Morrison, and David Young
Transferee:	PE Health Care Associates, LLC
Purchase Price:	N/A
Payment of Purchase Price:	N/A

Unit Purchase Agreement

The applicant has submitted the executed Unit Purchase Agreement for the proposed member, the terms of which are summarized below:

Date:	3/30/2022
Description:	Sale of 9.306% interest in Gramparknorth, LLC (Holdco) which amounts to 0.11% indirect membership interest in ESNY
Seller	Dr. Moushumi Sanghavi
Buyer	Dr. Bharat Sanghavi
Purchase Price:	$261,457
Payment of Purchase Price:	On the effective date, the purchaser shall pay to the seller the fair market purchase price of $261,457 or $28,760 (which represents a per-unit price of the company's equity of $261,457 in the aggregate in exchange for the purchased Holdco interests, payable in one lump sum in the form of a certified check or wire of immediately available funds.

Unit Redemption Agreement between CBK Partners, LLC and ESNY

The applicant has submitted the executed Unit Redemption Agreement for the proposed member, the terms of which are summarized below:

Date:	5/2/2022
Description:	Redemption of Dr. Kasmin's 50% membership in CKB Partners, LLC which equates to a 1.2607% indirect membership interest in ESNY
Seller	CKB Partners, LLC (Dr. Kasmin's 50% membership share)
Buyer	Eastside Endoscopy, LLC
Purchase Price:	$329,566
Payment of Purchase Price:	The Purchase Price shall be paid to CKB at the Closing as follows: I) An amount equal to the sum of (A) minus (B), where: (A) equals the sum of the Purchase Price minus the amount of the Deferred Redemption Payments, and (B) equals $243,221.25; and II). The amount of $243,221.25 to be paid via a promissory note.

Unit Redemption Agreement between Lexington Endo, LLC and ESNY

The applicant has submitted an executed Unit Redemption Agreement for the proposed member, the terms of which are summarized below:

Date:	3/30/2022
Description:	Redemption of Dr. Siegel's 33.333% membership in Lexington Endo, LLC which equates to a 2.3909% indirect membership interest in ESNY
Seller	Lexington Endo, LLC (Dr. Siegel's 33.333% membership share)
Buyer	Eastside Endoscopy, LLC
Purchase Price:	$625,106
Payment of Purchase Price:	The purchase price shall be paid to Lexington in four (4) equal installments as follows: I) 25% of the purchase price on the Closing Date II) 25% of the purchase price on each of the three anniversaries of the initial payment date, with interest on the outstanding principal balance accruing at six percent.

Capability and Feasibility

There are no project costs associated with this application. ESNY will fund the redemption price of $954,672 for Dr. Kasmin and Dr. Siegel's combined 3.6516% indirect interest in ESNY within Class A membership via accumulated cash. Dr. Bharat Sanghavi's purchase price of $261,457 for the acquisition of 9.3060% membership interest in Gramparknorth, LLC will be funded via his personal resources. BFA Attachments A and B are Dr. Bharat Sanghavi's net worth statement and ESNY's financial statements, which indicate sufficient resources available to fund Dr. Bharat Sanghavi's purchase price of $261,457 for the acquisition of 9.3060% membership interest in Gramparknorth, LLC and the redemption price of withdrawing Class A members' transaction, respectively.

ESNY's 2020-2021 certified financial statements and their interim report as of March 31, 2022, indicates the entity maintained an average positive working capital position, an average positive net asset position, and experienced an average net operating income of $7,274,049 for the years 2020-2021. As of March 31, 2022, the entity shows a positive working capital position, positive net asset position, and an operating income of $2,109,231. ESNY has demonstrated strong financial performance.

Conclusion

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

Attachments

BFA Attachment A	Personal Net Worth Statements of proposed members of Gramparknorth, LLC
BFA Attachment B	2020-2021 Certified Financial Statements and March 31, 2022, Internal Financial Statements of ESNY

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 6th day of October 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 41.926% ownership interest from three withdrawing members to a new member LLC; 83.3333% interest from two withdrawing members to existing members within two member LLCs and 9.306% from an existing member to a new member within a member 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:
221269 E	East Side Endoscopy, LLC d/b/a East Side Endoscopy and Pain Management Center

APPROVAL CONTINGENT UPON:

N/A

APPROVAL CONDITIONAL UPON:

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

NEW YORK STATE OF OPPORTUNITY. Department of Health

Public Health and Health Planning Council

Project # 221184-E
Emerest Certified Home Health Care of NY LLC d/b/a Royal Care Certified Home Health Care of NY

Program: **Certified Home Health Agency** ***County:*** **Bronx**
Purpose: **Establishment** ***Acknowledged:*** **June 10, 2022**

Executive Summary

Description

Emerest Certified Home Health Care of NY, LLC., (Emerest CHHA) d/b/a Royal Care Certified Home Health Care of NY, a New York limited liability company, requests approval to be established as the new operator of Cabrini of Westchester d/b/a Cabrini Certified Home Health Agency (Cabrini CHHA), an Article 36 Certified Home Health Agency (CHHA) with an office at 115 South Broadway, Dobbs Ferry, (Westchester County). The seller, a not-for-profit corporation, also operates a 304-bed, residential health care facility (RHCF) located at the same address. The applicant plans to relocate the CHHA operations to 798 Southern Boulevard, Bronx (Bronx County).

On April 11, 2022, Cabrini of Westchester entered into an Asset Purchase Agreement (APA) with Emerest Certified Home Health Care of NY, LLC., for the sale and acquisition of the CHHA operating assets for $3,500,000. The transaction will be effectuated upon the Public Health and Health Planning Council (PHHPC) approval of this application.

Cabrini CHHA is currently authorized to serve the Bronx, New York, and Westchester Counties with the following licensed services: Home Health Aide, Medical Social Services, Medical Supply, Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, Speech Pathology, and Personal Care. There will be no changes in the counties served and licensed services.

The proposed operator is as follows:

Emerest Certified Home Health Care of NY, LLC.	
Members	%
Chaim Klein	50%
Yankel Bernath	50%

These proposed members are also current members of Royal Care Certified Home Health Care, LLC, the operator of a licensed CHHA serving Nassau and Queens counties.

OPCHSM Recommendation

Contingent Approval

Need Summary

This change in ownership will allow the applicant to serve residents in the three-county service area, maintaining services currently provided by Cabrini CHHA.

Program Summary

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2)(b).

Financial Summary

Emerest Certified Home Health Care of NY, LLC., will acquire the CHHA's operations for $3,500,000, funded by owner's equity in businesses 100% owned by the proposed members. A deposit of $1,000,000 has been

paid, with the $2,500,000 balance to be paid at closing. There are no project costs associated with this application.

Budget	Year One	Year Three
Revenues	$1,303,726	$5,370,870
Expenses	1,392,049	4,450,007
Gain/(Loss)	($88,323)	$920,863

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of an executed administrative service agreement acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an amended and executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Administrative Services 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

October 6, 2022

Need and Program Analysis

Background and Analysis

Cabrini Home Health Agency is approved to provide services in Westchester, Bronx, and New York counties. Upon approval of this application, Emerest Certified Home Health Care of NY, LLC will continue to provide Home Health Aide, Medical Social Services, Medical Supplies Equipment and Appliances, Nursing, Nutritional, Occupational Therapy, Physical Therapy, Speech Pathology, and Personal Care services to the same counties.

Historical and Projected Patient Visits by Payor Mix						
By Payor	**2019**	**2020**	**2021**	**2022***	**Year 1**	**Year 3**
Traditional Medicare	5,078	3,115	2,577	1,199	4,101	16,891
Medicare MC	832	676	831	468	1,532	6,167
Medicaid Managed Care	355	339	173	42	631	2553
Commercial/Private HMO/Other	343	331	82	54	226	909
Total	6,608	4,461	3,663	1,763	6,490	26,520

** 6 Months of Reporting*
Source: Applicant

Historical and Projected Visits Per Patient						
	2019	**2020**	**2021**	**2022***	**Year 1**	**Year 3**
Total Visits	6,608	4,461	3,663	1,763	6,490	26,520
Total Patients	390	300	290	132	805	3,240
Visits Per Patient	17	15	13	13	8	8

** 6 Months of Reporting*
Source: Applicant

The applicant projects 805 patients in Year One and 3,240 in Year Three. According to the applicant, the projected increased patient volume is based on Emerest building the operations of the agency to full capacity in a region with a significant need for services. It is also informed by their experience operating Royal Care Certified Home Health Care, LLC (another CHHA) in Nassau and Queens and takes into account the current labor market.

Specific ways Emerest anticipates meeting the projected volume are as follows:

- The agency will utilize approaches employed by Royal Care, which include, but are not limited to, robust social media engagement, a competitive compensation package with numerous incentive payments, and effective mentoring throughout employment.
- Implement a training and staff development program to maximize retention and ensure a competent and skilled workforce. Emerest will utilize an electronic platform for orientation and continuous skill development for staff.
- Utilize a reward program for staff recognition and appreciation, Excellence in Care, which is in place at Royal Care and will be replicated at Emerest. In recognition of top performers and acknowledgments received from patients, an active recognition program will be implemented that provides rewards for exemplary performance. Emerest will implement this successful approach for attracting and retaining staff at start-up.
- Policies and procedures will focus on:
    - Ease of admission
    - Timeliness of service initiation
    - Coordination of services
    - Helpfulness of staff
    - Quality of care

- According to the applicant, Emerest will leverage Royal Care's current referral sources in addition to established relationships from the Cabrini CHHA.

Prevention Quality Indicators (PQIs) use data from hospital discharges to identify admissions that might have been avoided through access to high-quality outpatient care. As seen in the table below, Westchester County has a lower-than-average PQI rate indicating that its primary care and outpatient services perform better than the state average.

Avoidable Hospital Admissions per 100,000 Adults for all PQIs		
PQI Rates: 2017	Westchester County	New York State
All PQIs	1,250	1,431

Character and Competence Review

The membership of Emerest Certified Home Health Care of NY LLC is as follows:

Yankel Bernath aka Jack Bernath (50%)
Chief Operating Officer, The Royal Care, Inc. (LHCSA)
Affiliations

- Royal Care Certified Home Health Care, LLC (CHHA)
- The Royal Care, Inc. (LHCSA)
- The Royal Care FI, LLC (Fiscal Intermediary)
- Emerest Home Care of Connecticut LLC (Homemaker Companion Agency)
- Emerest Health of New Jersey LLC d/b/a Bettercare Home Health (Health Care Service Firm)
- Emerest Health of Pennsylvania LLC (Home Care Services))
- Emerest Health of Missouri LLC (Home Care Services)
- Emerest Health CDS of Missouri LLC (Consumer Directed Services)

Chaim Klein aka Josh Klein (EMT) (50%)
Chief Executive Officer, The Royal Care, Inc. (LHCSA)
Affiliations

- Royal Care Certified Home Health Care, LLC (CHHA)
- The Royal Care, Inc. (LHCSA)
- The Royal Care FI, LLC (Fiscal Intermediary)
- Emerest Home Care of Connecticut LLC (Homemaker Companion Agency)
- Emerest Health of New Jersey LLC d/b/a Bettercare Home Health (Health Care Service Firm)
- Emerest Health of Pennsylvania LLC (Home Care Services))
- Emerest Health of Missouri LLC (Home Care Services)
- Emerest Health CDS of Missouri LLC (Consumer Directed Services, MO)

A search of the individuals and entities named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

Facility Compliance/Enforcement
The information provided by the Department's Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety, and welfare of patients and to prevent recurrent code violations.

The States of Connecticut, New Jersey, Pennsylvania, and Missouri did not respond to the out-of-state compliance request. The applicant submitted affidavits attesting to the compliance history of all out-of-state healthcare facilities. The applicant reported no history of enforcement for any affiliated entities.

The information provided by the Bureau of Emergency Medical Services indicates that Chaim Klein aka Josh Klein holds an EMT license (#367187) and there has never been any disciplinary action taken against this individual or their license.

CHHA Quality of Patient Care Star Ratings	
CHHA Name	**Quality of Care Rating**
Cabrini of Westchester d/b/a Cabrini Certified Home Health Agency	2 out of 5 stars
Royal Care Certified Home Health Care, LLC	2.5 out of 5 stars

** CMS data as of July 20, 2022*

A review of the personal qualifying information indicates that the applicant has the required character and competence to operate a certified home health agency.

Conclusion

The individual background review indicates the proposed members have met the standard for approval as set forth in Public Health Law §3606(2). This change in ownership will allow the applicant to expand the current services and continue to meet the needs of residents in the three-county service area.

Financial Analysis

Operating Budget

The applicant has submitted the CHHA's current results for 2020 and the projected first and third-year operating budgets, in 2022 dollars, as summarized below:

	Current Year 2020	Year One 2023	Year Three 2025
Revenues			
Medicaid -MC	0	$69,145	$279,720
Medicare-FFS	$810,650	1,056,611	4,374,870
Medicare-MC	0	165,510	666,430
Commercial-FFS	0	5,050	20,690
Private	0	7,410	29,160
All Other	209,894	0	0
Bad Debt	-326,908	0	0
Total Revenues	$693,636	$1,303,726	$5,370,870
Expenses			
Operating	$1,424,771	$1,380,049	$4,423,607
Capital	1,608	12,000	26,400
Total Expenses	$1,426,379	$1,392,049	$4,450,007
Net Income or (Loss)	($732,743)	($88,323)	$920,863
Utilization - Cases	300	805	3,240
Utilization - Visits	4,461	6,490	26,520
Average Revenue per Visit	$155.49	$200.88	$202.52
Average Expense per Visit	$319.74	$214.49	$167.80

The following is noted concerning the submitted CHHA budget:

- The current Year is based on Cabrini's 2020 experience
- The projected revenue and utilization assumptions by payor source are based on the proposed owners' historical experience operating a CHHA in the New York Metro area.
  - The CHHA will focus on short-term CHHA cases funded by traditional Medicare, as well as, Medicare Managed Care
  - Year One will be a rebuilding year, with a commitment to increase the census from a starting point of 20 cases to up to 95 cases per month by the end of Year One.

- Year Three represents a stabilized year of 270 cases per month.
- Medicare revenue is based on an average episodic payment of approximately $2,419. It was derived from 2021 data from the Medicare paid claims reported on the Provider Statistical and Reimbursement (PS&R) report. The same average episodic rate of $2,419 was used in projecting Year One and Three revenues.
- Medicaid Managed Care revenue is based on the fee-for-service historical experience of the owner's existing CHHA in the NY Metro Area.
- Expense assumptions for direct care, direct administration, and contracted services are based upon historical experience trended to 2022 dollars. Other expenses such as rent and back-office support are estimated based on the terms included in Emerest CHHA's administrative service agreement with the Royal Care Certified Home Health Care, LLC.

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

Payor	Current Year (2020)	Year One (2023)	Year Three (2025)
Medicaid MC	0%	9.72%	9.63%
Medicare FFS	69.83%	63.19%	63.69%
Medicare MC	0%	23.61%	23.25%
Commercial FFS	0%	0.72%	0.72%
Private	0%	0.80%	0.77%
All Other	30.17%	0%	0%
Charity	0%	1.96%	1.94%
Total	100%	100%	100%

Asset Purchase Agreement

The applicant has submitted an executed APA to acquire the seller's CHHA business assets, effective upon PHHPC approval. The terms are summarized below:

Date:	April 11, 2022
Seller:	Cabrini of Westchester
Purchaser:	Emerest Certified Home Health Care of NY, LLC.
Assets Transferred:	All rights, title, and interest in the CHHA designated assets. Including CHHA's operating authority, rate increases after the closing date, CHHA's assets, inventory, personal property, copies of permitted business records, policy & procedures, intellectual property, rights and trademarks, computers and software, assignable contracts, telephone and fax numbers, security deposits, and goodwill.
Excluded Assets:	All assets associated with businesses other than the CHHA.
Assumed Liabilities:	Obligations and liabilities incurred by the CHHA on or after the closing date.
Purchase Price:	$3,500,000
Payment:	$ 1,000,000 effective date of APA ($750,000 escrow deposit & $250,000 to seller) $ 2,500,000 due at closing.

The CHHA's purchase price is proposed to be satisfied via owner's equity in businesses 100% owned by the proposed members. BFA Attachments A-1 and A-2 show the proposed members' net worth summary and a consolidated financial presentation from 2021, financial statements, and March 31, 2022, internal statements for the business owned. The proposed members of Emerest Certified Home Health Care of NY, LLC have access to sufficient liquid resources to meet the equity requirement.

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 under Article 36 of the Public Health Law concerning the period before the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of August 1, 2022, the facility had no outstanding Medicaid liabilities.

Lease Agreement

The applicant has submitted an executed lease for the proposed site:

Date:	January 1, 2020
Premises:	5,000 sq ft. located at 798 Southern Boulevard, Bronx, NY 10455
Landlord:	Emerest Properties, LLC
Lessee:	The Royal Care, Inc.
Term:	Ten years. Option to extend for one (1) additional term of 10 years.
Rental:	Current Rent $125,000 per annum, Renewal at $137,000 per annum
Provisions:	The tenant is responsible for maintenance, utilities, and real estate taxes, insurance.

The applicant has attested this lease is a non-arm's length arrangement, as the applicant members are owners of the real property.

Sub-Lease Agreement

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

Date:	May 1, 2022
Premises:	250 sq. ft located at 798 Southern Boulevard, Bronx, NY 10455
Sub-Landlord:	The Royal Care, Inc.
Sub-Lessee	Emerest Certified Home Health Care of NY LLC
Terms:	Ten years
Rental	$12,000 per year
Provisions:	Sub Lessee is responsible for insurance and rubbish removal.

The applicant has attested that the lease is a non-arm's length arrangement, as a family member is the owner of the Sub-Landlord.

Administrative Service Agreement

The applicant provided a draft Administrative Service Agreement (ASA). Below terms are summarized:

Consultant:	Royal Care Certified Home Health Care, LLC
Facility:	Emerest Certified Home Health Care of NY, LLC
Services:	Assist with: record keeping and accounting, provide payroll and human resources services, marketing services including websites, technology support services, vendor management, and office support services.
Compensation:	Fixed monthly fee of $100 plus reimbursement of associated expenses with providing services
Terms:	Three years with a three (3) automatic renewal.

There is common ownership, between the applicant and the ASA provider. The applicant has submitted an executed attestation acknowledging that the statutory and regulatory required reserve powers cannot be delegated. They will not engage in any illegal delegations of authority. The Licensed Operator retains ultimate authority, responsibility, and control.

Capability and Feasibility

Emerest Certified Home Health Care of NY LLC will acquire the CHHA's operations for $3,500,000, funded by owner's equity in businesses 100% owned by the proposed members. A deposit of $1,000,000 has been paid, with the $2,500,000 balance to be paid at closing. The consolidated financial presentation supports sufficient liquid resources to meet the remaining obligation. There are no project costs associated with this application.

The total working capital requirement is estimated at $232,008 based on two months of first-year expenses of $232,008. Working capital will be funded via members' equity in existing businesses. The cash flow analysis shows first-year loss is the result of start-up expenses that incur during the first three months. The balance of the year generated an average monthly profit of $9,602. A review of attachments A-1 and A-2, members' net worth, and the consolidated financial presentation reveals sufficient resources to meet the equity requirements.

The submitted budget projects an $88,323 loss in the first year and a $920,863 profit by the third year. BFA Attachment B is Emerest Certified Home Health Care of NY LLC's Pro-forma balance sheet, which shows the entity will start with $3,752,000 in equity. The budget appears to be reasonable.

Conclusion

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

Attachments

BFA Attachment A-1	Emerest Certified Home Health Care of NY LLC Proposed Members' Net Worth
BFA Attachment A-2	Emerest Certified Home Health Care of NY LLC Proposed Members Consolidated Financial Presentation of Business 100% Owned.
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 6th day of October 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 Emerest Certified Home Health Care of NY LLC as the new operator of Cabrini Certified Home Health Agency, a Certified Home Health Agency currently operated by Cabrini of Westchester and relocate it to 798 Southern Boulevard, 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:
221184 E	Emerest Certified Home Health Care of NY LLC d/b/a Royal Care Certified Home Health Care of NY

APPROVAL CONTINGENT UPON:

1. Submission of an executed administrative service agreement acceptable to the Department of Health. [BFA]
2. Submission of a photocopy of an amended and executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of an amended and executed Operating Agreement, acceptable to the Department. [CSL]
4. Submission of a photocopy of an amended and executed Administrative Services 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]

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 th*e Contingencies Tab in NYSE-CON.*