

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

April 16, 2015

10:00 a.m.

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

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chairman

II. EXECUTIVE SESSION – CLOSED TO THE PUBLIC

A. PROFESSIONAL

Dr. Jodumutt Bhat, Chair

Executive Session

Report of the Committee on Health Personnel and Interprofessional Relations

Two cases arising under PHL 2801-b

B. DISCUSSION REGARDING PROPOSED, PENDING OR CURRENT LITIGATION

III. APPROVAL OF MINUTES

Exhibit #1

February 12, 2015

IV. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

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

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

C. Report of the Office of Health Insurance Programs Activities

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

D. Report of the Office of Quality and Patient Safety

Patrick Roohan, Director, Office of Quality and Patient Safety

E. Report of the Office of Public Health Activities

Dr. Guthrie Birkhead, Deputy Commissioner, Office of Public Health

V. REGULATION

Report of the Committee on Codes, Regulations and Legislation

Exhibit #2

John M. Palmer, Ph.D., Vice Chair

For Emergency Adoption

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

For Information

12-15 Amendment of Sections 22.3 and 22.9 of Title 10 NYCRR
(Supplementary Reports of Certain Congenital Anomalies for
Epidemiological Surveillance; Filing)

VI. 2014 CON ANNUAL REPORT

Exhibit #3

For Information Only

VII. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Gary Kalkut, M.D. Vice Chair

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Center - Construction

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142200 C	Long Island Digestive Endoscopy Center (Suffolk County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Upstate Request for Applications – Certified Home Health Agencies – Construction **Exhibit #5**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	121224 C	HCR (Monroe County) Ms. Hines – Recusal Mr. Robinson - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

CATEGORY 6: Applications for Individual Consideration/Discussion

APPLICATIONS FOR COMPETITIVE REVIEW OF HEALTH CARE FACILITIES/AGENCIES **Exhibit #6**
CON 142261 C and CON 142183 B

CON Applications

Dialysis Services- CONSTRUCTION

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 142261 C	Faxton – St. Lukes Healthcare St. Lukes Division (Madison County) Dr. Bhat - Interest	No Recommendation

Dialysis Services- ESTABLISH/CONSTRUCT

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 142183 B	Utica Partners, LLC d/b/a Dialysis Center of Oneida (Madison County) Dr. Bhat - Interest	No Recommendation

Proton Beam Therapy – Establish/Construct **Exhibit #7**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 142213 B	The New York Proton Center (New York County) Dr. Kalkut –Recusal Dr. Martin - Recusal	No Recommendation

HOME HEALTH AGENCY LICENSURES **Exhibit #8**

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2063 L	Ace in Home Care, Inc. (Nassau, Suffolk, and Queens Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation

2249 L	Act On It Home Care, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2216 L	Advanced Home Care Specialist, Inc. d/b/a Medical Home Care Services (Suffolk and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2354 L	Behr’s Homecare, LLC (Oneida, Madison, Herkimer and Hamilton Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2290 L	Benevolent Home Care, LLC (Bronx, Kings, Queens, Richmond, New York and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2367 L	Black Diamond Roslyn, Inc. d/b/a Right at Home Nassau Suffolk (Nassau and Suffolk Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2357 L	Care in the Home, LLC d/b/a Griswold Home Care of Scarsdale and Yonkers, NY (Westchester County) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2277 L	CaringHeart, Inc. d/b/a ComForcare Senior Services South Orange (Orange and Rockland Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation

2233 L	<p>Cedas Home Care, LLC (Bronx, Richmond, Kings, New York, Queens and Westchester Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2395 L	<p>Ciambella Home Care, Inc. d/b/a FirstLight Home Care of East Buffalo (Erie, Cattaraugus, Monroe, Niagara, Allegany, Wyoming, Orleans, Chautauqua and Genesee Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC/Interest</p>	No Recommendation
2345 L	<p>Graceland Home Care, Inc. (Bronx, Richmond, Kings, Westchester, New York, Queens Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2255 L	<p>Hafler Corporation d/b/a Comfort Keepers of Pittsford (Monroe, Yates, Ontario, Livingston, Wayne and Steuben Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC/Interest</p>	No Recommendation
2308 L	<p>Happy Life Home Health Agency, Inc. (Queens, Bronx, Kings, Richmond, New York, and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation

2312 L	<p>Help Home Health Care Agency, LLC (Bronx, New York, Kings, Queens, Richmond, and Westchester Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2271 L	<p>Home Assist Senior Care, Inc. (Erie, Genesee, Niagara, Chautauqua, Cattaraugus, Wyoming, Allegany, and Monroe Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC/Interest</p>	No Recommendation
2341 L	<p>JMD Care Services, Inc. d/b/a Homewatch CareGivers of Nassau County (Nassau, Suffolk, Queens, and Westchester Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2227 L	<p>Karma Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2360 L	<p>K-REG, LLC d/b/a Manhattan Office of Griswold Home Care (New York, Bronx, Kings, Richmond, and Queens Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2284 L	<p>Kelly Sisters, Inc. (Nassau and Suffolk Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation

2156 L	Liberty Healthcare Services, Inc. d/b/a All Island Homecare Services (Nassau and Suffolk Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2248 L	My HHA Care’s, Inc. (Suffolk and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2269 L	NY Home Care Service, Inc. (New York, Bronx, Queens, Kings, Richmond and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2234 L	Optimum Home Care, LLC d/b/a Home Care Solutions (New York, Queens, Bronx, Richmond, Kings and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2194 L	Pampered Parents, LLC (Ontario, Yates and Monroe Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC/Interest	No Recommendation
2301 L	Richmond Home Care Agency, Inc. (Richmond County) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2387 L	Royal Class Home Health Care Agency, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation

2297 L	<p>SDL Home Care Agent, Inc. (Kings, New York, Queens, Bronx, Richmond and Nassau Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2278 L	<p>SLK Caregivers, Inc. d/b/a Comfort Keepers (Erie County) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2383 L	<p>The Impossible Dream Isn't It d/b/a Home Helpers of Rochester (Monroe County) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC/Interest</p>	No Recommendation
2171 L	<p>Yiming L Corp. (New York, Richmond, Kings, Queens, and Bronx Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2358 L	<p>Zaweski Senior Care, Inc. d/b/a Home Instead Senior Care (Suffolk and Nassau County) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2569 L	<p>Seaview Manor, LLC (Queens, Richmond, Kings, Bronx and New York Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC</p>	No Recommendation
2281 L	<p>Anchor Home Care LLC (Allegany, Erie, Orleans, Cattaraugus, Genesee, Wyoming, Chautauqua, and Niagara Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC/Interest</p>	No Recommendation

2473 L	Bayshore Home Healthcare, Inc. (Nassau, Suffolk and Queens Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2378 L	Park Terrace Operating LLC d/b/a Park Terrace at Radisson Assisted Living Program (Cayuga, Onondaga and Oswego Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC	No Recommendation
2377 L	Seneca Lake Terrace Operating, LLC d/b/a Seneca Terrace Assisted Living Center (Ontario, Seneca, Wayne and Yates Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC/Interest	No Recommendation
2442 L	HDA NY, LLC (Kings, Queens, Bronx, New York, and Richmond Counties) Dr. Brown – Abstained at EPRC Ms. Hines – Abstained at EPRC Ms. Carver-Cheney – Recusal	No Recommendation

**Administrative Law Judge’s Report and Recommendation –
Establish/Construct**

Exhibit #9

<u>Number</u>	<u>Applicant/Facility</u>
1. 131347 B	Southtowns Ambulatory Surgery Center, LLC (Erie County)

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

CON Applications

Ambulatory Surgery Centers– Establish/Construct

Exhibit #10

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 142272 E	Specialists’ One-Day Surgery Center, LLC (Onondaga County)	Contingent Approval

2.	151035 E	Saratoga-Schenectady Endoscopy Center, LLC (Saratoga County)	Contingent Approval
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Diagnostic and Treatment Centers – Establish/Construct

Exhibit #11

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142006 B	Partners Healthcare Network, LLC (Kings County)	Contingent Approval
2.	142133 B	Upstate Family Health Center Inc. (Oneida County)	Contingent Approval
3.	142212 E	S.L.A. Quality Healthcare (Kings County)	Contingent Approval
4.	142257 B	Liberty Resources, Inc. d/b/a Liberty Resources Family Health Clinic (Onondaga County)	Contingent Approval

Residential Health Care Facility – Establish/Construct

Exhibit #12

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	131349 E	Sea-Crest Acquisition I, LLC d/b/a Sea-Crest Health Care Center (Kings County)	Contingent Approval
2.	141079 E	Hollis Park Manor Nursing Home (Queens County)	Contingent Approval
3.	141153 E	River Meadows, LLC d/b/a James Square Nursing and Rehabilitation Centre (Onondaga County)	Contingent Approval
4.	141207 E	Delaware Operations Associates, LLC d/b/a Buffalo Center for Rehabilitation and Healthcare (Erie County)	Contingent Approval

Certificate of Dissolution

Exhibit #13

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
Guthrie Same Day Surgery Center, Inc.	Approval

Certificate of Amendment of the Certificate of Incorporation

Applicant

The Hortense and Louis Rubin Dialysis Center, Inc.

E.P.R.C. Recommendation

Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

Exhibit #14

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 151027 E	NYP Community Programs, Inc. (Queens County) Dr. Bhat – Interest Dr. Brown – Recusal Mr. Fassler - Interest	Contingent Approval

Ambulatory Surgery Centers– Establish/Construct

Exhibit #15

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1. 142197 B	Surgical Pain Center of the Adirondacks LLC (Clinton County) Dr. Ruge – 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 or HSA

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

VIII. AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CENTERS AND CHARITY CARE

Report on the Activities of the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care

Howard Berliner Sc.D., Member

IX. NEXT MEETING

May 21, 2015 - NYC
June 11, 2015 - NYC

X. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
February 12, 2015

The meeting of the Public Health and Health Planning Council was held on Thursday, February 12, 2015 at the New York State Department of Health Offices at 90 Church Street, 4th Floor, Rooms 4A & 4B, NYC. Chairman, Mr. Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner	Dr. Gary Kalkut
Dr. Jodumatt Bhat	Mr. Jeffrey Kraut
Dr. Jo Ivey Boufford	Dr. Glenn Martin
Dr. Lawrence Brown	Mr. John Palmer
Ms. Kathleen Carver-Cheney	Ms. Ellen Rautenberg
Mr. Michael Fassler	Dr. John Rugge
Ms. Kim Fine	Mr. Peter Robinson
Dr. Carla Bouton-Foster	Dr. Theodore Strange
Dr. Angel Gutierrez	Dr. Anderson Torres
Mr. Thomas Holt	Dr. Patsy Yang

DEPARTMENT OF HEALTH STAFF PRESENT

Mr. Charles Abel	Mr. George Macko (Albany via video)
Ms. Nancy Agard (Albany via video)	Ms. Lisa McMurdo (Albany via video)
Mr. Udo Ammon (Albany via video)	Mr. JP O’Hare
Mr. James Clancy	Ms. Stephanie Pawluk (Albany via video)
Ms. Barbara DelCogliano (Albany via video)	Ms. Sylvia Pirani (Albany via video)
Mr. Christopher Delker (Albany via video)	Ms. Lakia Rucker
Mr. James Dering	Ms. Linda Rush (Albany via video)
Ms. Alejandra Diaz	Mr. Timothy Shay
Mr. James Horan	Mr. Michael Stone (Albany via video)
Ms. Yvonne Lavoie(Albany via video)	Mr. Daniel Sheppard
Ms. Colleen Leonard	Ms. Lisa Thomson
Ms. Ruth Leslie(Albany via video)	Ms. Diana Yang (Albany via video)

INTRODUCTION

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

Mr. Kraut turned the floor over to Dr. Zucker.

Dr. Zucker announced that Governor Cuomo had appointed Mr. Jeffrey Kraut to serve as the Council’s Chair. Dr. Zucker congratulated Mr. Kraut on the appointment.

Mr. Kraut thanked Dr. Zucker and gave a brief history of the Public Health Council and the Public Health and Health Planning Council appointed chairs. Please see pages 4 through 6 of the attached transcript.

ELECTION OF OFFICERS

Election of Vice Chairperson

Mr. Kraut nominated Dr. Jo Ivey Boufford to serve as the Council's Vice Chair. The motion was seconded by Dr. Gutierrez. The motion passed. Please see page 6 of the attached transcript.

Mr. Kraut announced that Mr. Booth had resigned from the Council. He thanked Mr. Booth for his dedicated service to the Council.

APPROVAL OF THE MINUTES OF DECEMBER 4, 2014

Mr. Kraut asked for a motion to approve the December 4, 2014 Minutes of the Public Health and Health Planning Council meeting. Dr. Gutierrez motioned for approval which was seconded by Dr. Kalkut. The minutes were unanimously adopted. Please refer to page 8 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Mr. Kraut moved to the next item on the agenda, the Report of Department of Health Activities and turned the meeting over to Dr. Zucker.

2015-16 PROPOSED BUDGET HIGHLIGHTS

Dr. Zucker stated that we are in the midst of the budget season which is always a good time to reconsider what our priorities are as we strive to achieve our mission to protect, to improve, and to promote the health, the productivity and the well-being of all New Yorkers. One of our top priorities is to manage the healthcare challenges that continue to plague certain regions of our State. To address that, Governor Cuomo's budget calls for a \$1.4 billion in a healthcare facility transformation program. These funds will address the healthcare needs of communities both upstate and downstate, where residents lack access to adequate healthcare.

Dr. Zucker noted that in east and central Brooklyn there is a struggle with unmet healthcare needs and significant health disparities. To help these communities, Governor Cuomo has proposed \$700 million of the \$1.4 billion for capital project funding. These funds will go toward renovating and replacing inefficient or outdated facilities and building financially sustainable systems of care. Our goal is to give the residents of Brooklyn access to healthcare they need and deserve.

Dr. Zucker noted that there are plans to allocate \$300 million to help Oneida County. These funds will be used to consolidate multiple healthcare facilities into an integrated system of acute inpatient care, outpatient primary care, and other healthcare services. The remaining \$400 million will be used to provide grants to hospitals for debt retirement and other purposes that are part of our healthcare transformation efforts. These efforts will help ensure financially sustainable systems of care. Debt retirement and other balance sheet cleansing activities are not eligible for the Medicaid Vital Access Provider, VAP funds or the DSRIP capital. The charter of these funds is primarily hospitals that serve rural and other geographically isolated communities.

Dr. Zucker noted that the Governor's budget supports the Department's mission in other ways as well. Two years ago the Department identified the prevention of dental cavities as a high priority because of the pain and suffering they cause, not to mention the high medical costs that poor dental health incurs as well. Drinking water fluorination program is the most important thing a community can do to help residents avoid dental cavities. To that end, the budget calls for allocating \$5 million to create a drinking water partnership fund. It also requires communities looking to discontinue fluorination to do a public notice about their intent. This fund will help communities pay for the installation, the repair and the upgrade of drinking water fluorination facilities. Having fluorine in our water systems not only prevents dental cavities, but also reduces the need for costly treatments and it saves money for Medicaid.

Dr. Zucker advised that the Governor's budget also addresses another community health need which is hunger. As part of the anti-poverty agenda, \$4.5 million will be committed to the hunger prevention and nutrition assistance program. These additional funds will provide \$2.8 million more meals in the coming fiscal year.

Dr. Zucker stated another standing priority is providing care to the elderly and the disabled and the people who look after them. The 2015-16 proposed budget is allocating \$25 million for Alzheimer's caregiver support. Alzheimer's is a growing epidemic that affects more than five million people in the United States. In New York there are an estimated 320,000 individuals with Alzheimer's and other forms of dementia. The disease also takes a toll on those who provide the care, such as family members who devote countless hours of unpaid health to their loved ones. These funds will help caregivers by providing them with much needed respite services and other programs.

Dr. Zucker advised that the budget also reinforces the Department's commitment to bring an end to the AIDS epidemic. AIDS has been a scourge in New York State for far too long, but we are not at a tipping point where in the coming years the number of newly diagnosed cases will likely drop below the number of people dying of HIV AIDS. At that point the number of people living with HIV AIDS will start to decline for the first time since the epidemic began. We can assure that it happens and happens sooner by no later than 2020. Governor Cuomo's three part plan to end the epidemic is simple. It identifies people with HIV who have not been diagnosed and link them to care. It keeps people who have been diagnosed in care so that they remain healthy, and it provides pre-exposure prophylaxis or prep to high risk individuals so they stay HIV negative. The end of the AIDS epidemic will be milestone of public health for this generation and beyond.

Dr. Zucker also stated that the proposed budget reflects the Department's commitment to advancing reforms recommended by the Medicaid Redesign Team. Among them is the transition to managed care plans. The Department is in the process of moving all Medicaid enrollees into these comprehensive plans and away from the fee-for-service model of care. The Governor's budget also includes a plan to implement the basic health plan. A federally supported insurance option authorized under the Affordable Care Act. This new option makes coverage more affordable for low income individuals who don't have health insurance through an employer and yet do not have incomes low enough to qualify for Medicaid. By creating this plan it will lower the number of uninsured people in New York even further which means more people will have access to health care.

DSRIP

Dr. Zucker spoke on the topic of DSRIP. The Department is in the early stages of implementing DSRIP. The federal Delivery System Reform Incentive Program. The federal government has allocated up to \$6.4 billion in waiver funds for DSRIP which will go towards funding and providing systems of PPS's. The Department has received applications from healthcare providers all over the state. There will be a total of 25 PPS's. The DSRIP project approval and oversight panel met for the first time in early January and they will meet again from February 17 to February 20 and all meetings are open to the public. The panels charge is to review the DSRIP applications which have been scored by an independent assessor. Dr. Zucker stated that it is his job to listen to the panel's recommendations on whether to accept or reject or modify a PPS.

MEASELS

Dr. Zucker noted that we are experiencing a growing number of measles cases. Many cases have been traced to the Disney Land situation in California, though none of them are in New York State at this time. It is important to make a note of that New York had cases, but they have not been from California. Measles is a highly contagious upper respiratory disease and like many viruses it begins with a fever, runny nose, cough, red eyes, sore throat, and then it's followed by a rash which usually begins on the face, it goes to the arms, down the trunk and down to the legs. As of January 30, 2015 there have been 102 cases of measles in 14 states. Here in New York three cases which were all linked to international travel. The rise in measles illustrated why immunizations are so important. Immunizations are important, diseases once on the decline have had a comeback, and in recent years there have been outbreaks of pertussis or whooping cough, measles, mumps, and other infections. In New York our childhood immunization coverage level is at or above national average which is great. 98 percent of all the children in pre-k through grade 12 have received an MMR vaccine for mumps, measles and rubella. At the college level 97 percent of all the students have gotten the MMR vaccine and among toddlers we have an MMR immunization rate of about 95 percent. However, there are pockets where immunizations have not happened in some areas of the State. New York does allow religious medical exceptions to school immunization requirements although we are below the national average in the percentage of children who have had those exceptions made.

Dr. Zucker explained that the recent case in Bard College illustrated that we are still vulnerable because measles is a global health problem. The student at Bard College contracted measles overseas and then came back to New York. The case triggered a joint response among the local, the state and the federal health officials who alerted Bard College community and urged anyone at risk to get vaccinated. Vaccines still remain our best defense against these serious diseases, and for that matter against many diseases in general.

FLU

Dr. Zucker noted that New York is in the middle of a fairly severe flu season and one of the worst that we have had in several years. The CDC describes it as "moderately severe" with the H3N2 virus as the prominent, predominant strain. The flu has been prevalent in New York since mid-December and unfortunately this year's flu vaccine was not well-matched the strains that are now making people sick. Still, the vaccine does provide some protection. If you do get

sick the vaccine reduces the severity of the disease and lowers your risk for hospitalizations and complications thereof. In addition, the vaccine protects against three or four influenza viruses strains that may emerge and circulate later on in the season. Dr. Zucker encouraged people to receive the flu vaccination. Persons at risk of complications from the flu should talk to their doctor about taking anti-viral drugs such as oseltamivir to prevent illnesses or make it less severe. He also mentioned that everyone should realize, that if you get sick with the flu there are some anti-virals out there and you should talk to your physician.

EBOLA

Dr. Zucker gave an update on Ebola and stated the good news is that we are starting to see some indications that the Ebola epidemic in West Africa has started to wane since our last meeting in December. It has been over a year since it began its deadly spread, it began December 24 of 2013, and the epidemic has taken a significant toll. There have been more than 22,300 cases with over 8,900 deaths in Guinea, Sierra Leone, and Liberia, the three countries that have been most heavily impacted by Ebola. In New York we have monitored more than 1,400 people from these effected countries since mid-October. All of them have been monitored for illnesses twice a day for 21 days after leaving the affected countries. Around 150 people are still undergoing monitoring today. There were also nine returning healthcare workers who have all agreed to quarantine for 21 days and fortunately, there have been no cases of Ebola itself. Dr. Zucker advised that he had spoken to all of the people who have been under quarantine over the course of the time, and it is interesting when you speak with them about the stories about what has happened, their experiences in West Africa. Dr. Zucker noted that the team has been phenomenal both all across the state and all the areas who have worked on monitoring those who have come in, and that they deserve an incredible amount of congratulations and credit for what they are doing to make sure that everyone is safe.

NEW YORK STATE OF HEALTH

Dr. Zucker advised that the end of 2014 kicked off a new enrollment period for a health benefits market place, the New York State of Health. Last week Governor Cuomo announced that New York has enrolled more than two million New Yorkers in affordable health insurance coverage through the New York State of Health, our State health marketplace program. The marketplace has been a major success. 89 percent of enrollees report that they had no coverage of the time that they joined the marketplace. 92 percent of them have said that they're satisfied with their health insurance, and 84 percent say they are using their coverage to access care. The Department's had a sign up New Yorkers tour, Sign Up New York tour which was set up in 13 shopping malls around that state on weekends in January and as well as in the first half of this month. The tour helped reach the uninsured and raise awareness of the importance and benefits of enrolling I health insurance through the marketplace. The certified assistors were on site at each location to answer questions to provide information and to make follow up appointments for individuals. The events included appearance from Marvel super heroes to help engage consumers, direct them to more information assistance. Judging from enrollment numbers these efforts have truly worked.

CANCER PREVENTION

Dr. Zucker noted that the Department is also looking at the issue of cancer prevention. There will be a New York State Cancer Prevention summit which will be coming up. The summit will be in New York City on May 20 and will explore the many ways that we can actually prevent cancer. Research shows that nearly 2/3 of all deaths from cancer can be prevented. Tobacco use accounts for a third of cancer deaths, and another third attributable to obesity, poor nutrition, and inactivity. We are going to look at all the different issues of cancer prevention at this summit. Also at the summit, the Department will examine the ways we can reduce cancer risks and how we can promote and implement those strategies that we put in place. The event is being led by the Department of Health's Division of Chronic Disease Prevention, Bureau of Chronic Disease Control. Dr. Zucker stated that he is looking forward to an exciting discussion that day where the leading researchers will be out there.

Dr. Zucker concluded his report. Mr. Kraut thanked him and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 9 through 39 of the attached transcript.

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

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

Mr. Sheppard began his report by updating the members on the on the DSRIP regulatory waivers. In last year's budget, the Department got statutory authority to waive regulatory requirements for DSRIP projects and DSRIP related capital projects that are associated with providers licensed by Department of Health, Office of Mental Health, Office of Alcohol and Substance Abuse Services, and the Office for Persons with Developmental Disabilities, waivers may be issued to allow applicants to avoid duplication of requirements and allow the efficient implementation of those proposed projects. Only if a waiver would not jeopardize patient safety and only for the life of the project. The DSRIP applications that came in at the end of December, there were approximately 460 waiver requests from 24 of the 25 PPS's. To evaluate those we established teams to review the requests and make recommendations and based on the nature of the requests the teams consisted of subject matter experts from all of the covered agencies mentioned earlier. The Department also put in place a steering committee that reviewed all the teams' recommendations to assure consistency, and in cases where there was not consistency went back to those teams. The reviews of all the requests was recently completed and determination letters are now in production and will start going out shortly. It will take about one or two weeks for all the letters to go out. The waiver determinations are falling in four categories, there is approved, approvable on a case by case basis, denied, and waiver not needed. There will be a couple of PPS's that are notified that there is a determination pending on their request and this will be in a few cases where related legal and policy issues were so complex that more time was needed but did not want to slow down the entire determination notification process to deal with those issues. As an example, there were some requests that dealt with scope of practice issues which is legally and policy complicated.

Mr. Sheppard explained that some examples that include revenue sharing and that was so the PPS leads could distribute DSRIP incentive payments, share credentialing for providers within a PPS, and then highlight more detail under the “Approved” category is the integrated services. These are the so-called DSRIP-3AI projects which is one of the most popular projects that cross all of the applications. Through a collaborative effort with the Office of Mental Health and OASAS we developed an approval model for requests to integrate primary care and behavioral health as well as substance abuse disorder services under a single license and the standard we used, we raised the threshold uniformly so that all these services could be provided under a single license so long as the service to be added does not constitute more than 49 percent of the providers total annual visits. This is a significant increase from the current thresholds restricting the provision of integrated services in across the article 28, 31, and 32 settings. Currently no licensure thresholds that would allow a primary care provider to offer substance abuse disorder services. So that under the model that was developed for DSRIP-3AI projects would be allowed. In order to help insure that quality, care and patient safety concerns are addressed, the providers integrating services using this new DSRIP licensing threshold will be expected to be in good standing and here to prescribe sections of the integrated outpatient regulations.

Mr. Sheppard noted that for the category of approval on a case-by-case basis, these requests were deemed eligible for approval but the Department or the other covered agencies much make waiver decisions on a case-by-case basis because of the potential for patient safety issues, adverse impacts on providers that are not part of the PPS or other significant externalities and in almost all these cases, the details, level of detail provided in the application was not comprehensive enough for us to make those determinations in the initial review. So those will be, that will be an iterative reach-out process with those applicants.

Mr. Sheppard noted the other category was denied. These were requests the Department could not approve because they were requesting waiver of a statute, federal requirement, or something that overtly raised patient safety issues. Some examples of those were architectural standards, preopening surveys, waiving the corporate practice of medicine, establishment of a new article 28 operators which is statutory and purview of this body, waiving review of hospital management contracts was another area. Final category, waiver not needed. These were activities related to requests that could be performed without a waiver and so examples, these are common consent forms across PPS providers. The Department is now working on a team to develop one that can be used as a model, as well as another Waiver Not Needed category was increasing the number of observation beds. The significant majority of responses fall into either the approved or unapprovable on a case-by-case basis or Waiver Not Needed categories.

Mr. Sheppard moved onto the topic of CON enhancements. Mr. Sheppard acknowledged Mr. Clancy and Mr. Abel and their team in a multi-year effort to significantly improve the CON process using technology and LEAN process changes. Since from 2011 to 2014 for Administrative CON’s the median processing time has declined from 179 days to 69 days for a Full CON review, from 268 days to 143 days, and for Limited Review from 66 days to 19 days. There has been some significant accomplishments.

Mr. Sheppard announced that there are some NYSE-CON enhancements to the executive summary functionality that rather than have PDFs just uploaded it would require data entry, and this enhancement will allow all facilities, health planners and the public to give summary information about a given CON project. This is a significant step forward to improve CON project transparency. It is the first product of the electronic, the NYSECON smart forms team, and the Department is going to build on this platform so that more of the CON application will be data field entry in the future. The next enhancement which is targeted for release at the end of March is the regional office module. This phase will allow applicants and facilities to move from paper submissions and utilize the NYSECON platform and its communication and tracking capabilities for contacting the Department's regional office staff to establish onsite survey dates for approved CON projects, to submit required documentation in advance of the onsite survey, to electronically communicate with the surveyors and to track and resolve any noted deficiencies noted at the survey. All the data will be stored in the CON system in electronic form and viewable by staff and the subject applicant. There are additional phases for the regional office model that are being developed, and this will further help improve and standardize record keeping and make onsite service processes much more efficient and transparent.

Mr. Sheppard explained that the last improvement which is the licensed homecare services agency module. The Department will be moving for a paper application submission and review process for LHCSAs to bring them into the electronic CON as a unique application type and what this will do is permit real time electronic application submission, communication with applicants for additional information and project tracking and reporting, and we hope that this will enable us to bring LHCSAs some of the same processing efficiencies that we've seen for the article 28 applications and for the, as well as the article 36 CHHA applications.

Mr. Sheppard noted that it is evident from the communications that the Department is receiving at both queries as well as things before the Department for review, regulatory review, and it is evident over the next several years there will be more and more instances of large healthcare systems affiliating with various degrees of control with smaller systems, both within and outside of their traditional patient service areas. He noted that these affiliations are very important because they can help ensure the financial viability of systems that might otherwise maintain services or to exist altogether. Additionally, such affiliations can foster and accelerate the development, the types of integrated patient centered healthcare delivery systems envisioned under DSRIP and more broadly the state's prevention agenda. However, as we consider these affiliations and the associated regulatory approval, it is important that we also put a premium on ensuring that these new health systems continue to serve and to provide access to even higher level qualities of care to the populations served by the legacy systems and that those new systems work in partnership with existing community-based health providers.

Mr. Sheppard concluded the report. Mr. Kraut thanked Mr. Sheppard and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 39 through 54 of the attached transcript.

Report on the Office of Quality and Patient Safety Activities

Mr. Kraut introduced Ms. Pawluk who reported via video from Albany to give the report of Activities of the Office of Quality and Patient Safety.

Ms. Pawluk began her report and gave an update on the work relating to the State Health Innovation Plan, also known as the SHIP, and the State Innovation Models Initiative which is the grant that the Department was recently awarded effective February 1, 2015. The State Innovations Models grant, or SIM grant was to implement the SHIP. The SHIP is the State's roadmap to achieve the triple aim over the next four years and really coordinate all of the wonderful activities happening in New York between DSRIP, the Prevention Agenda. The Department's work on the SHIP which involves many different agencies, OMH, Department of Financial Services, and the Department of Civil Service which is responsible for State Employee Health Benefits and really advancing system information across the State. Effective February 1, 2015, the Department received \$100 million funding from the Center for Medicare and Medicaid Innovation, which was under the Affordable Care Act which is an opportunity for states to exercise their state policy levers in advancing transformation and value in care across all the states lead by each state. New York received \$100 million and was one of 11 states that received funding over the next four years. It is a 48 month award beginning in February 2015 and will end in January 2019. The first year is predominantly pre-implementation year which will involve significant design and concepts that were proposed in the SHIP or the State Health Innovation Plan. Much of this work will be completed through workgroups over the next year and going forward.

Ms. Pawluk explained a few of the workgroups that will be involved. The first is an Integrated Care Workgroup which is charged really with the heard of the SHIP which is an advanced primary care model based on PCMH but really allowing flexibility so that the payers, more payers can get behind it and it can be spread across that state and have some flexibility. 80 percent of the State population over four years can have a true medical home that is recognized by the State. Over the next year we will be designing that model and integrated care workgroup which takes many external parties, leveraging all of the things that are already happening across the State.

Ms. Pawluk described another workgroup which is the Department's Health IT Evaluation and Transparency Workgroup which is charged at looking at the HIT systems in the State between the SHIN-NY, the developing all-payer database, and really make sure that we are able to leverage those tools in order to evaluate the transformation of care across the State and also to support consumer transparency. There will also be two other workgroups, Access to Care and a Workforce Workgroup to address issues of getting consumers access to care if we are going to have a medical home model, how do we ensure that we have an adequate workforce so everyone can have access to their medical home, and all of these workgroups are led by folks within the state and co-chaired, or will be co-chaired by an external partner and will integrate across DSRIP, the Prevention Agenda, and many other initiatives happening across the State to try to maintain coordination. She noted that the first year is a planning year and then actual advanced primary care model will launch some time in 2016 and will have funding in the grant for practice transformation, all of which will be developed further during 2015 and the workgroup process.

Mr. Kraut thanked Ms. Pawluk and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 54 through 57 of the attached transcript.

PUBLIC HEALTH SERVICES

Report of the Activities of the Committee on Public Health

Mr. Kraut introduced Dr. Boufford to give her Report of the Committee on Public Health.

Dr. Boufford stated that the Public Health Committee met with the Ad Hoc Leadership Group on January 29, 2015 from four meeting locations. In attendance were over 30 different state level organizations that have joined the Committee's work and to bring their intelligence to it. Also in attendance were representatives from 11 PHIPS. Dr. Boufford thanked Ms. Pirani along with her team who have been amazing in taking on the first agenda item which was a one year progress report from all of the local health departments and hospitals and their partnerships on the submissions under the prevention agenda. There are five statewide goals, non-communicable disease prevention, and safe and healthy environment, women, infants, and children's health, promoting mental health and preventing substance abuse and HIV AIDS and infectious disease, vaccine preventable infectious diseases.

Dr. Boufford explained that with the combination of the local health department and hospitals, 57 of 58 local health departments have chosen work in the non-communicable disease prevention area. Primarily obesity prevention, access to preventive services, and tobacco, and 29 of these localities have chosen work on mental health and substance abuse, which was the second most frequently selected, which is very gratifying because this was an add-on because the Commissioner of Health agreed to involve two other agencies over which they could partner but not have authority. The local coalitions were charged to pick two objectives within the report on two objectives within the prevention agenda and one disparity and three quarters reported on disparity, so they have to be followed up. The number one disparity focused on was poverty. Race/ethnicity was the second.

Dr. Boufford noted that another important question the Committee asked was who is at the table locally, because these are supposed to be led by local health departments in conjunction with hospitals, but other community organizations, business, academic institutions are supposed to be around, and we actually know that by county which is very exciting, so the number one, two, and three participants from the reports are preexisting local coalitions that were built around issues like tobacco or vaccine or other issues. Other community-based organizations who were leading in one of the areas selected and community health centers which was very gratifying. They have been an active part of the Ad Hoc Leadership Group and have really stepped up in terms of engaging locally in these coalitions.

Dr. Boufford stated that the least well involved which does not mean they are not participating but just in terms of numbers are schools, which are critical places for infants and children's health and prevention of obesity. She also noted that businesses, colleges and universities were less involved as well. The group at the table have decided to try to activate the groups mentioned engagement in these priorities.

Dr. Boufford advised that the top challenges reported from the local coalitions is data collection and engaging community leadership. This is a combination of both elected and appointed community leaders, administrative leaders such as city managers or local mayors or county leaders, but also community leaders and business and other areas.

Dr. Boufford explained there were three questions trying to connect the dots across the healthcare reform between the Prevention Agenda, DSRIP, and community benefit activities, and the findings were very important. The question was asked in the survey, 25 reporting provider systems were asked to report on the level of connection between the identities. The priorities they identified in the prevention agenda and the priorities they said they were working on in DSRIP. About half said they were more or less the same with about a 75 percent overlap. Half, about 30 percent said they were not sure, and 14 percent said no. This was a signal that there appears to be a bit of a disconnect sometimes within the hospitals themselves between the CEO level which is obviously focusing heavily on DSRIP and those applications, and what has traditionally been the community relations group that have done work on things like the prevention agenda. Dr. Boufford expressed that the Committee was very delighted that Greater New York Hospital Association, HANYS, are members of the Ad Hoc group and have been very active in working on this issue.

The DSRIP and Prevention Agenda overlap is largely around non-communicable diseases but also around mental health infrastructure, and to some degree on tobacco. The links between Prevention Agenda and the community benefit reporting under schedule H, a year ago the Commissioner indicated that they would like to have a specific explicit reports from each hospital in the State on all of the categories of their schedule 8 submissions. The Committee again asked the question regarding the connection between what you selected to work on in your community needs assessment driven, community benefit plan, and the prevention agenda, there was about half showed an overlap, again, between the two are concurrent between the two. 21 percent said there was no connection, and 25 were not sure. There is this issue of these three opportunities to begin to align investments that hospitals especially are making in the communities already with their investments that link to other community actors in the prevention agenda and also their DSRIP commitments. The two areas of the schedule H that we are particularly interested in and will be looking at over time are aligning the investments in this so-called community health improvement category of the schedule H which is \$160 million a year in New York State, and the community building category which is about \$12 million. These are two categories that do not get into the complex issues of DISH and Medicaid gaps and GME and all the other things that are quite conflictual. The definitions of those two categories under IRS rules are quite consistent with investments. It could be made both in prevention agenda and others, so the Committee is going to try to align those.

Dr. Boufford stated that the important comments and issues raised by other guests at the meeting were from the Office of Mental Health and OASAS. The spoke about how they are trying to activate the local government units, especially for the mental health infrastructure around the State to connect with local health departments which is not really routinely been happening. They have done a survey that has identified about a 75 percent overlap in what they are doing, but the mental health infrastructure folks saying that much of their work is around service provision while the local health departments work with Prevention Agendas around prevention and that they really need to work more closely together, and this is a gratifying commitment and identification because of this, the Prevention Agenda structure. Dr. Boufford

again mentioned that GNYHA and HANYS have been very active in different ways in this area, working also on developing real focus on hospitals engagement with their communities. The New York City Health Department under the new Mayor has really embraced aligning the Take Care New York activity with the prevention agenda work and gave us an updated report on that and the New York City Health Department is leading the Population Health Improvement Plan (PHIP) as a PHIP grantee for New York City.

Dr. Boufford noted that NYSACHA is looking into concerns about the reduction in funding and prevention. The local health department directors are hoping to get much more involved in the DSRIP selections under items four and three, but are also facing considerable staffing constraints. Hopefully with the PHIP staffing at least envisioning, or the SHIP funding, envisioning an additional public health advisor for each of the PHIP regions that help. Other members discussed issues of workforce which have been raised in the Council, health plans wanting to get involved in having some of their own issues which the Committee is going to explore. Mr. Macielak who is the head of the Health Plan Association of New York State has been very active from the beginning, and the North East Business Group on health who are active participants in the Ad Hoc Leadership Group pointing out that many of their business members are not local businesses and they have agreed to go with us to talk again with the business council. The New York State Business Council has joined the Ad Hoc Leadership Group, but have not been able to be too active so far.

Lastly, Dr. Boufford stated that Ms. Graham presented from the Office of Minority Health on the disparities workgroup and we are anticipating there will be a health equity report in early 2015 which will help the Committee with the work at local level on health disparities. There is a working group linked to Prevention Agenda on health disparities. Dr. Boufford advised that Ms. Plavin has been terrific in participating with the Committee to try to help us understand how and to support broader engagement and the population health agenda. In the waiver application for the SHIP grant or in the application for the SHIP grant it does very explicitly envision a role for the PHHPC in some kind of an oversight or steering role, it is actually in the application, and the Committee is looking forward to conversations about how that role can be played out most constructively.

Dr. Boufford concluded her report by advising that at the March Public Health Committee meeting they will be revisiting the topic of maternal mortality.

Mr. Kraut thanked Dr. Boufford and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 57 through 68 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Emergency Adoption

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

Dr. Gutierrez described for emergency adoption Amendment of Section 415.3(h) of Title 10 NYCC (Children’s Camps) and motioned for approval. Mr. Fassler seconded the motion. The adoption carried with 2 members opposing. Please see pages 68 through 73 of the attached transcript.

For Adoption

11-02 Amendment of Section 415.3(h) of Title 10 NYCRR (Nursing Home Transfer and Discharge Rights)

Dr. Gutierrez described the proposed Amendment of Section 415.3(h) of Title 10 NYCRR (Nursing Home Transfer and Discharge Rights) and motioned for approval. Ms. Fine seconded the motion. The motion for adoption carried. Please see pages 73 and 74 of the attached transcript.

Dr. Gutierrez concluded his report. Mr. Kraut thanked him and moved to the next item on the agenda.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Jeffrey Kraut, 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

Acute Care Services - Construction Exhibit #3

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	142181 C	Orange Regional Medical Center (Orange County)	Contingent Approval

Ambulatory Surgery Centers - Construction Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	142134 C	Mohawk Valley Eye Surgery Center (Montgomery County)	Contingent Approval

Mr. Kraut presented applications 142181 and 142134 and motioned for approval. Dr. Strange seconded the motion. The motion to approve passed. Please see page 75 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

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	142081 C	Huntington Hospital (Suffolk County) Mr. Kraut - Recusal	Contingent Approval
3.	142083 C	Southside Hospital (Suffolk County) Mr. Kraut – Recusal	Contingent Approval

Dr. Kalkut introduced application 142081 and noted for the record that Mr. Kraut has a conflict and has exited the meeting room. Dr. Kalkut motions for approval. Mr. Fassler seconds the motion. The motion to approve passes with Mr. Kraut’s recusal. Please see page 75 of the attached transcript.

Mr. Kraut remains outside the meeting room, Dr. Kalkut notes for the record that Mr. Kraut has declared a conflict on application 142083. Dr. Kalkut motions for approval, Mr. Fassler seconds the motion. The motion passes with Mr. Kraut’s recusal. Mr. Kraut returns to the meeting room. Please see page 76 of the attached transcript.

Acute Care Services - Construction

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2.	142168 C	Westchester Medical Center (Westchester County) Dr. Berliner – Interest	Contingent Approval

Dr. Kalkut introduces application 142168 and notes for the record that Dr. Berliner has an interest. Dr. Kalkut motions for approval, Dr. Gutierrez seconds the motion. The motion carries. Please see page 77 of the attached transcript.

Acute Care Services - Construction

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
4.	142185 C	New York Presbyterian Hospital – New York Weill Cornell Center (New York County) Dr. Brown – Recusal Dr. Boutin-Foster – Recusal	Contingent Approval

Mr. Kraut describes application 142185 and notes for the record that Dr. Brown and Dr. Boutin-Foster have declared conflicts and have exited the meeting room. Mr. Kraut motions for approval, Dr. Gutierrez seconds the motion. The motion to approve passes with Dr. Brown and Dr. Boutin-Foster's recusals. Dr. Brown and Dr. Boutin-Foster return to the meeting room. Please see pages 77 and 78 of the attached transcript.

Acute Care Services - Construction

Exhibit #5

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
5. 142228 C	Strong Memorial Hospital (Monroe County) Ms. Hines – Recusal Mr. Robinson – Recusal	Contingent Approval

Mr. Kraut introduces application 142228 and notes that Ms. Hines and Mr. Robinson have declared a conflict and have exited the meeting room. Mr. Kraut motions for approval. Dr. Gutierrez seconds the motion. The motion to approve carries with Ms. Hines and Mr. Robinson's noted recusals. Ms. Hines and Mr. Robinson return to the meeting room. Please see page 78 of the attached transcript.

Residential Health Care Facilities - Construction

Exhibit #6

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 132305 C	Jewish Home of Rochester (Monroe County) Ms. Hines - Interest	Contingent Approval

Mr. Kraut described application 132305 and noted for the record that Ms. Hines has declared an interest. Dr. Gutierrez seconds the motion. The motion to approve carries. Please see page 79 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 **Exhibit #7**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	141253 E	South Brooklyn Endoscopy Center (Kings County)	Contingent Approval

Mr. Kraut describes application 142153 and motions for approval. Dr. Gutierrez seconds the motion. Dr. Berliner asks the Department questions relative to the application. The motion to approval carries. Please see pages 79 through 83 of the attached transcript.

Diagnostic and Treatment Centers – Establish/Construct **Exhibit #8**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	142152 E	Odyssey Community Services, Inc. (New York County)	Contingent Approval

Residential Health Care Facilities – Establish/Construct **Exhibit #9**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	142195 B	Delhi Rehabilitation & Nursing Center (Delaware County)	Contingent Approval

Certified Home Health Agency – Establish/Construct **Exhibit #10**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	142193 E	Kindred Healthcare (Saratoga County)	Contingent Approval

HOME HEALTH AGENCY LICENSURES

Exhibit #11

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2276 L	1 st Class Care Services, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2178 L	All Heart Homecare Agency, Inc. (New York, Richmond, Kings, Bronx, Queens, and Westchester Counties)	Contingent Approval
2292 L	Angels of Mercy Counseling Center, Inc. (Nassau Suffolk Queens and Westchester Counties)	Contingent Approval
2272 L	A Plus Homecare Agency, Inc. (Queens, Bronx, New York, Kings, Richmond, and Nassau Counties)	Contingent Approval
2037 L	Bright Home Care, Inc. (New York, Bronx, Kings, Richmond, Queens and Westchester Counties)	Contingent Approval
2266 L	Central Westchester Home Health Services, LLC (Westchester County)	Contingent Approval
2268 L	Chinatown Home Health Care, Inc. (New York, Bronx, Kings, Queens, Richmond and Nassau Counties)	Contingent Approval
2218 L	Comprehensive Elder Care, LLC (Bronx, Richmond, Kings, New York, Queens, and Nassau Counties)	Contingent Approval
2285 L	Elite Home and Community Care Service, Inc. (Rockland, Putnam, Westchester, Orange and Bronx Counties)	Contingent Approval

2254 L	Ellison Home Care Companion Agency, Inc. (Nassau, Westchester, Rockland, Queens, and Suffolk Counties)	Contingent Approval
2247 L	Grupp KK, Inc. (Bronx, Richmond, New York, Queens, Kings, Westchester Counties)	Contingent Approval
2152 L	Guiding Angels Home Care, LLC (Bronx, Kings, New York, Richmond, Queens and Nassau Counties)	Contingent Approval
2138 L	Home at Last Home Care Services, LLC (Kings, Bronx, Queens, Richmond, and New York Counties)	Contingent Approval
2175 L	Human First Community Health Care, LLC (Nassau, Suffolk and Queens Counties)	Contingent Approval
2215 L	La'Dorch Homecare, Inc. (Bronx, Richmond, Kings, New York, Queens, and Westchester Counties)	Contingent Approval
2261 L	Marabi Homecare Agency, Inc. (New York, Richmond, Kings, Bronx, Queens, and Nassau Counties)	Contingent Approval
2274 L	Masih Home Care Incorporated (Queens, Kings, Richmond, New York, Bronx, and Nassau Counties)	Contingent Approval
2202 L	MY Care Health Services, Inc. (Queens, New York, Bronx, Richmond, Kings, and Nassau Counties)	Contingent Approval

2244 L	New Hope Services, Inc. (Bronx, Richmond, New York, Queens, Kings and Westchester Counties)	Contingent Approval
2259 L	NMC Homecare Agency of NY, Inc. (New York, Richmond, Kings, Bronx, Queens, and Westchester Counties)	Contingent Approval
2176 L	Augusta Osinowo d/b/a Nightingale Care Services (Bronx, Queens, New York, Richmond, Kings, and Nassau Counties)	Contingent Approval
2157 L	Passion for Seniors of NY, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2299 L	Premium Home Services, LLC (Queens, Kings, Bronx, New York, Richmond, and Nassau Counties)	Contingent Approval
2279 L	Scope Healthcare Services, Inc. (Suffolk, Nassau and Queens Counties)	Contingent Approval
2163 L	Global Private Home Care LLC (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)	Contingent Approval
2461 L	Alice Hyde Medical Center (Franklin County)	Contingent Approval
2295 L	Hyde Park Assisted Living Facility, Inc. d/b/a Hyde Park Licensed Home Care Agency (Dutchess County)	Contingent Approval

2319 L	Acare HHC, Inc. d/b/a Four Seasons Home Care (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval
2389 L	Crown of Life Care NY, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval
2342 L	Elite HHC, LLC (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
2401 L	Prestige LHCSA Management, Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval
2556 L	Quality Care – USA, Inc. d/b/a Gentiva Health Services (See exhibit for counties served)	Contingent Approval

Mr. Kraut described applications 142152, 142195 and 142193 along with the following Home Health Agency Licensure applications 2276, 2178, 2292, 2272, 2037, 2266, 2268, 2218, 2285, 2254, 2247, 2152, 2138, 2175, 2215, 2261, 2274, 2202, 2244, 2259, 2176, 2157, 2299, 2279, 2163, 2461, 2295, 2319, 2389, 2342, 2401 and 2556. Mr. Kraut motioned for approval of the above referenced applications. Mr. Fassler seconds the motion. The motion to approve carries. Please see pages 83 through 85 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 – Establish/Construct

Exhibit 12

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	142218 E	NYU Lutheran Medical Center (Kings County) Dr. Boufford – Interest/Abstained Dr. Kalkut – Recusal	Contingent Approval

Mr. Kraut introduces application 142218 and notes for the record that Dr. Kalkut has a conflict and has left the meeting room and that Dr. Boufford has an interest and will abstain. Mr. Kraut motions for approval, Dr. Gutierrez seconds the motion. The motion to approve passes with Dr. Kalkut’s recusal and Dr. Boufford’s abstention. Please see pages 85 through 103 of the attached transcript to review the members’ discussion. Dr. Kalkut returns to the meeting room.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facility – Establish/Construct

Exhibit #13

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	142115 E	Pure Life Renal of Buffalo, Inc. (Erie County) Dr. Bhat – Interest	Contingent Approval

Mr. Kraut described application 142115 and noted that Dr. Bhat had declared and interest. Mr. Kraut motions for approval. Dr. Gutierrez seconds the motion. The motion to approve passed. Please refer to pages 103 and 104 of the transcript.

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

CON Applications

Dialysis Services – Establish/Construct

Exhibit #14

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 132178 E	Big Apple Dialysis Management, LLC (Kings County) Dr. Bhat – Recusal Dr. Boufford – Recusal (not present at the time of the vote) Dr. Martin – Recusal Dr. Yang - Recusal	Deferred

Mr. Kraut Booth called application 132178 and noted for the record that Dr.'s Bhat, Martin and Yang have declared a conflict and have exited the meeting room. Mr. Kraut motioned to approve. Dr. Gutierrez seconds the motion. The motion to approve fails. Dr. Kalkut motions for disapproval, Dr. Gutierrez seconds the motion. The motion to disapprove fails. Dr. Boutin-Foster motions for a deferral and Dr. Berliner amends the motion for the application to be deferred and considered at the May Establishment and Project Review Committee meeting to be held in NYC. Dr. Ruggie seconds the motion. The motion carries with the noted recusals from Dr.'s Bhat, Martin and Yang. Please see pages 105 through 155 of the attached transcript for the complete discussion.

ADJOURNMENT:

Mr. Kraut adjourns the public portion of the meeting and the Council goes into Executive Session for the Report of the Committee on Health Personnel and Interprofessional Relations.

1 JEFF KRAUT: Good morning. I'm Jeff Kraut and I have the
2 privilege to call to order the February 12, 2015 meeting of the
3 Public Health and Health Planning Council. We welcome members
4 Dr. Zucker, participants and observers. I'd like to remind
5 Council members, staff and the audience that this meeting is
6 subject to the open meeting law and is broadcast over the
7 internet. The webcasts are accessed at the Department of
8 Health's website, NYHealth.gov. The on-demand webcast will be
9 available no later than seven days after the meeting for a
10 minimum of 30 days, and copy will be retained in the Department
11 up to four months. Now there are some suggestions and
12 groundrules I'd like to make to make this meeting successful.
13 First, because it's - there's synchronized captioning, it's
14 important that people don't talk over each other. The
15 captioning can't be performed correctly when two people are
16 speaking at the same time. The first time you speak, please
17 state your name and briefly identify yourself as a council
18 member, or DOH staff. This is going to be helpful to the
19 broadcasting company who are recording the meeting, and please
20 note that the microphones are hot, meaning that they pick up
21 every sound - those that you intend and those that you don't
22 intend - therefore I ask that you avoid also the rusting of
23 papers next to the microphone and be sensitive about those
24 personal conversations. Will pick up any of that side chatter.
25 And as a reminder for our audience, there's a form that needs to

1 be filled out before you enter the meeting room which records
2 your attendance today. This is required by the Joint Commission
3 on Public Ethics in accordance with executive law section 166.
4 The form is also posted on the Department of Health's website,
5 www.NYHealth.gov under Certificate of Need, so in the future,
6 you can fill out the form prior to attending the council
7 meetings. We appreciate your cooperation and our duties as
8 prescribed by law.

9 Now today's meeting, the structure of today's activities,
10 we'll hold our annual meeting first. Dr. Zucker will make some
11 brief remarks. I will take a vote. And then the Department of
12 Health reports will begin under the health reports. We'll hear
13 from Dr. Zucker who will provide a report on the Department of
14 Health activities. Mr. Shepard will then give an update on the
15 activities of the Office of Primary Care and Health Systems
16 Management. Mr. Rohan will give an update on the Office of
17 Quality and Patient Safety Activities, then Dr. Boufford will
18 follow under the category of Public Health Services to give us
19 an update on the initiatives of the Committee on Public Health
20 followed by the regulation committee where Dr. Gutierrez will
21 present regulations for emergency adoption and/or adoption.
22 Then we'll proceed with the project review committee under the
23 category of project review recommendations and establishment
24 actions. I'll be reporting on a CON applications that were
25 reviewed at a meeting on the Committee of Establishment of

1 Healthcare and the Project Review. And then under the
2 professional category we will ask everyone to leave the room.
3 We're go into executive session to do the Council. We'll
4 consider one case arising under the PHL, section 22801B.

5 I just want to have another point about conflicts. Members
6 of the Council and most of our guests who regularly attend the
7 meetings now should be familiar with the reorganization of the
8 agenda by topics or categories which captures the roles and
9 responsibilities of the Council. This includes the batching of
10 CON applications for discussion and voting, and members, I hope
11 you've had time to review those batched applications that we've
12 done and thought about whether you'd like a project moved to a
13 different category. I'll pause for a moment and give you that
14 opportunity to request a change in batched applications. So,
15 anything that we have planned to be batched, you have the right
16 to have it removed from the batch and discuss separately.

17 I'd now like to move for the annual meeting portion of the
18 meeting, and I turn the mic over to Dr. Zucker.

19

20 HOWARD ZUCKER: Thank you very much. It's a pleasure to be
21 here this morning, and I will be providing a whole report about
22 where we are with the Department, but first I'd like to mention
23 and announce that Jeff Kraut has been appointed by Governor
24 Cuomo as the head of the PHHPC Council and we are pleased to
25 have my, working with you in the past, so let's give a round of

1 applause. Congratulations on your appointment. We will
2 accomplish a lot in the coming time.

3 So, I'm going to turn it back to you before I continue with
4 the health report.

5
6 JEFF KRAUT: OK. Thank you. And I just want to - you
7 know, I want to just take a second and thank a few people. It
8 took me 36 years when in 1979 I first entered this room as a 23
9 year old consulted having just graduated, and I sat in the back
10 of the room. Took me 36 years to walk to the front of the room,
11 so those people who believe in journeys, the journey has been
12 spectacular. I first, I have to thank the Governor for
13 designating me as Chair and Dr. Zucker and the staff have been
14 just remarkable supporters over this year. I think we've really
15 done a great job since the merger under Dr. Streck in informing
16 the Public Health Council. I can't be more thankful to my
17 colleagues that are sitting around the table. My colleagues in
18 industry, particularly my boss and the folks - my boss Mike
19 Dowling and the folks back at North Shore LIJ who are not only
20 understanding but they're supportive when I say sorry, it's a
21 PHHPC day. I won't be there. Coleen, Tracy, the staff, you
22 guys have just been spectacular in supporting not only me but
23 the Council, and just take the moment to reflect a little on the
24 Council. I have a professor, David Rosner who teaches now at
25 Columbia, he was my professor at Baruch and his specialty is the

1 history of healthcare and other issues, and he always said "look
2 back before you look ahead." And I'm serving as the health
3 chair of the Council has 102 year old history being founded in
4 1913. And some amazing individuals have held this chair. The
5 father of public health in New York, Herman Biggs who I guess
6 was the first Commissioner of Health, I believe, -- he was an
7 important commissioner. See you forget about the others if
8 you're not - but he was the first chair of this council when it
9 was formed, and he was followed by Simon Flexner who became the
10 first director of the Medical Institute for Research that is now
11 Rockefeller University. And he was followed by - Goran,
12 Mayflower decendent, and you know, again, these people were
13 pioneers in the field of communicable diseases because those
14 were the issues that were really confronting healthcare at the
15 time. And I'm also pleased to report that my high school,
16 Dewitt Clinton High School in the Bronx has now produced two
17 chairman. The most chairman ever for the Public Health Council,
18 I am a proud graduate of 1973 class and Dr. George (Bayer) who
19 served from 1955 to 1967 was Dewitt Clinton graduate of 1904.
20 So, no high school in New York or in this country has produced
21 more chairs than Dewitt Clinton, and there's for public
22 education. And the other chairs, Mort Hyman who served for 10
23 years, Russ Bissett who had been on the council with us, and of
24 course, what can I say about the following in the footsteps of
25 Dr. Bill Streck, who for 10 years probably the longest serving

1 chair, intelligent, thoughtful, fair, integrity, a clear
2 thinker, I can only hope to do as well as he did, and I'm very
3 proud and I want to thank everybody for this honor. Thank you
4 so much.

5 I'd like now to move to the election of the Vice-Chair
6 since that vacancy has just occurred and I would like to make a
7 motion to nominate Dr. Jo Ivey Boufford as Vice-Chair of the
8 Council. May I have a second? I have multiple seconds. Is
9 there any discussion? Any opposition? Yes? She - what high
10 school?

11

12 JO BOUFFORD: East Lansing High School in Michigan.

13

14 JEFF KRAUT: Out of state. Actually she could not have
15 attended Dewitt Clinton. Dewitt Clinton was an all boys high
16 school up until the last decade. And I was just there for
17 their alumni football team. So, all those in favor say aye.

18

19 [Aye]

20

21 The motion passes. Congratulations Dr. Boufford. Remember
22 your major responsibility is to call Coleen and say, "Is Jeff
23 gonna be there?"

24

1 JO BOUFFORD: I thought you were going to say keep you
2 healthy.

3
4 JEFF KRAUT: Well, you and several other people trying.
5 Not too well. Now, we also at this time historically have made
6 some changes to our committees membership and our chairmanships
7 of those committees. We were planning to do so today, but two
8 things occurred; one, several of you have written to us asking
9 to move around on some of the committee, and since we hadn't
10 made that available to everyone, we're suggesting we're going to
11 put off naming the committee membership. We'll just continue it
12 as they are now for one cycle. We'll come back, and it's, I
13 have to report that yesterday, two days ago we received the
14 resignation of Chris Booth who has long serving member here who
15 for business and reasons, just activities, you know the amount
16 of time you have to spend to do this work effectively he felt
17 that other responsibilities are preventing him from doing so,
18 and he has tendered his resignation. So, we'll thank Chris at
19 probably the next meeting. I'll have a formal declaration to
20 say that, but feel free to call him and wish him well. He also
21 has been an amazing member of this committee. Always
22 thoughtful. Very unflappable and really clear thinker when
23 issues sometimes got muddled. He was a real I think, a
24 significant member of our Council and was a major contributor,
25 so I know I'll miss him as I suspect you will. As a consequence

1 of that, we're going to also hold off just on that and the other
2 things to just talk to a few people and reconstitute our
3 committee. So I'll report on that at the next meeting.

4 OK. So, what I have to ask is if you do not have a chair
5 in this room, you have to leave the room. The fire marshal has
6 asked us that we're maximizing the thing, so I just have to ask
7 for you to - I'm sorry. There's an overflow room next door, but
8 we can't have anybody standing in the room. OK. So please do
9 that.

10 OK. So that's the - do I close the annual meeting? Just,
11 I'm going to keep going. Alright. So, we're looking forward to
12 another productive year, and you know, our objective of serving
13 and maintaining and improving the health of New Yorkers. So,
14 with that being said, I'd like to move now for the adoption of
15 the minutes. May I have a motion of the adoption of the
16 December 4 - I have a second - I have a motion from Dr.
17 Gutierrez. Do I have a second? Second Dr. Kalkut. Any
18 discussion? All those in favor aye.

19

20 [Aye]

21 Opposed? Motion carries.

22 I'd not like to turn it over to Dr. Zucker who will update
23 the Council about the Department's activities since our last
24 meeting.

25

1 HOWARD ZUCKER: Thank you. Thank you Jeff. I didn't go to
2 Dewitt Clinton High School but I am a descendent of - My dad
3 went to Dewitt Clinton High School. Talks about it. So there
4 you go. And lived in the neighborhood there.

5 It's a pleasure to be here today and once again,
6 congratulations Jeff on the appointment.

7 As I'm sure you know we're in the midst of budget seasons,
8 comes around every year, and working on the budget is always a
9 good time to reconsider what our priorities are as we strive to
10 achieve our mission to protect, to improve, and to promote the
11 health, the productivity and the well-being of all New Yorkers.
12 One of our top priorities is to manage the healthcare challenges
13 that continue to plague certain regions of our State. To
14 address that, Governor Cuomo's budget calls for a \$1.4 billion
15 in a healthcare facility transformation program. These funds
16 will address the healthcare needs of communities both upstate
17 and downstate, where residents lack access to adequate
18 healthcare. So, take Brooklyn. In east and central Brooklyn we
19 continue to struggle with unmet healthcare needs and significant
20 health disparities. To help these communities, Governor Cuomo
21 has proposed \$700 million of the \$1.4 billion for capital
22 project funding. These funds will go toward renovating and
23 replacing inefficient or outdated facilities and building
24 financially sustainable systems of care. Our goal is to give
25 the residents of Brooklyn access to healthcare they need and

1 deserve. The other community we plan to help is Oneida County.
2 Just to the east of Syracuse. We plan to allocate \$300 million
3 to that community. These funds will be used to consolidate
4 multiple healthcare facilities into an integrated system of
5 acute inpatient care, outpatient primary care, and other
6 healthcare services. The remaining \$400 million will be used to
7 provide grants to hospitals for debt retirement and other
8 purposes that are part of our healthcare transformation efforts.
9 Now, these efforts will help ensure financially sustainable
10 systems of care. Debt retirement and other balance sheet
11 cleansing activities are not eligible for the Medicaid Vital
12 Access Provider, VAP funds or the DSRIP capital. So this
13 program will fill an important gap there. The charter of these
14 funds is primarily hospitals that serve rural and other
15 geographically isolated communities.

16 The Governor's budget supports our mission in other ways as
17 well. Two years ago we identified the prevention of dental
18 carriers as a high priority because of the pain and suffering
19 they cause, not to mention the high medical costs that poor
20 dental health incurs as well. Preventing carries also has
21 health and social benefits. A drinking water fluorination
22 program is the most important thing a community can do to help
23 residents avoid dental carries. To that end, the budget calls
24 for allocating \$5 million to create a drinking water partnership
25 fund. It also requires communities looking to discontinue

1 fluorination to do a public notice about their intent. This
2 fund will help communities pay for the installation, the repair
3 and the upgrade of drinking water fluorination facilities.
4 Having fluorine in our water systems not only prevents dental
5 carries, but also reduces the need for costly treatments and it
6 saves money for Medicaid.

7 A health department studied showed that children on
8 Medicaid living in communities with fluorinated drinking water
9 have \$24 less in dental expenses than children in non-
10 fluorinated communities. So this is clearly an important
11 priority for any community.

12 The Governor's budget also addresses another community
13 health need, and that is hunger. As part of our anti-poverty
14 agenda, we are committing \$4.5 million to the hunger prevention
15 and nutrition assistance program. These additional funds will
16 provide \$2.8 million more meals in the coming fiscal year.
17 Another standing priority is providing care to the elderly and
18 the disabled and the people who look after them. This year's
19 proposed budget is allocating \$25 million for Alzheimer's
20 caregiver support. Alzheimer's is a growing epidemic that
21 affects more than five million people in the United States. In
22 New York there are an estimated 320,000 individuals with
23 Alzheimer's and other forms of dementia. But the disease also
24 take a toll on those who provide the care, typically family
25 members who devote countless hours of unpaid health to their

1 loved ones. These funds will help caregivers by providing them
2 with much needed respite services and other programs. The
3 budget also reinforces our commitment to bring an end to the
4 AIDS epidemic. AIDS has been a scourge in New York State for
5 far too long, but we are not at a tipping point where in the
6 coming years the number of newly diagnosed cases will likely
7 drop below the number of people dying of HIV AIDS. At that
8 point the number of people living with HIV AIDS will start to
9 decline for the first time since the epidemic began. We can
10 assure that it happens and happens sooner by no later than 2020.
11 Governor Cuomo's three part plan to end the epidemic is simple.
12 It identifies people with HIV who have not been diagnosed and
13 link them to care. It keeps people who have been diagnosed in
14 care so that they remain healthy, and it provides preexposure
15 prophylaxis or prep to high risk individuals so they stay HIV
16 negative.

17 The end of the AIDS epidemic will be milestone of public
18 health for this generation and beyond. I mentioned this before
19 that there are very few infectious diseases that I can think of,
20 communicable diseases that have ended not as a result of just a
21 vaccine, because we always turn to vaccines. So this is a great
22 milestone when we achieve this. In addition the proposed budget
23 reflects our commitment to advancing reforms recommended by the
24 Medicaid Redesign Team. Among them is the transition to managed
25 care plans. We are in the process of moving all Medicaid

1 enrollees into these comprehensive plans and away for the fee-
2 for-service model of care. The Governor's budget also includes
3 our plan to implement the basic health plan. A federally
4 supported insurance option authorized under the Affordable Care
5 Act. This new option makes coverage more affordable for low
6 income individuals who don't have health insurance through an
7 employer and yet do not have incomes low enough to qualify for
8 Medicaid. My creating this plan we will lower the number of
9 uninsured people in New York even further which means more
10 people will have access to health care.

11 Now on to the issue of DSRIP. The budget isn't the only
12 news in the Department. We are in the early stages of
13 implementing DSRIP. The federal delivery system reform
14 incentive program, payment program. The federal government has
15 allocated up to \$6.4 billion in waiver funds for DSRIP which
16 will go towards funding (pro forma) providing systems of PPSs as
17 we call them. We have received applications from healthcare
18 providers all over the state. We have banded together to form a
19 total of 25 PPSs. Our DSRIP project approval and oversight panel
20 met for the first time in early January and it's getting ready
21 to meet again next week from February 17 to the 20. February 17
22 will be devoted to public comments. It'll be held from 10:30 in
23 the morning until 5 in the meeting rooms two and four at the
24 Empire State Plaza in Albany. Recently I spoke to Jason about
25 this and things are set to go on this. The other three days are

1 full day meetings and will serve as work sessions for the panel
2 members. All meetings are open to the public, and the panels job
3 is to review these DSRIP applications which will be scored by an
4 independent assessor. It'll be my job to listen to the panels
5 recommendations on whether to accept or reject or modify a PPS.
6 And all sessions will be webcast live. The panel will continue
7 to serve as advisors and reviewers of the PPSs during the five
8 years that DSRIP is taking place. This is a major movement
9 forward for New York and I think we'll really change the course
10 of healthcare for many people for the better.

11 Measles and immunizations. In health news I'm sure you've
12 seen our country's experiencing growing number of measles cases.
13 Many cases have been traced to the Disney Land situation in
14 California, though none of them are in New York State at this
15 time. It's important to make a note of that. We've had cases,
16 but they have not been from California. Measles is a highly
17 contagious upper respiratory disease and like many viruses it
18 begins with a fever, runny nose, cough, red eyes, sore throat,
19 and then it's followed by a rash and actually just as an aside,
20 the rash usually -

21 Thank you. So, I'll continue.

22 [am I broadcasting?]

23 You are. Never know. That's right. Hot mic. So anyway,
24 measles ends up as a rash, and just for those who worry about
25 rashes, it usually begins on the face, it goes to the arms, down

1 the trunk and down to the legs. So, just in case anyone's
2 saying - just an aside. Measles can also cause serious
3 complications; pneumonia as well as ear infections, diarrhea,
4 encephalitis which is a brain infection which is very concerning
5 obviously and sometimes death. As of January 30 we've had 102
6 cases of measles in 14 states. And here in New York we've had,
7 as I mentioned, three cases which were all linked to
8 international travel. The rise in measles illustrated why
9 immunizations are so important, and we've seen in recent years
10 what can happen when children are not immunized. Diseases once
11 on the decline have had a comeback, and in recent years we've
12 seen outbreaks of pertussis or whooping cough as we know it, as
13 well as measles, mumps, and other infections. And fortunately
14 here in New York our childhood immunization coverage level is at
15 or above national average which is great. 98 percent of all the
16 children in pre-k through grade 12 have received an MMR vaccine
17 for mumps, measles and rubella. At the college level 97 percent
18 of all the students have gotten the MMR vaccine and among
19 toddlers we have an MMR immunization rate of about 95 percent.
20 However, there are pockets where immunizations have not happened
21 in some areas of the State. And New York does allow religious
22 medical exceptions to school immunization requirements although
23 we are below the national average in the percentage of children
24 who have had those exceptions made. Even so, the recent case in
25 Bard College illustrated we are still vulnerable because measles

1 is a global health problem. The student at Bard contracted
2 measles overseas and then came back to New York. The case
3 triggered a joint response among the local, the state and the
4 federal health officials who alerted Bard College community and
5 urged anyone at risk to get vaccinated. And vaccines still
6 remain our best defense against these serious diseases, and for
7 that matter against many diseases in general.

8 Next issue is flu season. So, we're also in the middle of
9 what happens to be a fairly severe flu season and one of the
10 worst that we've had in several years. The CDC describes it as
11 "moderately severe" with the H3N2 virus as the prominent,
12 predominant strain. The flu has been prevalent in New York
13 since mid-December and unfortunately this year's flu vaccine was
14 not well-matched the strains that are now making people sick.
15 Still, the vaccine does provide some protection. So if you do
16 get sick the vaccine reduces the severity of the disease and
17 lowers your risk for hospitalizations and complications thereof.
18 This happens every couple years. Just doesn't match up as well.
19 In addition, the vaccine protects against three or four
20 influenza viruses strains that may emerge and circulate later on
21 in the season. Those who are wondering should I get the flu
22 vaccine, still get the flu vaccine; it's worth it. And I would
23 encourage you to do so.

24 Persons at risk of complications from the flu should talk
25 to their doctor about taking anti-viral drugs such as

1 oseltamivir to prevent illnesses or make it less severe, and I
2 think that's an important point that everyone should realize,
3 that if you get sick with the flu there are some anti-virals out
4 there and you should talk to your physician.

5 Ebola. So I'd also like to give you an update on the Ebola
6 situation. The good news is that we're starting to see some
7 indications that the Ebola epidemic in West Africa has started
8 to wane since our last meeting. But it's been over a year since
9 it began its deadly spread, remember began December 24 of 2013,
10 and the epidemic has taken a significant toll. We've had more
11 than 22,300 cases with over 8,900 deaths in Guinea, Sierra
12 Leone, and Liberia, the three countries that have been most
13 heavily impacted by Ebola. And here in New York we've monitored
14 more than 1400 people from these effected countries since mid-
15 October. All of them have been monitored for illnesses twice a
16 day for 21 days after leaving the affected countries. And about
17 150 are still undergoing monitoring today. And we also have
18 nine returning healthcare workers who have all agreed to
19 quarantine for 21 days. And fortunately, we've had no cases of
20 Ebola itself. I've spoken to all of the people who have been
21 under quarantine over the course of the time, and it's
22 interesting when you speak with them about the stories about
23 what has happened, their experiences in West Africa, and I'd
24 also just like to thank, our team has been phenomenal both all
25 across the state and all the areas who have worked on monitoring

1 those who have come in, and I think that they deserve an
2 incredible amount of congratulations and credit for what they're
3 doing to make sure this is
4 And for that matter, everyone safe because disease like this can
5 easily spread, as we've seen.

6 New York State of Health. In other business the end of
7 2014 kicked off a new enrollment period for a health benefits
8 market place, the New York State of Health, and the last day to
9 sign up is in three days from now - three days from now. Last
10 week Governor Cuomo announced that we've enrolled more than two
11 million New Yorkers in affordable health insurance coverage
12 through the New York State of Health, our State health
13 marketplace program. And the marketplace has been a major
14 success. 89 percent of enrollees report that they had no
15 coverage of the time that they joined the marketplace. 92
16 percent of them have said that they're satisfied with their
17 health insurance, and 84 percent say they are using their
18 coverage to access care. So our efforts were buoyed up this
19 time by the sign up New Yorkers tour, Sign Up New York tour
20 which was set up in 13 shopping malls around that state on
21 weekends in January and as well as in the first half of this
22 month. The tour helped reach the uninsured and raise awareness
23 of the importance and benefits of enrolling I health insurance
24 through the marketplace. And certified assistors were on site
25 at each location to answer questions to provide information and

1 to make follow up appointments for individuals. The events
2 included appearance from Marvel super heroes to help engage
3 consumers, direct them to more information assistance. Always
4 works. Judging from enrollment numbers these efforts have truly
5 worked.

6 Another issue that we're looking at is the issue of cancer
7 prevention. So we will have a cancer prevention summit and I
8 want to share some news about that. It's the New York State
9 Cancer Prevention summit which will be coming up in the autumn.
10 The summit will be in New York City and will explore the many
11 ways that we can actually prevent cancer. I'm sorry, in the
12 spring; May 20. Research shows that nearly 2/3 of all deaths
13 from cancer can be prevented. Tobacco use accounts obviously
14 for a third of cancer deaths, and another third attributable to
15 obesity, poor nutrition, and inactivity. We're going to look at
16 all the different issues of cancer prevention on May 20.

17 At the summit we'll examine the ways we can reduce cancer
18 risks and how we can promote and implement those strategies that
19 we put in place. The event is being led by our division of
20 chronic disease prevention bureau of chronic disease control.

21 I am looking forward to an exciting discussion that day
22 where the leading researchers will be out there. I've been
23 involved with the planning of this and there's some remarkable
24 names. So look at this issue from a lot of different vantage
25 points of how we could move forward to tackle this problem.

1 The Department has been extremely busy. This is now I
2 guess in this role about nine months and we have been going at
3 least from the day I started in this role nonstop between one
4 issue and one issue leads into the next, but in talking those
5 who have worked in the Department, there's always something that
6 comes up, and I think what's amazing is that we do the
7 Department has such depth and breadth of knowledge and is
8 extremely privileged to work with so many talented individuals,
9 and it's a privilege to work with all of you around the table
10 here and to help us as we move forward with the goal of
11 improving health for all of New Yorkers, so, I appreciate the
12 opportunity to talk with you, give you an update on where we are
13 on many of the things the State's doing. As you can imagine,
14 many other areas we're tackling as well, and I turn it back to
15 Jeff. Thank you very much.

16

17 JEFF KRAUT: Thank you Commissioner. You know, public
18 health outbreaks, restructuring the Medicaid system, little
19 things like this - you guys have some more bandwidth there I
20 hope, and I hope we can advocate for better resources, because,
21 boy, your plates are full. But if you love change you're going
22 to love healthcare. That's the - questions for the
23 commissioner. Dr. Bhat, then Dr. Berliner, then we'll go.

24

1 DR. BHAT: Let me start off by congratulating you because
2 since we met last time, you were the (real) commissioner at the
3 present time.

4 [my confirmation hearing]

5 Anyway, we need to change the plaque that you have, take
6 the acting out. I think you have presentation today reminded me
7 of the time infectious disease with HIV, measles, all the stuff
8 is coming back. Let me go back to something that you said; what
9 is dental, which is very important. I congratulate the
10 Department for putting resources in there. I read somewhere
11 saying \$700 million that's going to be spent in Brooklyn. There
12 was a proposal to put up a new hospital or
13 am I right, or is it something that I'm dreaming?

14

15 HOWARD ZUCKER: So we're looking at all different ways both
16 from the standpoint of hospitals or facilities and this is all
17 in the works as part of the discussion. The goal here is to make
18 sure that the quality of care for east Brooklyn, the area that I
19 mentioned and central Brooklyn meets and exceeds anything that
20 the nation has and I think that is the primary responsibility
21 for us to do and that's what we're looking at at this point.
22 And we'll work it through as we go forward.

23

1 DR. BHAT: I think it needs primary care in that
2 area because there are not many practicing in the area of Bed-
3 Stuy and the surrounding areas.

4
5 HOWARD ZUCKER: So, what we see as you transform healthcare
6 I think that we have to tackle this on many fronts. Not just,
7 there's primary care, tertiary care, there's networks, there's
8 communities, and I think if we just, as we move forward we have
9 to approach this from whatever area we can to reach this, and
10 there needs to be - and what we're looking at is a plan to make
11 sure that every one of those areas is addressed. So I hear what
12 you're saying about clinics and communities. Tie
13 together. And right now it's not where it is.

14
15 JEFF KRAUT: Dr. Berliner. By the way, could people hear
16 us -

17 Is there any way to bring up the sound in the back of the
18 room on the mics?

19
20 HOWARD BERLINER: Commissioner, congratulations also. A
21 question; I don't know if you'd have these numbers at your
22 fingertips but if we've insured three million new people, how
23 many uninsured do we have left in the State?

24
25 HOWARD ZUCKER: I'd have to get you the numbers on that.

1

2 HOWARD BERLINER: Just ballpark.

3

4 HOWARD ZUCKER: I'm not sure what we have.

5

6 HOWARD BERLINER: and I guess the thing that, at one time
7 the number was about three million. So it's gotta be -

8

9 HOWARD ZUCKER: We're down because we have two million
10 pulled into the system.

11

12 HOWARD BERLINER: And I'm wondering if the Department is
13 considering a change to the bad debt and charity care policies
14 to either be more targeted or to be separate if so many more
15 people can now pay for their hospital.

16

17 HOWARD ZUCKER: We'll look into that.

18

19 JEFF KRAUT: Yes, just go to Dr. Martin, then I'll go to
20 Dr. Palmer. Then I'll go Dr. (rautenberg)

21

22 GLENN MARTIN: So I too will share my congratulations with
23 everyone on front of the table. So, as a private practitioner
24 and a CMIO for two of the hospitals in Queens, among the things
25 on your busy plate, one thing that didn't come up which

1 unfortunately is preoccupying my plate is e-prescribing and the
2 deadline coming up. I am the request for
3 delays by a lot of industries as well as professional societies
4 and action in the legislature that's going on. Putting that
5 aside, I'm just wondering from DOH's perspective, and you know
6 it's a difficult situation because it's B&E and DOH and their
7 variety of different imperatives that are there, do you have any
8 thoughts about how this is going and whether or not you believe
9 that we could actually get this done safely and fully by the end
10 of March, because I'm growing increasingly skeptical.

11

12 HOWARD ZUCKER: There is a delay that's been put forth as
13 you've heard. I think that we want to be sure that when we
14 implement this it works effectively and efficiently, so if not
15 at this point, we'll get it done when we feel that it'll be
16 without any glitches, I should say. I would like to bring up
17 one point about that, is that we do need to move forward with
18 regards to the education component of all health professionals
19 on this, and I know that that will be a critical component to
20 the success of this program.

21

22 GLENN MARTIN: So, follow up on that, the healthcare
23 professionals, absolutely, but it's also the patient population
24 because there's, I mean, frankly the whole, as a psychiatrist
25 who routinely has patients turned away from pharmacists because

1 they're out of the medication that I prescribed especially
2 controlled substances and the incredibly (cludgy) mechanism
3 there is at the moment from e-prescribing to have to cancel it
4 out and represcribe it and rather than just take a script and go
5 elsewhere as they do now, it's a real educational -

6

7 HOWARD ZUCKER: That's a great point. It is education of
8 everyone. Not just the health provider, and the success of many
9 of these kinds of programs requires both sides.

10

11 JEFF KRAUT: I was going to go to Dr. Palmer, but is this
12 on topic? Do you mind? OK.

13

14 JOHN RUGGE: If I could just pile on, just to note
15 especially in the SNIF environment, the nursing home
16 environment, the new regulations which prohibit verbal orders
17 and require e-prescribing when systems do not connect to one
18 another will make it literally impossible to prescribe
19 controlled drugs as these people are admitted to the facility,
20 or they cannot be extended from the hospital to the facilities.
21 So, I can't say how troubling it would be and would lead to
22 terrible patient outcomes.

23

24 HOWARD ZUCKER: Good point. Thank you.

25

1 JEFF KRAUT: Dr. Palmer.

2

3 JOHN PALMER: I just would ask the acting commissioner to
4 embellish his comments on the diminution of HIV infection and
5 it's relationship or lack of thereof to a vaccine. You made a
6 couple of comments earlier, I didn't quite hear them, but I was
7 interested in your thinking.

8

9 HOWARD ZUCKER: Well, what I was mentioning about vaccines
10 was that most infectious disease, contagious diseases when you
11 think about like measles and things like that, polio, usually
12 it's vaccines that are out there to tackle and since we don't
13 have a vaccine for HIV AIDS the ability to decrease these
14 numbers and to turn the tide without a vaccine is just a
15 remarkable accomplishment to do that, pure public health with
16 communication, education efforts and I think that's really a -
17

18 JOHN PALMER: So the question is, is there a model that we
19 can draw from that experience that we can use in other areas
20 that don't have the same issue without a final cure or
21 preventive.

22

23 HOWARD ZUCKER: So, that's a good point. The model of what
24 we're trying to do with HIV. Well, I think that that is a very
25 good point that we should be thinking about is there some lesson

1 that we can learn as we move forward to sort of tackle other
2 things. Maybe it has nothing to do with infectious diseases.
3 Just tackling the issues of obesity, communication, diabetes and
4 other areas. So as we move forward with this I will make a note
5 to myself to make sure that some of the things that we learn as
6 good lessons we can apply, because otherwise it's just
7 reinventing the wheel.

8

9 JEFF KRAUT: Dr. Rautenberg and -

10

11 ELLEN RAUTENBERG: Thank you for the promotion. Dr.
12 Zucker, one of the things that's in the state budget that you
13 didn't mention was a 15 percent cut to public health programs
14 and the desiloization[sic] of those programs, and my issue is
15 not about the desiloization because I completely understand
16 that, but in terms of the 15 percent cut that's proposed this
17 year as was rejected by the legislature last year, and as Jeff
18 said, we can see further investments, those of us who have
19 worked on the prevention agenda, rather than a cut could see
20 significant investments would move the needle and how do you
21 justify that.

22

23 HOWARD ZUCKER: This is a hard part of the budget. This is
24 one of the toughest parts of the budget because a lot of

1 What we're trying to do is look at all those different
2 areas in prevention. See if there's ways we can tie this
3 together with other parts of our budget to make sure that we
4 don't lose out on some of those programs.

5

6 ELLEN RAUTENBERG: Those of us in public health are going
7 to have to work against you with the legislature in terms of the
8 15 percent cut. I think the silos are less controversial. But,
9 just want to put myself on that, radar screen on that one.

10 The second point I wanted to make was involving the
11 proportion of the new enrollees that have been Medicaid which is
12 far in excess of expanded Medicaid, which really sort of speaks
13 to the issue of outreach and communications and advertising
14 matter, that a lot of the people who signed up, which is
15 fabulous, could've signed up years ago and came out of the
16 woodwork because of what they saw of the New York State of
17 Health which was an amazing campaign. I've got navigators in
18 New York and in New Jersey which is the federal exchange where
19 there's no advertising, and they say the population in New York
20 State is really much more activated, much more knowledgeable,
21 and how do we use those lessons around WIC and other things. I
22 mean, WIC, only 50 percent of the eligible participate in WIC.
23 SNAP, we've done a pretty good job in New York City on the SNAP
24 enrollment, but how do we keep this going?

25

1 HOWARD ZUCKER: I think a lot of this is communication. I
2 think that we are fortunate living in a time where communication
3 has become so accessible to everyone with devices and everything
4 else, I think that we have to utilize that to get this
5 information out there. I can't speak to the other states but I
6 know I talking to Donna what we're doing and it's great. People
7 realize maybe I can get enrolled in the program. Maybe I'm
8 eligible. And it's just information. Comes back, the
9 information goes back to the HIV AIDS issue, it goes back to the
10 measles issue. It really is an issue of education for us, so
11 let's, we'll make all the efforts on that, and we've been
12 speaking about that as well in the Department.

13

14 JEFF KRAUT: Dr. Brown and then Mr. Robinson.

15

16 LAWRENCE BROWN: Commissioner, I want to be one of those
17 who pile on the issue about we're so confident that you're going
18 to sail through the confirmation hearings that we've decided to
19 congratulate you now.

20 I have a question that is a follow up on the prior meeting,
21 talking about the young citizens of the State of New York
22 particularly around the influenza vaccination program, but
23 really in detention centers where the collaboration with
24 Department of Health and other State departments to make sure
25 that the health of the State of New York is adequately met

1 because those same adolescents leave those facilities, those
2 same healthcare workers who are there also have potential for
3 transmission and acquiring infection. So I was wondering if you
4 had any information about where we're doing to enhance the
5 collaboration across the many areas where we provide care?

6

7 HOWARD ZUCKER: I remember you mentioned this the other
8 time, and I have had follow up discussions about this and also
9 recently on different component to this is the behavioral health
10 components are involved as well on this just the other day. And
11 I agree; if you leave any pocket left open on this infectious
12 disease particularly you're setting yourself up for a problem,
13 and we are trying to tackle it we spoken to at
14 the County levels and also obviously the city but elsewhere to
15 try and see how we could minimize that.

16

17 LAWRENCE BROWN: If you would consider including some of
18 the stakeholders to help to advocate I the best interest of
19 public health, those populations.

20

21 HOWARD ZUCKER: That would be great. And I'd gladly sit down
22 afterwards and maybe we could talk about some of the ideas,
23 which stakeholders and how to tackle this because this is an
24 important issue, and maybe comes back also as a communication

1 issue. None of these things are in isolation, so that would be
2 great. And afterwards I would gladly talk to you about that.

3

4 JEFF KRAUT: Dr. Kalkut then Mr. Robinson.

5

6 DR. KALKUT: Dr. Zucker, so, offer my congratulations.
7 Look forward to your leadership in the Department and also for
8 healthcare with all that is happening in New York State. I want
9 to state, make a statement that may be the obvious and that's as
10 you think about capital investments in Brooklyn, other areas of
11 great need, that the facilities or other parts of delivery
12 systems have to be tied to reimbursement reform and how we pay
13 for things. And I know that's contemplated in DSRIP but they
14 need to be twinned in time and in order to make them most
15 effective to meet the needs that are in central Brooklyn,
16 eastern Brooklyn, in Oneida County, and that has to be part of
17 it, as I think will be unfolded in DSRIP. But new facilities
18 and how they're used can be effected greatly by how we reimburse
19 providers.

20

21 HOWARD ZUCKER: I agree with that. As I mentioned before,
22 this is, there's so much change that is happening at this point
23 in time and I think that we recognize, and everyone's different
24 view, but I know that everyone's goal is the same. How do we
25 get better care? And so from where I'm sitting, I always am

1 very much welcome to any ideas and advice particularly when some
2 of you, all of you have experience that will be different, and
3 so I think it's different for me to hear what you think some of
4 the challenges are particularly from where your sitting and from
5 where others are sitting and whether upstate or downstate.

6 I said to someone the other day that New York - I was
7 looking at the map and I said to myself, New York is the state,
8 just unusual state because it has rural, urban, areas which are
9 just challenged with both, from demographics and challenged,
10 other areas that are really fortunate, and I said, how do we tie
11 this whole thing together? It's like multiple states in one.

12

13 JEFF KRAUT: Mr. Robinson.

14

15 PETER ROBINSON: So without a particular point of view
16 I'd like you to share your views on the status of the medical
17 marijuana initiative and also just whatever observations you
18 want on the 340B proposals that have come from the Governor. It
19 likely will have a significant impact on the delivery system,
20 and actually mainly on FQHCs I think, looking forward.

21

22 HOWARD ZUCKER: On the medical marijuana program, we're
23 moving forward very well on this. I know this is a challenge
24 and a lot of moving parts to this. We have heard from many of
25 the advocates regarding certain issues, particularly the

1 advocates involving children who have epilepsy which has been a
2 major concern. I've spoken with families of some of these
3 children as well as we've, the Governor's office has heard from
4 them as well.

5 There are possibilities out there. We are working with one
6 of the pharmaceutical companies and hopefully shortly we will be
7 able to enroll some patients into some trials on that, and
8 that's moving forward, but we're working on that as well. And
9 then our program that the Governor signed legislation for, it is
10 on target to be implemented and active by the date that we have
11 set forth which is right at the beginning of the next calendar
12 year. And every week we meet and every week I'm there at the
13 meetings, but many times separate from that once a week update,
14 we have discussions about how to make sure this moves forward.
15 And I'm, I think that is our responsibility to make sure this is
16 a safe program and I know it's a very, it's restrictive, and I
17 know there are many people asking questions about other things
18 we can add, but let's get it up and rolling and see where we are
19 and I'm always welcome to advice. And the other issue, I'll
20 have to get back to you on that one.

21

22 JEFF KRAUT: Dr. Rugge.

23

1 JOHN RUGGE: Just like to make something of an editorial
2 comment that north country is kind of just like Brooklyn but
3 more spread out.

4

5 HOWARD ZUCKER: Can I quote you on that? I like that.

6

7 JEFF KRAUT: That's a t-shirt John.

8 JOHN RUGGE: Disproportionate amounts of poverty, lots of
9 need, facilities that were really built for a new era leading to
10 an excess of acute care capacity and yet significant out
11 migration because services are not provided in the borough if
12 you will and people need to leave. And so, I know that you've
13 been hearing from certain quarters that here we have \$400
14 million targeted once again for hospitals when the real need is
15 to build the ambulatory care sector. But I think your
16 communicating as you did that a preliminary step needs to be the
17 capital retirement to allow those facilities to itself be
18 transformed, and I said to be transformed, I think is really
19 important. And then for the Department and you to indicate just
20 how we're defined the resources, the capital necessary to build
21 up the parts of the system which are now so underdeveloped.

22

23 HOWARD ZUCKER: Excellent point. I think one of the things
24 we can do is, and we've spoken about this in the Department is
25 the use of technology, and we've spoken about this as well, is

1 how do you reach rural communities, particularly I this day and
2 age. Fifteen, twenty years ago, even when I was in training
3 some of the equipment that was out there was \$10,000 you
4 couldn't use. I use a good example is the little oximeter that
5 when I was in training that was one box and you had to share it
6 between operating rooms. And now you can go to the local
7 pharmacy and pick one up and keep it at home. I mean, I keep
8 one in the car. Like, this is - what a piece of equipment I
9 think that if we can use some of that, tie that into the issues
10 of education and also technology and communication, we should be
11 able to reach out to a larger percentage of the community.

12

13 JOHN RUGGE: You're right. We can and we are, but
14 expansion of that requires downsize among present systems,
15 building up the other, finding the capital and having the kind
16 of leadership we need to be sure that we persist I those
17 efforts.

18

19 HOWARD ZUCKER: I hear you. Completely hear you.

20

21 JEFF KRAUT: Any other questions? Dr. Boutin-Foster?
22 She had her hand up then Dr. Bhat.

23

24 CARLA BOUTIN FOSTER: Thank you. Commissioner, thank
25 you so much for your comments, and on the topic of the

1 transformation of Brooklyn and rural parts of the states, I
2 think as you're considering, as you consider transformation
3 through physical changes to also look at the people and one of
4 the things that, one of the lessons that I've learned in doing
5 health disparities research is the importance of stakeholder
6 engagement, and not only the, those who are going to create,
7 build the facilities but the individuals who are going to occupy
8 the facilities. So that means bringing together the providers,
9 the patients, the caregivers, the local vendors, the community
10 health workers, because in order to sustain whatever it is that
11 you're creating you need buy-in, you need input, and you also
12 need a greater understanding of some of the social determinants
13 of health that prevent people from accessing healthcare in a
14 meaningful way, and it's going to go beyond just having
15 insurance, but helping people to navigate some of the barriers
16 whether it's - you know one of the studies that we did we found
17 that people who didn't stay in our studies didn't - they, excuse
18 me, they were hard to follow up because of things like they lost
19 their homes, they had problems with their children, they had a
20 divorce, a child was in prison, and those are some of the things
21 that our providers aren't equipped to handle in the doctor-
22 patient encounter. So I think any effort to transform
23 healthcare has to begin at the root of health disparities, and
24 that is addressing the social determinants of health.

25

1 HOWARD ZUCKER: I absolutely agree with you on this, and I
2 think that what often happens is the last thing, if you have all
3 those things you mentioned, one of them or all of those things
4 you just mentioned the challenges of family, what ends up
5 happening in healthcare is the last thing. As long as you're
6 walking around, as long as you're getting to your job, as long
7 as you can pick up your kids from school the last thing you're
8 going to be worrying about is do I need to go - so how do we
9 make sure that when one is going to do those other things that
10 the health system is tied in? How do you make sure that someone
11 isn't afraid of the health system because of question - what are
12 they doing with my data? What are they doing with my name? and
13 so you can get a little skeptical. An I will say, when I lived
14 in Europe in a country where I always felt like you never really
15 know what's going on, I say why do they need to know like, my
16 license plate on my car? I could tell you exactly what building
17 I lived in, which area of the country, what street - why do they
18 need to know? And so, I knew it didn't really matter, but I
19 always thought about that, I thought about here, if your
20 information comes forward, how do you know what you're doing?
21 Even if they're doing nothing with it, it's the perception. And
22 so I think you have to work on those and some of those issues
23 and I look forward to - but we are, when we move forward on
24 these issues it's not just one issue. It's multiple issues and
25 we are aware of that, and I agree; community engagement is

1 critically important to this, anywhere. Whether it's Brooklyn
2 or anywhere in the State.

3

4 JEFF KRAUT: Dr. Bhat.

5

6 DR. BHAT: Thank you. The debt environment that you're
7 offering to the hospitals in Brooklyn and upstate New York are
8 you requiring these hospitals to invest in preventive care and
9 primary care?

10

11 HOWARD ZUCKER: Primary care is a critical part to what we
12 want them to do, and it's sort of at the foundation of a lot of
13 what we're moving forward on, so absolutely.

14

15 JEFF KRAUT: Commissioner, thank you so much.

16

17 HOWARD ZUCKER: I just want to say one thing, I was just
18 thinking about this because we were talking about some of these
19 challenges, and when I drive down the highway there's always
20 traffic in New York City, so my way to deal with the traffic is
21 to usually listen to something on the car, and so I'm listening
22 to a book about one of the presidents from the beginning of the
23 last century, and I was listening to it and it mentioned that
24 his son got sick, cut his foot playing tennis, got a little
25 infection and then it ended up seating to a staph infection then

1 he ultimately died. And this was, this happened in the last
2 century but it didn't happen - there are many people in the
3 country alive who were probably that age or that kid at that
4 time and they didn't have anything to treat. I said, I cannot
5 believe that this was only that century, was not that long ago,
6 and I said how things have changed with medicine. And I feel I
7 the same way that things are moving and things are changing and
8 in five, ten years we'll look back and hopefully be able to say
9 that the system, the health system is changed for the better and
10 surely in ten or fifteen years, and I think that New York is
11 setting the example and is in the forefront of all this much the
12 way others have been, infections and other things as well.

13

14 JEFF KRAUT: Thank you Dr. Zucker, and you know, we look
15 forward to our next meeting to celebrate the official, if you
16 pass your nomination hearing which we fully expect to be the
17 case. Thank you. I'd now like to turn to Mr. Sheppard to give
18 us an update on the Office of Primary Care and Health Systems
19 Management.

20

21 DAN SHEPPARD: If I could turn my mic on. Can you hear me?
22 I guess it's on. Good morning everybody. Like to cover a
23 couple of topics for my update. The first is a progress report
24 on the DSRIP regulatory waivers. Just to briefly recap, I last
25 year's budget the Department got statutory authority to waive

1 regulatory requirements for DSRIP projects and DSRIP related
2 capital projects that are associated with providers licensed by
3 Department of Health, Office of Mental Health, Office of Alcohol
4 and Substance Abuse Services, and OPWDD, waivers may be issued
5 to allow applicants to avoid duplication of requirements and
6 allow the efficient implementation of those proposed projects.
7 Only if a waiver would not jeopardize patient safety and only
8 for the life of the project.

9 So, with the DSRIP applications that came in at the end of
10 December, we received approximately 460 waiver requests from 24
11 of the 25 PPSs. To evaluate those we established teams to
12 review the requests and make recommendations and based on the
13 nature of the requests the teams consisted of subject matter
14 experts from all of the covered agencies I just mentioned. We
15 also put in place a steering committee that reviewed all the
16 teams recommendations to assure consistency, and in cases where
17 there wasn't consistency went back to those teams. The reviews
18 of all the requests was recently completed and determination
19 letters are now in production and will start going out this
20 week. It will take about one or two weeks for all the letters
21 to go out. At the next PHHPC meeting provided detailed
22 compilation of all the waivers that were, that were granted or
23 what the determinations were. The waiver determinations are
24 falling basically in four categories. There's approved, there's
25 approvable on a case by case basis, denied, and waiver not

1 needed. There will be a couple of PPSs that are notified that
2 there's a determination pending on their request and this will
3 be in a few cases where related legal and policy issues were so
4 complex that we want to take a little bit more time, but we
5 didn't want to slow down the entire determination notification
6 process to deal with those issues. Just as an example, there
7 were some requests that sort of danced around scope of practice
8 issues which as we all know are legally as complex as well as
9 policy complexity, so we wanted to take some more time for both
10 legal and policy analysis of those.

11 Just to give you a flavor of the, what falls into those
12 categories again, details coming next meeting, so for approved
13 some examples include revenue sharing and that was so the PPS
14 leads could distribute DSRIP incentive payments, share
15 credentialing for providers within a PPS, and then one area I'd
16 like to highlight in particular, go into a little bit of detail
17 under the "Approved" category is the integrated services. These
18 are the so-called DSRIP-3AI projects which is one of the most
19 popular projects that cross all of the applications. So through
20 a collaborative effort with the Office of Mental Health and
21 OASAS we developed an approval model for requests to integrate
22 primary care and behavioral health as well as substance abuse
23 disorder services under a single license and the standard we
24 used, we raised the threshold uniformly so that all these
25 services could be provided under a single license so long as the

1 service to be added does not constitute more than 49 percent of
2 the providers total annual visits. So this is a significant
3 increase from the current thresholds restricting the provision
4 of integrated services in across the article 28, 31, and 32
5 settings. And as many of you know there is currently no
6 licensure thresholds that would allow a primary care provider to
7 offer substance abuse disorder services. So that under the
8 model that was developed for DSRIP-3AI projects would be
9 allowed. And in order to help insure that quality, care and
10 patient safety concerns are addressed, the providers integrating
11 services using this new DSRIP licensing threshold will be
12 expected to be in good standing and here to prescribe sections
13 of the integrated outpatient regulations.

14 So for the category of approval on a cas-by-case basis,
15 these requests were deemed eligible for approval but the
16 Department or the other covered agencies much make waiver
17 decisions on a case-by-case basis because of the potential for
18 patient safety issues, adverse impacts on providers that are not
19 part of the PPS or other significant externalities and in almost
20 all these cases, the details, level of detail provided in the
21 application was not comprehensive enough for us to make those
22 determinations in the initial review. So those will be, that
23 will be an iterative reach-out process with those applicants.

24 The other category was denied. These were requests the
25 Department couldn't approve because they were - we're requesting

1 waiver of a statute, federal requirement, or something that
2 overtly raised patient safety issues. So, some examples of
3 those were architectural standards, preopening surveys, waiving
4 the corporate practice of medicine, establishment of a new
5 article 28 operators which is statutory and purview of this
6 body, waiving review of hospital management contracts was
7 another area. Final category, waiver not needed. These were
8 activities related to requests that could be performed without a
9 waiver and so examples, these are common consent forms across
10 PPS providers. The Department is now working on a team to
11 develop one that can be used as a model, as well as another
12 Waiver Not Needed category was increasing the number of
13 observation beds. The significant majority of responses fall
14 into either the approved or unapprovable on a case-by-case basis
15 or Waiver Not Needed categories.

16 Moving on to the next topic of the report, CON
17 enhancements. I think this is a shout out to Charlie Abel and
18 Jim and their team and their leadership in a multi-year effort
19 to significantly improve the CON process using technology and
20 lean process changes. So just to give you some concrete
21 examples of those accomplishments, since, going in a range from
22 2011 to 2014 for administrative CONs the median processing time
23 has declined from 179 days to 69 days for a full CON review,
24 from 268 days to 143 days, and for limited review from 66 days
25 to 19 days. So I think across the board some significant

1 accomplishments. So give some credit to Charlie and his team's
2 hard work.

3 Also, just some other enhancements that will be evident to
4 both, the hospitals, other applicants as well as the public
5 soon, there is about to come online a new executive summary
6 functionality that rather than have PDFs just uploaded it would
7 require data entry, and this enhancement will allow all
8 facilities, health planners and the public to give summary
9 information about a given CON project. This functionality
10 actually became operational yesterday and is a significant step
11 forward to improve CON project transparency. It's the first
12 product of the electronic, the NYSECON smart forms team, and
13 we're going to build on this platform so that more of the CON
14 application will be data field entry in the future, again, which
15 enables much greater degree of analysis than just calling up
16 static PDFs and having to pour through those for information.

17 Next enhancement which is targeted for release at the end
18 of March is the regional office module. This phase will allow
19 applicants and facilities to move from paper submissions and
20 utilize the NYSECON platform and it's communication and tracking
21 capabilities for contacting the DOH regional office staff to
22 establish onsite survey dates for approved CON projects, to
23 submit required documentation in advance of the onsite survey,
24 to electronically communicate with the surveyors and to track
25 and resolve any noted deficiencies noted at the survey. All the

1 data will be stored in the CON system in electronic form and
2 viewable by staff and the subject applicant. There are
3 additional phases for the regional office model that are being
4 developed, and this will further help improve and standardize
5 record keeping and make onsite service processes much more
6 efficient and transparent.

7 Finally, the last improvement I want to highlight is in
8 licensed homecare services agency module. We'll be moving for a
9 paper application submission and review process for LHCSAs to
10 bring them into the electronic CON as a unique application type
11 and what this will do is permit real time electronic application
12 submission, communication with applicants for additional
13 information and project tracking and reporting, and we hope that
14 this will enable us to bring LHCSAs some of the same processing
15 efficiencies that we've seen for the article 28 applications and
16 for the, as well as the article 36 CHHA applications.

17 So, last point I wanted to make is an observation. I don't
18 know if I want to make habit of this as every meeting come to
19 you with, here's my significant observation from the past couple
20 of months. But what I want to share this time is I think that
21 it's certainly evident from the communications that the
22 Department is receiving at both queries as well as things before
23 the Department for review, regulatory review, and it's evident
24 over the next several years we'll be seeing more and more
25 instances of large healthcare systems affiliating with various

1 degrees of control with smaller systems, both within and outside
2 of their traditional patient service areas. I think such
3 affiliations are very important because they can help ensure the
4 financial viability of systems that might otherwise maintain
5 services or to exist altogether. Additionally, such
6 affiliations can foster and accelerate the development, the
7 types of integrated patient centered healthcare delivery systems
8 envisioned under DSRIP and more broadly the state's prevention
9 agenda. However, as we consider these affiliations and the
10 associated regulatory approval, it's important that we also put
11 a premium on ensuring that these new health systems continue to
12 serve and to provide access to even higher level qualities of
13 care to the populations served by the legacy systems. And that
14 those new systems work in partnership with existing community-
15 based health providers.

16 So, thank you and that ends my report.

17

18 JEFF KRAUT: Questions for Mr. Sheppard? Mr. Ruge. Dr.
19 Ruge.

20

21 JOHN RUGGE: Would seem that with the release of
22 information about waiver requests and those granted, this
23 represents something of a giant learning collaborative for those
24 of us across the State, and the question is as PPSs evolve will
25 there be opportunity for additional waiver requests?

1

2 DAN SHEPPARD: Yes, the opportunity for waiver requests is
3 open. We would expect that as, particularly as the PPSs as
4 they're now engaged deeply in detailed project development that
5 other needs may come up that would result in waiver requests,
6 and based on our responses some PPSs may modify their requests
7 as well. So I think we expect it to be a very iterative
8 process. It is certainly a learning collaborative. I think one
9 of the reasons why we wanted to take some time to really
10 synthesize and think about what we've learned over the last
11 couple of weeks before coming to you with a more fulsome report
12 is just to frame it in a way that I think we can all learn from.

13

14 JOHN RUGGE: Just as a follow up observation on your
15 observation, just to say we can't wait to hear next time about
16 what tests you might propose for whether those new increasingly
17 large systems really do provide the kind of local input and
18 local service, and that really is key for us all and we're at
19 the beginning of a lot of unknowns. That's a really important
20 thing for us to watch and track.

21

22 JEFF KRAUT: Yes, Ms. Fine.

23

24 KIM FINE: What is the thought about how other PPSs will
25 benefit from some of these waiver decisions and how they might

1 apply in other instances where PPS might not have thought yet
2 about asking for waiver?

3

4 DAN SHEPPARD: So, I think one of the reasons why it's so
5 important to view this as a rolling process and not a static,
6 you had to December 22 to apply and it is just because I think,
7 you know, PPSs will learn from decisions on others, they'll
8 learn from some of the determinations that we've made,
9 particularly in the approvable by case-by-case basis or the
10 denied basis, and so I think it's going to be a dynamic process.
11 I think something that we're very cognizant of, we'll be
12 maintaining consistency in decision making during that iterative
13 process, and that's going to a balance and challenge we
14 recognize, but something that we'll be mindful of so.

15

16 JEFF KRAUT: Dr. Kalkut

17

18 GARY KALKUT: Thank you. Shortly before the December 22
19 DSRIP application submission there was communication from Jason
20 about looking or evaluating attestation for various PPSs. I
21 think last week there was an inquiry to all the PPSs using
22 samples of physician attestation. Can you talk a little bit
23 about that process and what PPSs will hear about it and what the
24 goal here is for the State?

25

1 DAN SHEPPARD: I would - whoa - I would defer to my OHIP
2 colleagues. I don't know if they're in Albany.

3

4 JEFF KRAUT: Is anybody up in Albany? I don't know if
5 you've heard the question. The issue is about the physician
6 attestation or the attestation forms that were required I think
7 as part of an OMIG review. What's happening with that and how
8 that information's being used. If anybody's capable of
9 responding, and if all of you are fearful, you can hold it off
10 till the next meeting.

11

12 DAN SHEPPARD: It doesn't appear, although I can't see the
13 screen.

14

15 JEFF KRAUT: I can't see that they're there.

16

17 DAN SHEPPARD: So, we'll make sure to get back to you with
18 that response to your question.

19

20 JEFF KRAUT: I suspect that'll be a question that'll come
21 up at the public hearings next week too. I think they may be
22 reporting on that. And those will be webcasted for those
23 individuals who are interested in monitoring those
24 conversations. That's a good point. Thank you. Mr. Robinson.

25

1 PETER ROBINSON: so, thanks for a very good report and
2 progress is really pretty amazing, actually. The question I
3 have is really one of the viability of the delivery systems
4 broadly read, and what we're seeing from the delivery system
5 side is the fact there's continued downward pressure on revenue
6 streams that are coming from the public payers, both from
7 Medicare and Medicaid. More recently in New York with the
8 establishment of prior approval for rates on the commercial side
9 we've now see that issue be extended to the commercial payer
10 market. Historically commercial payers and revenues have
11 actually subsidized public payers in order to create a viable
12 delivery system as marginal as it is. This past year,
13 particularly, what we've seen is that health insurers, at least
14 the not-for-profit ones are seeing significant losses. I know
15 it's true of the upstate markets. I can't speak as much to the
16 downstate markets. And so I'm concerned that when we're
17 planning this delivery system reform that what's going on in the
18 financial services and insurance side is sort of not integrated
19 with what's going on on the health department side. And as a
20 result of that I think delivery systems broaden
21 and I'm talking about not necessarily only about hospitals but I
22 think generically are finding that they are under even more
23 potential financial stress. And so the request is really just
24 broadly that there be some good coordination between the
25 Department of Health and Department of Financial Services around

1 these issues as you do budget planning for this year and
2 certainly as rate reviews come forward from the payers in this
3 next cycle.

4

5 JEFF KRAUT: OK. I just want to make two comments; one
6 is Dan, I'd like to thank you, Charlie, and the staff. When we
7 laid out the vision for what we hoped NYSECON would be, which is
8 really many years ago about just greater transparency, better
9 communication, better engagement both within our industry and
10 within, with the public, you guys have really fulfilled that
11 vision and I know how difficult it was just to start the
12 momentum to get it to a point, but you've clearly built a
13 platform here that really hit what we were trying to do, and I
14 just want to congratulate, I know how many hours that you've put
15 into it, and I can just tell from my little corner of the earth,
16 it has made a substantive difference in processing times, in
17 communicating, in, the problems I have today are the problems I
18 have. They would've occurred whether they were electronic or
19 not. But the little problems are really gone, and its' really
20 attributed to your leadership and to all the effort. And please
21 thank everybody that had been involved in that.

22 The second issue, Dan, I just want to come back to is the
23 scope of practice. We've had very positive movement with OMH,
24 OASAS where we've had overlap issues in regulation. Does that
25 same venue exist with State Education Department, where we're

1 looking at transformation of the health systems, scope of
2 practice of trying to get people to not only practice at the top
3 of their license, but to move where the top of that license may
4 be for other practitioners. Is there a venue that you have with
5 SED with your counterparts? Just out of curiosity issue more
6 than anything else.

7

8 DAN SHEPPARD: I mean, yes, they're both in a sort of
9 very informal retail way as well as more official meetings.
10 We're always in communication about scope of practice. It's
11 obviously critical that the two, that the agencies, the mental
12 hygiene agencies as well as Department of Health are working
13 closely with SED and scope of practice matters. The issues are
14 challenging as I think about them as multidimensional
15 in a lot of ways. So I think we've made progress and we hope to
16 continue to make progress, and I think in many ways the
17 healthcare transformation, the velocity at which things are
18 happening and the needs that it's generating, I'm optimistic
19 we'll drive even further discussions and the palpable needs
20 coming out of delivery system reform will move things along
21 quickly.

22

23 JEFF KRAUT: Thanks so much. Yes, Dr. Brown.

24

1 LAWRENCE BROWN: Yes, Mr. Chair. Your question spurred
2 another question from me and it's pertaining to a category of
3 professionals on healthcare that I must say they probably do
4 what people might call God's work in various venues of
5 healthcare, social workers. And I'm sort of, I've heard a
6 concern about the issue about limitations on their scope of
7 practice, the conversations about that, and if this is too soon
8 for that Mr. Chair, I'm certainly receptive to postpone it to
9 another time.

10

11 JEFF KRAUT: You know, I think it is a juicy topic so to
12 speak. I think, am I correct, there is the Commissioner of
13 Education is vacant or there's an acting? I think, I know this
14 is an activity and we just had a side conversation, this might
15 be something we might take a look at and we could be a positive
16 force in this way and so we might just find the right venue to
17 have that conversation on another day in another place.

18

19 JOHN RUGGE: Mr. Chair? I think that's really an
20 excellent suggestion, that this body I think is uniquely
21 positioned to have a broad based look at how changes in
22 healthcare really are impacting limits on practice by certain
23 professionals; nurses come to mind in the electronic world.
24 They could really be changing, and I'm not sure there's a better
25 place for presentation of those ideas to SED.

1

2 JEFF KRAUT: Just the issues and the overlapping things,
3 I think I would just like the Department to come think about it
4 and see if this is, if there is a positive contribution we can
5 make. But it's timely. And since there's 464 waiver requests
6 and few

7 I'd rather - we could, in all fairness, spend the time on
8 things that have very wide impact, and I think it would be
9 appropriate, as you say.

10 I'd like now to introduce Stephanie Paulik to give an
11 update on the activities of the Office of Quality and Patient
12 Safety. She's in Albany. So if we turn our attention to the TV
13 in the corner there. Ms. Paulik. Hopefully you're not muted
14 there. There you go. Almost had it. OK.

15

16 STEPHANIE PAULIK: Sorry about that. The button was
17 sticking. Can you hear me OK?

18

19 JEFF KRAUT: Very well, actually.

20

21 STEPHANIE PAULIK: So, Stephanie Paulik from the Office of
22 Quality and Patient Safety and I just wanted to provide a brief
23 update on our work relating to the State Health Innovation Plan,
24 also known as the SHIP, and the State Innovation Models

1 Initiative which is the grant that we were recently awarded
2 effective February 1.

3 So, the State Innovations Models grant, or SIM grant was to
4 implement the SHIP - I know, two acronyms in a row - but the
5 SHIP is really the State's roadmap to achieve the triple aim
6 over the next four years and really coordinate all of the
7 wonderful activities happening in New York between DSRIP, the
8 Prevention Agenda, our work on the SHIP which involves many
9 different agencies, OMH, Department of Financial Services, and
10 the Department of Civil Service which is responsible for State
11 Employee Health Benefits and really advancing system information
12 across the State. So, effective February 1 we received \$100
13 million funding from the Center for Medicare and Medicaid
14 Innovation, which was under the Affordable Care Act and really
15 was an opportunity for states to exercise their state policy
16 levers in advancing transformation and value in
17 care across all the states lead by each state. So, New York
18 received \$100 million and we were one of 11 states that received
19 funding over the next four years. It's a 48 month award
20 beginning in February and will end in January 2019. The first
21 year is predominantly preimplmentation year which will involve a
22 lot of design of a lot of concepts that were proposed in the
23 SHIP or the State Health Innovation Plan, and a lot of this work
24 will be completed through workgroups over the next year and
25 going forward. I'd just like to walk through a few of the

1 workgroups that will be involved. The first is an integrated
2 care workgroup which is charged really with the heard of the
3 SHIP which is an advanced primary care model based on PCMH but
4 really allowing flexibility so that the payers, more payers can
5 get behind it and it can be spread across that state and have
6 some flexibility. So really that 80 percent of the State
7 population over four years can have a true medical home that is
8 recognized by the State. So over the next year we'll be
9 designing that model and integrated care workgroup which takes a
10 lot of external parties, several of which I see in the room and
11 really leveraging all of the things that are already happening
12 across the State.

13 Another workgroup is our health IT evaluation and
14 transparency workgroup which is really charged that looking at
15 the HIT systems in the State between the SHIN-NY, the developing
16 all-payer database, and really make sure that we're able to
17 leverage those tools in order to evaluate the transformation of
18 care across the State and also to support consumer transparency.
19 And then there'll be two other workgroups, access to care and a
20 workforce workgroup to address issues of getting consumers
21 access to care if we're going to have a medical home model, how
22 do we ensure that we have an adequate workforce so everyone can
23 have access to their medical home, and all of these workgroups
24 are led by folks within the state and co-chaired, or will be co-
25 chaired by an external partner and will integrate across DSRIP,

1 the Prevention Agenda, and many other initiatives happening
2 across the State to try to maintain coordination.

3 So, really the first year is a planning year and then
4 actual advanced primary care model will launch some time in 2016
5 and will have funding in the grant for practice transformation,
6 all of which will be developed further, opined upon during 2015
7 and the workgroup process. So that was a really quick update,
8 but hopefully that provided you with information. I'm happy to
9 answer any questions that you may have.

10

11 JEFF KRAUT: Thank you Stephanie. Are there any
12 questions? Comments? Thank you very much. I now would like to
13 ask Dr. Boufford to give the report on the activities of the
14 Committee on Public Health.

15

16 JO BOUFFORD: Thank you. Good morning everyone. We met,
17 the Public Health Committee met in conjunction with the ad-hoc
18 leadership group advising the Prevention Agenda on January 29.
19 We had over 30 different state level organizations that have
20 joined our work to bring their intelligence to it. We also had
21 the representatives from each of the brand new (PHIPS) 11 PHIPS
22 were involved with our ad-hoc leadership group as well. And we
23 were in four locations so it was very well attended and we're
24 very pleased it's picked up a lot of momentum.

1 Sylvia Pirani who's in Albany deserves a huge vote of
2 thanks along with her team who have been amazing in sort of
3 taking what was our first agenda item which was a one year
4 progress report from all of the local health departments and
5 hospitals and their partnerships on the submissions under the
6 prevention agenda. For those of you who have not followed it
7 closely, just very quickly recalling there are five statewide
8 goals, non-communicable disease prevention, safe and healthy
9 environment, women, infants, and children's health, promoting
10 mental health and preventing substance abuse and HIV AIDS and
11 infectious disease, vaccine preventable infectious diseases.
12 The reports for the first year, I want to just hit a few
13 highlights because it's an opportunity for an audience that
14 probably wouldn't hear this to understand what's going on. With
15 the combination of the local health department hospital reports
16 57 of 58 local health departments have picked work in the non-
17 communicable disease prevention area. Primarily obesity
18 prevention, access to preventive services, and tobacco, and 29
19 of these localities have chosen work on mental health and
20 substance abuse, which was the second most frequently selected,
21 which is very gratifying because this was an add-on because the
22 Commissioner of Health agreed to involve two other agencies over
23 which they could partner but not have authority. So, it's been
24 a really important step. The local coalitions were charged to
25 pick two objectives within the report on two objectives within

1 the prevention agenda and one disparity and three quarters
2 reported on disparity, so they have to be followed up. Those
3 who did not, but the number one disparity focused on was
4 poverty. And it really sort of outnumbered all of the others.
5 I think race/ethnicity was the second so you're getting a sense
6 of what is coming back from localities and to try
7 to address those, and I'll talk about those in a minute.

8 Another important question we asked was who's at the table
9 locally, because these are supposed to be led by local health
10 departments in conjunction with hospitals, but other community
11 organizations, business, academic institutions are supposed to
12 be around, and we actually know that by county which is very
13 exciting, so the number one, two, and three participants from
14 the reports are preexisting local coalitions that were built
15 around issues like tobacco or vaccine or other issues. Other
16 community-based organizations who were leading in one of the
17 areas selected and community health centers which was very
18 gratifying. They've been a really active part of the ad-hoc
19 leadership group and have really stepped up in terms of engaging
20 locally in these coalitions.

21 The least well involved, and that doesn't mean they aren't,
22 but just in terms of numbers are schools, which of course are
23 critical places for infants and children's health and prevention
24 of obesity; business, which is relatively less involved; and
25 colleges and universities. So this kind of said to us with our

1 ad-hoc leadership group, all of whom are sitting around that
2 table is to try to activate their engagement.

3 The top challenges reported from the local coalitions are
4 data collection and engaging community leadership. So this is a
5 combination of both elected and appointed community leaders,
6 administrative leaders like city managers or local mayors or
7 county leaders, but also community leaders and business and
8 other areas. So that's another opportunity.

9 We had three questions really trying to connect the
10 dots across the healthcare reform between the Prevention Agenda,
11 DSRIP, and community benefit activities, and the findings were
12 very important. The question was asked in the survey, 25
13 reporting provider systems were asked to report on the level of
14 connection between the identity - the priorities they identified
15 in the prevention agenda and the priorities they said they were
16 working on in DSRIP. About half said they were more or less the
17 same with about a sort of 75 percent overlap. Half, about 30
18 percent said they weren't sure, and 14 percent said no. So this
19 was a signal, and I think pushing this a little bit further,
20 there appears to be a bit of a disconnect sometimes within the
21 hospitals themselves between the CEO level which is obviously
22 focusing heavily on DSRIP and those applications, and what has
23 traditionally been the community relations group that have done
24 work on things like the prevention agenda. So we're very
25 delighted that Greater New York Hospital Association, HANYS, are

1 in our ad-hoc group and have been very active in working on this
2 issue. Again, the DSRIP and Prevention Agenda overlap is
3 largely around non-communicable diseases but also around mental
4 health infrastructure, and to some degree on tobacco.

5 The links between Prevention Agenda and the community
6 benefit reporting under schedule H, a year ago the Commissioner
7 indicated that they would like to have a specific explicit
8 reports from each hospital in the State on their, all of the
9 categories of their schedule 8 submissions, and again, when we
10 ask the question connection between what you selected to work on
11 in your community needs assessment driven, community benefit
12 plan, and the prevention agenda, there was about half showed an
13 overlap, again, between the two are concurrent between the two;
14 21 percent said there was no connection, and 25 weren't sure.
15 So again, I think there's this issue of these three
16 opportunities to begin to align investments that hospitals
17 especially are making in the communities already with their,
18 with investments that link to other community actors in the
19 prevention agenda and also their DSRIP commitments. And the two
20 areas of the schedule H that we're particularly interested in
21 and will be looking at over time are aligning the investments in
22 this so-called community health improvement category of the
23 schedule H which is \$170 million a year in New York State, and
24 the community building category - that's, I'm sorry, \$160
25 [million] and the community building category which is about \$12

1 million. So these are two categories that don't get into the
2 complex issues of DISH and Medicaid gaps and GME and all the
3 other things that are quite conflictual. The definitions of
4 those two categories under IRS rules are quite consistent with
5 investments. It could be made both in prevention agenda and
6 others, so we're going to try to align those. We're hoping to
7 see over time an increased alignment.

8 There were I think important comments and issues raised by
9 other guests at the meeting. Office of Mental Health and OASAS
10 talked about how they're trying to activate the local government
11 units, especially for the mental health infrastructure around
12 the State to connect with local health departments which is not
13 really routinely been happening. They've done a survey that's
14 identified about a 75 percent overlap in what they're doing, but
15 the mental health infrastructure folks saying that much of their
16 work is around service provision while the local health
17 departments work with Prevention Agendas around prevention and
18 that they really need to work more closely together, and this is
19 I think a gratifying commitment and identification because of
20 this, the Prevention Agenda structure.

21 As I mentioned, the Greater New York and HANYS have been
22 very active in different ways in this area, but working also on
23 developing real focus on hospitals engagement with their
24 communities. The New York City Health Department under the new
25 Mayor has really embraced aligning the Take Care New York

1 activity with the prevention agenda work and gave us an updated
2 report on that and the New York City Health Department is
3 leading the (PHIP) as a PHIP grantee for New York City, and the
4 last thing to mention is NYSECHA reported and I think I'm
5 speaking - I'll have to speak to Ellen's concern really about
6 the reduction in funding and prevention. The local health
7 department directors are really hoping to get much more involved
8 in the DSRIP selections under items four and three, but are also
9 facing considerable staffing constraints. Hopefully with the
10 PHIP staffing at least envisioning, or the SHIP funding,
11 envisioning an additional public health advisor for each of the
12 PHIP regions that help, but this is an area that we have to keep
13 our eye on.

14 Other members of the discussion highlighted issues of
15 workforce which have been raised here, health plans wanting to
16 get involved in having some of their own issues which we're
17 going to explore. Paul Macilak who's the head of the Health Plan
18 Association of New York State has been very active from the
19 beginning, and the North East Business Group on health who are
20 active participants in the ad-hoc leadership group pointing out
21 that many of their business members are not local businesses and
22 so we're going to - they've agreed to go with us to talk again
23 with the business council, New York State Business Council who
24 has joined the ad-hoc leadership group, but not been able to be
25 too active so far. And then Hope Plavin who's been - I'm sorry,

1 Yvonne Graham presented from the Office of Minority Health on
2 the disparities workgroup and we're very keen there will be a
3 health equity report early. We hope around the first or second
4 quarter perhaps of 2015 that will help us beef up the work at
5 local level on health disparities. There is a working group
6 linked to Prevention Agenda on health disparities. And Hope
7 Plavin has been terrific in participating with us to try to help
8 us understand how and to support broader engagement and the
9 population health agenda and just to highlight for this group,
10 it's really to reinforce what Jeff has said, what John has
11 indicated. In the waiver application for the SHIP grant or in
12 the application for the SHIP grant it does very explicitly
13 envision a role for the PHHPC in some kind of an oversight or
14 steering role, so it's actually in the application, so I think
15 we're looking forward to conversations about how that role can
16 be played out most constructively. So, our next meeting will be
17 I preparation for the March Public Health Council, and we'll be
18 revisiting maternal mortality. We've been working with other
19 parts of the Department and looking forward to those progress
20 reports. So thank you.

21

22 JEFF KRAUT: Mr. Fassler.

23

1 MICHAEL FASSLER: Jo, just a question. We talk about
2 smoking and tobacco. We're also talking about e-cigarettes
3 impact youth and whether there's danger there also?
4

5 JO BOUFFORD: Yeah, I think some of the sub objectives -
6 wait, I didn't go into strategies, but some communities are
7 using different kinds of strategies to deal with tobacco, but
8 maybe Sylvia, she may have a comment because she knows the
9 details better than I or she can get back to us on the strategy
10 that have been selected around the tobacco issue.
11

12 SYLVIA PIRANI: Yeah, I can get back to you on that with
13 more detail, but there are on the tobacco area communities
14 working on smoke free policies in low income housing in housing
15 complexes with hospitals and then they're also working on Point
16 of Sale issues to reduce the sale of tobacco products.
17

18 JO BOUFFORD: Just to emphasize, I think for everybody the
19 really exciting part of it is all on the website. We now
20 actually know on the local, at the county level what coalitions
21 are working on, what progress they're making, what problems
22 they're having, who's at the table, it's just a really
23 unprecedented opportunity to try to really focus in and connect
24 the dots at the community level as others have raise and you've
25 heard from other -

1

2 JEFF KRAUT: Any other questions? Listening to the
3 committee discussion I'm struck by, you know, kind of a new
4 level of alignment that we're trying to achieve which is really
5 getting providers, you know, kind of that holy grail of health
6 planning is getting everybody aligned around the community
7 health needs, and instead of everybody doing their little thing,
8 just trying to focus on two or three things that can move a
9 needle. So you've heard reference to the role of the council
10 and the State Health Improvement Plan and you know, we have some
11 responsibility here to encourage the healthcare community to
12 participate so it's not unreasonable for us to ask when we have
13 different venues and discussions about what is your institution
14 doing, how are you aligning with the prevention agenda, are you
15 participating in the collaborative and if not, why? As we
16 debate certain issues that come into this room, and I think it's
17 particularly helpful for the industry to understand that that is
18 going to be another level of interest as we have in Medicaid
19 access and equity and the like. So we can play a very positive
20 carefully planned and thoughtful role, but a role nevertheless.
21 So I think I look forward to those conversations as well. Dr.
22 Bhat.

23

24 DR. BHAT: I think last year we discussed about CVS getting
25 out of the cigarette business. Have you identified any other

1 large businesses that are likely to go that route? Because I
2 think it's probably the best thing that they did. They are in
3 the healthcare business. They should not be selling cigarettes.

4

5 JO BOUFFORD: I personally have not. I've actually met
6 with Troy Brennan who's the medical director for (CBS) who's
7 hoping to take this even further. In terms of they are now
8 talking about themselves as a health company, not a pharmacy any
9 more. So I suspect if one is successful in the business model
10 others will follow, but I don't -

11

12 JEFF KRAUT: Out of coincidence I read their quarterly
13 report, they're revenue is down but they have replaced their
14 revenue from cigarettes. That was a concern on stock analysts.
15 It seems not to have negatively affected the profitability, so
16 healthcare is profitable. Yes.

17

18 ELLEN RAUTENBERG: I was just in Arizona and CVS is a
19 major provider of liquor in Arizona.

20

21 JEFF KRAUT: Guns and - so I every-yes, Dr. Palmer.

22

23 JOHN PALMER: I just wanted to ask Jo, the thinking on all
24 the actions over the years that have been taken against tobacco,
25 they're forming a partnership with us "through their foundation"

1 and they continue to tack on tobacco. What's the other side of
2 that, meaning, what are they doing? Because they've got to be
3 doing something to recover and replace those dollars. What's
4 happening overseas with tobacco? What are the things that are -
5 well, it's a back door.

6

7 JO BOUFFORD: This is U.S. Foreign policy. It's not CVS.

8

9 JOHN PALMER: I understand.

10

11 JO BOUFFORD: No, I mean, it's quite well known that a lot
12 of the overall tobacco revenue has been compensated by marketing
13 in low income countries. That's the simple answer. We could
14 bring somebody in from - get involved in foreign policy here.

15

16 JEFF KRAUT: Well, we're not the world health planning
17 council. But there are vacancies there too. OK. Thank you
18 very much. I'd like to Dr. Gutierrez to give the report on
19 Codes, Regulations, and Legislation.

20

21 ANGEL GUTIERREZ: Good morning. I'm Angel Gutierrez, I'm
22 the chair of the Codes, Regulations, and Legislation committee
23 and I'm here to report on the proceedings of the January 29
24 meeting. The committee reviewed two regulations at that
25 meeting. One for emergency adoption, the other for adoption.

1 For emergency adoption was children's camps. The first matter
2 on the agenda was a proposed emergency amendment to subpart 7-2
3 of the State Sanitary Code regarding children's camps. These
4 amendments are necessary to implement the law that established
5 the New York State Justice Center for the Protection of People
6 with Special Needs. At the committee meeting, Tim Shea from the
7 Department of Health noted that there have been no changes to
8 the emergency amendments previously approved by the Council,
9 which have been in effect since June 30, 2013. He indicated
10 that the emergency amendments currently in effect will expire in
11 mid-march so it is necessary to request approval of another
12 emergency adoption. Mr. Shea explained that the Department has
13 not yet put forth permanent regulations because permanent
14 regulations must be consistent with those promulgated by the
15 Justice Center, which has not yet been enacted. The Justice
16 Center sent a letter to the Public Health and Health Planning
17 Council which indicated that it is continuing to work on
18 regulations and that it has asked that the Department of Health
19 wait to finalize the children's camps regulations until this
20 work concludes. Mr. Shea also noted that questions previously
21 have been raised as to whether the regulations should apply to
22 all camps providing care to children with developmental
23 disabilities or just to those where at least 20 percent or more
24 of campers are children with developmental disabilities, as
25 currently reflected in the emergency regulations. Mr. Shea

1 noted that the Department's camp safety advisory council
2 considered this at it's meeting of October 29, 2014, similar to
3 previous meetings, the advisory council expressed concern that
4 applying the regulations to all camps with a child with
5 developmental disability could be burdensome and had unintended
6 consequences such as a camp not admitting a child into the
7 program. The advisory council recommended that the Department
8 maintain it's current applicability at this time and that they
9 will continue to evaluate the issue at future meetings. The
10 Department had received several letters urging the department
11 not to apply the additional requirements on this amendment to
12 other camps that registered individuals with developmental
13 disabilities. Letters were received from State Senators Hannon
14 and and from the executive director of the
15 Conference of Mayors and Municipal Officials. Additionally, the
16 Justice Center letter referenced earlier conveyed agreement with
17 the Department applications for Justice Center requirements for
18 camps serving populations with 20 percent or more children with
19 disabilities. Public comments were delivered by representatives
20 of the Boys Scouts of America, the Hidden Pond Day Camp of Long
21 Island, the Greater New York Councils of Boy Scouts, the New
22 York State Camp Directors Association, the Fresh Air Fund and
23 Frost Valley YMCA. Comments were in favor of keeping the 20
24 percent threshold for the Justice Center requirements we applied
25 as we consider permanent regulations in the future. Given the

1 impact and belief that the current regulations have protective,
2 Mr. Shea stated that the Department of Health has decided to
3 maintain the current 20 percent threshold to trigger the
4 requirements for camps to the disabled. The committee
5 unanimously voted to recommend adoption to the full council and
6 I so move.

7

8 JEFF KRAUT: I have a motion. Do I have a second?
9 Second Mr. Fassler. Any discussions or questions? Dr. Brown.

10

11 LAWRENCE BROWN: This is a very difficult issue. On the
12 one hand I certainly can appreciate that we certainly need to
13 have liable healthcare facilities that provide services to New
14 Yorkers. At the same time, it's kind of challenging for me as a
15 physician, if we had to say that standards for treatment of
16 cardiology, we wouldn't say the standards are changed based on
17 the number of patients that are going to receive care at the
18 healthcare facility. I find that somewhat difficult to chew on.
19 And I appreciate the work of the Committee and particularly the
20 Chair. But it's difficult for me to really chew on that to say
21 that below a certain level it's acceptable to have a different
22 set of precautions in place for a same person or persons who
23 could actually benefit from the precautions. And I do
24 appreciate this has come before the council and the committee a
25 number of times as this emergency extension. It seems that it

1 is very difficult Mr. Chair, so I appreciate you giving me the
2 time to express the concern that I have.

3

4 JEFF KRAUT: Other questions? The, to that point, it's
5 interesting, I didn't fully appreciate the nuances of the
6 arguments till I read some of the letters and listened to some
7 of the testimony online, but I guess there's a threshold - it's
8 a critical mass issue that they're dealing with that they would
9 protect their campers in one way when they have fewer and
10 require them to protect them another way as far as availability,
11 but it's a, I'm actually was pleased when the Justice Center
12 wrote and said give us a little more time to weigh that out, and
13 that's what motivated me. So I think this is the - I don't
14 know, we're celebrating some anniversary of emergency adoption
15 here?

16

17 ANGEL GUTIERREZ: That is correct.

18

19 LAWRENCE BROWN: Using Roman numerals?

20 JEFF KRAUT: At least we're not into three digits.

21 There's a positive.

22

23 ANGEL GUTIERREZ: To address Dr. Brown's point, I would
24 hesitate in requesting that the district hospital

1 used to have 20 beds. Will have cardiology to take care of every
2 heart attack.

3

4 JEFF KRAUT: Other questions? Comments? Hearing none,
5 I'll call for a vote. All those in favor, aye.

6

7 [aye]

8 Opposed? Abstention? Two opposed. One abstention? Any
9 abstentions? The motion carries.

10

11 ANGEL GUTIERREZ: For adoption was the nursing home
12 transfers and discharge rights. The proposed amendment to
13 section 415.3 of title 10 of New York Code rules regulations
14 clarified the requirements for transfer and discharge of
15 residents from nursing homes as mandated by federal law. The
16 amendments more clearly defined what constitutes a transfer or
17 discharge, specify the elements must be included in a notice of
18 transfer or discharge to the resident and the deadlines for
19 service of notice and clarify the rights of the resident at a
20 hearing should one be requested. These amendments do not change
21 existing requirements. They simply ensure that the Department's
22 regulations clearly reflect the existing federal requirements.
23 This proposal has gone through the 45 day comment period and
24 received no comments. The committee unanimously voted to
25 recommend adoption to the full council, and I so move.

1

2 JEFF KRAUT: I have a motion. May I have a second, Ms.
3 Fine. Any questions? Any discussion? All those in favor, aye.

4

5 [Aye]

6 Opposed? Abstentions? The motion carries.

7

8 ANGEL GUTIERREZ: Mr. Chairman, that concludes my report.

9

10 JEFF KRAUT: Thank you Dr. Gutierrez. I think what I'm
11 going to do is take, can we take a five minute break for the
12 bathroom but not enough for lunch and not enough to wander off
13 the floor. The reason I'm asking you to come back I five
14 minutes is we have a full agenda. We have to empty the room
15 because we have other individuals who want to come in on some of
16 the later items. So I want to kind of move it, and I know some
17 of you have told me you have plane, trains, and other things to
18 catch, so I just don't want the afternoon to stretch out. So
19 we'll try to get this done as quickly as the conversation
20 permits us. So, let's come back I five minutes, and as soon as
21 I have a quorum, I'm going to start the meeting. Take a five
22 minute break.

23

24 [break]

25

1 JEFF KRAUT: OK. We'd like to begin the meeting and thank
2 everybody for not wandering. So I'd like to now call the
3 project review and establishment committee to order. I'm now
4 going to call - let me make sure I do this right - I have two
5 applications which I'm going to batch together. It's 142181C,
6 Orange Regional Medical Center. The Department of Health and
7 the Establishment Committee recommend contingent approval, and
8 application 142134C, Mohawk Valley Eye Surgery Center. The
9 Committee and the Department recommend contingent approval.
10 There were no member recusals. There was no dissent by the HSA.
11 And this was no dissent at the Establishment and Project Review.
12 So I have a motion. May I have a second? I have a second, Dr.
13 Strange or Dr. Berliner? We'll give it to Dr. Strange. A
14 second by Dr. Strange. Does the Department wish to make any
15 comments on this application? Does the committee members have
16 any questions about this application? Hearing none, I'll call
17 for a vote. All those in favor, aye.

18 [Aye]

19 Opposed? Abstention? The motion carries. I'll now turn
20 over to Dr. Boufford and Dr. Kalkut to make a report out.

21

22 GARY KALKUT: So I'd like to call the application 142081C,
23 Huntington Hospital. Mr. Kraut has left the room because of a
24 conflict. This application is about the construction of a
25 replacement emergency department. The Department has approved

1 with conditions and contingencies. And the Establishment and
2 Project Review Committee also approves with conditions and
3 contingencies and recommended approval. And I so move.

4

5 JO BOUFFORD: Any discussion? He did have a second from
6 Mr. Fassler. Any discussion? All in favor, aye.

7 [aye]

8 Opposed? Abstentions? Ok, next.

9

10 GARY KALKUT: And I'd like to consecutively now move to
11 South Side Hospital. 142083C. Again, Mr. Kraut has recused
12 himself. This is a construction of an emergency replacement
13 emergency department. Again, the Department has approved with
14 conditions and contingencies and that was recommended by the
15 Establishment and Project Review Committee and I so move.

16

17 JO BOUFFORD: Any discussion? Comments? All in favor,
18 aye?

19 [aye]

20 Opposed? Any abstentions? Motion passes.

21 Mr. Kraut can reenter the room.

22 Do you want to keep going?

23

24 GARY KALKUT: Sure. Next project is 142168C. Westchester
25 Medical Center. Mr. Berliner has expressed an interest—

1

2 [are you back in session?]

3 [Can't hear you]

4 GARY KALKUT: 142168C, Westchester Medical Center.

5 Interest by Mr. Berliner. This is for construction of an

6 ambulatory care pavilion on the main campus of the hospital.

7 And potential shelf space for future use. DOH, the Department

8 has recommended approval with conditions and contingencies, and

9 the Establishment and Project Review Committee has accepted that

10 and recommended approval, and I so move.

11 [second]

12

13 JEFF KRAUT: I have a second, Dr. Gutierrez. Any

14 discussion? Any comment by the Department of Health? Any

15 discussion on the Council? Hearing none, I'll call for a vote.

16 All those in favor, aye.

17

18 [aye]

19 Opposed? Abstention? The motion carries.

20 OK, so you want me to -- I'll take back - we have enough?

21 OK.

22 Application 142185, New York Presbyterian Hospital - let me

23 just get with my script here. OK. I have a conflict and recusal

24 by Dr. Brown and Dr. Bouton Foster, both of whom have left the

25 room. This is to certify a new extension clinic to provide

1 therapeutic radiology to be located at 21 Broadway New York.
2 DOH and the Establishment Committee recommends approval with
3 conditions and contingencies. And I so move. I have a second,
4 Dr. Gutierrez. Any comment by the Department? Any questions
5 from the Council? Hearing none I'll call for a vote. All those
6 in favor, aye.

7

8 [aye]

9 Opposed? Abstention? The motion carries. Could we ask
10 Dr. Brown and Dr. Boutin Foster to return.

11 I'll now call application 14228C, Strong Memorial in Monroe
12 County. We have a conflict has been declared by Ms. Hines who
13 is not attending today, and Mr. Robinson who has left the room.
14 This application is to renovate existing space within the
15 hospital to add eight neonatal intensive care beds for a total
16 of 34 NICU beds. DOH and the Committee recommends approval with
17 conditions and contingencies. I so move. May I have a second,
18 Dr. Gutierrez. Does the Department wish to comment? Is there
19 any questions from the Council? Hearing none I'll call for a
20 vote. All those in favor, aye.

21

22 [aye]

23 Opposed? Abstention? The motion carries.

24 Could we ask Mr. Robinson to return.

1 Now have application 132305C, Jewish Home of Rochester in
2 Monroe County. An interest had been declared by Ms. Hines.
3 This is to construct a total of 168 new resident rooms in
4 greenhouse homes and decertify 34 RHCF beds. DOH and the
5 Committee recommended approval with conditions and
6 contingencies, and I so move. May I have a second? Dr.
7 Gutierrez. Does the Department wish to comment? Does any
8 member of the Committee have any questions? Hearing none I'll
9 call for a vote. All those in favor, aye.

10

11 [aye]

12 Opposed? Abstention? The motion carries.

13 Now going to turn to category I guess six - well category
14 one. We have an application for establishment and construction.
15 This is an application 141253E, South Brooklyn Endoscopy Center
16 in Kings County. This is to transfer 40 percent of membership
17 interest to four new members and the withdrawal of two existing
18 members to certify an additional three-year limited life
19 extension for CON 081088. DOH and the Establishment Committee
20 recommend conditional and contingent approval with a three year
21 extension of the operating certificate from the date of the
22 Public Health and Health Planning Council recommendation letter
23 approval was recommended. And I so move. I have a second Dr.
24 Gutierrez. Mr. Abel? Any comment? Any members of the Council
25 - Dr. Berliner.

1

2 HOWARD BERLINER: Charlie, could you say a little bit
3 about the character and competence review that was done.

4

5 JEFF KRAUT: The question was for the Department to
6 comment on the character and competence review that was
7 conducted.

8 CHARLIE ABEL: Um, just to be clear, we're on South
9 Brooklyn Endoscopy. The character and competence review was
10 conducted on all the new members, operator members proposed to
11 come in and it is a 10 year look back on healthcare operations
12 and other factors that could be relevant to opine on a character
13 and competence review. So that was that extent of the review of
14 the facility itself is in compliance as of today and as of the
15 time of processing.

16

17 HOWARD BERLINER: And Dr. Fowler is giving up his
18 ownership?

19

20 CHARLIE ABEL: He remains as a partial owner. His, I
21 believe his ownership is being reduced in this application. It
22 is. Yes.

23

24 HOWARD BERLINER: So, it's my understanding and I may be
25 incorrect about this—

1

2 JEFF KRAUT: Howard, just move the mic a little closer.

3

4 HOWARD BERLINER: Sorry. It's my understanding and I may
5 be incorrect, so please correct me if I'm wrong that Dr. Fowler
6 is also a principal in Yorkville Endoscopy?

7

8 CHARLIE ABEL: That's correct.

9

10 HOWARD BERLINER: A- what's going on with Yorkville? B-
11 how does that relate to the character and competence review that
12 was done?

13

14 CHARLIE ABEL: I'll take B and then we'll go to A in a
15 little bit.

16

17 JEFF KRAUT: A for \$400.

18

19 CHARLIE ABEL: With respect to the statutory language with
20 respect to establishment approvals, individuals who are already
21 established operator members are not subject to a full character
22 and competence review; only new members coming in are subject to
23 that character and competence review. So Mr. Fowler was not
24 subject to that. A- I believe we have Ruth or Dan, did you want?

25

1 JEFF KRAUT: Dan, just turn it on, please. Or go to a new
2 mic.

3
4 HOWARD BERLINER: I no, it was B. We've asked at the
5 Project Review Committee meeting for a report on the State's
6 investigation into Yorkville Endoscopy. Given that CMS has
7 already issued a report, we haven't heard anything from New York
8 State about that.

9
10 DAN SHEPPARD: CAN I COMMENT ON THAT? CMS continues to work
11 with CMS with respect to their licensure status and DOH cannot
12 comment on this matter until the process is complete, because
13 it's an ongoing process.

14
15 HOWARD BERLINER: Let me just make sure I'm understanding
16 this. New York State can't make a comment on its own
17 investigation into a facility that CMS is currently
18 investigating?

19
20 DAN SHEPPARD: We are serving as an agent of CMS in this
21 regard.

22
23 HOWARD BELINER: So the CMS...
24 So the CMS report is essentially, was done by you, not by CMS?
25 Acting as their agent.

1

2 DAN SHEPPARD: And they are still in adjudication with CMS.

3

4 HOWARD BERLIENR: OK. Thank you that's actually, yeah.

5

6 JEFF KRAUT: OK. Any other questions on this application?

7 Hearing one... hearing none, I'll call for a vote. All those in

8 favor, aye.

9

10 [Aye]

11

12 Opposed? Abstentions? The motion carries. I am now going to

13 group several applications together for which we had no debate,

14 no discussion, no opposition. So just bear with me for a moment.

15 This is going to be application 142152E, Odyssey Community

16 Services. To establish Odyssey Community Services as the

17 operator of a diagnostic and treatment center located at 219

18 East 121st Street, which is currently operated as an extension

19 clinic, as Odyssey House. The DOH and the Committee recommends

20 approval with conditions and contingencies. Establish 142195B,

21 Delhi Rehabilitation and Nursing Center in Delaware County. To

22 establish DRNC Operating, LLC as the operator of the to-be

23 constructed 176-bed residential health care facility to be

24 located at 41861 State Route 10, Delhi on the site of the former

25 Countryside Care Center. DOH and the Committee recommend

1 approval with conditions and contingencies. Application 142193E,
2 Kindred Health Care in Saratoga County. To establish Kindred
3 Health Care, Inc. and Kindred Healthcare Operating, Inc as the
4 new controlling persons of QC-Medi New York, Inc. The operators
5 were five certified home health agencies. DOH and the Committee
6 recommend approval with a condition and contingencies. I then
7 recommend for approval the following home health care agency
8 licensures. I'll just list the number: [226L], 2178L, 2292L,
9 2272L, 2037L, 2266L, 2268L (I note for our point for the
10 committee that application 2395L has been deferred at the
11 Department's request; we will not be voting on that in this
12 batch). Application 2218L, 2285L, 2254L, 2247L, 2152L, 2138L,
13 2175L, 2215L, 2261L, 2274L, 2202L, 2244L, 2259L, 2176L, 2157L,
14 2299L, 2279L, 2163L, 2461L, 2295L, 2319L. 2281L-this is also
15 going to also be deferred at the Department's request. We are
16 not voting on 2281L. 2389L, 2342L, 2401L, 2556L. DOH and the
17 Committee recommends approval with contingency. So recommend.
18 May I have... That's my motion. May I have a second? Second. Now
19 you understand why I was selected as chair. I do commercials
20 late at night. And does the Department wish to comment on any
21 one of these applications? Does any member of the Committee have
22 any question on any one of these applications or wish to have it
23 removed from this batch? Hearing none, I'll call for a vote. All
24 those in favor, aye.

25

1 [Aye]

2

3 Opposed? Abstentions? The motion carries. Now I am going to
4 call application 142218, NYU Lutheran Medical Center in Kings
5 County. A conflict has been declared by Dr. Kalkut, who has left
6 the room. An interest has been declared by Dr. Boufford. This is
7 to establish NYU Langone Health System, Inc. as the active
8 parent and co-operator of Lutheran Medical Center to be renamed
9 NYU Lutheran Medical Center. The DOH and the Establishment
10 Committee recommends approval with a condition and contingencies
11 and I so move. I have a second, Dr. Gutierrez. Does the
12 Department wish to comment? No. Do the councilmember have any
13 questions about this application?

14

15 JOHN PALMER: I have a question.

16

17 JEFF KRAUT: OK. Dr. Palmer and then Dr. Berliner.

18

19 JOHN PALMER: In the, one of the letters we received, I
20 think was from 1199, and they were discussing the impact of this
21 relationship and they were mentioning some CMS issues. Were
22 those things under review by the Department when this
23 application was being considered?

24

1 CHARLIE ABEL: The, well first of all the letter was not
2 taken into consideration in the review because the letter came
3 after the fact, but in terms of the expectation of health care
4 facilities in terms of their performance relative to the
5 communities, I think Mr. Sheppard's earlier comments refer to a
6 policy that we have always adhered to in CON review, and that is
7 that we expect that we know how much the health care community
8 and the public rely upon the hospitals that serve the
9 communities and we expect that the hospitals will serve that
10 community and identify health care needs as they exist and set
11 up programs to address those health care needs and the
12 individuals that require services.

13

14 JEFF KRAUT: Dr. Berliner.

15

16 HOWARD BERLINER: In a sense, this is...

17

18 JEFF KRAUT: Dr. Berliner, just closer.

19

20 HOWARD BERLINER: In a sense I am following on from Dr.
21 Palmer on this. You know, Lutheran has always been regarded in
22 New York and has won awards for being almost, you know, a model
23 community hospital. It has done much to improve access to
24 services for people in its community. It has done much to
25 actually improve the economic status of the community. It's

1 really what you would hope a community hospital would do in a
2 community, and so it's somewhat worrisome that they will be
3 essentially taken over by an institution, which, as is the data
4 we received in the letter from 1199, show doesn't do as much for
5 its community. And so I guess I am wondering if a condition or
6 contingency could be added to the application asking that we
7 receive a report from the Department on a yearly basis showing
8 the changes in Medicaid utilization at Lutheran and NYU? And if
9 there is any significant change, any significant reduction that,
10 you know the committee be, the Council be notified so that we
11 can address that issue?

12

13 CHARLIE ABEL: Well, the Department can certainly add a
14 condition that is the wish, the desire of this body if you want
15 to take that up for discussion.

16

17 JEFF KRAUT: Any comment? Yes.

18

19 But I think...

20

21 What would give it...

22

23 Oh, I am sorry.

24

1 Oh, I am sorry. What would give it teeth though? If there's no
2 limited life or whatever and they are approved, how would we be
3 able to do anything about it?

4

5 JEFF KRAUT: Well, let's take... let's separate the issues
6 for a moment. You know, I think you make the point that the
7 concern has been an exemplary, you know, it was certainly one of
8 the forerunners of FQHC development in the City and has done
9 significant things, and I think it's seemed clear that in order
10 to continue that mission, it is partnering with another
11 institution to bring other resources to support and permit that.
12 I suspect just knowing that board and that leadership, this
13 would be very much on the top of their mind, as well. And so,
14 you know, in my mind there is no (necessarily) problem to review
15 their, the Medicaid commitment. I, you know, just recognize, and
16 I think we should given the report we heard of the Commissioner,
17 with the number of people enrolled in Medicare, you know,
18 uninsured changing and the availability of the exchanges, I
19 think those numbers will change to some degree. I hope we'll all
20 see those changes as positive, but you used the term
21 "significant" and we'll have to—you'll know it when you see it,
22 I suspect. Yes. Mr. Clancy.

23

24 MR. CLANCY: Thank you, Mr. Chairman. The only thing I
25 was going to say, Mr. Berliner, Dr. Berliner was, in light of

1 the comments that were made to Dan and what Charlie reiterated,
2 and even what Dr. Rugge said earlier in recognition of the
3 comments from Dan is that this is something that we are
4 obviously keenly aware of looking at and have no problem
5 reporting back to this Committee on any topic. I just... with
6 respect to putting contingencies on, I think we send a... there
7 become precedents that are set and additional bandwidths that
8 have to be met, bandwidth needs that have to be met—and I am
9 defending the Department, and Charlie, and the staff at this
10 point. We're not... we want to make sure that the information that
11 this body wants to get it will get that information.

12

13 JEFF KRAUT: Can't, without making it a contingency,
14 can't we just say we want the Department to report—we don't have
15 to put...

16

17 Yes.

18

19 The obligation on the applicant, we'll put it on the Department.

20

21 MR. CLANCY: Correct. What the chairman just said.

22

23 So, is that a...

24

1 HOWARD BERLINER: If that was reported whenever a CON
2 application came through, that would be fine.

3

4 JEFF KRAUT: I think that it's fine. Dr. Brown.

5

6 LAWRENCE BROWN: Well I have question then. Let's say,
7 let's play this out. So we put the burden on the Department. And
8 let's say that the outcome of the report is less than what this
9 Council would have found to be favorable. Where is the recourse
10 for the Council just to tell the Department of Health, "bad
11 boy"; slap them on the hand. I am not sure. Well, what is it
12 that if we want this to be truly embraced, and the stakeholders
13 here are not just the Department, quite frankly. We have an
14 applicant in front of us. So it seems to me that there needs to
15 be some understanding about what's going to be the next step
16 should, in the worst case scenario, that the outcome that we
17 receive is less than favorable?

18

19 JEFF KRAUT: Mr. Abel.

20

21 CHARLIE ABEL: I guess I... I just want to make sure that
22 folks understand. I mean we all know we're embarking on a brave
23 new world in DSRIP and we've got PPSs that are taking
24 responsibility for populations. I think we all have to
25 understand that the Department's role is changing, as well. And

1 it will be vitally important for the Department to ensure that
2 the PPSs are doing what they promised and beyond that, even
3 broader than that, that there are improvements to population
4 health that are being achieved. And that there are no
5 populations that are being excluded from those improvements. You
6 know, it's a little different focus from the Department's
7 perspective. So with respect to any given applicant I, you know,
8 I question the value of putting anything specific on the
9 application because I think it becomes the Department's
10 responsibility to ensure you are all and our comfort that the
11 health care system changes that are occurring are what we all
12 want.

13

14 JEFF KRAUT: Dr. Strange. We'll come back to that, Dr.
15 Brown.

16

17 DR. STRANGE: So in agreement with what you just said,
18 Charlie, if this is the future, we're here now; however, I think
19 what was said before is what can be the teeth, however. Can you
20 dissolve this if they don't meet a standard? Are we going to
21 fine them to an extent that then is going to put a bigger burden
22 on the community by taking further resources out of the
23 community? Are we going to fire the CEO? Are we gonna...? I mean
24 what are the teeth when one day somebody comes forward and says
25 "OK, you didn't meet this Medicaid threshold," or "You left this

1 group of patients out there." Despite the fact that the CON came
2 across and said, you know, we're going to do this—so what are
3 our teeth at that point? So we pass this, that's great. It's
4 done. It's the future. We all believe in it. We think the board
5 is doing everything on the altruistic side. Three years from
6 now—what is our teeth?

7
8 DAN SHEPPARD: So I think just, Mr. Chairman, I think just
9 in response. So there are, because of the DSRIP structure, there
10 are dollars at stake that will not flow if Medicaid population
11 is not served. So, I think in one, so in that lens there is a
12 built-in incentive. I think just generally, you know, I think
13 that this has been alluded to here, as I had indicated in my
14 remarks, which were speaking to this situation, you know, too,
15 on a statewide basis—cause we see this in rural areas and
16 upstate suburban areas—that the Department will be focusing and
17 happy to report with whatever frequency this body deems
18 appropriate, our observations on how these systems are evolving
19 and how patients, how the populations are being served. You
20 know, this is the direction that health care is going. I think
21 we all have an obligation, again, to get to make sure that the
22 populations that are being served are not only served, but
23 served better. And these applications come to us when you have
24 two governing bodies in good standing asking this body, asking
25 the State, to approve it. And they are acting in their fiduciary

1 capacity and looking at their communities. So, you know, and
2 then the goal, as we all can ATTEST is to strengthen those
3 health care systems. So, you know, I mean I think we certainly
4 can provide information FOR THEM and we will. I, on the spot
5 here, so taking the step of contingencies related to this, I
6 think that is something that we really have to consider.

7

8 JEFF KRAUT: We'll come back with Dr. Ruge and then I'll
9 go back to Dr. Berliner and then I'll make a comment and then
10 anybody else.

11

12 JOHN RUGGE: Earlier in the meeting I was being factious
13 suggesting that Dan bring back to us at the next meeting a
14 methodology for testing. What is the impact of the kind of
15 mergers and affiliations we're taking about at really the mega
16 level? We didn't have to wait that long. This, I think, is the
17 opportunity for this Council to take a systematic, ongoing look
18 at the impact of what we're doing. And to some degree we're
19 relying on sunshine itself being a valuable antiseptic—that even
20 though we can't reverse a merger, even though we can't... the
21 embarrassment if we were to have an adverse finding would be
22 huge for that institution and have important implications for
23 future decision of this body in terms of other like kind of
24 mergers. So I think having a mechanism and that induces—our
25 authority is to ask the Department to systematically look and

1 report back to us at a specified interval the impact of the
2 decisions we're making. And that's really the invaluable
3 function we have as a Council a service the Department can give
4 to our public.

5

6 JEFF KRAUT: Did you want to make a comment?

7

8 HOWARD BERLINER: I mean, I just want to say, I mean, I
9 am not in any way trying to impugn the management, you know, or
10 boards of either of the institutions or any of the institutions
11 for that matter. I think the way you said it, Dan, was that, you
12 know, those institutions have a fiduciary responsibility to act
13 in their own interest, but we have a responsibility as this Council
14 to act in the interest of the public, not the institution. I
15 mean, and that's really, you know, the tension that we have. I
16 know it may be heresy to say it in this room at this time, but
17 DSRIP is not UBERALICE. You know, and I mean a lot of people
18 would do very well not doing much with DSRIP and picking up a
19 lot of other kinds of income from other payers. So, you know, I
20 mean there is the possibilities that an institution acting in
21 its own fiduciary interest may not necessarily act in the
22 public's fiduciary interest. And that's just so...

23

24 JEFF KRAUT: Well, OK, but...

25

1 HOWARD BERLINER: That doesn't answer the question of
2 what we do about it, but just.

3
4 JEFF KRAUT: Right, so let me try to kind of close this
5 up. Let's put it in context. When Mr. Sheppard said the
6 Department is taking a look at these consolidations, which we
7 are, by the way, we're just a microcosm of the country. You
8 know, need I remind everybody here, New York Presbyterian,
9 Lawrence, Hudson Valley; Montefiore, New Rochelle, Mt. Vernon,
10 White Plains; Mt. Sinai, Beth Israel, St. Luke's New York Eye
11 and Ear, Kings Highway. And I'll just leave me off the table for
12 a minute, OK? Just so, you know, in the interest of time. In the
13 interest of time. It is, it is a changing world and I think our
14 regulatory processes have to adapt. They are a little
15 anachronistic. We don't have, necessarily, the questions that
16 are being asked now are valid questions; they deserve an answer.
17 Not necessarily for this particular applicant. OK, so it
18 stimulated it. For some reason, it didn't stimulate it when we
19 did these ten other applications, but for whatever reason it
20 happened now, I think what you have heard is we would like to
21 know what is the impact. There issues that we're concerned about
22 are access and Medicaid access and equity, and I think if you
23 overlay DSRIP and the relationship here, let's give the
24 Department a little time to go through this and we would like in
25 the appropriate venue, my guess is in planning—probably in the

1 Planning Committee—let it be reported out with a time limit and
2 we should... you should... we should just discuss this and let... if
3 that's acceptable. I don't think it needs to be attached to this
4 application, but I think it's appropriate to direct the
5 Department that that's the interest of the Council. And then as
6 far as actions, I'd rather wait and see what the data is before
7 trying to make up sanctions or actions until we see what data
8 is. Dr. Strange.

9

10 DR. STRANGE: So, Jeff, I do think, though, we have spoken
11 about this before in a smaller way. So when we have approved
12 ambulatory surgery sites, when we have approved some of these
13 centers, this has been a question that in fact we held back in
14 fact...

15

16 JEFF KRAUT: And that's why we did limited lives.

17

18 DR. STRANGE: And I think in some of the other
19 institutions as is reported in one of these here, a lot of the
20 other institutions like Mount Sinai—and I won't speak about our
21 institution either—but we know the Medicaid numbers were clearly
22 much different from what you see here in the NYU numbers and I
23 think that's the concern. In these other mergers, there was data
24 to support what it was that we're talking about here. The
25 problem with NYU, you've got Bellevue sitting on its campus next

1 door and the door swings one way, maybe. You know, when I was at
2 Downstate Kings County...

3

4 JEFF KRAUT: We'll we could have the same thing with
5 Downstate. Until they opened an ED, how many years did we have
6 this discussion?

7

8 DR. STRANGE: Right, so I think that's really the concern
9 that there's not--and again, I am not impugning the METER, I
10 agree totally with Dr. Berliner--but we do have an obligation to
11 the public that "cherry picking" does not occur, should not
12 occur, never will occur, and that this is a fair playing field.

13

14 JEFF KRAUT: In all fairness, if this issue had come up
15 during the Project Review Committee, I suspect the folks from
16 Lutheran and from NYU would have been eloquent in why they are
17 not concerned about that, but I don't know that for a fact. But
18 I believe it would be the case. So, having said that, it's just
19 another issue here that, you know, if we had been able maybe to
20 discuss that during that committee we might have had a different
21 presentation. That's all. So could I... may I call the vote.

22

23 I think...

24

25 Maybe not.

1

2 JOHN RUGGE: I think the presumption though is they would
3 welcome this because...

4

5 Yeah.

6

7 They should be proud of what they did.

8

9 JEFF KRAUT: I suspect they don't have any problem with
10 this.

11

12 JOHN RUGGE: And I think all we're suggesting is
13 attaching to this application a requirement not them but to the
14 Department that they report back to us in a specified time frame
15 about this specific merger given the very special nature of it
16 and that will lead, in turn, to a broader discussion about how
17 consolidation is working across the state. So we are using this
18 as an index but...

19

20 JEFF KRAUT: OK, But, I just don't want to attach it to...
21 I'd like to vote on the motion and I'd like to direct the
22 Department to prepare that, exactly what you said. But I don't
23 necessarily see it as attaching because it is the Department's
24 responsibility—I am not making it the applicants. Cause I want

1 to bring it back in. And I think I want it to be broader than
2 just NYU. Yes, Dr. Boufford.

3

4 JO BOUFFORD: I think the separation, I mean, we should
5 look at this for the case that it is and ask for the reporting
6 as requested. I think we have heard many, many comments this
7 morning about the fact that role of this Council really needs to
8 somehow—and I think we're inviting the Department to give us
9 that advice—somehow play a more significant role than we have
10 been in these enormous strategic and substantive changes that
11 are going on in the health care system in the state. And we're
12 sort of doing the retail and not looking at the larger picture.
13 And that may end up with a set of criteria on a number of things
14 that we have cared about or are a part of our mission to follow.
15 So, if we could separate the two, but I think the point has been
16 made that we need to really think about the bigger issue for the
17 overall Council.

18

19 JOHN RUGGE: Just to clarify. Excellent. I think, Jeff,
20 just to clarify. You would see an order then following this
21 application to entertain a motion to, again, do a systematic
22 study to include this particular...

23

24 JEFF KRAUT: Yeah, more general across the state. Ms.
25 Carver Cheney.

1

2 MS. CARVER CHENEY: Yes. Would it be possible to bring this
3 particular application back at the next agenda so that we could
4 have NYU and Lutheran weigh in on these issues.

5

6 JEFF KRAUT: In all fairness, we had that opportunity and
7 I would suggest if, you know, I personally don't feel it's fair
8 to the applicant unless you are going to get other information
9 that would affect it. Typically, we'd prefer not to. That's all
10 I would say, unless, you know, people felt differently, but I am
11 not sure if it raises to that issue. Dr. Brown.

12

13 LAWRENCE BROWN: Might I suggest a friendly amendment to
14 the guidance to the Department that we want to make sure that we
15 get information back, but we know that the Department, even
16 though it is strained in many ways, and in the ways sometimes
17 that we put on it, but we'd like to have more than just be a
18 report of the outcomes. We'd like to perhaps have some kind of
19 examination or hypothesis that they provide us as to perhaps the
20 reasons why the output that they provide us is maybe in place.
21 Why, it would seem to me that given their resources and their
22 technical expertise—I should say their technical expertise,
23 perhaps not a whole lot of resources, we appreciate that—but at
24 least their technical expertise, that they have the skill set
25 and talent to be able to answer those questions.

1

2 JEFF KRAUT: Yeah. Dr. Martin.

3

4 GLENN MARTIN: I sort of sympathize in advance for the
5 Department at the moment only because this is such a moving
6 target that I don't even know what number we'd be looking at,
7 and I like looking at all the numbers, so yeah, give them to us,
8 that's great. I mean, the truth is if DSRIP continues to work as
9 well as it should, hospital admissions should drop down an
10 therefore your percentage of hospital Medicaid admissions should
11 go down and that would be a good thing no matter what they have
12 promised us. So it will be a, I think, a difficult thing to do.
13 With the ambulatory surgery things, I think are different
14 because a lot of them, when we spoke, didn't even know what
15 DSRIP was, were to not be hooked in and the like, and they are
16 sort of very much stand-alone or weren't integrated over the
17 years.

18

19 JEFF KRAUT: Well, I think you speak to the issue. This
20 is a moving target issue. We're not sure, but we'll see market.
21 We'll see how the market moves.

22

23 GLENN MARTIN: Right, of course.

24

1 JEFF KRAUT: As a market. We'll see how individual
2 facilities move. And, you know, we'll...

3

4 GLENN MARTIN: Right. As I say, it would be nice to get
5 really... and the report isn't just going to be a simple report is
6 what you are basically saying, but I see no reason to stand up
7 this application now.

8

9 OK.

10

11 ANGEL GUTIERREZ: I am not sure we are still on topic.

12

13 JEFF KRAUT: Well, no. Let's do this. Let's dispense with
14 the direction to the Department. Do you believe, based on the
15 conversation, you're clear as to what we need to do? And we can
16 always refine it in a planning committee discussion instead of
17 holding up this meeting. So let the Department come back and
18 kind of mull over what they have heard. Come back to the
19 Planning Committee and say this is how we expect to start the
20 process, and then let's have that discussion within the Planning
21 Committee, and you can affect it one way or the other and, you
22 know, all the data, as much of the data, this type of analytic
23 stuff. And that's fine. So, is there anybody that is uncertain
24 at the Department? Let me just ask, do you feel comfortable at
25 this juncture that you could fulfill the general wishes of the

1 Council, which is to set up some sort of monitoring, bring it to
2 the planning committee, and work out the methodological and the
3 review? Is that fine? OK. So that's fine. I now turn back to the
4 applicant. Is there any other questions concerning the
5 applicant? This application, I am sorry. OK, hearing none, I'll
6 call for a vote. All those in favor, aye.

7

8 Aye.

9

10 Opposed? Abstentions? The motion carries. Could we ask Dr.
11 Kalkut to return to the room please? Now I am going to call
12 application 142... 142115E, Pure Life Renal of Buffalo, Inc. in
13 Erie County. An interest has been declared by Dr. Baht. This is
14 to establish Pure Life Renal of Buffalo, Inc. as the new
15 operator of the facility located at 6010 Main Street,
16 Williamsville, which is currently operated by the Comprehensive
17 Dialysis Center of New York, Inc. DOH recommends approval with
18 conditions and contingencies and the Establishment Committee
19 recommends approval with conditions and contingencies with one
20 member abstaining. And I so move. May I have a second? Dr.
21 Gutierrez. Mr. Abel.

22

23 CHARLIE ABEL: Thank you. At the Establishment and Project
24 Review Committee meeting, the committee members asked the
25 Department to furnish the councilmembers with the CMS quality

1 data for the facility, as it is currently operated under the
2 current operator (not the proposed operator), and that material
3 should be at your desks. If not, it was sent to you in advance.
4 That concludes. That's responsive to what was requested. Thank
5 you.

6

7 JEFF KRAUT: Yes. Are there any questions for the
8 Department? Hearing none, I'll call for a vote. All those in
9 favor, aye.

10

11 [Aye]

12

13 Opposed? Abstentions? Motion carries. OK, before I call the
14 next application, I am going to ask anybody that is in the room
15 that is not directly affiliated with this application to please
16 leave. We have members of the public who are, who would like to
17 participate. We'd ask you to change places with them and go to
18 one of the remote reviewing rooms and to make room for them to
19 be able to observe the proceedings directly. So, let's take a
20 minute and we will... what I am going to ask Colleen as many
21 people as leave and we have empty chairs. So I am assuming
22 everybody that is in this room has a direct relationship with
23 the thing. So we'll just wait and could you just direct how many
24 people... as many empty seats as I have, you can fill and no more.
25 So let's give a moment.

1

2 [silence]

3

4 JEFF KRAUT: Let's make sure we are all settled. Dr.
5 Boufford, Dr. Baht, Dr. Martin, Dr. Yang. Colleen, we're OK to
6 start? OK. I'd now like to call application 132178E, Big Apple
7 Dialysis Management, LLC, Kings County. A conflict has been
8 declared by Drs. Baht, Dr. Boufford, Dr. Martin, and Dr. Yang,
9 all of whom have left the room. This is to establish Big Apple
10 Dialysis Management, LLC as the operator of a chronic renal
11 dialysis diagnostic and treatment center and three extension
12 clinics currently operated by the New York City Health and
13 Hospital Corporations. DOH recommends approval with conditions
14 and contingencies and the Establishment Committee was unable to
15 make a recommendation to the Council with a vote of three in
16 favor, two against, and one abstaining. I have a motion and I so
17 move it. I have a second by Dr. Gutierrez. And does the
18 Department wish to make any remarks? OK. Does any member of the
19 Council wishes to make any statements about this application?
20 Dr. Palmer.

21

22 JOHN PALMER: I really have three questions and it doesn't
23 matter if any of them are answered, but things have been hanging
24 in the air for me in the process here. One is going forward,
25 what role is quality, the assessment of quality, going to play

1 into review of character and is there going to be any systematic
2 way that the Department addresses this issue? Again, that's a
3 question.

4

5 OK.

6

7 Number two, I believe that Big Apple has already started to
8 manage some HHC facilities. I believe that. Number three, in the
9 letters that were sent to us, there were physicians whose names
10 were indicated on the letters. There were no signatures, but it
11 said that the below were signed on. Were there any physicians
12 from that entity that Big Apple already manages that signed on
13 to that letter?

14

15 JEFF KRAUT: I have no knowledge other than what we
16 received. I don't know if the Department does.

17

18 CHARLIE ABEL: I don't have answer to that last question.

19

20 JOHN PALMER: OK, cause I think that goes back to people
21 working on the inside, what do they think and if they are
22 signing on to that, what does it mean?

23

24 JEFF KRAUT: Sure. OK, maybe we'll come back as we go
25 through it. Are there any other issues or questions? Cause I'd

1 like to... I want to address that, but I wanna get them all out
2 and then we can systematically go through them.

3

4 MICHAEL FASSLER: Just a couple of questions for the
5 Department. Again, we've had during the course of the year
6 several sales of nursing homes, home care, things like that.
7 Again, criteria for the Council, is it our responsibility to
8 determine whether the seller or the buyer is better than the
9 seller or whether they meet character and competence? That's
10 question number one. And second thing, are there any enforcement
11 actions, deficiencies outstanding against Big Apple or any of
12 the principals involved?

13

14 CHARLIE ABEL: First of all, the individual applicant
15 members for Big Apple do operate other health care facilities
16 and to the best of my knowledge and we checked it recently, we
17 have been checking periodically—all those facilities are
18 currently operating in compliance. With respect to your initial
19 question, I can tell you from the Department's perspective that
20 do not assess whether an applicant would, could provide better
21 quality than the current operator; that hasn't been a criteria.
22 The criteria is statutorily is character and competence of the
23 proposed operator, financial feasibility, and public need. And
24 with respect to the individual applicant members of Big Apple,

1 they have—and we do have a rather robust character and
2 competence review—they meet our character and competence tests.

3

4 MICHAEL FASSLER: Thank you.

5

6 JEFF KRAUT: OK, so if there's no other questions, let me
7 just make some statements and bring Dr. Palmer's issue. You are
8 right, this is a bit of new ground for us and the objective here
9 was to bring quality into the conversation, particularly where
10 data existed, and, as you heard Mr. Abel say, the criteria by
11 which we review and we render a decision is very clear and I am
12 going to come back to that in a moment. And we've done it
13 consistently, we've had trouble doing it in the past, frankly,
14 because we were uncomfortable, but that was the definition. Now
15 Art Levin can't be here today. I think he is snowed in; he's
16 over 18 inches where he is upstate. I did speak to him and, you
17 know, when we go back over what prompted the conversation, he
18 said, "I don't know how to use the data; I just like to start
19 using it and then figure it out as we go along, so to speak."
20 And he just believed that, you know, we wanted to bring. He
21 reminded me that the purpose of quality data is to help people
22 improve. It is also to help the organization in much of, you
23 know, our own quality processes, is to help us to identify a
24 problem to get better. It's also to make the public aware of
25 some comparative—valid statistical comparisons—to make

1 decisions. So he just said I didn't... the answer to your first
2 question is we never expected or thought that we necessarily use
3 a single point of data, but we never necessarily really
4 discussed it—if it's valid or appropriate or what have you, and
5 yet we have this case. So, I certainly want to thank Art for
6 starting this conversation and I appreciate that he wasn't here
7 to conclude it, cause he would have enjoyed participating. And I
8 wanted to really thank everybody who wrote letters. I mean, it
9 does show there is an issue here and there is a process here and
10 I think it's been an interesting journey for us to contribute to
11 that process and that discussion, so let me start and I am going
12 to come back to the issue you raised. We have three criteria—
13 need (nobody's debated the need, nobody is suggesting these
14 facilities are not needed), financial feasibility (nobody is
15 suggesting that this arrangement is not financially feasible)—
16 not necessarily detrimental financially. There's debate about
17 the numbers. I am not going to get into these particulars, but
18 doesn't on the surface, it's not a reason necessarily to
19 disapprove it. There is nobody has impugned the character of
20 the—you may take exception with the State—but I don't think
21 anybody has impugned the personal character of the operators
22 about this. And the issue comes down to the competency and
23 suggesting that the quality information that we have makes these
24 providers who are licensed who have no open issues against them,
25 not competent for us to prepare. So the standard we've applied

1 in the past or as you just heard is are there any known actions
2 of the applicant which has been cited by DOH, CMS, any other
3 government entity that impacts their character and their
4 competence, and are there any known actions or investigations
5 which may place patients in immediate harm or risk that would
6 prevent DOH to recommend this to the Council? And DOH has looked
7 at that information and concluded that there is none and
8 recommended approval. HHC leadership had only recommended it
9 based on their review of character and competence, as Mr. Abel
10 just described. HHC leadership has made a decision that many
11 other hospitals have made to contract out management of the
12 dialysis centers. The board has ultimate responsibility; they
13 are accountable for the quality of care rendered in their
14 facilities. We have been told they have had public meetings.
15 They have heard arguments, they have conducted their own due
16 diligence. They concluded that the applicant is competent to
17 manage these facilities. They pointed to their experience at one
18 of their centers at Elmhurst. They have told us that they could
19 terminate this agreement for any quality concerns at any time.
20 The decision of the HHC board has been sustained through two
21 different HHC presidents and administration and through two
22 different City administrations. We've heard thoughtful, well-
23 researched arguments about many aspects of the application, with
24 a focus on higher-than-expected mortality rates. So for those of
25 you who did not attend the meetings, that was the focus. That

1 there was for a few centers owned by the applicant, they have a
2 worse-than-expected mortality rate. The applicant has expressed
3 an explanation (Part of those are the nursing homes that they do
4 it). I think the methodology, the other respondents have
5 indicated that that methodology is adjusted for the nursing
6 homes and it stands alone. It stands that it's worse than
7 expected. Some of them have better than expected, and some of
8 them have about the same. So, we've heard that quality will be
9 diminished if this applicant was to be responsible to manage the
10 care—not keeping the same staff there, but managing the care—at
11 the facilities and in opposition, I guess, there is no
12 acknowledgement of the possibility that it could be enhanced, as
13 it was at Elmhurst. Just that this suggests that it's not. The
14 Council is being asked to disapprove the application on the
15 basis of those arguments. DOH reviewed the correspondence, as I
16 said (had their own review) and if you review the end-stage
17 renal disease dialysis center for the State of New York, we have
18 about 256-58 dialysis centers; 26 of them have outcomes worse
19 than expected. Four of those are operated by hospitals, six of
20 them are operated in nursing homes. The majority of those
21 applicants had actions before this Council previously where we
22 approved the transfer of ownership. Now, I can't say that we
23 were aware of that, OK, but we did approve it; no other issue
24 was raised. We've approved this applicant previously. So, it
25 comes back to the Establishment Committee couldn't make a

1 recommendation because we needed seven affirmative votes and as
2 you heard, we didn't have it. We don't conduct our own
3 investigations independent of DOH. DOH conducts those on our
4 behalf and they did it in accordance with the competence. The
5 HHC board is responsible for the accountability to the quality
6 of care in the facilities and they have decided to go forward.
7 They found no basis on quality not to believe it's going to
8 enhance quality. They feel they have adequate provisions and so
9 I just believe that if you're, if we ask if we believe the data
10 is worse than expected is threshold that you believe there's
11 sufficient evidence and assume it's going to be—you have to also
12 assume we will be taking that an applying it in other
13 situations. We've established a new precedent. Now I don't know
14 if we've had enough time to discuss that precedent. If we wish
15 to do it, again, I am concerned about a single point of data;
16 there are, you know, and I would like if, you know, to be done
17 in a more in the Planning Committee. It would have been a more
18 appropriate—how to use quality data. And I think that's
19 initially how Art Levin had intended this, but here it is. So we
20 have to be concerned about the precedent we are also going to
21 establish, but we have been presented, I think, quite
22 competently with a lot of information, good data, well
23 presented, well written, well researched his arguments
24 for/arguments against. And I think we have to render a decision,
25 just to vote on this application. So with that, I just tried to

1 kind of summarize the activities and I hope everybody has a
2 chance to read all the documents. I didn't want to repeat them,
3 but you have to make a decision now on if we are going to vote
4 yes and if there is any other questions of what I have said or
5 any statements you want to take issue with, please, everybody
6 feel free.

7

8 JOHN PALMER: One more, Jeff. The question I have is, and
9 I understood this from the last few discussions, is that if the
10 application's approved, Big Apple taking over those operations
11 will retain the physicians, staff, that is currently operating
12 those facilities, and the changes in staffing would be amongst
13 nursing staff. There was a question about social work staff and
14 their role in that and I just wanted to get clarification on
15 that, because I didn't quite get those details.

16

17 JEFF KRAUT: Could you respond, Charlie? I mean, I think
18 I remember the social work comment. I don't, I think I know the
19 answer.

20

21 CHARLIE ABEL: Yeah, I mean there are specifics there that
22 I can't address adequately. Probably the applicant would be the
23 best person to address that.

24

1 JEFF KRAUT: OK. Do you want to call? Do you want to have
2 the applicant... I am not sure the applicant should speak now, in
3 all fairness. I don't want to start this issue. My recollection
4 is that doctors remain in the employ of HHC there. There was a
5 concern expressed that in other settings where they have done
6 it, there's fewer social workers. There's a different staffing
7 pattern and people who spoke in opposition believed that that
8 staffing pattern compromised care and... but again, but I think
9 that was the issue. I think they then... and I think the applicant
10 did acknowledge to us that it was a different staffing pattern.
11 Yes, they do use a different staffing pattern. Yes. Dr.
12 Berliner.

13

14 HOWARD BERLIER: Jeff, I want to take a little bit of
15 issue with what you reported are as saying..

16

17 JEFF KRAUT: No, I didn't say. He didn't offer an opinion
18 on this application.

19

20 HOWARD BERLINER: No, no, I understand. I mean, but I
21 mean the fact is that this is a body that was set up almost 50
22 years ago, you know, with three, given three areas to look at.
23 You know, whether we do a good or bad job about looking at those
24 three issues is a different discussion, but one of the things

1 that, from my perspective, Art's always maintained is that we
2 collect all this information, all this data about quality.

3

4 And we don't use it.

5

6 And that it doesn't make any sense not to use it in our
7 decisions and it raises, for me at least, a larger question is
8 why are we here? I asked Charlie last meeting what the meaning
9 of life is, but the real interesting question is what is the
10 meaning of PHHPC? I mean, what is it that we are doing, do we
11 just approve applications? I mean, we should be doing something
12 more and this is not the, this is not about this application,
13 but this application certainly raises these questions and I
14 wonder if we can give more worth to, I know we keep saying this,
15 but...

16

17 JEFF KRAUT: John.

18

19 HOWARD BERLINER: You know, more worth to John and this
20 Committee to kind of think about are there new criteria.

21

22 JEFF KRAUT: I think that is. That is absolutely, you are
23 right. I never expected the conversation to come in during an
24 Establishment action; I always expected we would figure it out
25 and do it in another venue. And see what's appropriate to ask,

1 just as we ask for Medicaid access numbers on the am-surg
2 applicaton. It's not only our right, it's an obligation. And
3 more and more data is being available, it should come in here,
4 and we should be making better decisions, or we should be
5 reviewing the concept of the definition of competence. And so
6 there's a process, but I think we have to, you know, and I don't
7 want to get into the data TRIBES issue with which data, so, but
8 I don't disagree with you and maybe that will be the outcome of
9 this. Ms. Carver Cheney and then Dr. Bouton Foster.

10

11 MS. CARVER CHENEY: Yes, in an application I am working on
12 now, I was told by the Department that they don't make a
13 recommendation as far as competence goes. They make it as far as
14 character goes, but when it comes to competence, it's up to the
15 Public Health and Health Planning Council.

16

17 JEFF KRAUT: I think that's correct, but they have to
18 provide us with data and the data that they historically... I
19 mean, you could describe... let me not answer.

20

21 CHARLIE ABEL: No, the Department's review for
22 establishment applications and the individuals who are subject
23 to establishment are on character and competence, so I am not
24 sure where you got that information from, but we may have to
25 educate that person.

1

2 JEFF KRAUT: OK, so Dr. Bouton Foster, Dr. Gutierrez,
3 then Dr. Strange.

4

5 CARLA BOUTON FOSTER: So, looks like Big Apple, well Big
6 Apple will acquire, if approved, four sites currently owned by
7 HHC in Brooklyn, two in Harlem, and one in the South Bronx.
8 Currently they own seven dialysis centers in New Hyde Park,
9 Ridgewood, West Nassau, and one in Central Brooklyn and some
10 other places. So the question that I have now is the current
11 population that's being cared for by Big Apple, do they have the
12 same socio-economic needs? They have the same comorbidity in
13 terms of end-stage renal disease, but are the populations the
14 same? I am not as familiar with New Hyde Park, Ridgewood, and
15 West Nassau as I am with some of the other HHC sites. So it's
16 taking over a population of people with different
17 characteristics based on where they live, so that's a question
18 that I have. Have we looked into that? It's not only an
19 acquisition of dialysis centers, but the people, the family
20 members, the resources around those centers and have we looked
21 at that also?

22

23 CHARLIE ABEL: I can tell you that the Department hasn't
24 gone out and done any kind of analysis of the individuals and
25 the individual needs of folks who may require dialysis in those

1 neighborhoods, but the applicant, the members of the applicant
2 entity have extensive experience operating facilities more, you
3 know, more than one facility. The data is in there and where
4 they operator I am not sure those communities are very much
5 different from the communities that they propose to operate in.

6

7 CARLA BOUTIN FOSTER: But I... may I? I think it's
8 important that we know this information because taking over
9 dialysis center on the Upper East Side is different from a
10 dialysis center in the Lower East Side or the South Bronx, so I
11 think that is something that is important.

12

13 JEFF KRAUT: Well, they operate in Elmhurst, right? So
14 they are operating in HHC facilities and I, you know... I mean I
15 happen to know the communities. I don't know who they treat in
16 the centers. I just happen to know the communities, and think
17 they are similar, but it's a valid issue. Who did I say, doctor...
18 did? No... who... Dr. Gutierrez and then Dr. Strange.

19

20 ANGEL GUTIERREZ: To anybody in this body who has
21 attended a quality improvement course anywhere would agree with
22 me probably that Mr. DEMMING would be twisting in his tomb. We
23 are taking about data and we don't know whether the data has
24 been analyzed or acted upon. I think if we are going to make any
25 changes forward—not at this point, I don't think we can think

1 retrospectively, because we have not acted in a quality-
2 improvement mode. Data is dead. It's there. And unless you act
3 upon it with a quality-improvement effort, you can heavily
4 criticize an organization. In fact, data that is negative is
5 valuable. It helps you grow. I would argue that rather than
6 switch into a punishing, one that produced the data without
7 knowing what it is that we are pushing them for, we need to act
8 on it and try to improve in the future. And perhaps then the
9 question to be asked to future applicants is show us an example
10 of negative data that you had in the past and show us how you
11 worked at trying to improve that data. That's all.

12

13 DR. STRANGE: I, too, am very concerned about the quality
14 issues as a physician and as a fiduciary of this Council to move
15 forward with something that we're not totally comfortable with
16 because there's enough refuting data back and forth about what
17 is good and what is not good here. To just say we can
18 grandfathered in and I am not comfortable with that, I have to
19 say. So I am very concerned about the quality as is presented
20 here today because there's enough data refuted in the letters
21 that makes me concerned as both a physician and as a member of
22 this Council. And if I may ask however, and again, maybe I am
23 off base and maybe this came up somewhere else, whoever wants to
24 answer this. You know our last application we just approved—and
25 again I don't know the legalities of this, so somebody can

1 educate me—in the Pure Life Renal of Buffalo, they had a net
2 income of [\$]1.73 million and a purchase price of [\$]12 million.
3 And if this is being done by HHC in part because of some issues
4 that deal with budgetary issues, we now have a corporation that
5 has a net income that looks like it could be upwards of [\$]3
6 million, but we're selling this thing at [\$]1.1 million. Now
7 offer any bidder 1.7-to-12 to 3-to-1, something doesn't make
8 sense to me here unless I am missing something. I may just be
9 totally off base on this whole process. I would think that this
10 dialysis or these dialysis centers should sell for a lot more
11 than [\$]1.13 [million]—and again, I am just bringing that up as
12 fair market, this has the appearance maybe. It is somebody who
13 does sit on our board here at this Council and please I am not
14 suggesting that at all, but I am just reading it. And I just
15 think that is a concern for me as I just read this.

16

17 JEFF KRAUT: I don't know how to respond to that, but
18 Charlie, you want to take a shot. Other than he's reading the
19 income statements.

20

21 CHARLIE ABEL: I can take a shot from a few different
22 perspectives. One, I can tell you that the Department does not
23 decide what is a good deal and what is not a good deal from a
24 financial perspective between a willing seller and a willing
25 buyer. Do not. We do run metrics with respect to financial

1 performance of an applicant, as well as, you know, especially if
2 they have other facilities and how they are operating, to
3 compare their proposals to their actual experience, and what is
4 reasonable with respect to a budget. And both of these budgets,
5 the budgets have been reviewed thoroughly and they are both, in
6 both applications they have been determined to be reasonable
7 budgets. Every transaction is different. Some transactions
8 include real property. Some transactions include just the
9 license. And in the HHC facilities, those are operator changes.
10 There's no transfer of real property other than the equipment
11 and the like. Not every, some facilities—and you can draw these
12 analogies to the nursing home industry as well, where you have
13 facilities that are owned by landlords and not the operator. So
14 the per-bed transfer price varies greatly.

15

16 DR. STRANGE: There's no fair market, so to speak, is what
17 I am asking.

18

19 CHARLIE ABEL: We determine, with respect to fair-market
20 rates, we make the determination as to whether, for rental
21 properties, if the rent that is being charged the applicant,
22 which typically is a PATH THROUGH ON OUR RATE is fair market
23 rate. And so we do look at that, but with respect to the actual
24 transaction, the purchase price, to the extent that it—since

1 purchase price itself is not reimbursable, we do not make a
2 comment on market rate for purchase price.

3

4 JEFF KRAUT: Dr. Palmer.

5

6 JOHN PALMER: I want to thank Dr. Gutierrez for putting us
7 on point. Either use what's in front of you or you don't, the
8 information you have or you don't. Whether we had it before or
9 we didn't is one thing, but we've got it, use it. Number two is
10 in the lives of the individuals that are being dialyzed and
11 those of us who have met them who have sat next to them and
12 talked to them and held their hand, we know how important it is
13 to have the services that have sustained them and if you don't
14 use the social determinants to understand what those services
15 need to be, it's important that we know it. We can't, at this
16 point, talk with any clarity about the social working staff. We
17 can't at this point talk with any clarity about the staffing
18 there. So, it makes it easier, obviously, to be very concerned
19 about this, even knowing that there's no dark past for the
20 person who is a vendor; there is actually a track record that
21 they have provided care to those people. It's entering a new
22 situation and using new, a new way of looking at it and judging
23 it that I think we are faced with.

24

1 JEFF KRAUT: So, my response, just to comment on those
2 comments is this. And this is where I come down on it: You're
3 right. We can't and we don't. And I am not even sure we should,
4 because that is the responsibility of the governing authority of
5 this institution. According to the health code, the governing
6 authority is responsibly for the quality of care. They are
7 responsible to look at those issues, to look at the staffing, to
8 look at the deal they wrote, to look at the quality data, and
9 they have made a determination—not once, but twice. They have
10 been open to public hearings, they have been involved in a
11 political process, and they have yet to come forward into this
12 room over the period of a year to say we are comfortable, we're
13 taking responsibility for this action, and we're asking you to
14 approve it. Now, again, I am not saying the issues that were
15 raised aren't important ones. I think they are and echo Dr.
16 Berliner's concern, you know. We need a venue to discuss that
17 and that we just don't ignore it. I am just suggesting this
18 application is an entity who will still retain quality
19 responsibility to say I want this entity to operate my dialysis
20 center. Just as we have approved a—I don't know how many we have
21 approved in the last couple and we have approved this applicant.
22 They have been satisfied that within the HHC facilities, where
23 they have responsibility, do you think they would have been
24 permitted to do this at Elmhurst had they not had a good outcome
25 at Elmhurst. So I am just, I am not willing to substitute our

1 two or three hours of conversation for that of the governing
2 authority, but I am willing, if I feel there's overriding
3 evidence, I'll support the fact that, OK, what did they miss?
4 But they had to go through all of this. And that's the same
5 issue about the staffing. And that's where I come back is
6 there's—I want to participate, I want to use the data, but I
7 want to use it in a very consistent way that's uniform and the
8 applicant's know when we come into the room I am probably more
9 conservative in protecting the process of precedent and also
10 establishing new precedent, which I am absolutely wonderful, I
11 would be happy to do, as long as we do it in a very careful and
12 deliberate way I am very happy to do that. But I am not, I just
13 saying I am not substituting my personal judgment for the
14 governing authority on this particular matter. That's all. Yes.

15

16 MS. CARVER CHENEY: How much weight would we give to the
17 councilmember who came and said it wasn't taken back to the
18 Council the way that was promised?

19

20 JEFF KRAUT: Well, I don't think this way, we never knew
21 how this was going to be—we never discussed, we never got to
22 that point. We were supposed to really, I think, you know...

23

24 MS. CARVER CHENEY: I meant the City Council, not...

25

1 Oh...

2

3 JOHN PALMER: The public advocate, she's talking about.

4

5 JEFF KRAUT: The public advocate. All I can say is the
6 application that is before us today. I don't know any other way
7 to say it. It is before us. That's above our pay grade maybe,
8 but it is what it is. So, if I don't hear any other comments,
9 I'd like to call a vote and see where we come out and then we'll
10 take it from there. The motion is to approve, as recommended by
11 the Department of Health and it has been seconded. All those in
12 favor, aye.

13

14 [Aye]

15

16 Opposed? Three oppositions. Abstentions. Wait a minute. Oh,
17 wait. Let's talk about abstentions, but let's get a vote out,
18 cause I started the vote, so let's complete the vote. So could
19 you just tell me the... let me do the roll call. We need 13,
20 excuse me, 13 affirmative votes for an approval.

21

22 Dr. Berliner.

23 No.

24 Dr. Bouton Foster.

25 Opposed.

- 1 Dr. Brown.
- 2 Abstain.
- 3 Ms. Carver Chaney.
- 4 Abstain.
- 5 Mr. Fassler.
- 6 Yes.
- 7 Ms. Hines.
- 8 Yes.
- 9 Dr. Gutierrez.
- 10 Yes.
- 11 Mr. Holt.
- 12 Yes.
- 13 Dr. Kalkut
- 14 Yes.
- 15 Dr. Palmer.
- 16 Opposed.
- 17 Ms. Rautenberg.
- 18 Yes.
- 19 Mr. Robinson.
- 20 Yes.
- 21 Dr. Ruge.
- 22 Abstain.
- 23 Dr. Strange.
- 24 Opposed.
- 25 Dr. Torres.

1 Yes.

2

3 [counting]. It's not going to pass.

4

5 JEFF KRAUT: Just give me the number.

6

7 [counting]

8

9 JEFF KRAUT: I have eight affirmative votes, four
10 against, and three abstentions. Eight and three is eleven, so
11 even when I vote, it wouldn't change it. OK. So the motion
12 fails. [applause]. So we're in a position to now, the
13 individuals who abstained. Now abstention, god, we have to go
14 through the... this is where I really miss Mr. Booth, cause he had
15 a pat discussion about... You use an abstention when you are,
16 have declared an interest and cannot fairly render a vote. So we
17 believe that those abstentions are you have done is because you
18 cannot fairly render a vote and are... so I just, and if anybody,
19 given the vote, wishes us to have a second vote..

20

21 JOHN PALMER: Mr. Chair. Jeff, I appreciate your providing
22 a clarification or an explanation for abstentions. Let me just
23 share with the Council my reason for abstaining. I am really
24 challenged. I believe that yes, there are precedents that we
25 have set in the past and yes there is a value to review those

1 precedents, but I must confess, I am really concerned on the one
2 hand about undertaking that type of exercise with an applicant
3 in front of us; that makes it even more challenging. So yes, I
4 have an interest as a physician providing care. And with respect
5 to that, as much as I know that there's always eternal debates
6 about quality, no matter what side you are on, you are going to
7 get positions, scientists are going to look at the data in a
8 different way. And so on the part of me, when I see patients, I
9 want the best that they can. On the other hand, on the Council,
10 I am looking at myself and looking at it from a macroscopic
11 view. I am looking at the best interests of the citizens of the
12 State of New York. That's... cause there's clearly a need here,
13 because if there weren't a need, the service wouldn't be
14 provided. There's no question of need. The issue to me is that
15 issue about the quality. And yes we are in 2015 where it makes
16 sense that we take advantage of the evolving science and
17 information base is before us, so I... it's troubling for me. My
18 interest as a physician is to provide care. My interest as an
19 administrator is to say, well, again a willing buyer and willing
20 seller actually made an agreement, and if that's the case we
21 have not in the past, in fact, objected to that, why are we
22 objecting to that on this basis without sufficient grounds. So I
23 am troubled in my interest as a physician.

24

1 JEFF KRAUT: Alright. Alright. I respect that point of
2 view.

3
4 JOHN RUGGE: I would likewise. I am aware that an
5 abstention does not count of yes and a certain number of yeses
6 are required, but on the same token I think that we, as the
7 supreme court for this kind of decision, we can't abdicate our
8 concerns about quality to another institution or another body
9 when that institution has concerns about costs that may override
10 the quality concerns. My reason for not casting a "no" vote is I
11 regard this a vote without prejudice, I am just not... I think
12 there is too much controversy and that we as a Council don't
13 have the criteria for our own actions clear enough to make a
14 considered judgment in the light of the degree of uncertainty
15 raised by all of the questions. So I think this is not simply a
16 stupid vote because I can't decide, but it's a considered vote
17 based on all of those considerations.

18

19 JEFF KRAUT: Thank you. Dr. Kalkut.

20

21 GARY KALKUT: Given the vote and the discussion here, I'd
22 like to make a motion for disapproval of the application.

23

24 JEFF KRAUT: OK. Before I ask for a second, let me
25 explain why we're going to do that. We're gonna, if you want to

1 consider that. The reason is if we are the final authority on
2 establishment, this is not a recommendation to the Commissioner.
3 If you remember the Long Island Hand Surgery, if we vote... if we
4 do not take another vote, the applicant is in legal limbo—he
5 can't, the applicant cannot avail themselves of the due process
6 to review the decision of the Council. So, they have to have a
7 basis to go forward to do that. And out of fairness or to avoid
8 that, if you remember that two-year legal limbo we were in with
9 Long Island Hand, Dr. Kalkut has made a decision for
10 disapproval. I'd like to have a second.

11

12 Second.

13

14 The second, Dr. Gutierrez. So, the discussion of that vote is we
15 need 13 affirmative "no" votes to disapprove the application.

16

17 JOHN RUGGE: And to be clear, you are suggesting that a
18 vote in favor of disapproval is actually to the benefit of the
19 applicant?

20

21 JEFF KRAUT: I... it... I don't know. Well. I don't think
22 it's as good as certainly an approval, but I think it permits
23 the applicant to avail themselves of the due diligence and the
24 due process and my belief is, I mean, the applicant is here, but
25 I believe it is, it historically has been in the interest of

1 every applicant not to be in limbo. So I am making, Mr. Able,
2 maybe there's...

3

4 CHARLIE ABEL: No, if we are up to comments, just wanted to
5 advise you that—and I know there's been a lot of discussion on
6 this already—but if there is additional information that the
7 Council would like us to obtain from the applicant or other
8 sources, you know, that is an alternative that we could obtain
9 that information and if the... if no motion receives approval
10 here, it essentially would roll over to the next cycle. But the
11 Department is certainly willing to get whatever information is
12 requested by the Council. Thank you.

13

14 JEFF KRAUT: OK. OK, yes, Dr. Palmer.

15

16 JOHN PALMER: Charlie, I'd like to take you up on that. If
17 we get agreement here again, there are a number of questions I
18 really need answers to.

19

20 JOHN RUGGE: So, does the vote...

21

22 JEFF KRAUT: Wait, hold on. I am
23 Confused. But, why don't you go.

24

1 JOHN RUGGE: Point of information. Does a vote for
2 disapproval preclude reconsideration in the next cycle or two?

3

4 JEFF KRAUT: Yes, it does.

5

6 GARY KALKUT: Charlie, can I ask? So you are offering an
7 alternative to the motion for disapproval by gathering more
8 data. Is that what you are suggesting?

9

10 JEFF KRAUT: Could I just... I just want to get a
11 clarification from legal counsel. [inaudible off tape
12 discussion] In order... could you come over here because it will
13 hinge upon your ability to perform certain analytic work in time
14 for the next cycle? Let me just clarify if we go that route, are
15 you able to... [inaudible off tape discussion] Yeah, that's the
16 other reason. Yeah. OK, thank you. We have a motion on the floor
17 for disapproval. If the motion for disapproval fails, they are
18 back to where they were. We could consider another motion if you
19 wanted to lay over to the next cycle. The next cycle will occur
20 in Albany, just to let you know, and then if we are going to lay
21 it over, we are going to be very specific. What do we want to
22 occur? That's all. And then the Department has to... has that time
23 to complete, but we do have a motion. I wanted to, I have to
24 dispense with the motion for disapproval, so if people vote no,
25 it's no, and then they can resubmit. They can avail themselves

1 of the process. [inaudible question]. I am sorry. This is a
2 motion to disapprove and you have to vote "yes" to disapprove
3 it. OK? Is that clear? The... if you vote "yes" and we have 13
4 "yes" votes, the application is disapproved. It could come back
5 to us, they could resubmit it, but the application, for our
6 purposes, we've dispensed with the application. We've rendered
7 our decision.

8

9 AND IF THAT DECISION, IF THIS APPROVAL fails.

10

11 Then I will come back and talk to you later, but what I can
12 consider another motion. I can't consider a motion, I can
13 consider two motions: One to approve or I can consider, we can
14 consider, another motion to lay it over a cycle with specific
15 requests to the Department of Health.

16

17 JOHN PALMER: Just a comment. If there were eight for in the
18 last vote, eight for approval.

19

20 JEFF KRAUT: Eight, four, three.

21

22 JOHN PALMER: Eight, four, three. I am guessing we're not
23 going to get 13.

24

25 JEFF KRAUT: Well, let's not guess, let's see.

1

2 JOHN PALMER: Wait, wait, wait... Alright, so we're going to
3 go if there's somebody that's already seconded this motion?

4

5 JEFF KRAUT: Yes, Dr. Gutierrez. We have a motion before
6 us, so that's what we're discussing now.

7

8 JOHN PALMER: I see. Alright. So if we go forward, we vote
9 on this motion, and we get 13 noes and then done. If we don't 13
10 noes, where are we?

11

12 JEFF KRAUT: We can have a second motion, we can have
13 another motion. Well, we have three options. We could do
14 nothing, they are in limbo. Two, we could vote to approve again,
15 have another motion to approve because you have had a change of
16 heart or reconsidered. Or you can do, you can make a motion to
17 do what you just said, to Mr. Abel is we will ask this to be
18 held over and brought back for another cycle and we want
19 additional information, and we'll specify that. That's, those
20 are our basic choices.

21

22 JOHN PALMER: Comment. I think the motion that you that
23 you just outlined best serves the needs of certainly the people
24 who abstained and my needs for clarification, as well. So I
25 would go in the direction.

1

2 JEFF KRAUT: Right, you would vote that no to the motion
3 before you right now. If you want to have that other
4 opportunity, you have to vote no now. So is... do you have... you
5 furrowed your brow, so you get to ask a question.

6

7 CARLA BOUTON FOSTER: So if we vote no, then we would
8 vote whether or not it comes back in April or no is no?

9

10 JEFF KRAUT: No, if you vote no that means you are not
11 disapproving it.

12

13 CARLA BOUTIN FOSTER: No, no... if you vote yes, sorry, if
14 you vote yes.

15

16 JEFF KRAUT: You are disapproving the application.

17

18 CARLA BOUTIN FOSTER: And the option... so what's the...

19

20 JEFF KRAUT: Then you can make another motion. The next
21 motion. Let me make it simple without being cute is you could
22 say I want to now... the next motion could be I have a motion to
23 bring it back to the Council in the next cycle with the
24 following information for consideration.

25

1 CAN THE MOTION BE WITHDRAWN.

2

3 JEFF KRAUT: Ah, yeah, I made the motion. I am not
4 withdrawing the motion. Yes, it could be withdrawn; I will
5 refuse to do so.

6 OK. Everybody OK? The motion is to disapprove. If you want
7 the application disapproved, vote "yes." OK, the application to
8 be disapproved. If you don't want the application to be
9 disapproved and consider another motion, vote "no." OK? I know
10 it's a... bear with me. And if there's any confusion while you are
11 voting, I'll stop and we'll clarify it. I'd like to call a vote.
12 The motion is to disapprove the application. All those in favor
13 of disapproving the application, vote yes. We have one, two,
14 three, Dr. Rugge, four, five. We have five yes votes.

15

16 IF YOU DISAPPROVE IT, IT MEANS IT WILL NOT COME BACK.

17

18 It will not come back.

19 Or they can reapply.

20 Or they can reapply, but they are not... it's not coming back. All
21 those in favor—do a roll call—of disapproving. You have, you are
22 voting yes, no, or abstaining.

23

24 And if while you vote, if you want to clarify it, ask the
25 question.

1

2 JOHN RUGGE: I still need some clarification. My interest
3 is in protecting the rights of the applicant to the max on this
4 because I think this applicant is suffering from ambiguity about
5 what our quality standards are. I think...

6

7 JEFF KRAUT: You'll vote against the application? Against
8 the motion.

9

10 JOHN RUGGE: You vote against the motion.

11

12 JEFF KRAUT: To prevent 13 affirmative votes.

13

14 JOHN RUGGE: But then that best protects the rights of
15 the applicant?

16

17 JEFF KRAUT: I don't know what protects the rights of the
18 applicant; it's what you want to do. If you feel that way, you
19 could consider it because it keeps it alive another cycle. We
20 are not asking the applicant what they want. Yes. Go.

21

22 [inaudible question]

23

1 CHARLIE ABEL: We don't have a minimum. If this project
2 was disapproved today, the applicant could submit a new project
3 tomorrow.

4

5 GARY KALKUT: OK, I think one of the advantages of
6 bringing it back sooner is for us to specify what data we are
7 actually looking for. Cause if it's amorphous, then it becomes
8 very difficult, and I think somewhat unfair to the applicant.

9

10 JEFF KRAUT: So the motion is to disapprove, OK? All
11 those in favor. Yes. No that's OK. It's confusing so, I am...

12

13 CARLA BOUTON FOSTER: If I would like to get more
14 information.

15

16 JEFF KRAUT: Vote against. Vote no on the motion.

17

18 CARLA: OK.

19

20 JEFF KRAUT: OK. Is there? Let me start again. Let me do
21 a roll call.

22

23 JOHN RUGGE: Can we abstain?

24

1 JEFF KRAUT: At this point, you could do whatever you
2 want. You could abstain, you could... you can't leave because I
3 need a quorum. That's the only think you can't do. Call the
4 vote.

5
6 Dr. Berliner.

7 JEFF KRAUT: You are disapproving the application. Yes I
8 want to disapprove, no I want to consider another motion.

9
10 Yes.

11 Dr. Bouton Foster.

12 JEFF KRAUT: You are disapproving the application; no I
13 want to consider another motion.

14

15 CARLA BOUTIN FOSTER: No. No, I want to consider another
16 motion.

17

18 JEFF KRAUT: No. I'll interpret.

19

20 Dr. Brown.

21 Abstain.

22 JEFF KRAUT: Consistency.

23

24 Ms. Carver Cheney.

25 No.

- 1 Mr. Fassler.
- 2 No.
- 3 Ms. Fine.
- 4 No.
- 5 Dr. Gutierrez.
- 6 No.
- 7 Mr. Holt.
- 8 No.
- 9 Dr. Kalkut.
- 10 No.
- 11 Dr. Palmer.
- 12 Yes.
- 13 Ms. Rautenberg.
- 14 No.
- 15 Mr. Robinson.
- 16 No.
- 17 Dr. Ruge.
- 18 No.
- 19 Dr. Strange.
- 20 Yes.
- 21 Dr. Torres.
- 22 No.
- 23 [counting]
- 24
- 25 What's the...

1

2 It's 10.

3

4 JEFF KRAUT: Ten yes. No, how many for? Yes, no, abstain.

5

6 Three yeas. Ten nays. And one abstained.

7

8 JEFF KRAUT: OK. The motion fails. We have three yeas,

9 ten nays, one abstention. I will consider another motion on this

10 application. Yes.

11

12 CARLA BOUTON FOSTER: So the applicant can come back to
13 answer some additional questions?

14

15 JEFF KRAUT: OK, so we are going to have a motion for
16 this applicant to come back on the next cycle to... yes?

17

18 HOWARD BERLINER: An amendment, can the applicant come
19 back in the New York City cycle rather than the next cycle?

20

21 JEFF KRAUT: I think, given the issues here, I think we
22 should. Does anybody feel differently? I mean, I know it's a
23 burden; it's been, you know, the next cycle is up in Albany. So
24 let's just be clear when that is. So it's March/April is Albany...
25 it's a long time.

1

2 [It's a hardship for others to come up for Albany.]

3

4 JEFF KRAUT: OK, what's the preference, just before we
5 make the motion?

6

7 GARY KALKUT: Does the motion come to the Council or...]

8

9 JEFF KRAUT: It's not, see this is the issue. We're not
10 having, there's no public hearing on this anymore. We've done
11 the public hearing, it's not going back to Project Review. It's
12 coming to the full Council. Yes.

13

14 JOHN RUGGE: Some time ago off line a leader in this room
15 suggested that the need for a quality committee and I think that
16 if we had a chance in a quality committee to explicate our own
17 standards and our own thinking about what competence entails and
18 how we should approach this issue, we would have the context to
19 come back to this issue. Without that I think we're going for a
20 round of circles.

21

22 JEFF KRAUT: So, John, let me ask you, if we did this, if
23 we took the data and brought it back to the quality.. to a
24 committee, you know, bring it back not to Establishment, not to

1 Project Review, but brought it to a committee to look at the
2 data and advise the Council. Is that what you...

3

4 JOHN RUGGE: I think it's also looking at the data, but
5 it's also explicating what we mean by "competence" and how does
6 that relate to quality and what should we be looking toward? Is
7 it really the statistical norms in terms of performance or is
8 that...

9

10 JEFF KRAUT: I think that has to be beyond this one case.
11 It's a broader conversation, cause competence to run a hospital,
12 to run a dialysis center, you know, it's multidimensional. It's
13 going to take a longer process than one cycle to do. I mean,
14 what I'd like to do is...

15

16 JOHN RUGGE: I think some of the, just to say, I think
17 some of the hesitation from at least the abstainers (at least
18 one abstainer) is we are murky about ourselves. We don't what
19 we're expecting of ourselves, we don't know what our role should
20 be, we don't know how to enact what kind of criteria we are
21 using. And this particular applicant, if you will, is suffering
22 from that lack of clarity. And I am just looking, for the sake
23 of this applicant, what can we do to address that and I think
24 you are correct, we need a longer-term analysis of how we're
25 approaching these issues.

1

2 JEFF KRAUT: So let's come back to this. Let's, before we
3 form a motion and where it's going to be, just let's be clear.
4 The issue is the concept of the worse-than-expected, the quality
5 criteria, is that an exclusionary criteria? Does that mean that
6 the entity is not competent? So we'll ask the Department to
7 research that, speak to the source of that data—which is the
8 University of Michigan, the KECC, is the producer of that data—
9 and the biostatisticians there are pretty expert in I think
10 addressing that issue and how does that... does that disqualify a
11 provider from being competent in the context we're doing? And
12 then Dr. Palmer, you raised issues about concerning about the
13 staffing that's done. And maybe we will require the Health and
14 Hospital Corporation to address why they believe that is not the
15 case, OK? And to give us a letter or something on why that's not
16 the case.

17

18 HOWARD BERLINER: Sorry, I don't see why wouldn't this
19 come back to the Project Review Committee?

20

21 JEFF KRAUT: Well, the Project Review Committee met and
22 it voted. There was no other motion to put it off a cycle. We're
23 putting it off a cycle in the Council. Am I correct? I mean, the
24 Project Review Committee did not put this off a cycle, they just

1 sent it up here without a vote, a recommendation, and we're just
2 putting it back. Why would we put it back in there and then...

3

4 HOWARD BERLINER: Because if you don't put it back in
5 there, there's the, there's no way for the public to comment.

6

7 JEFF KRAUT: Well I, hm... Yeah, we have to do that.

8

9 CARLA BOUTON FOSTER: That's the reason why I would like
10 it to come back, to give stakeholders an opportunity to bring up
11 issues or to answer our questions.

12

13 JEFF KRAUT: OK. Alright.

14

15 CARLA BOUTON FOSTER: Otherwise we're operating with the
16 same information.

17

18 JEFF KRAUT: OK. So let's do this. Let's make a motion to
19 put... we're going to have to put it off two cycles though, if
20 it's going to be in New York City, OK? And I am sorry, and I
21 apologize to the applicant. The applicant may have preferred a
22 no vote, you know, so yes.

23

24 DR. TORRES: Just reflecting here, having been on SHRPC
25 and then transitioning to PHHPC, I don't recall this ever

1 happening in any of our previous meetings. I remember, for
2 example, right now last week our Visiting Nurse Service of New
3 York.

4
5 [That's up in Westchester.]

6
7 Exactly, so then they can follow that due process, whatever it
8 is that they need to engage in, and then not come back here, so
9 that's what's spinning in my mind now. I am a little confused
10 with this other piece.

11
12 JEFF KRAUT: Well, it's the other piece is your
13 colleagues are making a decision and in the situation that I
14 think is somewhat similar, somewhat different. They just raised
15 a different approach. Yeah.

16
17 HOWARD BERLIER: We have asked the applicant in the past
18 if they would prefer the no vote or, you know, something else. I
19 mean, so...

20
21 JEFF KRAUT: So, the applicant is here. I am going to ask
22 one question and it's a yes or a no question. Would you prefer a
23 no vote or not to come back another cycle? Just if one member of
24 the applicant could identify themselves. Dr. MATU, just go to

1 the mic so we have it recorded. Yes. Dr. MATU, just use the mic,
2 cause you are not going to sit down. Yes. Use the middle.

3

4 DR. MATU: We would like to come back in front of the
5 Committee.

6

7 JEFF KRAUT: OK. OK, so I'd like to make a motion. Like
8 to make a motion that we're going to put this back to two
9 cycles, it's going to return to the Project Review and
10 Establishment Committee, which will be held in New York City,
11 May/June. I HOPE I AM HERE.

12 In May. It's the May/June cycle, but it's the May date.
13 What date is that date?

14

15 [Late in the month, the 21st.]

16

17 It's late in the month? OK. May 21st, we'll come back. The
18 Department of Health is requested to provide us information on
19 the aspect of worse-than-expected, is that in and of itself
20 sufficient to deny, to exclude an applicant from being
21 competent? Yes, Dr. Gutierrez.

22

23 ANGEL GUTIERREZ: Consistent with what I said the last
24 time I spoke, it's not simply just the data, but what actions
25 has the applicant taken to improve upon the data?

1

2 JEFF KRAUT: We'll ask the applicant, we'll be able to
3 talk about that issue, what they have done to rectify that.

4

5 WHAT DID THEY DO TO REMEDY IT?

6

7 And we'll talk about their quality and we'll ask the HHC to
8 respond to the issues that Dr. Palmer raised about their concern
9 about the staffing level and other operational aspects that have
10 been raised.

11

12 [Can we require them to COME TO THAT MEETING?]

13

14 We can't really require. I don't think I have subpoena, do
15 I?

16

17 [You're the chair.]

18

19 We strongly encourage them to come, but let's leave it to
20 them. That's it. You know, let's leave it to them. Excuse me.

21

22 [PUBLIC TESTIMONY ON THE 21st?]

23

24 Yes, of course. There'll be the same opportunity as we had
25 last time because it's done in Project Review. Yes, Dr...

1

2 HOWARD BERLINER: Just another thing. Some clarification
3 on the standardized mortality rate and if that rate is
4 standardized in a nursing home setting, is it standardized
5 within the nursing home?

6

7 Mr. Chair?

8

9 Yeah.

10

11 JOHN RUGGE: I just think also, using that next cycle, if
12 there were to be an ad hoc quality meeting or an opportunity for
13 discussions that we can have some clarification on the standards
14 we're applying to this case and that is if the mortality rate is
15 worse, is that by itself, is that a reason to exclude a provider
16 or is simply that beyond our purview? I think we need to know
17 our own thinking a bit in a more general way rather than simply
18 trying to apply standards we've not developed to one individual
19 application.

20

21 JEFF KRAUT: So do we want to, in the next cycle, have an
22 ad hoc quality meeting? Just to have a broader conversation in
23 Albany on that day? Is that doable? What?

24

25 [The ad hoc...]

1
2 We're going to make one up. I mean, actually I would love
3 to do it in the context of a committee meeting, so maybe John,
4 do you have a...

5 Either that or Dr. Boufford's committee.

6 Let me just leave it up to the Department of Health and let us
7 figure it out. We'll put it on the agenda of a committee and
8 invite everybody to attend. Yes, Dr. Kalkut.

9
10 GARY KALKUT: Yeah, I'd like to ask the Department if the
11 data worse-than-expected, these sort of qualitative, if there is
12 any information quantitative information on what's behind that,
13 what the differences are, what the... how risk is stratified, if
14 we're going to make decisions based on that, we should know as
15 much as we can. Worse-than-expected is not...

16
17 JEFF KRAUT: I would suggest let the Department do it and
18 for those of you who want to get educated, you go to the
19 website. The methodology is absolutely detailed there with
20 statistical formulas and algorithms that are used for adjusting
21 things and let's see who we'll possibly bring in to speak to us
22 on that matter in addition to the applicant. Yes, Dr. Bouton
23 Foster.

24

1 CARLA BOUTON FOSTER: And if we are going to make a
2 determination in terms of the numbers of social workers and
3 social services needed, we really need to know something about
4 the patient population.

5
6 JEFF KRAUT: We're not making that determination. We're
7 asking the Health and Hospital Corporation to comment.

8
9 CARLA BOUTON FOSTER: But in order for them to comment,
10 I think they would need to know.

11
12 JEFF KRAUT: Listen, let me just be real clear and it's
13 something I am not going to support. I am not running dialysis
14 centers out of this Council. I am not getting involved in
15 operational issues, I want to stay at policy levels, and I will
16 entertain any question that is relevant to it, but and I don't
17 mean to be sharp, particularly at you because I know you—I'll
18 just say we should get, ask the data that we want, but at the
19 level of we can't make decisions to say no you should have two
20 social workers versus three.

21
22 CARLA BOUTON FOSTER: Well, no. I think it is a policy
23 issue, because we need to know, I mean, even the zip codes, we
24 need to know something about the population, so it is...

25

1 JEFF KRAUT: But I think it will bring the population in.

2

3 CARLA BOUTON FOSTER: The populations, exactly.

4

5 JEFF KRAUT: I think your question we would ask them to
6 respond to that you raised, but as far as we getting
7 operationally.

8

9 CARLA BOUTO FOSTER: Well, no, no, you are right.

10

11 There's a bright... you have to agree there's a bright line here.

12

13 The population, we need to know the population.

14

15 XXX population.

16

17 Well, let the Department show us. The data is there.

18

19 Exactly.

20

21 I am sure it is there.

22

23 One operator for another...

24

1 JEFF KRAUT: OK, guys we have to go into executive
2 session, so I need to get this motion and I... cause we're going
3 to, I know some of you are leaving and we have to get this other
4 matter voted on or this other applicant will lose their rights.
5 Yes.

6
7 JOHN PALMER: It would be useful if any of the
8 stakeholders are involved that they provide, as early as
9 possible, to the Department of Health, the information they may
10 have because if we come to another committee meeting and we get
11 information from some other stakeholders, it's very difficult to
12 really evaluate that in the context of the Department of Health
13 having done theirs. So it would be useful from them if they have
14 any data to provide it to the Department of Health so that it
15 can be reviewed in the context and we can have that information.

16
17 JEFF KRAUT: Sure. I think we do want... we do not want the
18 information the night before we're meeting. Let's... we have ample
19 time now. Let the Department speak to the applicant and let's be
20 clear. I'd like to make a motion to hold this application over
21 one cycle. It will go return to the Project Review and
22 Establishment and to be held for two cycles—I am sorry, two
23 cycles—to be held in New York City on the date of May 21st.

24

1 JOHN RUGGE: I'd like to second that with a brief
2 commentary and that is we are absolutely addressing here the
3 Triple Aim. We're concerned about the population in the
4 community; we're concerned about measuring cost and quality; and
5 it ultimately comes down to a judgment call on this body that
6 has been appointed by the Governor to make those decisions and
7 we need criteria to understand how much lower quality might we
8 accept for a lower cost and vice versa.

9

10 JEFF KRAUT: I am very comfortable how today's
11 conversation... Time out. I think just...

12

13 [COMMENTS BEFORE YOU ARE seconding the motion.]

14

15 JEFF KRAUT: I know, but what do you want me to do? OK. I
16 have a second. Who seconded that motion? Doctor who?

17

18 Dr. Rugge.

19

20 Dr. Rugge seconded that motion.

21

22 Sorry.

23

24 I'll call a vote. All those in favor of...

25 [Aye]

1 Opposed? Abstention? The motion carries. That concludes the
2 public portion of today's meeting. We are now adjourning.

SUMMARY OF EXPRESS TERMS

The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying

- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

Pursuant to the authority vested in the Public Health and Health Planning Council by Section 225 of the Public Health Law, subject to the approval by the Commissioner of Health, Subpart 7-2 of the State Sanitary Code, as contained in Chapter 1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows, to be effective upon filing with the Secretary of State.

SUBPART 7-2

Children's Camps

(Statutory Authority: Public Health Law §§ 201, 225, 1390, 1394, 1395, 1399-a;

L. 2012, ch. 501)

Subdivision (o) of section 7-2.5 is amended to read as follows:

(o) The camp operator shall provide adequate supervision. *Adequate supervision* shall mean:

(1) supervision such that a camper is protected from any unreasonable risk to his or her health or safety, including physical or sexual abuse or any public health hazard; [and]

(2) as a minimum, there shall exist visual or verbal communications capabilities between camper and counselor during activities and a method of accounting for the camper's whereabouts at all times[.]; and

(3) at camps required to comply with section 7-2.25 of this Subpart, protection from any unreasonable risk of experiencing an occurrence which would constitute a reportable incident as defined in section 7-2.25(h)(4) of this Subpart.

Section 7-2.24 is amended to read as follows:

Variance; waiver.

(a) *Variance* - In order to allow time to comply with certain provisions of this Subpart, an operator may submit a written request to the permit-issuing official for a variance from a specific provision(s) when the health and safety of the children attending the camp and the public will not be prejudiced by the variance, and where there are practical difficulties or unnecessary hardships in immediate compliance with the provision. An operator must meet all terms of an approved variance(s) including the effective date, the time period for which the variance is granted, the requirements being varied and any special conditions the permit-issuing official specifies. The permit-issuing official shall consult with the State Department of Health and shall obtain approval from the State Department of Health for the proposed decision, prior to granting or denying a variance request for requirements in section 7-2.25 of this Subpart.

(b) *Waiver* - In order to accept alternative arrangements that do not meet certain provisions of this Subpart but do protect the safety and health of the campers and the public, an operator may submit a written request to the permit-issuing official for a

waiver from a specific provision of this Subpart. Such request shall indicate justification that circumstances exist that are beyond the control of the operator, compliance with the provision would present unnecessary hardship and that the public and camper health and safety will not be endangered by granting such a waiver. The permit-issuing official shall consult with a representative of the State Department of Health prior to granting or denying a waiver request. An operator must meet all terms of an approved waiver(s), including the condition that it will remain in effect indefinitely unless revoked by the permit-issuing official or the facility changes operators. The permit-issuing official shall consult with the State Department of Health, and shall obtain the approval of the State Department of Health for the proposed decision, prior to granting or denying a waiver request related to the requirements in section 7-2.25 of this Subpart.

New subdivisions (h)-(m) of section 7-2.25 are added to read as follows:

(h) Definitions. The following definitions apply to Section 7-2.25 of this Subpart.

- (1) *Camp Staff* shall mean a director, operator, employee or volunteer of a children's camp; or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to a children's camp pursuant to contract or other arrangement that permits such person to have regular and substantial contact with individuals who are cared for by the children's camp.
- (2) *Department* shall mean the New York State Department of Health.

(3) *Justice Center* shall mean the Justice Center for the Protection of People with Special Needs, as established pursuant to Section 551 of the Executive Law.

(4) *Reportable Incident* shall include those actions incorporated within the definitions of “physical abuse,” “sexual abuse,” “psychological abuse,” “deliberate inappropriate use of restraints,” “use of aversive conditioning,” “obstruction of reports of reportable incidents,” “unlawful use or administration of a controlled substance,” “neglect,” and “significant incident” all as defined in Section 488 of the Social Services Law.

(i) Reporting.

(1) In addition to the reporting requirements of section 7-2.8(d), a camp operator subject to section 7-2.25 of this Subpart and all camp staff falling within the definition of “mandated reporter” under section 488 of the Social Services Law shall immediately report any reportable incident as defined in section 7-2.25(h)(4) of this Subpart and Section 488 of the Social Services Law, where such incident involves a camper with a developmental disability, to the permit-issuing official and to the Justice Center’s Vulnerable Persons’ Central Register. Such report shall be provided in a form and manner as required by the Justice Center.

(j) Employee Screening, Training, and Code of Conduct

(1) Prior to hiring anyone who will or may have direct contact with campers, or approving credentials for any camp staff, the operator shall follow the procedures established by the Justice Center in regulations or policy, to verify that such person is not on the Justice Center's staff exclusion list established pursuant to section 495 of the Social Services Law. If such person is not on the Justice Center's staff exclusion list, the operator shall also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment as required by section 424-a of the Social Services Law. Such screening is in addition to the requirement that the operator similarly verify that a prospective camp staff is not on the sexual abuse registry, as required by section 7-2.5(1) of this Subpart.

(2) A camp operator must ensure that camp staff, and others falling within the definition of mandated reporter under Section 488 of the Social Services Law who will or may have direct contact with campers having a developmental disability, receive training regarding mandated reporting and their obligations as mandated reporters. A camp operator shall ensure that the telephone number for the Justice Center's hotline for the reporting of reportable incidents is conspicuously displayed in areas accessible to mandated reporters and campers.

(3) The camp operator shall ensure that all camp staff and others falling within the definition of "custodian" under Section 488 of the Social Services Law are

provided with a copy of the code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. Such code of conduct shall be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands such code of conduct.

(k) Disclosure of information

(1) Except to the extent otherwise prohibited by law, the camp operator shall be obliged to share information relevant to the investigation of any incident subject to the reporting requirements of this Subpart with the permit-issuing official, the State Department of Health, and the Justice Center. The permit-issuing official, the department and the Justice Center shall, when required by law, or when so directed by the department or the Justice Center and except as otherwise prohibited by law, be permitted to share information obtained in their respective investigations of incidents subject to the reporting requirements of section 7-2.25 (i) of this Subpart.

(2) Except as otherwise prohibited by law, the operator of a camp not otherwise subject to Article Six of the Public Officers Law shall make records available for public inspection and copying to the extent required by subdivision six of Section 490 of the Social Services Law and regulations of the Justice Center.

(l) Incident Management.

(1) The camp operator shall cooperate fully with the investigation of reportable incidents involving campers with developmental disabilities and shall provide all necessary information and access to conduct the investigation. The camp operator shall promptly obtain an appropriate medical examination of a physically injured camper with a developmental disability. The camp operator shall provide information, whether obtained pursuant to the investigation or otherwise, to the Justice Center and permit-issuing official upon request, in the form and manner requested. Such information must be provided in a timely manner so as to support completion of the investigation subject to the time limits set forth in this subdivision.

(2) Unless delegated by the Justice Center to a delegate investigatory agency as defined in subdivision seven of Section 488 of the Social Services Law, incidents of abuse or neglect, as defined in subdivision eleven of Section 488 of the Social Services Law, shall be investigated by the Justice Center. With regard to all other reportable incidents, as defined in Section 488 of the Social Services Law, the permit-issuing official shall initiate a prompt investigation of an allegation of a reportable incident, which shall commence no later than five business days after notification of such an incident, unless the Justice Center agrees that it will undertake such investigation. Additional time for completion of the investigation

may be allowed, subject to the approval of the department, upon a showing of good cause for such extension. At a minimum, the investigation of any reportable incident shall comply with the following:

- (i) Investigations shall include a review of medical records and reports, witness interviews and statements, expert assessments, and the collection of physical evidence, observations and information from care providers and any other information that is relevant to the incident. Interviews should be conducted by qualified, objective individuals in a private area which does not allow those not participating in the interview to overhear. Interviews must be conducted of each party or witness individually, not in the presence of other parties or witnesses or under circumstances in which other parties or witnesses may perceive any aspect of the interview. The person alleging the incident, or who is the subject of the incident, must be offered the opportunity to give his/her version of the event. At least one of the persons conducting the interview must have an understanding of, and be able to accommodate, the unique needs or capabilities of the person being interviewed. The procedures required by this Subparagraph (i) may be altered if, and only to the extent necessary to, comply with an applicable collective bargaining agreement.
- (ii) All evidence must be adequately protected and preserved.

(iii) Any information, including but not limited to documents and other materials, obtained during or resulting from any investigation shall be kept confidential, except as otherwise permissible under law or regulation, including but not limited to Article 11 of the Social Services Law.

(iv) Upon completion of the investigation, a written report shall be prepared which shall include all relevant findings and information obtained in the investigation and details of steps taken to investigate the incident. The results of the investigation shall be promptly reported to the department, if the investigation was not performed by the department, and to the Justice Center.

(v) If any remedial action is necessary, the permit-issuing official shall establish a plan in writing with the camp operator. The plan shall indicate the camp operator's agreement to the remediation and identify a follow-up date and person responsible for monitoring the remedial action. The plan shall be provided, and any measures taken in response to such plan shall be reported, to the department and to the Justice Center.

(vi) The investigation and written report shall be completed and provided to the department and the Justice Center within 45 days of when the incident was first reported to the Justice Center. For purposes of this

section, “complete” shall mean that all necessary information has been obtained to determine whether and how the incident occurred, and to complete the findings referenced in paragraph (1)(2)(iv) of this subdivision.

(3) (i) The camp shall maintain a facility incident review committee, composed of members of the governing body of the children’s camp and other persons identified by the camp operator, including some members of the following: camp administrative staff, direct support staff, licensed health care practitioners, service recipients, the permit-issuing official or designee and representatives of family, consumer and other advocacy organizations, but not the camp director. The camp operator shall convene a facility incident review panel to review the timeliness, thoroughness and appropriateness of the camp's responses to reportable incidents; recommend additional opportunities for improvement to the camp operator, if appropriate; review incident trends and patterns concerning reportable incidents; and make recommendations to the camp operator to assist in reducing reportable incidents. The facility incident review panel shall meet at least annually, and also within two weeks of the completion of a written report and remedial plan for a reportable incident.

(ii) Pursuant to paragraph (f) of subdivision one of section 490 of the Social Services Law and regulations of the Justice Center, a camp operator may seek an

exemption from the requirement to establish and maintain an incident review committee. In order to obtain an exemption, the camp operator must file an application with the permit-issuing official, at least sixty days prior to the start of the camp operating season, or at any time in the case of exemptions sought within the first three months following the effective date of this provision. The application must provide sufficient documentation and information to demonstrate that that compliance would present undue hardship and that granting an exemption would not create an undue risk of harm to campers' health and safety. The permit-issuing official shall consult with the State Department of Health (department), and shall not grant or deny an application for an exemption unless it first obtains department approval for the proposed decision. An operator must meet all terms of an approved exemption(s), including the condition that it will remain in effect for one year unless revoked by the permit-issuing official, subject to department approval, or the facility changes operators. Any application for renewal shall be made within 60 days prior to the start of the camp's operating season. The procedure set forth in this Subparagraph (ii) shall be used instead of the general procedures set forth in section 7-2.24 of this Subpart.

(m) In addition to the requirements specified by subdivisions (d) and (g) of section 7-2.4 of this Subpart, a permit may be denied, revoked, or suspended if the children's camp fails to comply with regulations, policies, or other requirements of the Justice Center. In

considering whether to issue a permit to a children's camp, the permit-issuing official shall consider the children's camp's past and current compliance with the regulations, policies, or other requirements of the Justice Center.

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on

that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.

- required that children’s camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children’s camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

Compliance Costs:

Cost to Regulated Parties:

The amendments impose additional requirements on children’s camp operators for reporting and cooperating with Department of Health investigations at children’s camps for children with developmental disabilities (hereafter “camps”). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of \$30.00 an hour, total staff cost would range from \$120 to \$1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children’s camps for children with developmental disabilities operate each year, with combined reports of zero to two

incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of “custodian” under section 488 of the Social Services Law (collectively “employees”) are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a \$25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs

associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of \$30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under \$100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment,

should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of \$50.00 an hour and a three hour meeting, the cost is estimated to be \$450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

Cost to State and Local Government:

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of \$50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range \$400.00 to \$1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately \$1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be

distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Children’s camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the “Cost to Regulated Parties” section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the “Cost to State and Local Government” section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is consistent with regulations promulgated by the Justice Center.

Alternatives Considered:

The amendments to the camp code are mandated by law. No alternatives were considered.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Federal Standards:

Currently, no federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments are to be effective upon filing with the Secretary of State.

Contact Person:

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Regulatory Flexibility Analysis
for Small Business and Local Government

Types and Estimated Number of Small Businesses and Local Governments:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” “Local Government Mandates,” and “Paperwork” sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:**Cost to Regulated Parties:**

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

Cost to State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the

“Cost to Regulated Parties” section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in “Cost to State and Local Government” and “Local Government Mandates” portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department’s ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Small Business Participation and Local Government Participation:

No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:**Cost to Regulated Parties:**

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in “Cost to Regulated Parties” and “Paperwork” sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Rural Area Participation:

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

Emergency Justification

Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs (“Justice Center”), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a “state oversight agency.” These regulations will assure proper coordination with the efforts of the Justice Center.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2015 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur

pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers

with special needs until the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Pursuant to the authority vested in the Public Health and Health Planning Council by sections 206(1)(d), 225(5)(t), and 2733 of the Public Health Law, sections 22.3 and 22.9 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

§ 22.3 - Supplementary reports of certain congenital anomalies for epidemiological surveillance; filing.

(a) Every physician, nurse practitioner authorized to diagnose congenital anomalies, physician assistant authorized to diagnose congenital anomalies, and hospital as defined in Article 28 of the Public Health Law, [in attendance on an individual diagnosed within two years of birth] providing health care to a pregnant woman or a child under two years of age, who diagnoses an embryo, fetus or child as having one or more of the congenital anomalies listed in Table 1 of this section shall file a supplementary report with the State Commissioner of Health within 10 days of diagnosis thereof.

(b) Every physician, nurse practitioner authorized to diagnose congenital anomalies, physician assistant authorized to diagnose congenital anomalies, and hospital as defined in Article 28 of the Public Health Law, providing health care to a pregnant woman or a child under ten years of age, who diagnoses an embryo, fetus or child as having one or more of the congenital anomalies listed in Table 2 of this section shall file a supplementary report with the State Commissioner of Health within 10 days of diagnosis thereof.

(c) Every clinical laboratory that conducts diagnostic testing on New York State residents to detect or confirm the diagnosis of genetic or chromosomal anomalies listed in Tables 1 and 2 shall, upon detecting or confirming such a genetic anomaly, file a supplementary report with the State Commissioner of Health within 30 days of detection or confirmation.

(d) Such report shall be on such forms, which may include electronic forms, as may be prescribed by the commissioner to facilitate epidemiological investigation and surveillance.

[Anencephalus and similar anomalies

Spina bifida

Congenital anomalies of the nervous system

Congenital anomalies of the eye

Congenital anomalies of ear, face, neck

Congenital anomalies of heart

Congenital anomalies of circulatory system

Congenital anomalies of respiratory system

Cleft palate and cleft lip

Congenital anomalies of upper alimentary tract

Congenital anomalies of digestive system

Congenital anomalies of urinary system

Congenital anomalies of genital organs

Congenital anomalies of limbs
 Congenital musculoskeletal deformities
 Other congenital musculoskeletal anomalies
 Congenital anomalies of the integument
 Congenital anomalies of the spleen
 Congenital anomalies of the adrenal gland
 Congenital anomalies of other endocrine glands
 Multiple congenital anomalies
 anomaly, multiple NOS
 deformity, multiple NOS]

<u>TABLE 1 – CONGENITAL ANOMOLIES AND GENETIC DISEASES FOR WHICH REPORTING IS REQUIRED TO AGE 2</u>
<u>Malignant neoplasm of kidney</u>
<u>Malignant neoplasm of eye</u>
<u>Malignant neoplasm of brain</u>
<u>Malignant neoplasm of other endocrine systems</u>
<u>Congenital leukemia</u>
<u>Hemangioma</u>
<u>Lymphangioma</u>
<u>Neurofibromatosis</u>
<u>Teratoma</u>
<u>Congenital hypothyroidism</u>
<u>Disorders of thyroid, congenital and hereditary</u>
<u>Diabetes Mellitus, neonatal</u>
<u>Disorders of the pituitary gland, congenital and hereditary</u>
<u>Adrenogenital syndrome</u>
<u>Testicular dysfunction, congenital and hereditary</u>
<u>Dwarfism</u>
<u>Other congenital endocrine disorders</u>
<u>Metabolic and Immunity Disorders, congenital and hereditary</u>
<u>Hereditary Hemolytic anemias</u>
<u>Aplasic anemias, congenital and hereditary</u>

<u>Coagulation defects, congenital and hereditary</u>
<u>Primary thrombocytopenia, congenital and hereditary</u>
<u>Diseases of white cells, congenital and hereditary</u>
<u>Methemoglobinemia, congenital and hereditary</u>
<u>Hereditary diseases of the central nervous system</u>
<u>Extrapyramidal disease and abnormal movement disorders, congenital and hereditary</u>
<u>Spinocerebellar Disease, congenital and hereditary</u>
<u>Anterior horn cell disease, congenital and hereditary</u>
<u>Infantile cerebral palsy</u>
<u>Infantile spasms</u>
<u>Cerebral cysts, congenital</u>
<u>Multiple cranial nerve palsies, congenital</u>
<u>Hereditary peripheral neuropathy</u>
<u>Hereditary muscular dystrophies and other myopathies</u>
<u>Hereditary optic atrophy</u>
<u>Duane's syndrome</u>
<u>Endocardial fibroelastosis</u>
<u>Wolf-Parkinson-White syndrome</u>
<u>Major anomalies of jaw size</u>
<u>Inguinal hernia</u>
<u>Femoral hernia</u>
<u>Nephrotic syndrome, congenital</u>
<u>Nephrogenic diabetes insipidus, congenital</u>
<u>Dyschromia, congenital</u>
<u>Anencephalus and similar anomalies</u>
<u>Spina bifida</u>
<u>Congenital anomalies of the nervous system</u>
<u>Congenital anomalies of the eye</u>
<u>Congenital anomalies of ear, face, neck</u>
<u>Congenital anomalies of heart</u>
<u>Congenital anomalies of circulatory system</u>
<u>Congenital anomalies of respiratory system</u>
<u>Cleft palate and cleft lip</u>
<u>Congenital anomalies of upper alimentary tract</u>
<u>Congenital anomalies of digestive system</u>
<u>Congenital anomalies of urinary system</u>
<u>Congenital anomalies of genital organs</u>
<u>Congenital anomalies of limbs</u>
<u>Congenital musculoskeletal deformities</u>
<u>Other congenital musculoskeletal anomalies</u>
<u>Congenital anomalies of the integument</u>
<u>Congenital anomalies of the spleen</u>
<u>Congenital anomalies of the adrenal gland</u>
<u>Congenital anomalies of other endocrine glands</u>

<u>Multiple congenital anomalies</u>
<u>Anomaly, multiple, Not Otherwise Specified</u>
<u>Deformity, multiple, Not Otherwise Specified</u>
<u>Genetic anomalies</u>
<u>Chromosomal anomalies</u>
<u>Fetal Alcohol Syndrome</u>
<u>Situs Inversus</u>
<u>Conjoined twins</u>
<u>Hamartoses</u>
<u>Congenital malformation syndromes affecting multiple systems</u>
<u>Noxious influences affecting the fetus via placenta</u>
<u>Amniotic band syndrome</u>
<u>Infections specific to the perinatal period</u>
<u>Hemolytic disease due to RH isoimmunization</u>
<u>Neonatal hepatitis</u>

<u>TABLE 2 – CONGENITAL ANOMOLIES AND GENETIC DISEASES FOR WHICH REPORTING IS REQUIRED TO AGE 10</u>
<u>Hereditary muscular dystrophies and other myopathies</u>
<u>Congenital anomalies of heart</u>
<u>Genetic anomalies</u>
<u>Chromosomal anomalies</u>
<u>Fetal Alcohol Syndrome</u>

§ 22.9 – Reports: place of filing

All reports required by Section 22.3 of this Part shall be filed with the Director of the Bureau of Environmental [Epidemiology] and Occupational Epidemiology, Center for Environmental Health, [Division of Epidemiology,] New York State Department of Health, Empire State Plaza, Corning Tower [Building], Albany, NY 12237.

REGULATORY IMPACT STATEMENT SUMMARY

Statutory Authority:

Section 206(1)(d) of the Public Health Law (PHL) authorizes the Commissioner to investigate the causes of diseases, epidemics, and the sources of mortality in New York State. PHL § 225(5)(t) provides that the State Sanitary Code may facilitate epidemiological research into the prevention of environmentally related diseases and require reporting of such diseases by physicians, medical facilities and clinical laboratories. PHL § 2733 requires that birth defects and genetic diseases be reported by physicians, hospitals, and persons in attendance at birth in a manner prescribed by the Commissioner. Information collected pursuant to such reports shall be kept confidential pursuant the Personal Privacy Protection Act.

Legislative Objectives:

PHL § 206(1)(d) established the Commissioner's broad authority to investigate the causes of disease in New York State. As reflected in the Declaration of Policy, the Legislature enacted PHL § 2733 and related statutes to ensure that the Department maintains a central and comprehensive responsibility for developing and administering the State's policy with respect to scientific investigations and research concerning the causes, prevention, treatment and cure of birth defects and genetic and allied diseases. Finally, in enacting PHL § 225(5)(t), the Legislature directed that the State Sanitary Code contain regulations that facilitate epidemiological research into the prevention of environmental diseases, by pathological conditions of the body or mind resulting from

contact with toxins, mutagens or teratogens and by requiring the reporting of such diseases or suspected cases of such diseases to the Department.

To these ends, the Department maintains the Congenital Malformation Registry (CMR) and has issued regulations requiring the reporting of structural, functional or biochemical abnormalities determined genetically or induced during gestation, and which are not due to birthing events.

Needs and Benefits:

The Department's proposal seeks to extend the case capture periods for certain diseases. Currently, health regulations require physicians and hospitals to report congenital malformations that are diagnosed within two years of a child's birth, yet many congenital malformations are not diagnosed until after age two. By extending the capture period for certain diseases listed below, the Department's proposal will enhance its epidemiologic surveillance and advance its understanding of birth defects and their environmental causes.

Fetal alcohol syndrome (FAS) is a serious but preventable congenital malformation that results from heavy maternal intake of alcohol during pregnancy. FAS is not uncommon, with national estimates of 5–20 cases per 10,000 live births. The annual prevalence of FAS reported by the CMR is about 10-fold less than national estimates. Studies indicate that FAS is more easily diagnosed from ages two to ten years.

Hereditary muscular dystrophies and other myopathies are a family of diseases that cause progressive and steady muscle weakness and wasting. The most common muscular dystrophy is Duchenne MD, followed by Becker MD. A recent US study

indicated the prevalence of boys age 5 to 24 with Duchenne and Becker MD was 1.3 to 1.8 per 10,000 males. However, the CMR indicated an annual birth prevalence of only 0.08 per 10,000 live births. One study reported a mean age of diagnosis of 5 years for boys with Duchenne MD.

Congenital heart defects (CHDs) are the most common organ system malformations, and they remain the leading cause of infant deaths from birth defects. Approximately 1 out of every 115 to 150 babies is born with a heart defect. Minor defects are often not detected until later in life and can have serious consequences. One study indicates that 3% of children with CHDs are diagnosed from ages three to ten years old.

Genetic and Chromosomal Anomalies. The CMR was established prior to the sequencing of the human genome and the associated advances in the scientific community's understanding of the role genetics plays in causing birth defects. Because the field of genetics and birth defects is so new, there is little or no documentation about diagnostic timing for many of these syndromes. However, genetic and chromosomal anomalies are often not recognized until after two years of age, because it can require several years to observe a child prior to diagnosis.

The Department's proposal would also require reporting of birth defects diagnosed or identified during pregnancy. This reporting requirement is important due to the increase in routine prenatal screening. For many diseases, the CMR data suggests a prevalence rate in New York that is far below the expected range.

The proposed amendment also allows reporting by qualified health care professionals other than physicians—specifically, nurse practitioners and physician assistants. Over the past several years, a growing number of national, state and specialty-specific studies indicate that the physician workforce in the United States is facing current and future shortages. Moreover, the shortage of family physicians will be most acute in rural and underserved populations. These trends highlight the need to allow reporting by nurse practitioners and physician assistants. Indeed, anecdotal reports indicate that nurse practitioners and physician assistants are already filling this role because of the burden on physicians.

The regulation would also clarify the requirement that clinical laboratories performing diagnostic testing for birth defects must report to the CMR. This requirement is not new. In 1978, Commissioner Whalen issued a blanket order directing that all laboratories report congenital malformations to the Department pursuant to PHL § 2733. However, many clinical laboratories are not aware of the reporting requirement.

Finally, the Department’s proposal adds granularity to the list of reportable diseases. Many diseases currently reported fall under broad categories, thereby limiting the Department’s ability to receive information concerning the individual diseases within the category. For example, congenital leukemia and lymphangiomas are both currently reported under the broad classification of “congenital anomalies of the circulatory system.” The Department’s proposal lists these and other defects as separate reportable conditions.

Costs to Regulated Parties:

The Department anticipates that, for the entire State, the regulatory changes will require annual reporting of an approximate additional 900 live born children by physicians, nurse practitioners, physician assistants and hospitals (FAS: 100-200 cases; muscular dystrophy: 100 cases; cardiac heart defects in children past age two: 200 cases; genetic or chromosomal anomalies: 400 cases).

Approximately 160 New York hospitals and their associated physicians, nurse practitioners and physician assistants will be affected by this change. The Department anticipates that the costs to these parties will be minimal, primarily because the number of additional birth defects to be reported annually through hospitals (five to six cases per year, on average) will be small, relative to the number of reports already being submitted. Hospitals already report cases to the CMR electronically. The additional hospital staff time to enter six to seven additional cases per year may require 20-30 minutes annually. Alternatively, a hospital can incorporate the additional diagnoses into a monthly batch file. Hospitals are already familiar with the process of modifying batch files.

Reporting by smaller, community-based health care facilities and individual providers will result in some costs primarily because, while physicians have always been required to report congenital anomalies, this requirement has not been enforced for providers who are not associated with New York hospitals. The Department has minimized the administrative costs associated with the reporting requirement by integrating the reporting process with technologies that healthcare providers already utilize. Healthcare providers currently rely on the Department's Health Commerce

System (HCS) for communication and reporting to the Department. Within the HCS, the Department is implementing a comprehensive web-based reporting system known as the Child Health Information Integration (CHI²) project to be used as the central website to report and track newborn screening, immunizations, lead and newborn hearing screening. Reporting of birth defects will become a component of the CHI² system in order to reduce the reporting burden of community-based healthcare facilities and providers.

Providers will be required to spend 3-5 minutes entering case information for each child or fetus diagnosed with a birth defect that is newly reportable under the updated CMR regulations. Statistically, this should involve very few cases for such providers. Because most providers already use and have free access to the online electronic reporting system, the proposed regulation will not impose any additional equipment or technology costs. The only costs will be in the amount of time required to use the CHI² to report additional birth defects, which is expected to be negligible. The Department will assist any providers that currently do not have access to the web based reporting system.

With regards to extending the CMR reporting requirements to nurse practitioners and physician assistants, the Department does not expect that regulated parties will incur any associated direct costs. Rather, the Department expects that this change will relieve physicians and hospitals from being the only classes of healthcare providers authorized to submit a report when a child is diagnosed with a congenital malformation.

For clinical laboratories, the Department anticipates the regulatory change will require annual reporting of approximately 6,600 additional genetic or chromosomal anomalies recognized during pregnancy, and approximately 400 reports related to children diagnosed between the ages of 2 and 10 years old, for a total of 7,000 additional

reports annually. The Department anticipates the ongoing costs to the roughly 50 clinical cytogenetic laboratories providing diagnostic testing for genetic and chromosomal anomalies to be minimal because these laboratories will report using the Electronic Clinical Laboratory Reporting System (ECLRS) as many already do. The Department estimates that the additional number of reports that these labs will make to ECLRS will cost approximately \$1,400. Clinical laboratories may experience a one-time expense related to modifying the laboratory's software to identify the additional cases that must be reported, which the Department estimates will require a maximum of 16 hours of work by a computer specialist at an estimated rate of pay of \$100/hour.

Costs to the Regulatory Agency:

The Department has been using a web-based electronic reporting system in place since 2006. Currently, the CMR receives and processes about 12,000 reports annually. Thus, annual cost to DOH to receive and process the additional 1,000-1,200 cases will be minimal.

Costs to the State Government:

There will be no costs to state government. For the last ten years, reporting to the CMR has been conducted electronically. Currently, the Department uses the Health Commerce System to receive CMR reports. Reporters upload cases individually or in batch reports. The electronic reporting system already includes automated processes to match and combine reports for the same child, to ensure de-duplication of data reported

from multiple reporters. Additional data quality control processes are built into the system.

Costs to Local Government:

Hospitals owned by local governments would be affected but, as discussed above, the costs will be minimal because the additional reporting requirement is relatively small.

Local Government Mandates:

There are no mandates on local governments, other than the additional reporting requirements that would apply to hospitals owned by a local government.

Paperwork:

This change will generate very little physical paperwork because reporting will be performed electronically as is described under “Costs to Regulated Parties.”

Duplication:

This change does not involve any duplication in laws. In terms of duplication of effort, the reporting software will prevent the repeated reporting of the same birth defect for a particular child.

Alternatives:

If no changes are made to this regulation, the Department will continue to collect incomplete reporting for birth defects, and prevalence estimates will remain inaccurate.

This will impede the Department's ability to detect and quantify environmental exposures that negatively impact the health of embryos and fetuses in New York State.

Concerning FAS, in particular, failure to change the reporting requirement will hamper prevention efforts and may cost New York more in the long-term. One study placed the nationwide annual cost of treating birth defects associated with FAS at \$1.6 billion. Another study used a societal perspective and generated nationwide cost estimates of \$9.69 billion. These costs included estimates of the value of productivity lost as a result of cognitive disabilities, as well as the cost of treatment and residential care. In addition to improving outcomes for affected children, early diagnosis and appropriate interventions are likely to generate significant costs savings over time.

Federal Standards:

There are no federal mandates for state-level reporting of birth defects. However, several of the 36 state birth defect surveillance programs require reporting of these birth defects past the age of 2 years, including Hawaii, Texas, Washington State and Colorado. At least eleven states receive reports of birth defects that occur during pregnancy.

Compliance Schedule:

Regulations will take effect immediately upon filing. The Department will continue its efforts to make reporting easier and more efficient, while simultaneously conducting outreach to understand and address any concerns that may arise.

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REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 206(1)(d) of the Public Health Law (PHL) authorizes the Commissioner to investigate the causes of diseases, epidemics, and the sources of mortality in New York State. PHL § 225(5)(t) provides that the State Sanitary Code may facilitate epidemiological research into the prevention of environmentally related diseases and require reporting of such diseases by physicians, medical facilities and clinical laboratories. PHL § 2733 requires that birth defects and genetic diseases be reported by physicians, hospitals, and persons in attendance at birth in a manner prescribed by the Commissioner. Information collected pursuant to such reports shall be kept confidential pursuant the Personal Privacy Protection Act.

Legislative Objectives:

PHL § 206(1)(d) established the Commissioner's broad authority to investigate the causes of disease in New York State. As reflected in the Declaration of Policy, the Legislature enacted PHL § 2733 and related statutes to ensure that the Department maintains a central and comprehensive responsibility for developing and administering the State's policy with respect to scientific investigations and research concerning the causes, prevention, treatment and cure of birth defects and genetic and allied diseases. Finally, in enacting PHL § 225(5)(t), the Legislature directed that the State Sanitary Code contain regulations that facilitate epidemiological research into the prevention of environmental diseases, by pathological conditions of the body or mind resulting from

contact with toxins, mutagens or teratogens and by requiring the reporting of such diseases or suspected cases of such diseases to the Department.

To these ends, the Department maintains the Congenital Malformation Registry (CMR) and has issued regulations requiring the reporting of structural, functional or biochemical abnormalities determined genetically or induced during gestation, and which are not due to birthing events.

Needs and Benefits:

The currently proposed amendments to the existing regulation will modernize the CMR in five ways and improve the ability of the CMR to meet the original objectives of the legislation. First, the amendments will establish a case reporting period of ten years for certain defects that often are not diagnosed within the current two-year capture period. The defects subject to the 10-year reporting requirements are: fetal alcohol syndrome (“FAS”); Duchenne and Becker muscular dystrophy; heart malformations; and chromosomal and genetic anomalies.

Second, the amendments will institute case reporting for congenital anomalies diagnosed during pregnancy. Third, the changes will allow reporting from nurse practitioners and physician assistants, thereby reducing the reporting burden on pediatricians, obstetricians, general and other practitioners and improving reporting in communities where physicians are scarce. Fourth, the amendments will add granularity to the reported data by creating separate categories for certain diseases that are currently reported under a single, broad category. Finally, the changes clarify prior requirements

for clinical cytogenetic laboratories to report diagnostic test results for chromosomal and genetic anomalies.

The Department's proposal seeks to extend the case capture periods for certain diseases. Currently, health regulations require physicians and hospitals to report congenital malformations that are diagnosed within two years of a child's birth, yet many congenital malformations are not diagnosed until after age two. In particular, conditions such as fetal alcohol syndrome, Duchenne and Becker muscular dystrophy, certain heart malformations, and some chromosomal and genetic anomalies are not diagnosed until the child is older than two years.

By extending the capture period for certain diseases, the Department's proposal will enhance its epidemiologic surveillance and advance its understanding of birth defects and their environmental causes. The Department's proposal seeks to update the capture periods for the following diseases:

Fetal alcohol syndrome (FAS) is a serious but preventable congenital malformation that results from heavy maternal intake of alcohol during pregnancy.

Significantly, the hallmark signs of FAS are challenging to recognize in infants.

FAS is not uncommon, with national estimates of occurrence at 5–20 cases per 10,000 live births. For birth years 2001 to 2007, the annual prevalence of FAS reported by the CMR was 0.64 per 10,000 live births, about 10-fold less than national estimates. These figures suggest significant underreporting of FAS in New York State. Further, studies indicate that FAS is more easily diagnosed from ages two to ten years. A

comparison of the CMR with other FAS surveillance data found that, in one region of New York State, almost 30% of FAS cases were diagnosed after the age of two. In addition, a recent analysis of children referred to an Erie County FAS Diagnostic Center found the average age of diagnosis of FAS to be 4.9 years, with only 39% diagnosed before their second birthday and 82% diagnosed by a child's tenth birthday. Consistent with current CMR regulations, these diagnoses were not required to be reported to the CMR for children over the age of two. These findings support the Department's proposal to extend the case capture period for FAS to ten years of age.

Hereditary muscular dystrophies and other myopathies are a family of diseases that cause progressive and steady muscle weakness and wasting. The most common muscular dystrophy is Duchenne MD, followed by Becker MD (together, "DBMD"). The age of onset and severity of symptoms are unique for each dystrophy, as is the average age of diagnosis for individuals.

Worldwide, the birth prevalence of Duchenne MD is estimated at 1 to 3.9 per 10,000 live births, and a recent US study indicated the prevalence of boys age 5 to 24 with DBMD for 2007 was 1.3 to 1.8 per 10,000 males. However, the CMR indicated an annual birth prevalence of "hereditary progressive muscular dystrophy" from 1998 to 2007 of only 0.08 per 10,000 live births. The remarkable difference in these statistics suggests significant underreporting of Duchenne MD in New York State.

The statistical difference is likely the result of New York's inadequate two-year case capture period, at least in part. Duchenne MD is commonly not suspected until the child is over two years of age, and one study reported a mean age of diagnosis of 5 years. According to the Department's records, 95% of children were diagnosed with DBMD

before their tenth birthday. By increasing the capture period of Duchenne MD to ten years of age, the Department will improve the accuracy and completeness of its surveillance for this disease, which will help the Department understand the prevalence of this condition and identify regions where healthcare services may be inadequate.

Congenital heart defects (CHDs) are the most common organ system malformations, and they remain the leading cause of infant deaths from birth defects. Approximately 1 out of every 115 to 150 babies is born with a heart defect, compared to only 1 in every 800 to 1,000 babies born with Down syndrome. Variation in prevalence has been associated with maternal race and ethnicity.

Although major heart defects are usually apparent in a newborn, minor defects are often not detected until later in life and can have serious consequences. One study indicates that 70% of children with CHD are diagnosed within the first year of life; an additional 18% are diagnosed in year 2; and 3% are diagnosed up to seven years later. That study found that children with CHD with few or mild symptoms are frequently under-diagnosed, especially in areas with inadequate health services (e.g., lack of nearby tertiary centers and/or cardiology services; insufficient pediatrician awareness and expertise regarding mild malformations). Further, in the past decade, there have been significant advances in medical technologies that can detect mild CHDs in children older than two years of age.

These findings support the Department's proposal to extend the case capture period for CHDs to ten years of age. The improved surveillance will assist the Department's efforts to study causation and support its prevention efforts.

Genetic and Chromosomal Anomalies. The CMR was established prior to the

sequencing of the human genome and the associated advances in the scientific community's understanding of the role genetics plays in causing birth defects. Because the field of genetics and birth defects is so new, there is little or no documentation in the literature about diagnostic timing for many of these syndromes.

However, it is known that genetic and chromosomal anomalies are often not recognized until after two years of age, because it can require several years to observe a child prior to diagnosis. Genetic testing may also be delayed past the age of two because of the cost, insurance policies, or other restrictions related to genetic testing.

By capturing data concerning those children diagnosed with birth defects through genetic and chromosomal testing, the Department will enhance its understanding of the epidemiology of these diseases. The following are two examples of genetic anomalies that will be captured under the CMR's proposed case capture periods.

DiGeorge syndrome ("DGS", also called velocardiofacial syndrome, or VCFS) is a disease that creates cognitive impairments, among other things. DGS has an estimated incidence of 2.5/10,000 live births, yet the CMR's annual birth prevalence of this genetic microdeletion from 1998 to 2007 was only 0.55/10,000 live births. Notably, when a child has minimal facial dysmorphisms, minor cardiac anomalies, and slight cognitive impairments, the child may not be diagnosed within two years of birth. These findings suggest underreporting of DGS in New York State.

The Department believes that the likely underreporting can be remedied, at least in part, by extending the case capture period. A longer capture period, to age 10 years, will dramatically improve the Department's ability to identify children with this disease.

Cystic fibrosis (CF) is the most common life-limiting recessive genetic disorder in Caucasians, with an incidence of 3.1/10,000 live born in the U.S. The reported incidence has varied from 0.5/10,000 to 3.3/10,000 live births, depending on the population sampled and the method of detection (i.e., newborn screening, newly reported cases, or calculations based on death certificates). However, the CMR's annual birth prevalence of CF from 1998 to 2007 was 1.16 per 10,000 live births. The discrepancy in these statistics likely reflects the CMR's insufficient two-year window of surveillance, which the Department's proposal seeks to address.

The Department's proposal would also require reporting of birth defects diagnosed or identified during pregnancy. This reporting requirement is important due to the increase in routine prenatal screening. For example, observational studies and clinical trials suggest that periconceptual use of folic acid can reduce neural tube defects (NTDs), including anencephaly and spina bifida. In New York State, however, the Department is currently unable to accurately confirm this association or the impact of prevention efforts, because these defects are often diagnosed early in pregnancy and may result in pregnancy outcome other than live birth. Therefore, many NTDs may not be reported to the Congenital Malformations Registry under the current regulations.

In general, for many diseases, the CMR data appears to suggest a prevalence rate in New York that is far below the range of what would be expected, where an approximate expected value is based on data gathered in other states through the National Birth Defects Prevention Network. In particular, CMR data indicates an anencephaly prevalence rate in New York that is approximately 84% less than expected; for

anophthalmia, 94% less than expected; Patau syndrome or trisomy 13, 18% less than expected; for Edwards syndrome or trisomy 18, 56% less than expected; spina bifida without anencephaly, 73% less than expected; and for encephalocele, 44% less than expected. It is highly improbable that the CMR's extremely low prevalence figures reflect the actual prevalence of these diseases in New York State. Rather, the figures are very likely the result of under-reporting by hospitals and healthcare professionals.

These deficiencies in data impede the Department's ability to study the prevalence of congenital malformations in New York and its relation to environmental factors. The proposed regulatory amendments would correct these deficiencies.

The proposed amendment also allows reporting by qualified health care professionals other than physicians—specifically, nurse practitioners and physician assistants. Over the past several years, a growing number of national, state and specialty-specific studies indicate that the physician workforce in the United States is facing current and future shortages. The number of generalist residency graduates and medical students entering primary care has declined each year since 1998. Moreover, the shortage of family physicians will be most acute in rural and underserved populations. These trends highlight the need to allow reporting by nurse practitioners and physician assistants. Indeed, anecdotal reports indicate that nurse practitioners and physician assistants are already filling this role because of the burden on physicians.

Additionally, reporting by nurse practitioners and physician assistants is key to diagnosing children with fetal alcohol syndrome. Children with fetal alcohol syndrome are more likely to be in foster care settings and covered by Medicaid. Programs serving

these children are more likely to employ nurse practitioners and physician assistants rather than physicians. Thus, to obtain meaningful data concerning fetal alcohol syndrome as well as other congenital diseases, it is imperative that nurse practitioners and physician assistants be required to report to the CMR.

The regulation would also clarify the requirement that clinical laboratories performing diagnostic testing for birth defects must report to the CMR. This requirement is not new. In 1978, Commissioner Whalen issued a blanket order directing that all laboratories report congenital malformations to the Department pursuant to PHL § 2733. Although that order remains legally effective, 35 years have passed and many clinical laboratories are not aware of the reporting requirement. Placing the requirement in the regulations will help ensure that clinical laboratories are aware that they must report diagnostic test results to the CMR. This will also support the capture of cases where diagnosis is either occurs during pregnancy or is delayed past age two.

Finally, the Department's proposal adds granularity to the list of reportable diseases. Many diseases currently reported fall under broad categories, thereby limiting the Department's ability to receive information concerning the individual diseases within the category. For example, congenital leukemia and lymphangiomas are both currently reported under the broad classification of "congenital anomalies of the circulatory system." The Department's proposal lists these and other defects as separate reportable conditions.

Costs to Regulated Parties:

The Department anticipates that, for the entire State, the regulatory changes will require annual reporting of an approximate additional 900 live born children by physicians, nurse practitioners, physician assistants and hospitals (FAS: 100-200 cases; muscular dystrophy: 100 cases; cardiac heart defects in children past age two: 200 cases; genetic or chromosomal anomalies: 400 cases).

Approximately 160 New York hospitals and their associated physicians, nurse practitioners and physician assistants will be affected by this change. The Department anticipates that the costs to these parties will be minimal, primarily because the number of additional birth defects to be reported annually through hospitals (five to six cases per year, on average) will be small, relative to the number of reports already being submitted. Hospitals already report cases to the CMR electronically using one of two methods: by individual child and by batch file. To report a child individually, hospital staff log onto the secure CMR website and enter the required data. It takes about 3 to 5 minutes to enter a complete case. Alternatively, hospitals can submit monthly batch files to the CMR. The additional hospital staff time to enter six to seven additional cases per year may require 20-30 minutes annually. Alternatively, a hospital can incorporate the additional diagnoses into a monthly batch file. Hospitals are already familiar with the process of modifying batch files, so this process is not new or unusual.

Reporting by smaller, community-based health care facilities and individual providers will result in some costs primarily because, while physicians have always been required to report congenital anomalies, this requirement has not been enforced for providers who are not associated with New York hospitals. The Department has

minimized the administrative costs associated with the reporting requirement by integrating the reporting process with technologies that healthcare providers already utilize. Healthcare providers currently rely on the Department's Health Commerce System (HCS) for communication and reporting to the Department. Within the HCS, the Department is implementing a comprehensive web-based reporting system known as the Child Health Information Integration (CHI²) project to be used as the central website to report and track newborn screening, immunizations, lead and newborn hearing screening. Reporting of birth defects will become a component of the CHI² system in order to reduce the reporting burden of community-based healthcare facilities and providers.

Providers will be required to spend 3-5 minutes entering case information for each child or fetus diagnosed with a birth defect that is newly reportable under the updated CMR regulations. Statistically, this should involve very few cases for such providers. Because most providers already use and have free access to the online electronic reporting system, the proposed regulation will not impose any additional equipment or technology costs. The only costs will be in the amount of time required to use the CHI² to report additional birth defects, which is expected to be negligible. The Department will assist any providers that currently do not have access to the web based reporting system.

With regards to extending the CMR reporting requirements to nurse practitioners and physician assistants, the Department does not expect that regulated parties will incur any associated direct costs. Rather, the Department expects that this change will relieve physicians and hospitals from being the only classes of healthcare providers authorized to submit a report when a child is diagnosed with a congenital malformation.

For clinical laboratories, the Department anticipates the regulatory change will require annual reporting of approximately 6,600 additional genetic or chromosomal anomalies recognized during pregnancy, and approximately 400 reports related to children diagnosed between the ages of 2 and 10 years old, for a total of 7,000 additional reports annually. The Department anticipates the ongoing costs to the roughly 50 clinical cytogenetic laboratories providing diagnostic testing for genetic and chromosomal anomalies to be minimal because these laboratories will report using the Electronic Clinical Laboratory Reporting System (ECLRS), which in turn provides appropriate reports to the CMR. These laboratories already use the ECLRS system. The Department estimates that the additional number of reports that these labs will make to ECLRS is expected to cost approximately \$1,400.

Clinical laboratories may experience a one-time expense related to modifying the laboratory's software to identify the additional cases that must be reported. However, the Department estimates that it would require a maximum of two days (16 hours) of work by a computer specialist to modify software to identify the additional cases required by the regulation for reporting to ECLRS. The estimated rate of pay for a computer specialist is up to \$100/hour.

Costs to the Regulatory Agency:

The Department has been using a web-based electronic reporting system in place since 2006. Currently, the CMR receives and processes about 12,000 reports annually. Thus, annual cost to DOH to receive and process the additional 1,000-1,200 cases will be minimal.

Costs to the State Government:

There will be no costs to state government. For the last ten years, reporting to the CMR has been conducted electronically. Currently, the Department uses the Health Commerce System to receive CMR reports. Reporters upload cases individually or in batch reports. The electronic reporting system already includes automated processes to match and combine reports for the same child, to ensure de-duplication of data reported from multiple reporters. Additional data quality control processes are built into the system.

Costs to Local Government:

Hospitals owned by local governments would be affected but, as discussed above, the costs will be minimal because the additional reporting requirement is relatively small.

Local Government Mandates:

There are no mandates on local governments, other than the additional reporting requirements that would apply to hospitals owned by a local government.

Paperwork:

This change will generate very little physical paperwork because reporting will be performed electronically. In terms of electronic reporting requirements, physicians, nurse practitioners, physician assistants and hospitals will be required to submit a total of approximately 900 additional reports to the CMR annually. Hospitals already report cases

to the CMR electronically using one of two methods: by individual child and by batch file. It takes about 3 to 5 minutes to enter an individual case. On average, hospitals will need to make an additional six to seven reports annually. The additional hospital staff time to enter six to seven additional cases per year may require 20-30 minutes annually. Alternatively, a hospital can incorporate the additional diagnoses into a monthly batch file, which will save some time. Hospitals are already familiar with the process of modifying batch files, so this process is not new or unusual.

Smaller healthcare providers will also be required to spend 3-5 minutes entering case information for each child or fetus diagnosed with a birth defect that is newly reportable under the updated CMR regulations. Statistically, this should involve very few cases for such providers. The Department will assist any providers that currently do not have access to the web based reporting system.

For all clinical laboratories, the Department anticipates the regulatory change will require annual reporting of approximately an additional 7,000 genetic or chromosomal anomalies. Laboratories will use the Electronic Clinical Laboratory Reporting System (ECLRS), which in turn provides appropriate reports to the CMR. These laboratories already use the ECLRS system, and the additional number of reports that individual laboratories will make to ECLRS is relatively small and does not represent a significant reporting burden.

Duplication:

This change does not involve any duplication in laws. In terms of duplication of effort, the reporting software will prevent the repeated reporting of the same birth defect for a particular child.

Alternatives:

If no changes are made to this regulation, the Department will continue to collect incomplete reporting for birth defects, and prevalence estimates will remain inaccurate. This will impede the Department's ability to detect and quantify environmental exposures that negatively impact the health of embryos and fetuses in New York State.

Concerning FAS, in particular, failure to change the reporting requirement will hamper prevention efforts and may cost New York more in the long-term. One study placed the nationwide annual cost of treating birth defects associated with FAS at \$1.6 billion. Another study used a societal perspective and generated nationwide cost estimates of \$9.69 billion. These costs included estimates of the value of productivity lost as a result of cognitive disabilities, as well as the cost of treatment and residential care. In addition to improving outcomes for affected children, early diagnosis and appropriate interventions are likely to generate significant costs savings over time.

Federal Standards:

There are no federal mandates for state-level reporting of birth defects. However, several of the 36 state birth defect surveillance programs require reporting of these birth defects past the age of 2 years. For example, FAS must reported at any age in Hawaii, to age six in Texas, and to age 10 in Washington State. In Colorado, reporting of most

defects is up to age 3, but reporting of FAS is required up to age 10. Other states have FAS capture periods ranging from 4 to 18 years. At least eleven states receive reports of birth defects that occur during pregnancy.

Compliance Schedule:

Regulations will take effect immediately upon filing. The Department will continue its efforts to make reporting easier and more efficient, while simultaneously conducting outreach to understand and address any concerns that may arise.

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**REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES
AND LOCAL GOVERNMENTS**

Effect of Rule:

This amended rule will have limited impact on small businesses providing health care because many of these businesses are affiliated with a general hospital. These small businesses include community-based healthcare providers (pediatricians, family practitioners and maternal-fetal medicine specialists) and some laboratories with small offices.

The amended rule will have a small impact on those healthcare facilities that are owned by local governments and that also diagnose congenital anomalies and genetic diseases. These healthcare facilities will be required to make additional reports to the CMR based on the updated list of reportable congenital anomalies and genetic diseases. Although the Department does not maintain a listing of local government-owned facilities that would be required to report, the Greater NY Hospital Association estimated that the number is relatively few. Further, the Department reasonably expects the burden on such facilities to be small—only 3-5 minutes per additional case. The number of cases will vary depending on the size of the facility, but the Department estimates that such facilities will report an average of 5-6 newly reportable cases per year, per facility.

Compliance Requirements:

Because healthcare providers and facilities are transitioning to electronic record-keeping systems, reporting and record keeping are expected to be simple and require very little time. The Department publishes a CMR guide to assist hospitals with reporting. A

guide will also be developed for other healthcare providers as well as clinical laboratories.

Professional Services:

No additional professional services are required under the amended rule.

Compliance Costs:

Staff working in small community-based healthcare providers and small clinical laboratories will need to learn how to report with the updated CMR requirements.

Economic and Technological Feasibility:

The amended rule is economically and technologically feasible because local governments and small businesses that are affected will continue submitting reports using their free access to the Department's electronic reporting system.

Minimizing Adverse Impact:

By offering free access to the electronic reporting system, the Department has minimized the costs and impact on local governments and small businesses operating in New York State.

Small Business and Local Government Participation:

The Department has reached out to the healthcare community to gather feedback on the proposed amended rule. Those contacted include: NYS American Academy of Pediatrics, NYS Academy of Family Physicians, Nurse Practitioner Association of NYS, NYS Nurses Association, NYS Society of Physician Assistants, NY Health Information Management Association, Greater NY Hospital Association, Healthcare Association of NYS, NYS March of Dimes, NYS Clinical Geneticists, Genetic Counselors, Neurologists, Neuromuscular Specialists, and Pediatric Cardiologists. Additionally, the

Department contacted other NYS agencies and programs which provide services to children affected by these birth defects, specifically fetal alcohol syndrome.

The Department received comments from two organizations that represent health care providers. The President of the New York State Society of Physician Assistants stated, “After soliciting input from our leadership, we wholeheartedly support this suggested regulatory change.” No concern was expressed about costs. Greater New York Hospital Association (GNYHA), representing nearly 150 voluntary, not-for-profit, and public hospitals expressed concern that “raising the maximum reporting age to 10 ... could potentially create an administrative burden for health care providers ... already contending with a wide range of such requirements.” GNYHA strongly recommended that the DOH work closely with providers to develop and implement a reporting system that places the least possible amount of administrative burden on those impacted by this potential regulatory change.

The Department also received positive support for these regulatory changes from non-profit organizations and other State agencies, including the NYS Council on Children and Families, the NYS Office of Alcoholism and Substance Abuse Services, the NY State Education Department’s Office of Special Education, and the Long Island Council on Alcoholism and Drug Dependence. These organizations view the proposed regulatory change as positive steps for meeting the needs of children and families affected by these devastating birth defects.

The Department asked several maternal-fetal medicine practices for input concerning the proposed changes and received replies from three practices (Hudson Valley Perinatal Consulting, Harrison, NY; University GYN/OB, Inc, at Women and

Children's Hospital of Buffalo, Buffalo, NY; and Fetal Testing Unit of Mercy Hospital Buffalo South, Buffalo, NY). As for access to the Department's web based reporting system, one had access, one did not, and the third was uncertain. All three expressed concerns about time required to report and assurances of patient confidentiality.

Public Health Law § 206(1)(j) ensures that diagnoses reported to the Congenital Malformations Registry shall be kept confidential and shall be used solely for the purposes of the Department's scientific research. The statute further provides that such records are not admissible as evidence in a court of law. Regarding time to report, we expect that some of these practices may not actually have to report separately but that their associated institution or hospital will be able to assume that responsibility, thus reducing the anticipated burden.

The Department is committed to minimizing the administrative burden of these new reporting requirements. By using the CHI² system as a reporting tool, the administrative burden will not be significant.

The Department will continue to communicate with stakeholders throughout the regulatory process. Prior to adoption of the rule, all amendments will appear in the New York State Register for public comment.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This regulation would apply statewide and affect the 44 counties that are considered rural.

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

This change involves a small increase in reporting using a system already being utilized by healthcare professionals to submit other reports. No additional requirement for professional services is required under the amended regulation.

Costs:

There is minimal cost to report. The costs are associated with staff time to report additional cases electronically. The number of additional cases to be reported is expected to be small relative to the number of cases already reported.

Minimizing Adverse Impact:

Any adverse impact will be minimized by using the Department's pre-existing Health Commerce System for electronic reporting. The impact will be further reduced when the Department implements the CHI² reporting system.

Rural Area Participation:

Regulated parties in rural areas have been contacted through the Department's reaching out to statewide associations of healthcare professionals, such as the NYS American Academy of Pediatrics, NYS Academy of Family Physicians, Nurse Practitioner Association of NYS, NYS Nurses Association, NYS Society of Physician

Assistants, NY Health Information Management Association, Healthcare Association of NYS, NYS March of Dimes, and NYS Clinical Geneticists.

JOB IMPACT STATEMENT

Nature of Impact:

There will be minimal impact, because health care facilities are currently required to report other conditions to the Department of Health. The Department does not expect there to be a positive or negative impact on jobs or employment opportunities.

Categories and Numbers Affected:

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

Regions of Adverse Impact:

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

Minimizing Adverse Impact:

Not applicable.



Public Health and Health Planning Council

Certificate of Need Annual Report

2014

TABLE I
Median Processing Times
(Acknowledgement to Director Action in Days)

	Admin	Full	Ltd
2011	179	268	66
2012	123	166	61
2013	63	196	28
2014	69	143	19

TABLE I (A)
Historical Project Volume and Values

Number of Projects				Value of Projects (in thousands)					Average Value (in thousands)	
Year	Adm	Full	Total	Adm	Full	Total	Adm	Full		
2000	196	140	336	427,590	914,871	1,342,461	2,181	6,535		
2001	199	150	349	446,917	756,778	1,203,695	2,246	5,012		
2002	212	140	352	552,566	883,911	1,436,477	2,606	6,314		
2003	281	172	453	605,072	1,242,984	1,848,056	2,153	7,227		
2004	198	141	339	432,515	1,049,534	1,482,049	2,184	7,444		
2005	234	163	397	469,406	1,845,890	2,315,297	2,015	11,324		
2006	211	142	353	484,771	2,232,572	2,717,342	2,297	15,722		
2007	190	115	305	619,756	1,309,918	1,929,674	3,261	12,357		
2008	205	108	313	805,085	3,385,133	4,190,218	3,985	31,343		
2009	202	102	304	\$467,328	\$1,452,895	\$1,920,223	\$2,313	\$14,244		

Number of Submissions					Value of Submissions (in thousands)					Average Value (in thousands)				
Year	Adm	Full	Ltd	Notice	Total	Admin	Full	Ltd	Notice	Total	Admin	Full	Ltd	Notice
2010 ¹	187	127	446		760	685,588	1,946,825	445,542		3,077,955	3,666	15,329	999	
2011	187	119	660		966	822,219	827,405	764,474		2,414,098	4,397	6,953	1,158	
2012 ²	182	139	352	232	905	475,513	2,879,596	347,124	274,346	3,976,579	2,613	20,717	986	1,183
2013	168	195	356	350	1069	666,105	3,942,527	401,105	732,442	5,742,179	3,965	20,218	1,127	2,093
2014	150	124	281	395	950	811,405	1,703,852	356,175	343,715	3,215,148	5,409	13,741	1,268	870

¹ July 2010, thresholds increased for administrative reviews from \$3M to \$6M with no upper limit for HIT projects.

Full review thresholds increased from \$10M to \$15M.

² January 2012, regulatory change allowed for non-clinical projects meeting specific criteria to be submitted with only written notification

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

2014								
Region	Number of Projects				Value of Projects <i>(in thousands)</i>			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	10	14	17	41	25,515	276,654	14,031	316,200
Finger Lakes	17	10	29	56	57,015	9,106	34,652	100,773
Central	13	16	25	54	24,671	20,331	12,328	57,330
NY Penn	1	0	7	8	254	0	5,334	5,588
Northeast	18	11	26	55	34,759	104,790	34,659	174,208
Hudson Valley	8	18	36	62	3,390	65,918	68,908	138,217
New York City	65	45	100	210	565,117	1,218,795	135,742	1,919,655
Long Island	18	10	41	69	100,685	8,258	50,521	159,463
Total	150	124	281	555	\$811,405	\$1,703,852	\$356,175	\$2,871,433

2013								
Region	Number of Projects				Value Of Projects <i>(in thousands)</i>			
	Admin	Full	Ltd	Total	Admin	Full	Ltd	Total
Western	19	17	32	68	59,510	29,690	18,836	\$108,036
Finger Lakes	19	7	36	62	28,036	9,590	31,208	68,834
Central	15	17	38	70	80,180	29,861	34,391	144,432
NY Penn	2	3	6	11	1,856	36,635	5,084	43,575
Northeast	16	23	25	64	20,874	121,405	21,609	163,888
Hudson Valley	18	29	49	96	33,869	34,299	35,853	104,021
New York City	66	71	124	261	378,896	2,139,624	202,216	2,720,736
Long Island	10	24	42	76	50,140	426,853	47,596	524,589
Total	165	191	352	708	\$653,361	\$2,827,957	\$396,793	\$3,878,111

TABLE II (A)
Disapprovals
2014

131225	Visiting Nurse Service of New York Home Care	\$0
	Establish a new Certified Home Health Agency operated by Visiting Nurse Service of New York Home Care to serve eight (8) counties	
131347	Southtowns Ambulatory Surgery Center, LLC	\$0
	Establish and construct a multi-specialty ambulatory surgery center to be located at 5959 Big Tree Road, Orchard Park	

TABLE II (B)
Withdrawals
2014

Withdrawals by Applicant	75
Withdrawals by Department	<u>21</u>
Total	96

TABLE III
Bed Changes by Facility Type by Region
2014

HOSPITALS	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
Bed Category									
Bone Marrow Transplant	0	0	0	0	0	0	0	0	0
Chemical Dependency, Detox	0	0	0	0	-15	-3	-50	0	-68
Chemical Dependency, Rehab	0	0	0	0	0	0	0	0	0
Coronary Care	-2	0	0	0	6	0	2	0	6
Intensive Care	-2	0	0	0	11	0	21	2	32
Maternity Beds	0	-121	0	0	0	0	12	0	-109
Medical/Surgical	-73	50	-24	0	36	-90	5	-16	-112
Neonatal Intensive Care	0	0	0	0	0	0	1	0	1
Neonatal Continuing Care	0	0	0	0	0	0	-1	0	-1
Neonatal Intermediate Care	0	0	0	0	0	0	0	0	0
Pediatric	-13	0	-1	0	-5	0	0	0	-19
Pediatric ICU	0	0	0	0	2	0	3	2	7
Physical Medicine & Rehabilitation	0	0	-2	0	0	0	-6	16	8
Psychiatric	-7	-38	25	0	0	0	25	-18	-13
Transitional Care	0	0	0	0	0	0	0	0	0
Traumatic Brain Injury	0	0	0	0	0	0	0	0	0
New York State Total	-97	-109	-2	0	35	-93	12	-14	-268

RESIDENTIAL HEALTH CARE FACILITIES	Western	Finger Lakes	Central	NY-Penn	North East	Hudson Valley	NYC	Long Island	TOTAL
Bed Category									
RHCF Beds	0	0	13	0	0	98	180	0	291
AIDS	0	0	0	0	0	0	-140	0	-140
Behavioral Intervention	0	0	0	0	0	0	72	0	72
Pediatric	0	0	0	0	0	0	0	0	0
Traumatic Brain Injury	0	0	0	0	0	0	0	0	0
Ventilator, Adult	0	-8	0	0	0	-10	0	0	-18
Ventilator, Pediatric	0	0	0	0	0	24	0	0	24
New York State Total	0	-8	13	0	0	88	112	0	205

TABLE IV
 Projects Receiving Commissioner Action by Facility Type
 2014

TABLE IV (A)
 Administrative Review Projects

Region	CHHA	D&TC	HOSPICE	HOSPITAL	LTHHCP	RHCF	TOTAL
Western		3		7			10
Finger Lakes		2		15			17
Central		2		11			13
NY-Penn				1			1
Northeastern		7		11			18
Hudson Valley		2		5		1	8
New York City	1	32		28		4	65
Long Island		9		8		1	18
New York State Total	1	57	0	86	0	6	150

TABLE IV (B)
 Full Review Projects

Region	CHHA	D&TC	HOSPICE	HOSPITAL	LTHHCP	RHCF	TOTAL
Western	1	2		5		6	14
Finger Lakes	1	1	1	4		3	10
Central	2	4	1	2		7	16
NY-Penn							0
Northeastern	1	2		2		6	11
Hudson Valley	2	3		7		6	18
New York City	5	18		5		17	45
Long Island	1	7		2			10
New York State Total	13	37	2	27	0	45	124

TABLE IV (C)
 Limited Review Projects

Region	D&TC	HOSPITAL	RHCF	TOTAL
Western	2	12	3	17
Finger Lakes		26	3	29
Central	2	19	4	25
NY-Penn		5	2	7
Northeastern	2	23	1	26
Hudson Valley	4	28	4	36
New York City	17	71	12	100
Nassau-Suffolk	2	26	13	41
New York State Total	29	210	42	281



Public Health and Health Planning Council

Project # 142200-C
Long Island Digestive Endoscopy Center

Program: Diagnostic & Treatment Center
Purpose: Construction

County: Suffolk
Acknowledged: November 14, 2014

Executive Summary

Description

LIAEC, LLC d/b/a Long Island Digestive Endoscopy Center (the Center), a New York limited liability company, is an existing Article 28 freestanding ambulatory surgery center (FASC) located at 1500 Route 112, Building 5, Port Jefferson Station (Suffolk County). The Center is currently certified as a single-specialty FASC specializing in the field of gastroenterology. The Center is requesting approval to add pain management services, and thereby become certified for two specialties only.

On December 6, 2012, the applicant received contingent Public Health and Health Planning Council approval under CON #121412 for the establishment and construction of a FASC with a limited life of five years from the date of issuance of an operating certificate. Staff notes that the applicant received its operating certificate effective June 5, 2014. The Center was approved to operate four procedure rooms, but has only been utilizing three procedure rooms since it opened. The fourth approved procedure room has been used as a storage room since that time. Because the existing three procedure rooms are being utilized for gastroenterology procedures, the Center now needs to bring the fourth procedure room online in order to accommodate the addition of pain management procedures projected per this application.

OPCHSM Recommendation

Contingent Approval, maintaining the current operating certificate expiration date of June 4, 2019.

Need Summary

Long Island Digestive Endoscopy Center, a single-specialty gastroenterology ASC, proposes adding pain management services. The proposed pain management services are currently being performed in an office setting. With the approval of this project, these services will be provided in a regulated Article 28 facility.

Program Summary

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

Financial Summary

Total project cost of \$253,375 will be met via equity from operations.

Incremental Budget:

Revenues	\$659,437
Expenses	<u>565,400</u>
Net Income	\$94,037

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval, maintaining the current operating certificate expiration date of June 4, 2019, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payer source;
 - Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided; and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of a DBA, acceptable to the Department. [HSP]

Approval conditional upon:

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

Council Action Date

April 16, 2015

Need Analysis

Analysis

The service area of this facility is Suffolk County. Upon approval of this application, the number of projected visits in pain management will be 1,200 in Year 1 and 1,224 visits in Year 3, with five percent Medicaid and two percent charity care. These projections are based on the current practices of the participating surgeons. Projected utilization for Years 1 and 3 is as follows:

CON 142200: Projections				
Visits by Payor Source	Year 1		Year 3	
Medicare (FFS)	300	25.0%	306	25.0%
Medicare (MC)	60	5.0%	61	5.0%
Medicaid (MC)	60	5.0%	61	5.0%
Commercial (FFS)	456	38.0%	466	38.0%
Commercial (MC)	300	25.0%	306	25.0%
Charity Care	24	2.0%	24	2.0%
Total	1,200	100.0%	1,224	100.0%

Suffolk County has a total of six freestanding multi-specialty ASCs and six freestanding single-specialty ASCs. There are four existing ASC's specializing in pain management in Suffolk County; two within 10 - 15 miles and two over 20 miles away. Given the sparsity of local capacity for these services, approval of this project will help ensure better access and more convenience in the utilization of pain management services for the communities within Suffolk County.

Table 1: Existing Ambulatory Surgery Centers: Suffolk County

ASC Type	Facility Name	Distance from site	2013 Patients
Gastroenterology	Long Island Digestive Endoscopy Center (opened 6/5/14)	0 mi	N/A
Multi-Pain Management	Suffolk Surgery Center, LLC	11.2 mi, 23 min	6,924
Gastroenterology	Great South Bay Endoscopy (opened 8/5/14)	11.9 mi, 23 min	N/A
Multi-Pain Management	North Shore Surgi-Center	13.9 mi, 30 min	7,663
Multi	Long Island Ambulatory Surgery Center	16.9 mi, 31 min	7,674
Multi-Pain Management	South Shore Surgery Center	22.7 mi, 29 min	2,757
Orthopedics-pain Management	Long Island Hand & Orthopedic Surgery Center	24.9 mi, 47 min	282
Gastroenterology	Digestive Health Center of Huntington	26.4 mi, 47 min	5,123
Gastroenterology	Island Endoscopy Center	26.5 mi, 36 min	10,133
Multi	Melville Surgery Center (LI Surgi-center Inc.)	27.1 mi, 37 min	6,456
Gastroenterology	Island Digestive Health Center (opened 5/22/14)	27.4 mi, 38 min	N/A
Multi	Progressive Surgery Center LLC	30.4 mi, 40 min	1,650

Source: SPARCS 2014 & Map quest

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

The applicant has an existing affiliation and transfer agreement with John T. Mather Memorial Hospital which is 3.7 miles and 9 minutes away.

Conclusion

The proposed pain management services are currently being performed in an office setting. With approval of this project, these services will be provided in a regulated Article 28 facility. Approval of this project will enhance access to pain management procedures for the residents of Suffolk County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

LIAEC, LLC d/b/a Long Island Digestive Endoscopy Center (the Center), an existing single-specialty ambulatory surgery center specializing in gastroenterology procedures located at 1500 Route 112, Building 5, in Port Jefferson Station (Suffolk County), requests approval to add pain management services. Upon approval, the center will be known as Advanced Surgery Center of Long Island.

The addition of pain management procedures to the facility's operating certificate will not involve any renovation or alteration of the facility, however, in order to accommodate the projected pain management procedures, the Center now needs to bring online a fourth procedure room which was previously built to code with the remainder of the facility and approved by the Department and Public Health and Health Council (Project #121412). It is anticipated that staffing will increase by 3.0 FTEs in the first year after pain management services are added and remain at that level through the third year.

Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Cost and Financing

Total project cost, which is for other fees and the acquisition of moveable equipment, is estimated at \$253,375, further broken down as follows:

Other Fees	\$25,000
Moveable Equipment	225,000
CON Fee	2,000
Additional Processing Fee	<u>1,375</u>
Total Project Cost	\$253,375

The applicant's financing of the project cost will be met via cash equity from operations.

Operating Budget

The applicant has submitted an incremental operating budget, in 2015 dollars, during the first and third years after the certification of pain management services, summarized below:

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Revenues		
Medicaid Managed Care	\$24,174	\$24,585
Medicare Fee For Service	138,902	141,658
Medicare Managed Care	27,764	28,315
Commercial Fee For Service	275,302	280,398
Commercial Managed Care	<u>181,128</u>	<u>184,481</u>
Total Revenues	\$647,270	\$659,437
Expenses		
Operating	\$524,064	\$530,387
Capital	<u>35,013</u>	<u>35,013</u>
Total Expenses	\$559,077	\$565,400
Net Income	\$88,193	\$94,037
Utilization (Procedures)	1,200	1,224
Cost Per Procedure	\$465.90	\$461.93

Utilization broken down by payor source during the first and third years is as follows:

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Medicaid Managed Care	5.00%	5.00%
Medicare Fee For Service	25.00%	25.00%
Medicare Managed Care	5.00%	5.00%
Commercial Managed Care	25.00%	25.00%
Commercial Fee For Service	38.00%	38.00%
Charity Care	2.00%	2.00%

Expense assumptions are based on the participating physician's experience in providing pain management services, as well as the experience of the Center's existing members in operating an Article 28 FASC. Utilization assumptions are based on the submitted letter from Dr. Yland, the participating pain management physician.

Marc Yland, M.D., a board certified anesthesiologist/pain management physician, has submitted a letter of interest supporting the utilization projections in this application and justifying the need for the addition of pain management services at the Center. All of these procedures are currently being performed in this private office-based practice, which is located in the same community that the applicant proposes to serve through this project. None of the projected procedures will migrate to the Center from local hospitals.

Capability and Feasibility

Total project cost of \$253,375 will be met via equity from operations.

Working capital requirements are estimated at \$91,488, which is equivalent to two months of third year expenses. The applicant will provide equity via operations to meet the working capital requirement. BFA Attachment A is the internal financial statements of LIAEC, LLC as of August 31, 2014, which indicates the availability of sufficient funds to meet the total project cost and the working capital requirements.

The submitted budget indicates net incremental income of \$88,193 and \$94,037 during the first and third years after the certification of pain management services. Revenues are based on current APG reimbursement rates for pain management services.

As shown on BFA Attachment A, the entity had a positive working capital position and a positive net asset position through August 31, 2014. Also, the entity achieved a net income of \$295,046 through August 31, 2014.

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

Recommendation

From a financial perspective, approval is recommended.

Supplemental Information

Supplemental Information from Surrounding Hospitals

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact in their service areas of the proposed addition of pain management services at Long Island Digestive Endoscopy Center. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: St. Charles Hospital -- **No Response**
200 Belle Terre Road
Port Jefferson, New York 11777

Facility: University Hospital -- **No Response**
Health Sciences Center
Stony Brook, New York 11794

Facility: John T. Mather Memorial Hospital -- **No Response**
75 North Country Road
Port Jefferson, New York 11777

Supplemental Information from Applicant

Need and Sources of Cases: The applicant states that all of the pain management cases to be added at this ASC will come from the private practice of the board certified anesthesiologist/pain management physician who is joining the facility. The applicant states that the ASC would be one of only five offering pain management in Suffolk County, with two situated more than 20 miles away from this facility. The current lack of local capacity to provide pain management will help ensure attainment of the projected volume of cases.

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

Office-Based Cases: The applicant states that all of the projected pain management procedures are currently performed in the anesthesiologist/pain management physician's private, office-based practice. None of the projected procedures are performed in any hospital.

DOH Comment

The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for approval for the addition of pain management services to the services offered by Long Island Digestive Endoscopy Center, LLC, based on public need, financial feasibility and operator character and competence.

Attachments

BFA Attachment A Internal Financial Statements of LIAEC, LLC as of August 31, 2014



Public Health and Health Planning Council

Project # 121224-C
HCR

Program: Certified Home Health Agency
Purpose: Construction

County: Monroe
Acknowledged: April 20, 2012

Executive Summary

Description

L. Woerner, Inc. d/b/a HCR, an existing Article 36 certified home health agency (CHHA) with its main office located in Rochester (Monroe County), requests approval to add three counties to the existing counties it currently serves. The applicant proposes to add the following: Livingston, Ontario and Wayne counties. The CHHA will provide the following services: nursing; physical therapy; speech pathology; occupational therapy; medical social services and home health aides.

OPCHSM Recommendation
Contingent Approval

Need Summary

The recommendation regarding need is based on the applicant's submissions under the RFA, and the information reflects what was submitted by the applicant at the time of the RFA application submission.

Program Summary

Based on information reviewed, staff found that L. Woerner, Inc. d/b/a HCR is currently in compliance with all applicable codes, rules and regulations.

Financial Summary

There are no project costs associated with this application.

Incremental Budget:

Revenues	\$729,420
Expenses	<u>612,117</u>
Net Income	\$117,303

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

Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency recommends approval.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of executed leases for all three sites acceptable to the Department. [BFA]

Approval conditional upon:

1. Pursuant to 10 NYCRR 762.2(l), the applicant shall implement the project that is the subject of this application within 90 days of receipt of the Commissioner's approval of the application, and be providing services in the entire geographic area approved within one year of the Council's recommendation for approval. Failure to implement an approved application within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the Commissioner's approval. [LTC]

Council Action Date

April 16, 2015

Need Analysis

Background

On December 8, 2011 the Public Health and Health Planning Council adopted an amendment to Section 750.5 of Title 10, NYCRR authorizing the Commissioner of Health to issue a request for applications (RFA) to establish new certified home health agencies (CHHAs) or expand existing CHHAs. Public need was based on established criteria in section 709.1(a) of Title 10 and that approval of the application will facilitate implementation of Medicaid Redesign Initiatives to shift Medicaid beneficiaries from traditional fee-for-service programs to managed care, managed long term care systems, integrated health systems or similar care coordination models or that approval will ensure access to CHHA services in counties with less than 2 existing CHHAs.

Solicitation

The RFA for the establishment of new or expansion of existing CHHAs was released on January 25, 2012 with RFA applications due on March 9, 2012 and CON applications due on April 20, 2012. Applicants were permitted to submit questions to the Department to seek additional clarification regarding this process. The Department's answers were provided to all applicants prior to the submission deadline, to ensure consistent information was shared regarding the process.

Applicants that were not presented to the Public Health and Health Planning Council with a recommendation for approval at either the August 2012 or October 2012 meetings were considered deferred. The department notified RFA applicants that we are exercising our authority under the RFA Section VII.D.5 to seek clarifications and revisions of applications from those applicants whose applications have been deferred. Letters dated September 17th and 27th were sent to these applicants through NYSE-CON and included information related to the review and evaluation criteria and characteristics of approved applicants.

Additionally, the opportunity to arrange a meeting or phone conference with the Division of Home and Community Based Services to discuss the RFA criteria that was used to evaluate each application was made available to each applicant.

Competitive Review

The applications, including any supplemental information submitted, were reviewed by the Department and recommendations are being made to the Public Health and Health Planning Council.

The CON determination of need was based on the applicant's response to the RFA which includes any additional information submitted by the applicant in response to the aforementioned September 17th and 27th letters. The applications were reviewed on criteria that included, but were not limited to:

- Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives;
- Knowledge and experience in the provision of home health services;
- Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data;
- Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population;
- Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance.

This CON application requests approval to expand the service area of the CHHA currently approved to serve Genesee, Monroe and Orleans counties into Livingston, Ontario and Wayne counties. The review of the RFA application showed that the applicant responded to each of the review criteria as indicated below:

Organizational capacity to successfully implement the MRT initiatives and potential of the proposal to support the goals of the Department in advancing MRT initiatives

- Detailed how their proposal will support the goals of the Department in advancing MRT initiatives.
- Described specific health management programs that the CHHA has to manage complex and high cost cases.
- Discussed partnering with MLTCPs and that it had existing relationships with, including VNS Choice and Elderplan.
- Currently participating with two MLTCPs, Elderplan and VNS Choice, to provide care coordination in some of its current service areas. States that both plans have expressed interest in working with them in the proposed counties.
- Discussed partnering with other MLTCPs that operate in the proposed areas.
- Are engaged and ready to work with several MLTCPs, including VNS Choice, Elderplan, Fidelis Care, and Universal American.
- Will utilize their extensive experience in transitioning patients to the most cost effective care and services.
- Participant in two Health Homes and engaged with the approved Health Homes in each of the proposed counties.
- Provided names of their existing relationships with local health departments and social service districts in each county along with linkages and MLTCPs contracts they have waiting for their approval to operate in the counties proposed.

Knowledge and experience in the provision of home health services

- Has a proven track record of successfully operating CHHAs in rural counties.
- Have a strong history of working with governmental and community organizations within the counties they serve.
- Provided much needed support to Schoharie County during the Hurricane Irene crisis and provided vital health services to homebound residence during the crisis.
- Described its organizational capacity for the regions proposed including specific relationships with community providers/hospitals.
- Discussed their expected referral sources
- Discussed how they would leverage their existing CHHA services in neighboring counties to provide services and recruit staff.
- Described how the proposed counties would result in contiguous service areas for the CHHA that would enable the CHHA to offer the choice of quality care in many rural counties with limited CHHA services.
- State they are the only home care provider chosen in Huther Doyle's Health Home which positions them to be a solution in managing the high cost behavioral health patient population.
- Demonstrated experience in efficiently and effectively developing services and programs in primarily rural counties.

Demonstration of public need based on 709.1(a) as well as a description of community need and the health needs of the community supported by data

- Demonstrated public need in each separate county they propose using the criteria specified in Section 709.1(a)
- Provided health status indicators; socioeconomic factors; geographic factors and demographics for each county requested.
- Provided in-depth analysis and compared home care utilization to capacity for the service areas.
- Addressed meeting the needs of the traditionally medically underserved and their policy to accept every patient regardless of where they reside in the county and their health status, as long as they qualify for home health services.
- Stressed their focus on community outreach and engagement as they pursue community and health care provider education to ensure everyone that could benefit from home care services and qualifies for them actually receives them in the most cost effective manner.
- Presented detailed, specific, and organized data to illustrate need in each county
- Discussed why need is currently not met and discusses all elements of the county demographics and growth issues

- Elaborated on how the needs of each county will be met by their CHHA services in providing choice and access to quality care.

Potential of the approved application to produce efficiencies in the delivery of home care services to the home care population

- Discussed events that have improved their position to effectively facilitate Medicaid Redesign initiatives, such as new relationships with MLTCPs and health care providers.
- Currently a participant in two Health Homes and engaged with the approved Health Homes in each proposed county.
- Demonstrated their ability and experience in each of the proposed counties to facilitate the implementation of shifting Medicaid beneficiaries to the most cost effective care models and programs.
- Emphasized their efficiencies generated through their centralized functions and operations in every region that they are applying for along with relationships and linkages to enhance care coordination and transitions, as well as streamlining operations and producing cost savings.
- Discussed history of producing lower hospital admissions for patients under their care.
- Elaborates on their InterQual Criteria to manage utilization of services, which is a nationally recognized, evidence based criteria and rule based clinical indicators of illness that are patient specific which have been used in inpatient and outpatient care for over 30 years.
- Discussed their Telehealth program with a central monitoring center and interface with the electronic medical record supporting their initiative to reduce utilization costs while ensuring superior outcomes, patient safety and improved self-efficacy.
- Discussed partnering with major hospitals and explain their primary sources of referral in their proposed service areas.
- Described in detail many of the care management programs that are offered by the CHHA to control high cost and complex cases including care management programs for joint replacement therapy, telemonitoring, a wound/ostomy team, a stroke program, a pain management team, palliative care, a cardiac disease program, a diabetic program and a falls prevention program.
- In counties where over reliance of SNF rehabilitation exists, described how they will facilitate the transfer of patients directly from the hospital to the home, thereby reducing costs.

Comprehensive and effective quality assurance plan which described how the agency will use data to implement an ongoing quality assessment and performance improvement program that leads to measurable and sustained improvement in performance

- The applicant has a proven QA program that has resulted in a high quality of care. They were recognized 2 years in a row by IPRO with their Quality Award for their sustained improvement in reducing Acute Care Hospitalization. The applicant continues to maintain a hospitalization rate below state and national averages and has many proven health management programs in place.
- The CHHA was named in the top 100 of certified home health care agencies by Home Care Elite 2011; the only NYS CHHA to receive the recognition.
- The application described a thorough QA program that uses OASIS data, and continually monitors their agency's data for OASIS reporting through a software package that provides real time feedback on the same information used for OASIS reporting.
- Discussed quality indicators to be measured, benchmarking and conducting root-cause analysis.
- Discussed outcome measures and incorporating results into the QA program initiatives.
- Discussed their history of developing partnerships that improve care transitions and decrease hospital/nursing home readmissions.
- Discussed working to identify high risk patients to put into place care management plans that improve quality of care and reduce readmissions.
- Discussed customer satisfaction surveys and HHCAHPS.

The recommendation regarding need is based on the applicant's submissions under the RFA and the information reflects what was submitted by the applicant at the time of the RFA application submission.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Review Summary

L. Woerner, Inc. d/b/a HCR is an existing for-profit corporation currently operating an Article 36 CHHA and LTHHCP. The CHHA is approved to serve Genesee, Monroe and Orleans counties, and the LTHHCP is approved to serve Genesee County. This CON application # 121224-C has been submitted by L. Woerner, Inc. d/b/a HCR to request approval to expand the service area of their existing CHHA currently serving Genesee, Monroe and Orleans into Livingston, Ontario and Wayne counties, pursuant to the Request for Applications (RFA) for the establishment of new CHHAs or the expansion of existing CHHAs into additional counties.

Three companion CON applications were also submitted by L. Woerner, Inc. d/b/a HCR to request approval for expansions requested under the RFA. These expansions are described below and have been approved by the Public Health and Health Planning Council at previous meetings.

CON application # 131186-C approved the expansion of the service area of the CHHA that serves Clinton County into Essex, Franklin, Hamilton, St. Lawrence and Warren counties.

CON application # 131187-C approved the expansion of the service area of the CHHA that serves Madison County into Cayuga, Onondaga, Oswego and Jefferson counties.

CON application # 131188-C approved the expansion of the service area of the CHHA that serves Schoharie County into Otsego County.

The applicant proposes to expand the service area of their existing CHHA into Livingston, Ontario and Wayne counties. L. Woerner, Inc. d/b/a HCR will serve the residents of Genesee, Monroe, Orleans, Livingston, Ontario and Wayne counties from their existing office located at 85 Metro Park, Rochester, New York 14623.

The applicant proposes to provide the following home health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Medical Social Services
Nutrition	Speech Language Pathology	Medical Supplies, Equipment and Appliances
Respiratory Therapy		

L. Woerner, Inc. d/b/a HCR is currently in compliance with all applicable codes, rules and regulations.

Recommendation

From a programmatic perspective, conditional approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant, has indicated that they plan to enter into one lease for each of the three counties that they are expanding to. As of this date, they have not entered into any agreements. As a contingency of approval, the applicant must submit executed lease for all three sites.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues		
Medicaid Managed Care	\$26,450	\$105,800
Commercial Fee-For-Service	52,900	211,600
Medicare Fee-For-Service	96,600	386,400
Private Pay	<u>6,405</u>	<u>25,620</u>
Total Revenues	\$182,355	\$729,420
Total Expenses	\$179,524	\$612,117
Net Income	\$2,831	\$117,303

The incremental caseload during the first and third years related to the added counties is as follows:

	<u>Year One</u>	<u>Year Three</u>
Livingston:	325	341
Ontario:	375	394
Wayne:	375	394

Utilization broken down by payor source during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	10.00%	10.00%
Commercial Fee-For-Service	20.00%	20.00%
Medicare Fee-For-Service	65.00%	65.00%
Private Pay	3.00%	3.00%
Charity Care	2.00%	2.00%

Expense and utilization assumptions are based on the historical experience of the applicant's existing CHHA. Revenues are reflective of the Medicaid Episodic Payment System.

Capability and Feasibility

There are no total project costs associated with this application.

Working capital requirements are estimated at \$102,020, which is equivalent to two months of third year expenses. The applicant has indicated that the working capital requirement will be met via equity from the shareholders of L. Woerner, Inc. BFA Attachment A is the personal net worth statements of the shareholders of L. Woerner, Inc., which indicates the availability of sufficient funds for the working capital requirement.

The submitted budget indicates an incremental net income of \$2,831 and \$117,303 during the first and third years, respectively. Revenues are reflective of current payment rates as well as the recent implementation of the Medicaid Episodic Payment System. The budget appears reasonable.

BFA Attachment B is the 2012 and 2013 certified financial statements of L. Woerner, Inc. As shown on BFA Attachment B, the facility had an average negative working capital position and an average negative shareholders position during 2012 and 2013. The applicant has indicated that the reason for the average negative working capital position and the average negative shareholders position was the result of historical operating losses and Employment Stock Ownership Plan contributions. Also, the applicant incurred average net losses of \$1,906,718 from 2012 through 2013. The applicant has indicated that the reason for the losses are as follows: Employment Stock Ownership Plan contributions of \$1,000,000, expenses incurred due to the facility expanding into the newly acquired counties, and delays in receiving reimbursement from its two largest payors, Medicaid and Medicare, as the enrollment process took an average of nine months to complete for each of the newly acquired agencies. The applicant has indicated that they have improved Medicaid case mix, increased volumes and reduced costs through efficiencies implemented through new software technology.

BFA Attachment C is the May 31, 2014 internal financial statements of L. Woerner, Inc. As shown, the entity had a negative working capital position and a negative shareholders position through May 31, 2014. The applicant has indicated that the reason for the negative working capital position and the negative shareholders position is prior year historical losses and Employment Stock Ownership Plan contributions. Also, the facility incurred a net loss of \$474,017 through May 31, 2014. The applicant has indicated that the reason for the loss was the result of start-up associated with providing home care in the ten new counties throughout New York State. The applicant has indicated that they have been significantly improved the revenue and merging of that segment of their business.

Subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

<h2>Attachments</h2>

BFA Attachment A	Personal Net Worth Statements
BFA Attachment B	Financial Summary- 2012 and 2013 certified financial statements of L. Woerner
BFA Attachment C	Financial Summary- May 31, 2014 internal financial statements of L. Woerner



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

NEW YORK STATE DEPARTMENT OF HEALTH CENTER FOR HEALTH CARE FACILITY PLANNING, LICENSURE AND FINANCE

MEMORANDUM

TO: Members of the Establishment and Project Review Committee
Public Health and Health Planning Council

FROM: Charles P. Abel *CFA*
Deputy Director
Center for Health Care Facility Planning, Licensure and Finance

DATE: March 17, 2015

SUBJECT: CON #142261 Faxton St. Luke's Healthcare
CON #142183 Utica Partners, LLC

The Department has received two applications to provide ESRD services in Madison County. Because both applications were received within the six-month batch period of July 1, 2014 to December 31, 2014, they may be considered concurrently, as set forth in 10 NYCRR Section 710.11. Each application also proposes to operate a total of eight dialysis stations, the number equal to the unmet need for dialysis stations in Madison County. Because it would be neither economical nor efficient to operate fewer than eight stations, only one application may be approved. Therefore, the two applications have been reviewed on a competitive basis.

Services and Operations

There are no significant differences in the services each proposed facility would offer, nor in their staffing and operations.

- Both facilities would be located in the city of Oneida, with proposed locations less than one mile apart.
- Each facility would run three shifts per day, six days per week by the third year of operation.
- Duration of treatment at each facility would be four hours, on average.
- Each facility would be adequately staffed with registered nurses and patient care technicians and run with appropriate medical supervision.

- Each facility would employ a registered dietitian and provide individualized nutritional guidance to patients at least once a month.
- Both facilities would offer in-center hemodialysis, home peritoneal dialysis training and support, and home hemodialysis training and support.
- There are no significant differences in the Dialysis Facility Compare “Star” ratings for dialysis operations of Faxton-St. Luke’s Healthcare and those for the New York State sites of American Renal Associates, the proposed corporate member of Utica Partners, LLC.

Costs

The Faxton-St. Luke’s Healthcare (FSLH) proposal and the Utica Partners proposal differ mainly in their projected costs. The FSLH application projects a cost of \$171.36 per treatment compared to \$287.98 at the Utica Partners facility.

The expense and utilization assumptions supporting the lower per treatment cost at the proposed FSLH facility are based on the historical experience of the hospital in operating other Article 28 chronic renal dialysis clinics in the Oneida and Madison counties. The lower projected cost per treatment likely reflects the fact that FSLH is an established provider of dialysis services in the area, with advantages in terms of start-up costs for the proposed site. These would include staff already trained in dialysis who could be deployed from other FSLH sites, as well as established administrative and treatment protocols and approved policies and procedures for dialysis care. The lower cost per treatment would also include efficiencies gained from the larger scale of FSLH dialysis operations and improvements made in operations and management over the years.

Conclusion

As an established provider of dialysis services in Oneida and Madison counties, Faxton-St. Luke’s Healthcare has both the experience and the patient base to operate an ESRD treatment facility, and to do so at a lower cost than the proposed Utica Partners, LLC facility under consideration. Approval of the Faxton-St. Luke’s Healthcare application is recommend.



Public Health and Health Planning Council

Project # 142261-C
Faxton-St Lukes Healthcare St Lukes Division

Program: Hospital
Purpose: Construction

County: Madison
Acknowledged: January 20, 2015

Executive Summary

Description

Faxton-St.Luke’s Healthcare (FSLH), an existing 370-bed, Article 28 not-for-profit, acute care hospital located at 1656 Champlain Ave, Utica, NY (Oneida County), requests approval for a new eight-station chronic renal dialysis center. The center will be located in leased space at 131 Main Street, Suite 101, Oneida, NY (Madison County). The leased space is also known as Oneida Plaza. The center will provide chronic renal dialysis services and both home hemodialysis and home peritoneal dialysis training and support.

FSLH is part of the Mohawk Valley Health System (MVHS), a not-for-profit healthcare organization which serves as the active parent of FSLH, St. Elizabeth Medical Center (SEMC), and several other health care entities providing senior care, nursing home, and home care services in the geographic area of Oneida, Herkimer, and Madison Counties.

FSLH currently provides dialysis services to 428 patients in Utica and the surrounding communities. For more than 13 years the hospital also operated an eight-station dialysis unit in Oneida at 221 Broad Street. However, the site’s lease agreement was not renewed and the dialysis clinic closed effective August 1, 2014. The applicant indicated that, at the time of closure, there were 31 patients being treated at the Oneida facility with an additional 17 patients on a waiting list. FSLH further indicated that they intended to reopen a dialysis unit in Oneida once suitable space could be located. The proposed eight-station unit would be able to accommodate the 48 patients over three shifts, six days per week. FSLH is also proposing to add home therapy services to this unit, which would include both home hemodialysis and home peritoneal dialysis

training and support. Having home therapy services available in Oneida would allow patients the opportunity for treatment options closer to home and reopening a FSLH dialysis unit in Oneida would provide continuity of care.

OPCHSM Recommendation
Contingent Approval

Need Summary

Due to the recent closure of Faxton St. Luke’s dialysis facility in Madison County, a projected need of 8 stations has been created. Faxton St. Luke’s had operated an eight-station dialysis center in Utica until July 2014, when they were unable to negotiate a lease extension. Desirable treatment slots will be available to residents in the area upon approval of the CON. Residents who have been traveling outside of the county for treatment due to the recent loss of capacity will be able to return.

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

Project costs of \$1,404,954 will be met via equity from FSLH’s current operations.

The projected budget based on the applicant’s utilization assumption of close to 100% is as follows:

Budget:	Revenues	\$2,754,482
	Expenses	<u>\$ 1,530,099</u>
	Net Income	\$1,224,383

The Department has sensitized the budget to reflect utilization assumptions consistent with Part 709.4 of Title 10 NYCRR renal dialysis capacity expectations. The methodology projects 702 treatments per freestanding station per year (90% utilization) based on operating 2.5 patient shifts per day, 6 days per week, for 52 weeks per year. The sensitized budget is as follows:

Sensitized Budget:	Revenues	\$ 2,227,890
	Expenses	<u>\$1,357,153</u>
	Net Income	\$870,737

The applicant's and sensitized budgets demonstrate the capability to proceed in a financially feasible manner, and approval is recommended.

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
7. Per 710.9 the applicant shall notify the appropriate Regional Office at least two months in advance of the anticipated completion of construction date to schedule any required pre-opening survey. Failure to provide such notice may result in delays affecting both the pre-opening survey and authorization by the Department to commence occupancy and/or operations. [AES]
8. Compliance with all applicable sections of the NFPA 101 Life Safety Code (2000 Edition), and the State Hospital Code during the construction period is mandatory. This is to ensure that the health and safety of all building occupants are not compromised by the construction project. This may require the separation of residents, patients and other building occupants, essential resident/patient support services and the required means of egress from the actual construction site. The applicant shall develop an acceptable plan for maintaining the above objectives prior to the actual start of construction and maintain a copy of same on site for review by Department staff upon request. [AES]
9. The applicant must adhere to the Construction Completion Date (09/04/2015). The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date

April 16, 2015

Need Analysis

Project Description

Faxton St. Luke's Healthcare, with Mohawk Valley Health System as its active parent, is an existing integrated delivery system operating two Hospitals and five Renal Dialysis extension clinics. Faxton St. Luke's Healthcare is seeking approval to establish an eight-station free-standing chronic dialysis facility to be located at 131 Main Street, Oneida, NY 13421 in Madison County.

Analysis

The primary service area for the new facility will be Madison County, which had a population estimate of 72,382 for 2013. The percentage of the population aged 65 and over was 15.5%. The nonwhite population percentage was 4.9%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Madison County and New York State are listed below.

	<u>Madison County</u>	<u>State Average</u>
Age 65+	15.5%	14.4%
NonWhite	4.9%	29.1%

Source: U.S. Census 2014

Capacity

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

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station $[(2.5 \times 6) \times 52 \text{ weeks}] = 780$ treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station $[(2 \times 6) \times 52 \text{ weeks}] = 624$ treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 8 free standing chronic dialysis stations operating in Madison County and there are 0 stations in pipeline for a total of 8 stations.
- Based upon DOH methodology, the 8 existing free standing stations in Madison County could treat a total of 36 patients annually.

Projected Need

	2013		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	50	70	52	73
Free Standing Stations Needed	11	16	12	16
Existing Stations	8	8	8	8
Total Stations (Including Pipeline)	8	8	8	8
Net new stations from this project	8	8	8	8
Unmet Need With Approval	-5	0	-4	0

*Based upon an estimate of a one percent annual increase

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat three patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2013.

A one percent growth rate was used based on the lack of need in surrounding counties for additional stations, the decreasing trend in population, the lack of minority groups within the county and the above state average of elderly patients. The recent closure of dialysis stations in Madison County created a need for eight additional dialysis stations in the area. Adding this new facility will add options for residents and desirable time slots may be more readily available.

Conclusion

This project will result in eight net new chronic dialysis stations to be located in Madison County. Currently there is documented unmet need, and the addition of these stations will help to provide the necessary resources and absorb remaining need. As an established provider in the county, the applicant has both the experience and the patient base required to successfully operate an ESRD treatment facility.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Faxton St. Luke's Healthcare (FSLH) seeks approval to establish and construct an eight station chronic renal dialysis center at 131 Main Street in Oneida.

Proposed Operator	Faxton St. Luke's Healthcare
Doing Business As	Faxton St. Luke's Healthcare—Oneida Dialysis Center
Site Address	131 Main Street, Suite 101 Oneida (Madison County)
Approved Services	Chronic Renal Dialysis (8 Stations) and Home Hemodialysis Training & Support Home Peritoneal Dialysis Training & Support
Shifts/Hours/Schedule	Three (3) shifts, six (6) days per week Monday through Saturday, 5 am to 9 pm

Staffing (1st Year / 3rd Year)	8.6 FTEs increasing to 12.0 FTEs by the 3 rd year
Medical Director(s)	Charles Eldredge, MD Ahmad Mian, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Faxton-St. Luke's Healthcare 21.2 miles / 33 minutes

Character and Competence

The applicant has identified Drs. Charles Eldredge and Ahmad Mian to serve as Medical Directors of the proposed center. Both physicians completed nephrology fellowships, are active in private practice and are board-certified in Internal Medicine with subcertifications in Nephrology.

Staff from the Division of Certification & Surveillance reviewed the disclosure information submitted regarding licenses held, formal education, training in pertinent health and/or related areas and employment history. These licensed individuals were checked against the Office of Medicaid Management, the Office of Professional Medical Conduct, and the Education Department databases as well as the US Department of Health and Human Services Office of the Inspector General Medicare exclusion database

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

Star Ratings - Dialysis Facility Compare (DFC)

The Centers for Medicare and Medicaid Services (CMS) and the University of Michigan Kidney Epidemiology and Cost Center have developed a methodology for rating each dialysis facility which may be found on the Dialysis Facility Compare website as a "Star Rating." The method produces a final score that is based on quality measures currently reported on the DFC website and ranges from 1 to 5 stars. A facility with a 5-star rating has quality of care that is considered 'much above average' compared to other dialysis facilities. A 1- or 2- star rating does not mean that a facility provides poor care. It only indicates that measured outcomes were below average compared to other facilities. Star ratings on DFC are updated annually to align with the annual updates of the standardized measures.

The DFC website currently reports on 9 measures of quality of care for facilities. The measures used in the star rating are grouped into three domains by using a statistical method known as Factor Analysis. Each domain contains measures that are most correlated. This allows CMS to weight the domains rather than individual measures in the final score, limiting the possibility of overweighting quality measures that assess similar qualities of facility care.

To calculate the star rating for a facility, each domain score between 0 and 100 by averaging the normalized scores for measures within that domain. A final score between 0 and 100 is obtained by averaging the three domain scores (or two domain scores for peritoneal dialysis-only facilities). Finally, to recognize high and low performances, facilities receive stars in the following way:

- Facilities with the top 10% final scores were given a star rating of 5.
- Facilities with the next 20% highest final scores were given 4 stars.
- Facilities within the middle 40% of final scores were given 3 stars.
- Facilities with the next 20% lowest final scores were given 2 stars.
- Facilities with the bottom 10% final scores were given 1 star.

The applicant disclosed interest in the following facilities whose Star Ratings are provided below:

Facility Name	Address	Star Rating
Faxton-St. Lukes Healthcare	1676 Sunset Ave, Utica, NY	★ ● ● ● ●
Faxton-St. Lukes Healthcare - Hamilton	10 Eaton Street, Suite 102, Hamilton, NY	★★★ ● ●
Faxton-St. Lukes Healthcare - Herkimer	201 East State Street, Herkimer, NY	★★★ ● ●
Faxton-St. Lukes Healthcare - Masonic	2150 Bleeker Street, Utica, NY	★ ● ● ● ●
Faxton-St. Lukes Healthcare - Rome	91 Perimeter Rd - Griffiss Park, Rome, NY	★ ● ● ● ●
FSLH-St. Lukes Home Renal Dialysis	1650 Champlin Avenue, Utica, NY	Not enough quality measure data to calculate Star Rating.

Source: <http://www.medicare.gov/dialysisfacilitycompare>

Recommendation

From a programmatic perspective contingent approval, is recommended.

Financial Analysis

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site they will occupy, as summarized below:

Date:	November 24, 2014
Premises:	131 Main Street, Oneida, NY (approximately 6,139 sq. ft.)
Lessor:	COSBROS Properties, LLC
Lessee:	Faxton St. Luke's Healthcare
Term:	10 years with (1) additional 5 year renewal options
Rental:	<ul style="list-style-type: none"> • From 12/1/2014 - 5/31/2015 is the tenant's free rent period • From 6/1/2015 and continuing until tenant's receipt of certificate of occupancy, annual rent is \$39,166.80 (\$3,263.90 monthly or \$6.38 per sq. ft.) • From the 1st of the month following tenant's receipt of certificate of occupancy: <ul style="list-style-type: none"> ○ Years 1-5 annual rent is \$78,272.28 (\$6,522.69 monthly or \$12.75 per sq. ft.) ○ Years 6-10 annual rent is \$81,341.75 (\$6,778.48 monthly or \$13.25 per sq. ft.)
Provisions:	The lessee shall be responsible for maintenance and utilities

The applicant has indicated that the lease arrangement is an arm's length lease. The applicant has submitted letters from 2 NYS licensed realtors attesting to the rent reasonableness.

Total Project Cost and Financing

Total project cost, which is for renovation and demolition and the acquisition of movable equipment, is estimated at \$1,404,954, further broken down as follows:

Renovation and Demolition	\$740,446
Design Contingency	\$9,593
Construction Contingency	\$74,044
Architect/Engineering Fees	\$95,933
Movable Equipment	\$417,759
Telecommunications	\$60,983
CON Fee	\$2,000
Additional Processing Fee	<u>\$4,196</u>
Total Project Cost	\$1,404,954

Project costs are based on a construction start date of May 6, 2015, and a five-month construction period.

The applicant's financing plan appears as follows:

Equity from FSLH	\$1,404,954
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Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for Years 1 and 3 of operations, as summarized below:

	<u>Year 1</u>	<u>Year 3</u>
Revenues		
Medicare Fee- For- Service	\$1,155,336	\$1,439,424
Medicaid Fee- For- Service	93,456	\$140,018
Commercial Fee- For- Service	<u>\$897,000</u>	<u>\$1,175,040</u>
Total Revenues	\$2,145,792	\$2,754,482
Expenses		
Operating	\$1,008,882	\$1,340,827
Capital	<u>\$189,272</u>	<u>\$189,272</u>
Total Expenses	\$1,198,154	\$1,530,099
Net Income	<u>\$947,638</u>	<u>\$1,224,383</u>
Utilization (Treatments)	7,176	9,792
Percent Occupancy	82.14%	98.08%
Cost Per Treatment	\$166.97	\$156.26

Utilization broken down by payor source for Years 1 and 3 is as follows:

	<u>Year 1</u>		<u>Year 3</u>	
	<u>Treatments</u>	<u>% Utilization</u>	<u>Treatments</u>	<u>% Utilization</u>
Medicare Fee-For-Service	5,023	70%	6,855	70%
Medicaid Fee- For-Service	718	10%	979	10%
Commercial Fee-For-Service	<u>1,435</u>	<u>20%</u>	<u>1,958</u>	<u>20%</u>
Total	7,176	100%	9,792	100%

Treatments broken down by Category for Years 1 and 3 are as follows:

	Year 1 <u>Treatments</u>	Year 3 <u>Treatments</u>
Chronic Renal Dialysis	6,024	7,488
Home Hemodialysis training and support	480	960
Home Peritoneal Dialysis training and support	672	1,344
Total	7,176	9,792

Projected FTEs for years 1 and 3 are 8.6 FTEs and 12.0 FTEs, respectively.

Breakeven utilization is projected at 4,007 treatments for year 1 (45.87%) and 5,440 treatments for year 3 (54.49%).

The methodology for evaluating chronic renal dialysis capacity is specified in Part 709.4 of Title 10 NYCRR. The Department's methodology projects that 1 freestanding station represents 702 treatments per year (at 90% utilization) based on the expectation that the center will operate 2.5 patient shifts per day, 6 days per week, for 52 weeks per year. The applicant's total treatments for the 8 stations would be as follows for both Years 1 and 3: 702 treatments * 8 stations = 5,616 treatments. FSLH's projected utilization is significantly higher than the total 5,616 treatments expected for an 8 station chronic renal dialysis clinic. Therefore, the applicant's Years 1 and 3 budgets have been sensitized to reflect utilization expectations consistent with the Department's methodology. The sensitized treatments, FTEs, and budgets are shown below.

Sensitized treatments broken down by Category for Years 1 and 3 are as follows:

	Year 1 <u>Sensitized</u>	Year 3 <u>Sensitized</u>
Chronic Renal Dialysis	5,616	5,616
Home Hemodialysis training and support	480	960
Home Peritoneal training and support	672	1,344
Total	6,768	7,920

Sensitized FTEs for Years 1 and 3 are 8.11 FTEs and 9.71 FTEs, respectively, based on the following:

- Total Projected Treatments / Total Projected FTEs = Number of Treatments per FTE
- Sensitized Treatments / Number of Treatments per FTE = Sensitized Number of FTEs

The sensitized year 1 and year 3 budgets are as follows:

	<u>Year 1</u>	<u>Year 3</u>
Revenues		
Medicare Fee- For- Service	\$1,089,648	\$1,164,240
Medicaid Fee- For- Service	88,142	113,250
Commercial Fee- For- Service	<u>846,000</u>	<u>950,400</u>
Total Revenues	2,023,790	\$2,227,890
Expenses		
Operating	\$969,383	\$1,167,881
Capital	<u>\$189,272</u>	<u>\$189,272</u>
Total Expenses	1,158,654	1,357,153
Net Income	<u>\$865,136</u>	<u>\$870,737</u>
Utilization (Treatments)	6,768	7,920
Percent Occupancy	77.47%	79.33%
Cost Per Treatment	\$171.20	\$171.36

Expense and utilization assumptions are based on the historical operating experience of the applicant in operating other Article 28 chronic renal dialysis clinics in the area.

Capability and Feasibility

Project costs of \$1,404,954 will be met entirely through equity from FSLH.

Working capital requirements are estimated at \$255,017 which is equivalent to two months of Year 3 expenses. The working capital requirement will be entirely funded through equity from FSLH.

BFA Attachment B is the 2012 and 2013 certified financial statements of Faxton-St. Luke's Healthcare, which indicates sufficient liquid assets to cover all of the equity requirements associated with this CON. The facility has maintained both average positive working capital and net asset positions for the period. Additionally, the facility averaged a \$901,203 net loss during this period. The 2013 loss of (\$5,921,019) is due to the following items: decrease in patient volume, increase in local competition, and reduction in overall reimbursement. In order to rectify these issues the facility has implemented several cost savings initiatives, the main initiative being the affiliation of FSLH with Mohawk Valley Health Systems, which allowed the facility to eliminate unnecessary redundant expenses.

BFA Attachment C is the internal financial statements of Faxton-St. Luke's Healthcare for the period 1/1/2014 through 12/31/14. The entity generated both positive working capital and net asset positions, and had a net loss of (\$1,996,943) for the period. The loss is due to the following items: decrease in patient volume, increase in local competition and reduction in overall reimbursement. As stated earlier, the facility is now affiliated with MVHS and is in the process of implementing several initiatives in order to eliminate unnecessary redundant expenses within the system. These initiatives have already allowed the facility to reduce their overall loss by over \$3.9 million dollars by the end of 2014.

The submitted budget indicates a net income of \$947,638 and \$1,224,383 will be generated during Years 1 and 3, respectively. Revenues are based on the current reimbursement methodologies for dialysis services. The submitted budget does not reflect utilization expectations per the Department's need methodology for freestanding end stage renal dialysis clinics and has been sensitized accordingly. The Department's sensitized budget indicates a net income of \$865,136 and \$870,737 will be generated during Years 1 and 3, respectively. Revenues are based on the current reimbursement methodologies for dialysis services. The sensitized budget appears reasonable.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

- BFA Attachment A Organizational Chart of Mohawk Valley Health System (MVHS)
- BFA Attachment B Certified Financial Statements of Faxton-St. Luke's Healthcare for 2012-2013
- BFA Attachment C Internal Financial Statements of Faxton-St. Luke's Healthcare for the period 1/1/2014-12/31/14



Public Health and Health Planning Council

Project # 142183-B

Utica Partners, LLC d/b/a Dialysis Center of Oneida

Program: Diagnostic and Treatment Center **County:** Madison
Purpose: Establishment and Construction **Acknowledged:** November 4, 2014

Executive Summary

Description

Utica Partners, LLC d/b/a Dialysis Center of Oneida (Utica Partners), an existing New York State limited liability company, requests approval for the establishment and construction of an 8-station freestanding Article 28 chronic renal dialysis center. The center will provide the following services: chronic renal dialysis, home hemodialysis training and support, home peritoneal dialysis training and support, nutrition, and social work services. The center will be housed in leased space located at 600 Old County Road, Suite 435, Oneida (Madison County). The leased space is also known as 2142 Glenwood Shopping Plaza.

The proposed members of Utica Partners and their ownership percentages are as follows:
American Renal Associates, LLC (ARA) at 51% and Dr. Emile Wassel at 49%.

ARA is a subsidiary of American Renal Holdings, Inc. (ARH), a national provider of renal dialysis centers. ARH, a subsidiary of American Renal Associates Holding, Inc. (ARAH), owns and operates 154 dialysis clinics in 22 states and the District of Columbia. As a subsidiary of ARH, ARA does not have separate certified financial statements. Therefore, ARA has provided the 2012 and 2013 certified financial statements of ARH to show their financial feasibility. ARH's certified statements are provided as BFA Attachment C.

ARA currently co-operates the following New York State chronic renal dialysis centers:

- Mohawk Valley Dialysis Center, Inc. (opened 9/1/2012);
- Plattsburgh Dialysis, LLC (acquired 12/1/2013).
- Elizabethtown Center, LLC (acquired 4/1/2014);
- Plattsburgh Associates, LLC d/b/a Hastings Hemodialysis Center (acquired 8/1/2014); and
- Massena Center, LLC (acquired 1/1/2015).

OPCHSM Recommendation
Disapproval on the basis of Need

Need Summary

Although the applicant has demonstrated that it could meet the need for eight additional dialysis stations in Madison County, this application has been reviewed competitively with that of CON 142261, submitted by Faxon-St. Lukes's Healthcare (FSLH), also proposing to operate an eight-station dialysis facility in the city of Oneida. The FSLH project has been selected for approval, which will fulfill the remaining need for eight dialysis stations in Madison County. Therefore, there is no need for the eight stations requested by Utica Partners, LLC.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Disapproval on the basis of Need

Council Action Date

April 16, 2015

Need Analysis

Background

Utica Partners, LLC, dba Dialysis Center of Oneida, is an existing limited liability company seeking approval to establish an 8 station free-standing chronic dialysis facility to be located at 2142 Glenwood Shopping Plaza, Oneida, NY 13421 in Madison County.

Need Summary

Due to the recent closure of an eight-station facility in Madison County, a projected need of eight stations has been created. Desirable treatment slots will be available to residents in the area upon approval of the CON. Residents who have been traveling outside of the county for treatment will also be able to return. The facility will add eight operating stations with two shells. Should the need arise, the facility will submit an additional CON for approval by the department to activate the shell stations.

Analysis

The primary service area for the new facility will be Madison County, which had a population estimate of 72,382 for 2013. The percentage of the population aged 65 and over was 15.5%. The nonwhite population percentage was 4.9%. These are the two population groups that are most in need of end stage renal dialysis service. Comparisons between Madison County and New York State are listed below.

	<u>Madison County</u>	<u>State Average</u>
Age 65+	15.5%	14.4%
NonWhite	4.9%	29.1%

Source: U.S. Census 2014

Capacity

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

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station $[(2.5 \times 6) \times 52 \text{ weeks}] = 780$ treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station $[(2 \times 6) \times 52 \text{ weeks}] = 624$ treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 8 free standing chronic dialysis stations operating in Madison County and there are 0 stations in pipeline for a total of 8 stations.
- Based upon DOH methodology, the 8 existing free standing stations in Madison County could treat a total of 36 patients annually.

Projected Need

	2013		2017	
	Total Patients Treated	Total Residents Treated	*Projected Total Patients Treated	*Projected Residents Treated
	50	70	52	73
Free Standing Stations Needed	11	16	12	16
Existing Stations	8	8	8	8
Total Stations (Including Pipeline)	8	8	8	8
Net new stations from this project	8	8	8	8
Unmet Need With Approval	-5	0	-4	0

*Based upon an estimate of a one percent annual increase

The data in the first row, "Free Standing Stations Needed," comes from the DOH methodology of each station being able to treat 4.5 patients, and each hospital station being able to treat three patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. "Total Patients Treated" is from IPRO data from 2013.

A one percent growth rate was used based on the lack of need in surrounding counties for additional stations, the decreasing trend in population, the lack of minority groups within the county and the above state average of elderly patients.

The recent closure of dialysis stations in Madison County created a need for 8 dialysis stations in the area. Adding this new facility will add options for residents and desirable time slots may be more readily available.

Conclusion

Although the applicant has demonstrated that it could meet the need for eight additional dialysis stations in Madison County, this application has been reviewed competitively with that of CON 142261, submitted by Faxton-St. Lukes's Healthcare (FSLH), also proposing to operate an eight-station dialysis facility in the city of Oneida. The FSLH application projects a cost of \$171.36 per treatment compared to \$287.98 at the Utica Partners facility. The expense and utilization assumptions supporting the lower per treatment cost at the proposed FSLH facility are based on the historical experience of the hospital in operating other Article 28 chronic renal dialysis clinics in the Oneida and Madison counties. The lower projected cost per treatment likely reflects the fact that FSLH is an established provider of dialysis services in the area, with advantages in terms of start-up costs for the proposed site. These would include staff already trained in dialysis who could be deployed from other FSLH sites, as well as established administrative and treatment protocols and approved policies and procedures for dialysis care. The lower cost per treatment would also include efficiencies gained from the larger scale of FSLH dialysis operations and improvements made in operations and management over the years. Based on the foregoing, the FSLH project has been selected for approval, which will fulfill the remaining need for eight dialysis stations in Madison County. Therefore, there is no need for the eight stations requested by Utica Partners, LLC.

Recommendation

From a need perspective, disapproval is recommended.

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 16th day of April, 2015, having considered any advice offered by the Regional Health Systems Agency, the Public Health and Health Planning Council, 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 disapprove the application referenced below to establish and construct an eight (8) station chronic renal dialysis center to be located at 2142 Glenwood Shopping Plaza, Oneida, New York; and be it further

RESOLVED, that the Public Health and Health Planning Council hereby directs that the Executive Secretary to the Public Health and Health Planning Council serve notice upon the applicants or their attorneys that the Council is considering disapproving the following application for establishment, as proposed, and that disapproval shall become final unless the applicants request a hearing, in writing, of the Executive Secretary concerning such proposed disapproval within 20 days of receipt of this Council's notification:

NUMBER

APPLICANT/FACILITY

142083 B

Utica Partners, LLC d/b/a Dialysis Center
of Oneida



Department of Health

ANDREW M. CUOMO
Governor


HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

NEW YORK STATE DEPARTMENT OF HEALTH CENTER FOR HEALTH CARE FACILITY PLANNING, LICENSURE AND FINANCE

MEMORANDUM

TO: Members of the Establishment and Project Review Committee
Public Health and Health Planning Council

FROM: Charles P. Abel 
Deputy Director
Center for Health Care Facility Planning, Licensure and Finance

DATE: March 17, 2015

SUBJECT: CON #142213 The New York Proton Center

Background

In 2010, the Department announced that it would undertake a demonstration project, under the authority of 10 NYCRR Part 705, to evaluate the medical efficacy, cost-effectiveness and efficiency of, and public need for, proton beam therapy services (PBT) in New York State. The project would not only open access to needed treatment for New Yorkers but also advance needed research into PBT's applicability and effectiveness. It would also enable the Department to plan for the appropriate use of this new technology over the longer term. The demonstration project is authorized for a period of ten years.

Because they are heavier than ionized atomic particles, protons can be directed, or "beamed," in a manner that confines them more fully to the targeted tumor or other malady. This results in less collateral damage to surrounding nerves and tissue than traditional photon radiation. Precise targeting of the radiation beam is especially important in the treatment of tumors located in the skull, spinal column or near vital organs. It is perhaps most beneficial in treating head and neck cancers in children, where damage to surrounding tissue can have long-term adverse effects on growth and development.

Although PBT technology was approved by the U. S. Food and Drug Administration (FDA) in 1988, it remains most applicable and preferable to only a small number of cancers and similar conditions, most of them rare. The high cost of PBT devices and the ethical issues surrounding randomized clinical trials that involve life-saving interventions have also inhibited rigorous scientific research on PBT. This makes the growth of PBT treatment controversial, with many experts contending that, except for a few rare diagnoses, PBT is no more effective than conventional radiation therapy. Nevertheless, this medical technology continues to evolve, and the number of PBT centers in the United States, though still relatively small, is growing steadily.

CON #142213

The New York Proton Center (NYPC) was approved for the PBT demonstration project in competition with one other applicant. NYPC has submitted CON #142213 to amend its original approved application (CON #101151) to reflect the following changes:

- The withdrawal of NYU Hospitals Center and Beth Israel Medical Center (BIMC) from the project's clinical consortium, leaving Memorial Hospital for Cancer and Allied Diseases (MHCAD), The Mount Sinai Hospital (MSH) and Montefiore Medical Center (MMC) as consortium members. (BIMC, now part of The Mount Sinai Health System, will continue to participate in the project as an academic medical center within the MSH System.)
- A restructuring of the NYPC's business affiliate, New York Proton Management, LLC (NYPM), to reflect the addition of Proton Center Management, LLC, an affiliate of United Health Group, Inc.; and the removal of 21st Century Oncology as a direct member of NYPM.

Project operations and deliverables will remain unchanged, including the number of patients and types of diagnoses to be treated, and the required development of treatment protocols, clinical trials and definitive outcome studies. The changes reflected in this amendment do not negatively impact on the project components that were subject to the competitive review criteria used in the 2010 selection process.

The Department recommends approval of this application.



Public Health and Health Planning Council

Project # 142213-B The New York Proton Center

Program: Diagnostic and Treatment Center **County:** New York
Purpose: Establishment and Construction **Acknowledged:** February 4, 2015

Executive Summary

Description

The New York Proton Center, Inc. (NYPC), a to-be-formed New York not-for-profit corporation, was contingently approved under CON # 101151 to construct and operate a Proton Beam Therapy (PBT) facility to be certified as a diagnostic and treatment center (DTC). NYPC was the selected application in a competitive process after the Department issued a Request for Applications (RFA) in 2010 for Proton Beam Therapy proposals under a Commissioner’s Demonstration Project Authority that set forth review and operation criteria for NYS’s first PBT Center. Since the contingent approval, the Center has had to change the approved location and financing structure of the project. On April 8, 2013, a project modification was approved to change the location. Under the current application, NYPC is submitting this project amendment to request approval for changes to its ownership. Specifically, Beth Israel Medical Center and NYU Hospitals Center are being removed as members of NYPC, though as Beth Israel Medical Center is now a part of the Mount Sinai Health System it will continue to clinically participate within TMSHS.

The PBT Center will be in a leased, to-be-constructed facility, consisting of 115,300 square feet of space. The facility will be located at 225 East 126th Street, Harlem, NY (New York County). Currently, New York Proton Management, LLC owns the land and will assign it to MM Proton 1, LLC. The applicant will lease the space from MM Proton 1, LLC. The landlord will construct the facility and will pursue financing and then recoup the costs via the lease rental payments.

NYPC is composed of three hospital members with equal representation on the Board:

- Memorial Hospital for Cancer and Allied Diseases (MHCAD),

- The Mount Sinai Hospital (MSH), and
- Montefiore Medical Center (MMC).

NYPC proposes to enter into an administrative service and license agreement with New York Proton

Management, LLC (NYPM), a to-be-formed New York limited liability company, to provide the facility equipment and day-to-day administrative/non-clinical support. NYPM will own or lease the “hard assets” of NYPC, including the building improvements, medical equipment, business equipment, furniture and fixtures. NYPM will also provide non-clinical business services to NYPC (e.g., billing/collections, HR, IT, accounting)).

The proposed members of NYPM are:

- MSKCC Proton, Inc. (36.31%),
- Mount Sinai Management Services, Inc. (23.04%),
- Montefiore Proton Acquisition, Inc. (7.02%), and
- ProHEALTH Proton Center Management, LLC (ProHealth) (33.63%).

ProHealth, an affiliate of United Health Group, Inc., will be NYPC’s manager.

BFA Attachments A and B are the organizational charts of NYCP and NYPM.

OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate ten years from the date of its issuance.

Need Summary

The application requests approval to operate a PBT center composed of four gantries and one fixed-beam unit, to serve 1,150 patients in its first full year of operation and 1,500 in its third year.

The Department, in consultation with the PBT Demonstration Project Technical Advisory Group, has determined that just one PBT facility is needed at this time.

Program Summary

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

Financial Summary

Total project cost of \$238,441,379 will be met as follows: Loan of \$181,194,786 at an interest rate of 10% for a six-year term. The remainder, \$57,246,593, will be met as follows: ProHealth Proton Center Management, LLC (\$15,359,260), MSKCC Proton, Inc. (\$20,351,163), Montefiore Proton Acquisition, LLC (\$5,083,497), Mount Sinai Proton Holding Company, LLC (\$15,018,435), and NYU Hospitals Center (a non-refundable capital contribution of \$1,434,238 toward the project). The applicant has indicated that the debt is structured as an interest only loan between the lenders and MM Proton 1, LLC. The landlord will refinance in six years with the existing lenders or new lenders.

Budget:

Revenues	\$92,553,962
Expenses	<u>86,760,621</u>
Excess of Revenues over Expenses	\$5,793,341

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended,

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 ten years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department. [BFA]
3. Submission of an executed building sublease, acceptable to the Department. [BFA]
4. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
5. Submission of a final financing package, acceptable to the Department. [BFA]
6. Submission of an executed land assignment agreement, acceptable to the Department. [BFA]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of an executed Administrative Services and License Agreement, acceptable to the Department. [HSP]
9. Submission of an executed Technical Advisory Agreement, acceptable to the Department [HSP]
10. The applicant is required to submit design development drawings, complying with requirements of 10NYCRR Part 710.4, for review and approval by DASNY. [DAS]
11. Submission of the executed Certificate of Incorporation of The New York Proton Center, acceptable to the Department. [CSL]
12. Submission of the finalized Bylaws of The New York Proton Center, acceptable to the Department. [CSL]
13. Submission of the Certificate of Incorporation of Memorial Hospital for Cancer and Allied Diseases and any amendments thereto, acceptable to the Department. [CSL]
14. Submission of the Bylaws of Memorial Hospital for Cancer and Allied Diseases, acceptable to the Department. [CSL]
15. Submission of the Certificate of Incorporation of The Mount Sinai Hospital and any amendments thereto, acceptable to the Department. [CSL]
16. Submission of the Bylaws of The Mount Sinai Hospital, acceptable to the Department. [CSL]
17. Submission of the Certificate of Incorporation of Montefiore Medical Center and any amendments thereto, acceptable to the Department. [CSL]
18. Submission of the Bylaws of Montefiore Medical Center, acceptable to the Department. [CSL]
19. Submission of evidence of site control, acceptable to the Department. [CSL]
20. Submission of the Administrative Service and License Agreement between The New York Proton Center and New York Proton Management, LLC, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]

5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant is required to submit final construction documents, complying with requirements of 10NYCRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [DAS]
7. The applicant must adhere to the Construction Start (05/01/2015) and Completion Dates (07/31/2015) provided in Schedule 8 of the application. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

April 16, 2015

Need Analysis

Background

Proton beam therapy (PBT) is a technology with demonstrated efficacy for a limited number of relatively rare cancers and tumors – providing high rates of tumor control and survival, while reducing radiation-related side effects. Despite encouraging results, there is a lack of randomized studies demonstrating PBT's effectiveness in comparison with conventional therapies. Although only eight PBT centers are currently operating in the United States, PBT continues to evolve, and the technology holds promise for broader applicability in cancer treatment. In addition, lower-cost PBT devices are under development, which is further likely to increase the number of PBT facilities in the United States.

New York State certificate of need regulations do not currently include a need methodology for proton beam therapy. The existing methodology for therapeutic radiology is not appropriate for PBT facilities, given the emerging nature of PBT and the absence of compelling evidence supporting its use for more than a few relatively rare conditions. In anticipation of receiving one or more applications for the establishment of a PBT facility in New York State, The State Hospital Review and Planning Council (SHRPC) in 2009 began discussing the policy considerations that should inform the review and evaluation of these requests. After several months of deliberation and research, the SHRPC, at its meeting of April 8, 2010, endorsed a Department policy paper on PBT and recommended to the Commissioner the operation of a PBT demonstration project. The SHRPC noted in particular the importance of using the demonstration project to promote research into the effectiveness of PBT in comparison with other therapies.

On May 5, 2010, the Commissioner announced that the Department would undertake such a demonstration project, under the authority of 10 NYCRR Part 705, to evaluate the medical efficacy, cost-effectiveness and efficiency of, and public need for, PBT services in New York State. A threshold requirement for participation in the demonstration project is a commitment to engage in research concerning the effectiveness of PBT in comparison with other treatment modalities. The project will also enable the Department to plan for the appropriate use of this new technology over the longer term

As required by Part 705, the Commissioner appointed a seven-member technical advisory group (TAG) to provide expertise in the review of applications submitted under the demonstration project.

Treatment Capacity

The conditions for which the evidence of PBT's therapeutic value is strongest (and for which insurers are most likely to authorize coverage) are:

- Intraocular melanoma
- Skull-base chordoma/chondrosarcoma
- Meningeoma
- Arteriovenous malformations
- Medulloblastoma
- Pediatric cancer
- Pituitary adenoma¹

¹ B. Glimelius et al., Number of patients potentially eligible for proton therapy. *Acta Oncologica*, 2005; 44:836-849.

The following table shows the annual incidence of these cancers in New York State:

The Potential Base for Proton Beam Therapy in New York State					
Condition		NYS Annual Cases 2003-2007²	Projected to 2013³	Potentially Eligible for PBT (from Glimelius et al., 2005)⁴	
				%	Cases
Clinical Candidates	Intraocular Melanoma	150	164	20%	33
	Skull-base chordoma/	23	66	75%	49
	Meningeoma	1,423	2,091	12%	244
	Arteriovenous malformations	150	153	32%	49
	Medulloblastoma	26	47	67%	31
	Pediatric Cancer ⁵	814	857	23%	200
	Pituitary adenoma	545	822	10%	82
	Totals	3,131	4,199		688

Based on these figures, currently there is a need for one PBT center in New York State with the capacity to provide access to approximately 700 patients. While therapeutic gain is recognized for these relatively rare cancers, additional research is required to document the effectiveness of PBT in treating more common cancers (e.g., lung, breast, and prostate).

Research Capacity

Evaluation of need under this demonstration project entails not only an assessment of the capacity of the applicant to deliver quality PBT services to patients with the relatively rare cancers for which PBT is indicated, but also a review of the applicant's capacity to conduct medical research into the effectiveness of PBT. Because a PBT center of the five-beam type under consideration for this demonstration project typically serves 1,500 patients per year, there would remain, in addition to capacity for roughly 700 patients for whom PBT is indicated based on published evidence, capacity to treat 800 patients with cancers for which the effectiveness of PBT has not been demonstrated. This provides an opportunity to advance a principal goal of the demonstration project – conducting research into the efficacy of PBT, and in particular, its efficacy in comparison with other treatments.

Number of Facilities

The Department received three applications in response to the original RFA announcement of the PBT demonstration project in 2010. The question of whether to authorize multiple facilities was addressed by the TAG, whose members unanimously concluded that the goals of the demonstration project would be best served if just one PBT facility were approved under this Part 705 demonstration. The TAG expressed concern that if two or more facilities were approved, the cases for which PBT is a preferred treatment would be dispersed, the financial viability of the facilities would be weakened, and there would be additional pressure on each to treat lucrative, high volume conditions for which there is little evidence supporting PBT, and/or for which there are other equally effective and less expensive treatments. As a result, the research objectives of the demonstration project would be compromised.

² Cases reported to NYS Cancer Registry, except arteriovenous malformations (AVM). AVM estimated at 1 in 100,000 adults: C. Stapf et al., Epidemiology and natural history of arteriovenous malformations. *Neurosurgical Focus*, 2001; 11: (5) and M. Berman et al., Use of ICD-9 Coding for estimating the occurrence of cerebrovascular malformations. *American Journal Neuroradiology*, 2002; 23: 700-705.

³ Based on average annual change from 2003-2007.

⁴ B. Glimelius et al., supra note 1. The potentially eligible percentages were taken principally from this paper, with supplemental data from M. Krengli et al. Medical aspects of the national centre for oncological hadrontherapy (CNAO- Centro Nazionale Adroterapia Oncologica) in Italy. *Radiotherapy & Oncology*, 2004; 73: S21-S23. See also P. Pommier, et al. Simulating demand for innovative radiotherapies: an illustrative model based on carbon ion and proton radiotherapy. *Radiotherapy & Oncology*, 2010; 96: 243-249.

⁵ Excludes medulloblastoma (included above) and pediatric leukemia.

The Department recognizes that, despite the low incidence of cancers amenable to PBT, a second PBT service would provide patients with a choice in PBT treatment. A second PBT center could also provide more opportunities for research to help determine PBT's long-range potential in treating a broader range of cancers. However, at this time, given the limited evidence supporting the use of PBT, the small number of cases for which it is indicated, and the ample research capacity of a single facility, these considerations are outweighed by the concerns expressed by the TAG.

Conclusion

Based on the foregoing analysis, there is a need for one PBT center in New York State at this time with the capacity to provide access to approximately 1500 patients annually for treatment and Research.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Research

The NYPC proposes to engage in clinical, translational, and outcomes research. The facility would have a research treatment room, with a dedicated proton beam line for pre-clinical research questions.

Two of the three proposed members of the NYPC are NCI-designated cancers centers based on their "scientific excellence and capability to integrate a diversity of research approaches to focus on the problem of cancer."⁶

- Memorial Sloan-Kettering Cancer Center - comprehensive cancer center
- Albert Einstein Cancer Research Center (Montefiore) - cancer research center

The proposed principal investigators for this project are:

- **Simon Powell, M.D., Ph.D.:** Chair, Radiation Oncology, Memorial Sloan Kettering. Dr. Powell has over 30 years of clinical experience including experience at Massachusetts General Hospital, the St. Louis Children's Hospital and the Memorial Sloan-Kettering Cancer Institute. Dr. Powell is board certified in Radiation Oncology. He has experience as principal and co-investigator in National Cancer Institute and National Institutes of Health clinical trials. He has authored or co-authored nearly 100 peer-reviewed publications.
- **Kenneth Rosenzweig, M.D.:** Chair, Radiation Oncology, Mount Sinai. Dr. Rosenzweig is board certified in Radiation Oncology by the American Board of Radiology. He has 13 years of experience in radiation oncology, including academic positions at Memorial Sloan Kettering. He has authored or co-authored over 70 publications, is a co-leader on an NCI-funded project, and has contributed to a number of texts including, Cancer: Principles and Practice of Oncology and the Textbook of Radiation Oncology.
- **Shalom Kalnicki, M.D.:** Chair, Radiation Oncology, Montefiore Medical Center. Dr. Kalnicki is board certified in Radiation Oncology. He has over 33 years of clinical experience in radiation oncology including experience at the University of Pittsburgh, Allegheny General Hospital, Hahnemann School of Medicine and Mount Sinai Medical Center. He has authored or co-authored over 150 publications.

⁶ National Cancer Institute, Cancer Centers Program, available at: http://cancercenters.cancer.gov/cancer_centers/index.html

Research and clinical trials at NYPC would be supervised and approved by a Clinical Governance Council appointed by the three academic medical center members. The Council would be supported by the Research Office of NYPC, which would work with disease teams and study disciplines to jointly develop clinical trials and run research programs. Trials would use a cooperative group structure, in which each protocol would be opened at all member institutions. Each member institution would independently review the protocols through its own IRB.

The research proposed includes disease-site based research, physics research, biology research, multi-institutional collaborative research, as follows:

1. Pediatric Malignancies

- Medulloblastoma: study the efficacy of PBT and late effects in treating medulloblastoma, comparing it to historical data on 2-dimensional, 3-dimensional and IMRT therapies; and study dose escalation beyond 60 Gy for ependymoma;
- Sarcomas: study dose escalation and reduced dosage to critical normal tissues through PBT for certain pediatric sarcomas, comparing efficacy and late effects to historical results obtained through IMRT and 3-dimensional therapy;
- Neuroblastoma: minimizing dose to normal tissue and correlating radiation exposure to long-term clinical outcomes, and cranio-spinal radiotherapy for brain metastases;
- Hodgkin lymphoma: treating mediastinal masses with proton therapy to minimize exposure of heart, lung and breast tissue and comparing results to control cases at NYPC member institutions or in the COG database.

2. Head & Neck Cancer and Eye/Orbital Tumors

- Nasopharynx: for a cohort of patients with advanced T4 diseases, with bulky tumors near vital structures, development of IMPT, IGPT and adaptive proton therapy.
- Oropharynx: for patients at high risk of locoregional recurrence, study of dose intensification, use of IMPT and IGPT, and outcomes assessment and reduction of adverse impact on swallowing and speech;
- Glottic cancer: elimination of carotid dose, reduce volume of larynx exposed to radiation;
- Second malignancies in aerodigestive tract: increase curative potential without over-exposure of normal tissue and adverse functional impact;
- Skull base: study of IMPT to improve outcomes;
 - Eyes and orbit: study role of proton therapy versus eye plaque brachytherapy through the development of management algorithms for uveal melanomas of various thicknesses and a prospective clinical trial.

3. CNS Tumors

- High grade glioma (HGG): Phase III randomized trial for HGG to compare the efficacy of proton vs. photons with a 2:1 randomization schema, using local control/survival and neuro-toxicity as endpoints;
- Skull base brain tumors: Phase II trial using conventional doses with protons to establish baseline local control and acute and late neuro-toxicity; Phase II randomized dose escalation trial, if initial results are promising;
- Brain metastases: Phase II trial for select brain metastases using a hypofractionated approach to establish the baseline local control and acute and late neuro-toxicity; Phase III randomized trial comparing proton beam with photon IMRT assessing neuro-cognitive outcomes;
- Posterior fossa brain tumors: Phase II trial to establish long-term local control and survival and acute and late toxicity.

4. Thoracic Cancers
 - Early stage NSCLC: develop guidelines and techniques to treat early stage NSCLC tumors that are adjacent to the chest wall utilizing the dose drop-off of proton irradiation and compare it to stereotactic body radiation therapy; and a dose escalation protocol for central tumors using PBT;
 - Locally advanced NSCLC: Phase I/II protocol of individualized image-guided proton radiotherapy for unresectable Stage IIIA/B NSCLC;
 - Small cell lung cancer: Phase I/II protocol for limited state SCLC with gross tumor volume >200 cc to receive daily proton therapy with dose constraints on major organs;
 - Thymoma: long-term Phase II protocol establishing feasibility and dose constraints.

5. Liver and Upper-GI Cancer
 - Hepatocellular carcinoma and liver metastases: engage in clinical, biologic and physics studies; Phase I/II dose escalation study of PBT for intrahepatic malignancy with incrementally escalated, guided by effective volume of liver irradiated to examine toxicity, response rates, and survival. .

6. Prostate Cancer
 - Comparison of Tumor Control Outcomes between IMRT and IMPT: prospectively evaluate and compare tumor control and late toxicity outcomes for patients treated with high-dose proton therapy and photon therapy for low- and intermediate-risk prostate cancer in a Phase III -trial setting. Goals include comparison of survival outcomes at 5 years and a longitudinal quality of life comparison.
 - Outcomes for locally-advanced disease using dose escalation techniques: Phase II study to evaluate outcomes for high-risk prostate cancer using high-dose IMPT in conjunction with ADT; Phase II trial using combining low-dose rate brachytherapy with PBT; PBT using transperineal biodegradable balloon device;
 - Phase I study of ultra-hypofractionation techniques;
 - Image-based treatment response during and after PBT compared to IMRT photon therapy;
 - Salvage therapies after initial treatment failures: Phase I study to explore use of PBT after external beam failures and biochemical relapse following surgery and compare to brachytherapy and cryotherapy.

According to NYPC, this disease-site research will build on existing data and ongoing research concerning toxicity profiles and quality of life outcomes at NYPC member institutions.

7. Physics Research
 - Adapt dose planning method for predicting proton dose using Monte Carlo methods;
 - Use new dual-energy GE CT scanner to identify accurately atomic number differences;
 - Investigate use of segmented ionization chamber to verify incident fluence;
 - Verification of proton range estimates using a single pencil beam at exit-side of patient;
 - Develop IGRT for protons to ensure accurate dose delivery; and
 - Automated adaptive treatment planning to accommodate changes in patient anatomy.

8. Biological Research
 - Develop an annotated tissue repository;
 - DNA damage and repair at the distal edge of a proton beam;
 - Individual susceptibility to proton therapy effects using tissue repository and radiogenomics;
 - Monitor TGF α and other cytokines to measure the response to PBT, including toxicity; and
 - Assess risks of radiotherapy-induced second cancers after PBT versus photon therapy by using markers of radiobiological damage from blood samples.

9. Outcomes Research

The NYPC application indicates that its members have already developed Outcomes Research Centers specifically focused on cancer patients, and led by researchers whose major focus is therapy-related outcomes. The application proposes to study biological markers of late toxicity and functional outcome. The studies include:

- Patient reported outcomes and treatment related data capture
- Normal tissue complication probability modeling
- Clinical outcomes and quality of life research

10. Multi-institutional collaborative research

NYPC expresses a commitment to participating in multi-institutional research initiatives, such as the Particle Therapy Cooperative Group (PTCOG <http://ptcog.web.psi.ch>). It has been invited by the members of the PROsPER --multi-institution randomized trial which includes MGH, University of Pennsylvania, Washington University in St. Louis and MRPI in Indiana to join their planned (but not yet funded) Phase III trial of prostate cancer treatment.

In addition, NYPC intends to carry out coordinated programmatic research collaboratively with the other major proton therapy centers, such as MGH and MD Anderson Hospital. Some of the NYPC investigators are already participating in this research as individual investigators.

Data Management

According to the applicant, all of the members of NYPC integrate data collection and analysis into large research departments. The NYPC proposes to integrate member information technology systems to as great an extent as possible and to structure an information technology network that is as compatible as possible with the Statewide Health Information Network for New York (SHIN-NY). The NYPC would use the IMPAC MOSAIQ EMR by Elekta which can identify patients by photo ID, manage bar coding of patient specific devices and import/export radiographic images and reports. The research proposal includes the development of specific databases which detail clinical outcomes and quality of life issues.

Utilization by Condition

The proposed center would serve 1,150 patients in its first year of operation and reach a capacity of 1,500 patients in its third full year. The applicant projects the following case mix:

- Adult head/neck: 27%
- Prostate: 20%
- Adult breast: 13%
- Adult lung: 13%
- Adult other: 13%
- Ocular therapy: 7%
- Pediatric: 7%

According to the applicant, the 20 percent assumed treatment volume in prostate cancer is significantly lower than other proton therapy facilities around the country.

Quality and Patient Safety

The applicant indicates that the facility would seek accreditation from the ACR. To assure correct patient identification, the facility would use photographs, as well as verbal inquiries, to match patients to treatment plans. The staff would also use a Record and Verify system with data concerning all aspects of the treatment, which would be matched against the treatment plan information before the accelerator is activated. The equipment proposal details the necessary equipment to perform image guided radiation therapy for purposes of position verification.

The applicant indicates that IBA would provide factory-based and on-site training for medical physicists, radiation oncologists, and associated staff. Training would span the entire therapy process from treatment planning and verification to treatment delivery and quality assurance. The equipment proposal from Elekta and from IBA details in- service training.

Radiation Safety

The applicant is working with Dr. Thomas Petrone, Ph.D., as its shielding design physicist/consultant. The shielding design is based on the guidelines for the Hampton University Proton Center, which is also using IBA equipment.

Services to the Under-Served, Medicaid Beneficiaries and the Uninsured

The applicant projects the following payor mix:

- o Medicaid: 15%
- o Medicare: 45%
- o Commercial: 31%
- o Self-Pay: 5%
- o Bad debt: 2%
- o Charity care: 2%

The operating agreement of NYPM (the business affiliate) provides that NYPM would be operated in a manner that furthers the charitable purposes of the NYPC and that the NYPC would be operated in a manner that provides access to patient care services without regard to race, religion, national origin, gender, age, sexual orientation, disability, payor source, or ability to pay. It also requires NYPM to cause NYPC to establish and maintain reasonable financial assistance policies, effectively communicate such policies, and provide reasonable levels of charity care based on need and levels of charity care in the community.

Collaboration

The applicant would be organized as consortium of three academic medical centers with a business affiliate. Each of the medical centers is a member of the not-for-profit operator and is represented equally on its board. All of the academic medical centers have committed to make an equity contribution to the project and would share in the governance of the facility and the business affiliate (NYPM) and in the revenues. Together, the academic medical centers would have an aggregate interest of 66.37 percent in NYPM.

Also, the academic medical centers would appoint a Clinical Governance Council which would oversee the “medically- related operations” of the facility, including research, clinical protocols, patient selection, staffing and quality. Each academic medical center would have equal representation on the Clinical Governance Council.

The applicant indicates that it would open to participation in the Clinical Governance Council from “other well- established members of the New York academic medical community” and will credential their physicians for the NYPC medical staff. In addition, the academic medical center participants are currently participating in multiple collaborative research studies and have committed to participating in collaborative research in PBT with other centers and groups. The applicant also indicates that it is engaged in discussions with the University of Pennsylvania’s Roberts Proton Therapy Center to collaborate on future research and multi-center trials.

Staffing

The proposed interim co-medical directors of NYPC are:

1. Simon N. Powell, M.D., MSKCC
2. Kenneth E. Rosenzweig, M.D., Mt. Sinai
3. Shalom Kalnicki, M.D., Montefiore

A single medical director would be hired as the project approaches completion.

The NYPC retained Daniel Alejandro Mazal, Ph.D., the senior medical physicist at the Institute Curie proton facility in Paris and chair of the Particle Therapy Co-Operative Group, to provide medical physics consulting concerning the development of the facility and selection, testing, and configuration of the equipment. After the facility is operational, Dr. Mazal will advise on operations, complex treatment planning and patient-specific quality assurance.

Staff of the NYPC will initially consist of 64 FTEs and is projected to expand to 131 FTEs by the end of the third year.

Transfer and affiliation agreements for emergency, inpatient and back-up support services are expected to be provided by Memorial Hospital for Cancer and Allied Diseases, Mount Sinai Hospital and Montefiore Medical Center, ranging from 1.7 to 4.2 miles and 8 to 12 minutes.

Character and Competence

The proposed Directors/Officers of The New York Proton Center (NYPC) will be:

<u>Name</u>	<u>Affiliation</u>
Simon N. Powell, MD, PhD	MHCAD/MSKCC Proton Inc.
Jose Baselga, MD	MHCAD/MSKCC Proton Inc.
Michael P. Gutnick	MHCAD/MSKCC Proton Inc.
Kenneth Rosenzweig, MD	MSH/Mount Sinai Management Services Inc.
Donald Scanlon	MSH/Mount Sinai Management Services Inc.
Burton P. Drayer, MD	MSH/Mount Sinai Management Services Inc.
Shalom Kalnicki, MD	MMC/Montefiore Proton Acquisition, Inc.
Philip O. Ozuah, MD, PhD	MMC/Montefiore Proton Acquisition, Inc.
Christopher S. Panczner	MMC/Montefiore Proton Acquisition, Inc.

New York Proton Management, LLC (NYPM), a to-be-formed New York limited liability company will own or lease the medical and business equipment, furniture and fixtures of NYPC. Additionally, NYPM will provide day-to-day administrative and non-clinical business services and support through an Administrative Services and License Agreement.

NYPM will have the following members:

<u>Name</u>	<u>Affiliate</u>	<u>Percentage</u>
MSKCC Proton Inc.	MHCAD	36.31%
Mount Sinai Management Services, Inc.	MSH	23.04%
Montefiore Proton Acquisition, Inc.	MMC	7.02%
ProHEALTH Proton Center Management, LLC	United Health Group, Inc.	33.63%

Because a third-party, New York Proton Management, LLC (NYPM), is intended to play a significant role in the physical plant and administrative operations of the proposed facility, the Department also conducted a Character and Competence review of NYPM.

The members of NYPC (listed above) and Members/Managers of ProHEALTH Proton Center Management, LLC— specifically, David Cooper, MD; Mark D. Ficker; and John (Jack) L. Larsen— are either board members/stock owners of the corporate members of NYPM or will serve as managers of NYPM.

Dr. Cooper, an Internist licensed to practice in New York State in 1984, currently serves as Chief Executive Officer (CEO) of ProHEALTH Medical Management, LLC, a physician practice management entity which includes diagnostic imaging centers, radiation oncology centers and an Article 28 Ambulatory Surgery Center. Mr. Ficker has over 16 years of accounting experience and is presently the Chief Financial Officer (CFO) of Local Care Delivery (a subsidiary of UnitedHealth Group, Inc.). Mr. Larsen is a member of the American Institute of Certified Public Accountants and the Minnesota Society of Certified Public Accountants. He has over 30 years of finance/accounting experience and has held a number of corporate leadership roles, including CFO, CEO and President. Mr. Larsen currently serves as the Executive Vice President for Optum, Collaborative Care.

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

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

In a Stipulation and Order dated March 6, 2007, Montefiore Medical Center was fined \$14,000 based on a complaint investigation into the care rendered to a child who presented with signs and symptoms of child abuse but was discharged home to an unsafe environment.

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement, which is summarized below:

Premises:	115,300 square feet located at 225 East 126 th Street, New York, New York
Lessor:	MM Proton 1, LLC
Lessee:	New York Proton Management, LLC
Term:	25 years
Rental:	Year One - \$30,000,000 (\$260.19 per sq. ft.) with a 2% increase thereafter.
Provisions:	The lessee shall be responsible for the real estate taxes, utilities and maintenance.

New York Proton Management, LLC currently owns the land and will assign it to MM Proton 1, LLC. As a contingency of approval, the applicant must submit an executed land assignment agreement.

Sublease Rental Agreement

The applicant has submitted a draft sublease agreement, which is summarized below:

Premises:	115,300 square feet located at 225 East 126 th Street, New York, New York
Sublessor:	New York Proton Management, LLC
Sublessee:	The New York Proton Center
Term:	25 years
Rental:	<p>The rent shall consist of the following: the payment of the "Fee" as such term is set forth in the Administrative Service and License Agreement between the Sublessor and Sublessee, and additional rent in an amount equal to any and all sums of money payable by Sublessee to Sublessor hereunder. The sublease rental payments for the first three years of operation are as follows:</p> <ul style="list-style-type: none"> • Year One - \$18,981,000 (\$164.62 per sq. ft.), • Year Two - \$33,213,840 (\$288.06 per sq. ft.), • Year Three - \$33,877,505 (\$293.82 per sq. ft.).

The applicant has indicated via affidavit that there is no relationship between the master landlord and the sublessee.

Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Purpose:	The Center desired to engage LLC, and LLC agrees to be so engaged, to provide Center with certain facilities, equipment, supplies, personnel and administrative services necessary for the Center to provide services at the Center.
Facility:	The New York Proton Center
Consultant:	New York Proton Management, LLC
Services Provided:	<p>The Consultant shall provide, on behalf of Center, all non-professional personnel required for the operation of Center, including, but not limited to, administrative and other staff, technicians and radiation therapists, dosimetrists, receptionists, secretaries, clerks, management personnel and/or other personnel as reasonably determined by LLC; be responsible for recruiting, training, managing supervising, compensating and terminating leased personnel, leased personnel shall remain employees and/or contractor of LLC, and not employees of Center; provide Center with such office and medical supplies as are necessary for patient care and treatment and the operation of the Center; shall provide all billing and collection services for Center's services; procure and maintain all necessary licenses and permits for the installation, use and operation of the Equipment and Center, and shall pay all related licensing, inspection and regulatory fees; shall prepare and submit to Center periodic financial reports reflecting the financial status and operations of the Center on a quarterly basis, assist the Center with the preparation of any tax forms; provide hardware and software; assist the Center in recruiting physicians and any other professional staff necessary for the Center to provide services; shall develop and implement marketing and public relations materials with respect to Center's services; shall assist Center in reviewing, evaluating, negotiating and securing contracts or agreements of Center relating to the provision of services by Center; assist the Center in the evaluation of all quality control aspects of Center's services and its operations; process invoices and payroll checks on behalf of the Center; assist the Center in gathering credentialing information relating to licensed personnel and shall credential all licensed personnel engaged by Center; assist the Center in the creation and administration of utilization review, quality assurance and peer review programs for Center; Consultant shall be responsible for all costs and expenses incurred in connection with the operation of the Center, other than the costs and expenses of Professional Personnel which shall be the responsibility of the Center; Consultant shall recommend qualified individuals, who shall be employees of Center, to</p>

	serve as Center's Administrator and Medical Director, subject to the approval and appointment of Center and shall provide Center with a \$4,500,000 working capital loan on terms mutually agreed to by the Parties.
Term:	25 years
Compensation Fee:	In consideration of the license to the Premises and the Equipment and the Services provided hereunder, the Center shall pay a fee to the Consultant Entity in an amount equal to the Collected Dollars less the sum of the Professional Collections, less the cost of the Professional Personnel, less any other expenses that the Center incurs to fulfill its obligations hereunder. The parties agree that in no event whatsoever shall the Fee include any collections received by or on behalf of Center attributable to the professional component of patient care services provided at the Center through physicians directly employed by Center or collections attributable to the professional component of patient care services performed at the Center but not physicians that are not employed by the Center. The total administrative and consultant fee during the first and third years is estimated at \$40,123,634 and \$62,304,860, respectively. The ASA defines the terms of the transfer from NYPC to NYPM to be revenue after the payment of NYPC's operating expenses.

Total Project Cost and Financing

Total project cost, which is for land acquisition and new construction, is estimated at \$238,441,379, further broken down as follows:

Land Acquisition	\$23,123,642
New Construction	120,579,689
Architect/Engineering Fees	8,963,881
Other Fees (Consultant)	10,987,432
Moveable Equipment	61,098,000
Financing Costs	1,510,805
Interim Interest Expense	10,871,687
CON Fee	2,000
Additional Processing Fee	<u>1,304,243</u>
Total Project Cost	\$238,441,379

Total project cost will be met as follows:

Equity	\$57,246,593
Bank Loan (10% for a six year term)	181,194,786

The equity contribution is broken down as follows:

ProHEALTH Proton Center Management, LLC	\$15,359,260
MSKCC Proton, Inc.	\$20,351,163
Montefiore Proton Acquisition, LLC	\$5,083,497
Mount Sinai Proton Holding Company, LLC	\$15,018,435
NYU Hospitals Center	\$1,434,238

NYU Hospitals Center is no longer involved in the Project, but previously made a non-refundable capital contribution of \$1,434,238 toward the project, which is being counted toward the \$57.25 million equity contribution.

Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$57,323,261	\$92,553,962
Expenses		
Operating	\$31,173,293	\$49,138,276
Capital	<u>22,725,840</u>	<u>37,622,345</u>
Total Expenses	\$53,899,133	\$86,760,621
Excess of Revenues over Expenses	\$3,424,128	\$5,793,341
Utilization		
Visits	29,237	45,388
Cost Per Visit	\$1,843.52	\$1,911.53

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Managed Care	15.00%	15.00%
Medicare Managed Care	35.00%	35.00%
Commercial Managed Care	41.00%	41.00%
Private Pay	5.00%	5.00%
Charity Care	2.00%	2.00%
Bad Debt	2.00%	2.00%

Utilization assumptions are based on the case mix at the respective academic medical centers, visits, and collaboration with other proton centers around the country. Expense assumptions are based on estimates provided by vendors on a similar costs at other proton centers or New York City Hospitals.

Capability and Feasibility

Total project cost of \$238,441,379 will be met as follows: Loan of \$181,194,786 at an interest rate of 10% for a six year term. The remainder, \$57,246,593, will be met as follows: ProHealth Proton Center Management, LLC (\$15,359,260), MSKCC Proton, Inc. (\$20,351,163), Montefiore Proton Acquisition, LLC (\$5,083,497), Mount Sinai Proton Holding Company, LLC (\$15,018,435), and NYU Hospitals Center (a non-refundable capital contribution of \$1,434,238 toward the project). The applicant has indicated that the debt is structured as an interest only loan between the lenders and MM Proton 1, LLC. The landlord will refinance in six years with the existing lenders or new lenders.

Working capital requirements are estimated at \$14,460,103, which is equivalent to two months of third year expenses. The applicant will provide equity to meet the working capital requirement from the following sources:

The equity contribution for the total project cost and the working capital totals \$71,706,696, which is broken down as follows:

ProHEALTH Proton Center Management, LLC	\$19,727,175
MSKCC Proton, Inc.	\$26,164,124
Montefiore Proton Acquisition, LLC	\$5,166,994
Mount Sinai Proton Holding Company, LLC	\$19,214,165
NYU Hospital Center	\$1,434,238

The submitted budget indicates an excess of revenues over expenses of \$3,424,128 and \$5,793,341 during the first and third years, respectively. Revenues are based on reimbursement rates for proton beam therapy services and additional reimbursement associated with ancillary services.

BFA Attachment C is the 2012 and 2013 certified financial statements of Memorial Sloan Kettering Cancer Center. As shown on BFA Attachment C, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity achieved average income from operations of \$134,846,500 from 2012 through 2013.

BFA Attachment D is the 2012 and 2013 certified financial statements of The Mount Sinai Hospital. As shown on BFA Attachment D, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity achieved an average excess of operating revenues over operating expenses of \$71,506,000 from 2012 through 2013.

BFA Attachment E is the 2012 and 2013 certified financial statements of Montefiore Medical Center. As shown, the entity had an average positive working capital position and an average positive net asset position. Also, the entity achieved an average income from operations of \$102,606,000 from 2012 through 2013.

BFA Attachment F is the 2012 and 2013 certified financial statements of United Health Group. As shown, the entity had an average negative working capital position and an average positive shareholders equity position from 2012 through 2013. The applicant indicated that the reason for the average negative working capital position is that the entity places significant assets in long term investments, which leads to business stability and lender confidence. Also, the entity achieved average net earnings of \$5,528,000,000 from 2012 through 2013.

BFA Attachment G is the September 30, 2014 internal financial statements of Memorial Sloan Kettering Cancer Center. As shown, the entity had a positive working capital position and a positive net asset position through September 30, 2014. Also, the entity achieved an income from operations of \$172,025,000 through September 30, 2014.

BFA Attachment H is the December 31, 2014 internal financial statements of Mount Sinai Hospital. As shown, the entity had a positive working capital position and a positive net asset position through December 31, 2014. Also, the entity achieved an income from operations of \$29,250,000 through December 31, 2014.

BFA Attachment I is the September 30, 2014 internal financial statements of Montefiore Medical Center. As shown, the entity had a positive working capital position and a positive net asset position through September 30, 2014. Also, the entity achieved an income from operations of \$35,643,000 through September 30, 2014.

BFA Attachment J is the September 30, 2014 internal financial statements of United Health Group. As shown, the entity had a negative working capital position and a positive shareholders equity position through September 30, 2014. The applicant has indicated that the reason for the negative working capital position is the result of the entity places significant assets in long term investments, which leads to business stability and lender confidence. Also, the entity achieved net earnings of \$1,602,000,000 through September 30, 2014.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Organizational Chart of NYCP
BFA Attachment B	Organizational Chart of NYPM
BFA Attachment C	Financial Summary- 2012 and 2013 certified financial statements of Memorial Sloan Kettering Cancer Center
BFA Attachment D	Financial Summary- 2012 and 2013 certified financial statements of The Mount Sinai Hospital
BFA Attachment E	Financial Summary- 2012 and 2013 certified financial statements of Montefiore Medical Center
BFA Attachment F	Financial Summary- 2012 and 2013 certified financial statements of United Health Group
BFA Attachment G	Financial Summary- September 30, 2014 internal financial statements of Memorial Sloan Kettering Cancer Center
BFA Attachment H	Financial Summary- December 31, 2014 internal financial statements of Mount Sinai Hospital
BFA Attachment I	Financial Summary- September 30, 2014 internal financial statements of Montefiore Medical Center
BFA Attachment J	September 30, 2014 internal financial statements of United Health Group

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a proton beam therapy diagnostic and treatment center to be located at 225 East 126th Street, New York. This project amends and supercedes CON # 101151, 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:

142213 B

FACILITY/APPLICANT:

The New York Proton Center

APPROVAL CONTINGENT UPON:

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department. [BFA]
3. Submission of an executed building sublease, acceptable to the Department. [BFA]
4. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
5. Submission of a final financing package, acceptable to the Department. [BFA]
6. Submission of an executed land assignment agreement, acceptable to the Department. [BFA]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of an executed Administrative Services and License Agreement, acceptable to the Department. [HSP]
9. Submission of an executed Technical Advisory Agreement, acceptable to the Department [HSP]
10. The applicant is required to submit design development drawings, complying with requirements of 10NYCRR Part 710.4, for review and approval by DASNY. [DAS]
11. Submission of the executed Certificate of Incorporation of The New York Proton Center, acceptable to the Department. [CSL]
12. Submission of the finalized Bylaws of The New York Proton Center, acceptable to the Department. [CSL]
13. Submission of the Certificate of Incorporation of Memorial Hospital for Cancer and Allied Diseases and any amendments thereto, acceptable to the Department. [CSL]
14. Submission of the Bylaws of Memorial Hospital for Cancer and Allied Diseases, acceptable to the Department. [CSL]
15. Submission of the Certificate of Incorporation of The Mount Sinai Hospital and any amendments thereto, acceptable to the Department. [CSL]
16. Submission of the Bylaws of The Mount Sinai Hospital, acceptable to the Department. [CSL]
17. Submission of the Certificate of Incorporation of Montefiore Medical Center and any amendments thereto, acceptable to the Department. [CSL]
18. Submission of the Bylaws of Montefiore Medical Center, acceptable to the Department. [CSL]
19. Submission of evidence of site control, acceptable to the Department. [CSL]
20. Submission of the Administrative Service and License Agreement between The New York Proton Center and New York Proton Management, LLC, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities.[HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The applicant is required to submit final construction documents, complying with requirements of 10NYCRR Part 710.7, to NYS DOH Bureau of Architecture and Engineering Facility Planning (BAEFP) prior to start of construction. [DAS]
7. The applicant must adhere to the Construction Start (05/01/2015) and Completion Dates (07/31/2015) provided in Schedule 8 of the application. The Department understands that unforeseen circumstances may delay the start and completion of the project. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Ace in Home Care, Inc.
Address: Great Neck
County: Nassau
Structure: For-Profit Corporation
Application Number: 2063-L

Description of Project:

Ace in Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned as follows: Cindy Gottshall owns 110 shares, Chester Gottshall owns 50 shares and Irving Port owns 40 shares.

The Board of Directors of Ace in Home Care, Inc. comprises the following individuals:

Chester Gottshall, President President, Empire Staffing Corporation (medical personnel staffing agency)	Cindy Gottshall, Vice President, Secretary PT Office Manager, Port, Rella & Co. VP/Office Manager, New Way Abstract Corp.
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Irving Port, Esq., Board Member
Owner, Irving Port, Esq.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for the attorney associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 500 Northern Boulevard, Great Neck, New York 11021:

Nassau	Suffolk	Queens
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Audiology	Medical Social Services	Nutrition
Homemaker	Housekeeper	Respiratory Therapy

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: February 18, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Act On It Home Care, Inc.
Address: Forest Hills
County: Queens
Structure: For-Profit Corporation
Application Number: 2249-L

Description of Project:

Act On It Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares, which are owned solely by Leonid Yakubov.

The Board of Directors of Act On It Home Care, Inc. comprises the following individual:

Leonid Yakubov, OT, Chairperson
Occupational Therapist, Kew Gardens SEP, Inc.

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 111-11 76th Drive, Forest Hills, New York 11375:

Bronx	Kings	New York
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 21, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Behr's Homecare, LLC
Address: New Hartford
County: Oneida
Structure: Limited Liability Company
Application Number: 2354-L

Description of Project:

Behr's Homecare, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of Behr's Homecare, LLC comprises the following individual:

Betty J. Hartmann, HHA, PCA – 100%
Owner/Director, Behr's Homecare, LLC (Companion Care)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The New York State Home Care Registry indicates no issues with the certifications of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 18 Hughes Lane, New Hartford, New York 13413:

Oneida	Madison	Herkimer	Hamilton
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 7, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Benevolent Home Care, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2290-L

Description of Project:

Benevolent Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of Benevolent Home Care, LLC comprises the following individual:

Moshe Friedman – 100%
Chief Executive Officer, Human Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1467 54th Street, Brooklyn, New York 11219:

Bronx	Queens	New York
Kings	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Black Diamond Roslyn, Inc. d/b/a Right at Home Nassau Suffolk
Address: Plainview
County: Nassau
Structure: For-Profit Corporation
Application Number: 2367-L

Description of Project:

Black Diamond Roslyn, Inc. d/b/a Right at Home Nassau Suffolk, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Black Diamond Roslyn, Inc. has entered into a franchise agreement with Right at Home, Inc.

The applicant has authorized 500 shares of stock, which are owned as follows: Gregg Balbera owns 64 shares and Eileen Balbera owns 65 shares. Gregg Balbera's 401K (Trust) owns 120 shares. The two trustees are Gregg Balbera & Eileen Balbera. The remaining 251 shares are unissued.

The Board of Directors of Black Diamond Roslyn, Inc. d/b/a Right at Home Nassau Suffolk is comprised of the following individuals:

Gregg Balbera – President
President – Right at Home Nassau Suffolk (companion care)
Executive Recruiter – Broad Reach Communications

Eileen Balbera – Vice-President
Chief Operating Officer – Right at Home Nassau Suffolk (companion care)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 9 Gerhard Road, Plainview, New York 11803:

Nassau Suffolk

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 27, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Care in the Home, LLC
d/b/a Griswold Home Care of Scarsdale and Yonkers, NY
Address: Bronxville
County: Westchester
Structure: Limited Liability Company
Application Number: 2357-L

Description of Project:

Care in the Home, LLC d/b/a Griswold Home Care of Scarsdale and Yonkers, NY, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Care in the Home, LLC has proposed to operate as a Franchisee of Griswold International, LLC.

The proposed membership of Care in the Home, LLC d/b/a Griswold Home Care of Scarsdale and Yonkers, NY comprises the following individual:

Robert M. Kreek, MBA – 100%
Certified Senior Advisor
Owner, Care in the Home, LLC d/b/a Griswold Home Care of Scarsdale and Yonkers, NY
(Staffing Agency)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Society of Certified Senior Advisors indicates no issues with the certification of the professional associated with this application.

The applicant proposes to serve the residents of Westchester County from an office located at 141 Parkway Road, Suite 8, Bronxville, New York 10708.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 7, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: CaringHeart, Inc.
d/b/a ComForcare Senior Services South Orange
Address: Monroe
County: Orange
Structure: For-Profit Corporation
Application Number: 2277-L

Description of Project:

CaringHeart, Inc. d/b/a ComForcare Senior Services South Orange, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

CaringHeart, Inc. has proposed to operate as a Franchisee of ComForcare Health Care Holdings, Inc.

The applicant has authorized 200,000 shares of stock. The principal shareholders are indicated below.

Teresita Manipon – 24,105 Shares	Angel Manipon – 12,500 Shares
Divina Gatica-Guinto – 6,250	Remigio Guinto – 6,250 Shares

There are 13,500 shares of stock issued to individuals owning less than 10% of the issued stock and 137,395 shares remain unissued.

The Board of Directors of CaringHeart, Inc. d/b/a ComForcare Senior Services – South Orange comprises the following individuals:

Teresita C. Manipon, President/CEO
Certified Project Management Professional
Project Management Consultant, TATA Consultancy Services Limited

Affiliation:

Manipon Family – Type Home for Adults (2010 – Present)

Angel C. Manipon, Director
Retired

Affiliation:

Manipon Family – Type Home for Adults (2010 – Present)

Divina Gatica-Guinto, Secretary/Treasurer
Registered Chemist (Philippines)
Global Head of Purchasing and Procurement, Enzo Life Sciences, Inc.

Remigio Guinto, Director
Registered Mechanical Engineer (Philippines)
Director, CaringHeart, Inc.

Marita Mercado, CNA, Director
Patient Care – Oncology Department, VA Medical Center

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Cedas Home Care Services, LLC
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 2233-L

Description of Project:

Cedas Home Care Services, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The sole member of Cedas Home Care Services, LLC is:

Cecile E. Sutherland, MS, BSN, RN, 100%
Owner/Operator, Cedas Home Care Services, LLC (New Jersey Home Care Company)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The office of the Professions of the State Education Department in the State of New York indicates no issues with the license of the health care professional associated with this application.

The Department of Law & Public Safety, Division of Consumer Affairs in the State of New Jersey indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at:
30 E. 125 Street, Number 310, New York, New York 10035

Bronx	Kings	Queens
Richmond	New York	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker		

A review of the following agency was performed as part of this review:

Cedas Home Care Services, LLC (Montclair, New Jersey)

The information received from the Office of the Attorney General, Division of Consumer Protection in the State of New Jersey indicates that the home care agency is in current compliance and that they have not taken any enforcement actions against the agency.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Ciambella Home Care, Inc.
d/b/a FirstLight Home Care of East Buffalo
Address: West Seneca
County: Erie
Structure: For-Profit Corporation
Application Number: 2395-L

Description of Project:

Ciambella Home Care, Inc. d/b/a FirstLight Home Care of East Buffalo, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Ciambella Home Care, Inc. has proposed to operate as a Franchisee of FirstLight HomeCare Franchising, LLC.

The applicant has authorized 200 shares of stock, which are owned as follows:

FirstLight Home Care of Western New York, Inc. Profit Sharing Trust – 8.224 Shares
Trustee, Perry A. Ciambella

Perry A. Ciambella – 0.1 Shares

Sharyl Ciambella Donovan, RN, BSN – 0.1 Shares

The remaining 191.576 Shares remain unissued.

The Board of Directors of Ciambella Home Care, Inc. d/b/a FirstLight Home Care of East Buffalo comprises the following individuals:

Perry A. Ciambella, President/Treasurer/Secretary
Master's in Divinity, BS in Chemistry
Ciambella Home Care, Inc. (Companion Care, 2013 – Present)

Sharyl Ciambella Donovan, RN, BSN, Vice President
Retired

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 326 Woodward Drive, West Seneca, New York 14224:

Erie	Niagara	Wyoming	Chautauqua
Cattaraugus	Allegany	Orleans	Genesee
Monroe			

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 3, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Graceland Home Care, Inc.
Address: Arverne
County: Queens
Structure: For-Profit Corporation
Application Number: 2345-L

Description of Project:

Graceland Home Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock, which are owned as follows:

Akinwande Obafemi – 200 Shares

The Board of Directors of Graceland Home Care, Inc. comprises the following individuals:

Akinwande Obafemi – Chairman/Secretary Residence Manager, Association for Neurologically and Brain Injured Children	Juliet Obafemi – Treasurer Director/Owner, Sunrise Daycare
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Habib Abass – Board Member
Network Senior Analyst, Hudson Group

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 464 Beach 68th Street, Arverne, New York 11692:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 30, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Hafler Corporation d/b/a Comfort Keepers of Pittsford
Address: Pittsford
County: Monroe
Structure: For-Profit Corporation
Application Number: 2255L

Description of Project:

Hafler Corporation d/b/a Comfort Keepers of Pittsford, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Hafler Corporation has proposed to operate as a Franchisee of CK Franchising, Inc.

The applicant has authorized 2 shares of stock, which are owned as follows: Terence Hafler owns 1 share and Donna Hafler owns 1 share.

The Board of Directors of Hafler Corporation d/b/a Comfort Keepers of Pittsford comprises the following individuals:

Terence Hafler, President/Treasurer
Owner, Hafler Corporation d/b/a Comfort Keepers of Pittsford (Companion Care)

Donna Hafler, Vice-President/Secretary
Owner, Hafler Corporation d/b/a Comfort Keepers of Pittsford (Companion Care)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 1163 Pittsford-Victor Road, Suite 215, Pittsford, New York 14534:

Monroe	Ontario	Wayne
Yates	Livingston	Steuben

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 21, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Happy Life Home Health Agency Inc.
Address: Bayside
County: Queens
Structure: For-Profit Corporation
Application Number: 2308-L

Description of Project:

Happy Life Home Health Agency Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Soonok Chong, RN.

The Board of Directors of Happy Life Home Health Agency Inc. is comprised of the following individuals:

Soonok Chong, RN, President Patient Coordinator – Visiting Nurse Service of NY	Jerry Louie, Vice-President Manager – Watsons Pharmacy
Jennifer Chong, Treasurer Associate Production Line Manager – Footlocker, Inc.	Julie Louie, Pharm D, Secretary Pharmacist – Watsons Pharmacy

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the health care professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 35-17 213th Street. Bayside, New York 11361:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 12, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Help Home Health Care Agency, LLC
Address: Bronx
County: Bronx
Structure: Limited Liability Company
Application Number: 2312-L

Description of Project:

Help Home Health Care Agency, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The proposed membership of Help Home Health Care Agency, LLC, comprises the following individuals:

Nurudeen Sulayman, MSW – 51% Customer Service Agent, Metro South Associates, LLC	Nikki Akeeb, RN – 49% Staff Nurse, Bronx Lebanon Hospital Center
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 3391 3rd, First Floor, Bronx, New York 10456:

Bronx	New York	Kings	Queens	Richmond	Westchester
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Housekeeper	Medical Social Services	Homemaker

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 12, 2015

Licensed Home Care Service Agency
Character and Competence Staff Review

Name of Agency: Home Assist Senior Care, Inc.
Address: Hamburg
County: Erie
Structure: For-Profit Corporation
Application Number: 2271-L

Description of Project:

Home Assist Senior Care, Inc. a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 3000 shares of stock which are owned as follows:

Richard Schneider – 2.5 shares

Richard Schneider and Beth Schneider TEE FBO Home Assist Senior Care, Inc. Profit Sharing Plan Trust TBO, Richard Schneider Rollover Account – 12.723697 shares

Richard Schneider and Beth Schneider TEE FBO Home Assist Senior Care, Inc. Profit Sharing Plan Trust TBO, Beth Schneider Rollover Account – 2,189.9337 shares

There are 794.842603 shares of stock that remain unissued.

The Board of Directors of Home Care Senior Care, Inc. is comprised of the following individual:

Richard Schneider, President
EMT- Paramedic
Executive Operator – Home Assist Senior Care, Inc.

The Trustees for the TEE FBO Home Assist Senior Care, Inc. Profit Sharing Plan Trusts are as follows:

Richard Schneider Disclosed above	Beth Schneider Business Development/Office Manager – Home Assist Senior Care, Inc.
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A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Emergency Medical Services has indicated that the NYS Paramedic license # 110792 held by Richard Schneider is in good standing and there has been no disciplinary action against this individual or his license.

The applicant proposes to serve the residents of the following counties from an office located at 3496 Lakeview Road, Hamburg, New York 14075:

Erie	Niagara	Cattaraugus	Allegany
Genesee	Chautauqua	Wyoming	Monroe

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 4, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: JMD Care Services, Inc.
d/b/a Homewatch CareGivers of Nassau County
Address: Westbury
County: Nassau
Structure: For-Profit Corporation
Application Number: 2341-L

Description of Project:

JMD Care Services, Inc. d/b/a Homewatch CareGivers of Nassau County, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

JMD Care Services, Inc. has proposed to operate as a Franchisee of Homewatch International, Inc.

The applicant has authorized 200 shares of stock, which are owned solely by Reena Sharma.

The Board of Directors of JMD Care Services, Inc. d/b/a Homewatch CareGivers of Nassau County comprises the following individuals:

Reena Sharma, President
Certified Senior Advisor
President/Owner, JMD Care Services, Inc. d/b/a Homewatch CareGivers of Nassau County
(Companion Care Agency, 2013 – Present)

Sanjay M. Shah, Director
New York State Licensed Pharmacist
President/Supervising Pharmacist, SMS Pharmacy Corp d/b/a Jorge Pharmacy

Chetan Sharma, MBA, Director
Sales Manager, McKesson Pharmaceutical

Dina N. Bhatia, Secretary
Retired

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 400 Post Avenue, Suite 203, Westbury, New York 11590:

Nassau	Suffolk	Queens	Westchester
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Homemaker
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 8, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Karma Care, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2227-L

Description of Project:

Karma Care, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares, which are owned as follows: Mohammad Akram Khan own 100 shares and Anu Khan owns 100 shares.

The members of the Board of Directors of Karma Care, Inc. comprise the following individuals:

Mohammad Akram Khan, President
Bookkeeper/Accounting Director, Foster Nurses Agency USA, Inc.

Anu Khan, LPN, Administrator
LPN, Foster Nurses Agency USA, Inc.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 316 5th Avenue, Suite 404C, New York, New York 10001:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: K-REG, LLC
d/b/a Manhattan Office of Griswold Home Care
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 2360-L

Description of Project:

K-REG, LLC d/b/a Manhattan Office of Griswold Home Care, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

K-REG, LLC has proposed to operate as a Franchisee of Griswold International, LLC.

The proposed membership of K-REG, LLC d/b/a Manhattan Office of Griswold Home Care comprises the following individual:

Kathleen Boziwick, MBA – 100%
Certified Senior Advisor
Owner, Manhattan Office of Griswold Home Care (Staffing Agency, 2012 - Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 146 West 95th Street, Suite #1B, New York, New York 10025:

New York	Kings	Queens
Bronx	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 27, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Liberty Healthcare Services, Inc.
d/b/a All Island Homecare Services
Address: Deer Park
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2156-L

Description of Project:

Liberty Healthcare Services, Inc., d/b/a All Island Homecare Services, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which have not been issued. The applicant has confirmed that Emmanuel Aboagye will be the sole shareholder and will own the entire 200 shares.

The Board of Directors of Liberty Healthcare Services, Inc. d/b/a All Island Homecare Services comprises the following individuals:

Emmanuel Aboagye, RN, BSN, Chairman
Nursing Supervisor, Apex Rehabilitation and Nursing Care Center

Nicole Martin, RN, MSN, Director
Clinical/Classroom Instructor, Long Island School of Nursing Assistants
Field Supervisor, Home Instead Senior Care

Isaac Otsieku-Baah, RN, BSN, Director
Assessment/Evaluation, Brookhaven Health Care Facility

Michael Otibu-Aboagye, RN, Director
ER Staff Nurse, Peconic Bay Medical Center

Emmanuel Boadu, LPN, Director
Licensed Practical Nurse, Blessed Healthcare & Staffing Agency

Josephine M. Aboagye, LPN, LBSC, Director
Administrative Assistant, Long Island School of Nursing Assistants

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the licenses of the healthcare professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 60 East Industry Court, 4th Floor, Suite A, Deer Park, New York 11729:

Nassau

Suffolk

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 7, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: NY Home Care Service, Inc.
Address: New York
County: New York
Structure: For-Profit Corporation
Application Number: 2269-L

Description of Project:

NY Home Care Service, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Yue Lam.

The Board of Directors of NY Home Care Service, Inc. is comprised of the following individual:

Yue Lam, President
Administrator, Chinatown Senior Services, Inc.
Coordinator and Marketing Specialist, Home Family Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 230 Grand St, 501B, New York, New York 10013:

New York Bronx Queens Kings Richmond Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Optimum Home Care, LLC
d/b/a Home Care Solutions
Address: New York
County: New York
Structure: Limited Liability Company
Application Number: 2234L

Description of Project:

Optimum Home Care, LLC d/b/a Home Care Solutions, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The managing members of Optimum Home Care, LLC d/b/a Home Care Solutions are:

Loreta Colombo – 75%
Director/Geriatric Case Manager, Optimum Home Care, LLC (Companion Care)

Andrea Rusyte – 25%
Manager, Optimum Home Care, LLC (Companion Care)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 41 Union Square West, Suite 617, New York, New York 10003:

New York	Bronx	Kings
Queens	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Richmond Home Care Agency, Inc.
Address: Staten Island
County: Richmond
Structure: For-Profit Corporation
Application Number: 2301-L

Description of Project:

Richmond Home Care Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Richmond Home Care Agency, Inc. has authorized 200 shares of stock which are owned solely by Richard Okeke.

The Board of Directors of Richmond Home Care Agency, Inc. is comprised of the following individuals:

Richard Okeke, HHA – President, Secretary
Homeless Diversion Unit Specialist – Human Resources Administration (City of New York)

Francisca Okeke, RN – Vice President, Treasurer
Volunteer – Maimonides Medical Center

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

A search of the New York State Home Care Registry revealed that the Home Health Aid (HHA) is certified as a HHA with no convictions or findings.

The applicant proposes to serve the residents of Richmond County from an office located at 352 Hillside Avenue, Staten Island, New York 10304.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 27, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Royal Class Home Health Care Agency, Inc.
Address: Flushing
County: Queens
Structure: For-Profit Corporation
Application Number: 2387-L

Description of Project:

Royal Class Home Health Care Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Royal Class Home Health Care Agency, Inc. has authorized 200 shares of stock, which are owned solely by Xiazi Zhao.

The Board of Directors of Royal Class Home Health Care Agency, Inc. is comprised of the following individual:

Xiazi Zhao, Director/Chairperson
Director, Royal Adult Day Care Center

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 143-26 41st Avenue, #2A, Flushing, New York 11355:

New York	Kings	Queens
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 21, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: SDL Home Care Agent, Inc.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2297-L

Description of Project:

SDL Home Care Agent, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 200 shares of stock which are owned solely by Luis Yip.

The Board of Directors of SDL Home Care Agent, Inc. is comprised of the following individual:

Luis Yip - President
Manager, Joyful Adult Day Care

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 782 61st Street, Brooklyn, New York 11220:

Kings New York Queens Bronx Richmond Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Respiratory Therapy	Occupational Therapy
Speech-Language Pathology	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: SLK Caregivers, Inc. d/b/a Comfort Keepers
Address: Orchard Park
County: Erie
Structure: For-Profit Corporation
Application Number: 2278-L

Description of Project:

SLK Caregivers, Inc. d/b/a Comfort Keepers, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

SLK Caregivers, Inc. has proposed to operate as a Franchisee of CK Franchising, Inc.

The applicant has authorized 200 shares of stock, which are owned solely by Susan L. Kryszak.

The Board of Directors of SLK Caregivers, Inc. d/b/a Comfort Keepers comprises the following individual:

Susan L. Kryszak, President/Director
SLK Caregivers, Inc. d/b/a Comfort Keepers (Companion Care)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Erie County from an office located at 3075 Southwestern Boulevard, Suite 206, Orchard Park, New York 14127.

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: The Impossible Dream Isn't, Inc.
d/b/a Home Helpers of Rochester
Address: Henrietta
County: Monroe
Structure: For-Profit Corporation
Application Number: 2383-L

Description of Project:

The Impossible Dream Isn't, Inc. d/b/a Home Helpers of Rochester, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Impossible Dream Isn't, Inc. has proposed to operate as a Franchisee of H.H. Franchising Systems, Inc.

The applicant has authorized 200 shares of stock, which are owned as follows: Debra Kostiw owns 100 shares and Paul Kostiw owns 100 shares.

The Board of Directors of The Impossible Dream Isn't, Inc. d/b/a Home Helpers of Rochester comprises the following individuals:

Debra Kostiw, President/Secretary
Owner, Home Helpers and Direct Link of Rochester (Companion Care Agency)

Paul Kostiw, Vice President/Treasurer
Owner, Home Helpers and Direct Link of Rochester (Companion Care Agency)
Patient Services Rep, Imaging Sciences

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of Monroe County from an office located at 29 Tomahawk Trail, Henrietta, New York 14467:

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: January 28, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Yiming L Corp.
Address: Brooklyn
County: Kings
Structure: For-Profit Corporation
Application Number: 2171-L

Description of Project:

Yiming L Corp., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Yiming L Corp. has authorized 200 shares of stock, which are owned as follows: Jian Ai Chen owns 100 shares, Yiming Liang owns 80 shares and Meili Huang owns 20 shares.

The Board of Directors of Yiming L Corp. comprises the following individuals:

Yiming Liang, President/Director
Chinese Language – Quality Evaluator, BPA International, Inc.
Chinese Tutor, John Jay College of Criminal Justice

Jian Ai Chen, Vice President/General Manager
Medical Office Manager, Jennan Comprehensive Medical Group

Meili Huang, RN, Operator/Quality Assurance Team Member
Enrollment Nurse, Village Senior Services Corp
Visiting Nurse, Caring LHCSA, LLC
RN, Jennan Comprehensive Medical Group

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Office of the Professions of the State Education Department indicates no issues with the license of the health care professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 4108 8th Ave, Brooklyn, New York 11232:

New York	Kings	Bronx
Richmond	Queens	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 19, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Zaweski Senior Care, Inc. d/b/a Home Instead Senior Care
Address: Hampton Bays
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2358-L

Description of Project:

Zaweski Senior Care, Inc. d/b/a Home Instead Senior Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Zaweski Senior Care, Inc. d/b/a Home Instead Senior Care has proposed to operate as a Franchisee of Home Instead, Inc.

The applicant has authorized 200 shares of stock which are owned solely by Tracy Zaweski.

The Board of Directors of Zaweski Senior Care, Inc d/b/a Home Instead Senior Care is comprised of the following individual:

Tracy Zaweski – President
Manager - Zaweski Senior Care, Inc. dba Home Instead Senior Care (Companion Care)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 148 East Montauk Highway, Suite 2, Hampton Bays, New York 11946:

Suffolk Nassau

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 4, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Seaview Manor, LLC
Address: Far Rockaway
County: Queens
Structure: Limited Liability Company
Application Number: 2569-L

Description of Project:

Seaview Manor, LLC, a limited liability company, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated the Assisted Living Program to be operated by Seaview Manor, LLC. The LHCSA and the ALP will have identical membership.

The membership of Seaview Manor, LLC comprises the following individuals:

Herman Yunger, 33.3%
Administrator, Seaview Manor, LLC

Affiliations:
Bayview Manor (1989 – 2009)

Bert Fried, 33.3%
Administrator/Operator, Mermaid Manor Home for Adults, LLC (1981 – Present)

Affiliations:
Seaview Manor, LLC (1974 – Present)
Surfside Manor Home for Adults, LLC (1976 – Present)
Surfside Manor Home for Adults LHCSA, LLC (1976 – Present)
Beacon Rehabilitation and Nursing Center, LLC (2006 – Present)

Tivador Marcovici, 33.3%
Owner/Operator, SE Management Corporation

Affiliations:
Seaview Manor, LLC (1974 – Present)
Surfside Manor Home for Adults, LLC (1976 – Present)
Surfside Manor Home for Adults LHCSA, LLC (1976 – Present)
Beacon Rehabilitation and Nursing Center, LLC (2006 – Present)
Mermaid Manor Home for Adults, LLC (1981 – Present)

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 210 Beach 47th Street, Far Rockaway, New York 11691:

Queens	Kings	New York
Richmond	Bronx	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
Speech-Language Pathology	Audiology	Nutrition
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Seaview Manor, LLC
Bayview Manor, LLC (2007 – 2009)
Surfside Manor Home for Adults, LLC
Surfside Manor Home for Adults LHCSA, LLC
Beacon Rehabilitation and Nursing Center, LLC (formerly Ocean Promenade Nursing Home)
Mermaid Manor Home for Adults, LLC

The information provided by the Division Assisted Living has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Ocean Promenade Nursing Home was fined \$4,000 pursuant to a stipulation and order dated November 19, 2012 for surveillance findings of February 24, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accidents and Supervision and 415.26 Administration.

The information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 4, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Anchor Home Care LLC
Address: Buffalo
County: Erie
Structure: Limited Liability Company
Application Number: 2281L

Anchor Home Care LLC, a limited liability company, requests approval for a change of ownership of a licensed home care services agency (LHCSA) under Article 36 of the Public Health Law.

Anchor Home Care LLC requests approval for the acquisition of Liken Health Care, Inc. Liken Health Care, Inc. was previously approved as a licensed home care services agency by the Public Health Council at its January 19, 2007 meeting and subsequently licensed as 1473L001.

The sole member of Anchor Home Care LLC is the following individual:

Kenneth Rosenberg – 100%
CEO, Bronx Center for Rehabilitation & Health Care
CEO, Centers Health Care, formerly Centers for Specialty Care Group

Affiliations:

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1998 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Chittenango)	05/2011 to present (owner) 07/2008 to 05/2011) (receiver)
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present (receiver)
Delaware Nursing & Rehabilitation Center	06/2014 to present (receiver)
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Queens Center for Rehabilitation and Residential Health Care	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Rome)	07/2008 to present
Steuben Center for Rehab	07/2014 to present
University Nursing Home	08/2001 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	01/2013 to present (owner) 08/2011 to 12/2012 (receiver)
Williamsbridge Manor Nursing Home	10/1997 to present

Certified Home Health Agency

Alpine Home Health Care 07/2008 to present

Licensed Home Care Services Agency

Amazing Home Care 05/2006 to present

Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS) 05/2005 to present

Managed Long Term Care Company
Center Plan for Health Living (MLTC)

01/2013 to present

The applicant proposes to serve the residents of the following counties from an office located at 200 Seventh Street, Buffalo, NY:

Allegany	Cattaraugus	Chautauqua
Erie	Genesee	Niagara
Orleans	Wyoming	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The Bureau of Professional Credentialing has indicated that Kenneth Rosenberg, a Nursing Home Administrator (NHA) license #04036, is in good standing. The Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or his license.

The Bureau of The New York State Department of Health's Bureau of Professional Credentialing and Bureau of Emergency Medical Services has indicated that Kenneth Rosenberg, NYS Paramedic license #082942, is in good standing. Mr. Rozenberg was assessed a civil penalty of \$350 for being one month late in renewing his nursing home administrator registration for the period January 1 – February 1, 2002.

A 7 year review of the operations of the following agencies was performed as part of this review (unless otherwise noted):

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare (05/2011 to present)
Bronx Center for Rehabilitation and Health Care
Brooklyn Center for Rehabilitation and Residential HC
Bushwick Center for Rehabilitation and Health Care (06/2008 to present)
(formerly Wartburg Lutheran Home for the Aging)
Chittenango Center for Rehabilitation and Health Care (07/2008 to present)
(formerly Stonehedge Health & Rehabilitation Center - Chittenango)
Corning Center for Rehabilitation (07/2013 to present)
Daughters of Jacob Nursing Home Company Inc. (08/2013 to present)
Delaware Nursing & Rehabilitation Center (06/2014 to present)
Dutchess Center for Rehabilitation and Healthcare
Essex Center for Rehabilitation and Health Care (03/2014 to present)
Fulton Center for Rehabilitation and Healthcare (04/2012 to present)
Holliswood Center for Rehabilitation and Healthcare (11/2010 to present)
Indian River Rehabilitation and Nursing Center (12/2014 to present)
Queens Center for Rehabilitation and Residential Health Care
Richmond Center for Rehabilitation and Specialty Healthcare (04/2012 to present)
Rome Center for Rehabilitation and Health Care (07/2008 to present)
(formerly Stonehedge Health & Rehabilitation Center - Rome)
Steuben Center for Rehab (07/2014 to present)
University Nursing Home
Washington Center for Rehabilitation and Health Care (02/2014 to present)
Waterfront Center for Rehabilitation and Health Center (08/2011 to present)
Williamsbridge Manor Nursing Home
Certified Home Health Agency
Alpine Home Health Care (07/2008 to present)

Licensed Home Care Services Agency

Amazing Home Care

Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)

Managed Long Term Care Company

Center Plan for Health Living (MLTC) (01/2013 to present)

Bronx Center for Rehabilitation & Health Care was fined four thousand dollars (\$4,000.00) pursuant to a stipulation and order dated August 25, 2011 for surveillance findings of April 16, 2010. Deficiencies were found under 10 NYCRR Sections 415.12(h)(2) Quality of Care: Accidents and Supervision; and 415.26 Administration.

Chittenango Center for Rehabilitation and Health Care was fined twenty thousand dollars (\$20,000.00) pursuant to a stipulation and order dated February 17, 2012 for surveillance findings of January 20, 2011. Deficiencies were found under 10 NYCRR Sections 415.12(c)(1)(2) Quality of Care: Pressure Sores; and 415.12(d)(1) Quality of Care: Catheters.

Stonehedge Health and Rehabilitation Center - Chittenango was fined for four thousand (\$4,000.00) pursuant to a stipulation and order dated November 15, 2010 for surveillance findings of October 22, 2009. Deficiencies were found under 10 NYCRR Sections 415.12(h)(1,2) Quality of Care: Accidents and Supervision; and 415.26(b)(3)(4) Governing Body.

Waterfront Health Care Center was fined two thousand dollars (\$2,000) pursuant to a stipulation and order dated April 24, 2013 for surveillance findings of September 27, 2011. Deficiencies were found under 10 NYCRR Section 415.12(h)(1)(2) Quality of Care Accidents and Supervision.

The Information provided by the Bureau of Quality and Surveillance has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Bureau of Emergency Medical Services reviewed the compliance history of the affiliated ambulance company for the time period specified as the affiliation. It has been determined that the affiliated ambulance company has operated in substantial compliance with all applicable codes, rules and regulations.

The information provided by the Office of Managed Care indicated that the Centers Plan for Healthy Living, a Managed Long Term Care Program, is too new to provide sufficient compliance information concerning supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency:

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 9, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: HDA NY, LLC
Address: Brooklyn
County: Kings
Structure: Limited Liability Company
Application Number: 2442-L

Description of Project:

HDA NY, LLC, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Human Development Association, Inc., a not-for-profit corporation, was previously approved as a home care services agency by the Public Health Council at its November 21, 1997 meeting and subsequently licensed as 0553L001.

HDA NY, LLC proposes to acquire the LHCSA currently operated by Human Development Association, Inc. through an asset purchase agreement.

The membership of HDA NY, LLC comprises the following individuals:

Cheskel Berkowitz – 40%
President, HHCNY, Inc.
President, Specialty Rx, Inc.
Member, Pella Care, LLC

Joel Zupnick – 40%
Vice President, HHCNY, Inc.
Vice President, Specialty Rx, Inc.
CFO, Pella Care, LLC

Affiliation:

- Pella Care, LLC (2006 – present)

Affiliations:

- North Westchester Restorative Therapy and Nursing Center (12/31/10 – 04/1/11)
- Pella Care, LLC (2006 – present)

Marton Ornstein – 20%
CEO, Hospitality Consulting & Supply

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven (7) year review of the operations of the following healthcare facilities/agencies was performed as part of this review (unless otherwise noted):

North Westchester Restorative Therapy and Nursing Center (12/31/10 – 04/1/11)
Pella Care, LLC

The information provided by the Division of Home and Community Based Services indicated that Licensed Home Care Services Agency reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The Information provided by the Bureau of Quality Assurance for Nursing Homes indicated that the residential health care facility reviewed has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The applicant proposes to serve the residents of the following counties from an office located at 12 Heyward Street, Brooklyn, New York 11249:

Kings

Queens

Bronx

New York

Richmond

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Occupational Therapy	Physical Therapy		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval

Date: March 6, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Park Terrace Operating, LLC d/b/a Park Terrace at Radisson Assisted Living Program
Address: Baldwinsville
County: Onodaga
Structure: Limited Liability Company
Application Number: 2378-L

Description of Project:

Park Terrace Operating, LLC d/b/a Park Terrace at Radisson Assisted Living Program, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Highland Park Center d/b/a Park Terrace at Radisson Assisted Living Program was previously approved as a home care services agency by the Public Health Council at its January 23, 2004 meeting and subsequently licensed 1208L001. At that time it was owned as follows: James Vitale – 40 shares, Joseph Vitale – 40 shares, Paul Vitale – 10 shares and Christopher Vitale – 10 shares. Through an Asset Purchase Agreement, the LHCSA will be sold and the previous owners will no longer be affiliated with the LHCSA. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home - Seneca Terrace Assisted Living Center.

The proposed members of Park Terrace Operating, LLC d/b/a Park Terrace at Radisson Assisted Living Program comprises the following individuals:

Wayne L. Kaplan, Esq. – Managing Member – 50%
Owner/Managing Member, Premier Senior Living, LLC

Paula J. Borsody – Managing Member – 50%
Trainer/Coach/Consultant, EI Schools/The Ruler
Approach to Social and Emotional Learning

Affiliations:

- The Inn at Orchard Park (Ohio): 2010 – Present
- The Inn at Westbrook (Ohio): 2010 – Present
- The Inn at Fountain Park (Ohio): 2010 – Present
- Summit at New Port Richey (Florida): April 2011 - Present
- Summit at Venice (Florida): April 2011 - Present
- Hampshire House (NY Adult Home): February 2011 – Present
- The 80th Street Residence (NY Adult Home): November 2011 - Present
- Premier Senior Living, LLC (NY Adult Home) 2006 – Present

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for Wayne Kaplan.

A seven year review was conducted for the following healthcare facilities:

- The Inn at Orchard Park (Ohio): 2010 – Present
- The Inn at Westbrook (Ohio): 2010 – Present
- The Inn at Fountain Park (Ohio): 2010 – Present
- Summit at New Port Richey (Florida): April 2011 - Present
- Summit at Venice (Florida): April 2011 - Present
- Hampshire House (NY Adult Home): February 2011 – Present
- The 80th Street Residence (NY Adult Home): November 2011 - Present

- Premier Senior Living, LLC (NY Adult Home) 2006 – Present

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Assisted Living has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Florida reported that during the applicant's affiliation Summit at Venice the facility was fined in the amounts and for the conditions as follows:

April 2013 – A staff Member who was not a nurse assisted a resident in removing a compression stocking. The facility was fined \$3,000.00.

April 2013 – There was some stained carpet noted by the surveyors, and an employee did not change gloves after interacting with a resident with Clostridium Difficile, a contagious bacterial infection that can be passed person to person, before caring for that resident's dentures. The facility was fined \$3,000.00.

September 2013 – The water temperature tested above the maximum permitted by the regulations. The facility was fined \$1,500.00.

A compliance report was received from the State of Ohio that indicated the facilities listed were in substantial compliance with applicable state laws and regulation.

The applicant proposes to continue to serve the residents of the following counties from an office located at 2981 Town Center Road, Baldwinsville, New York 13027.

Cayuga Onondaga Oswego

The applicant proposes to continue to provide the following health care services:

Nursing Home Health Aide Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: February 3, 2015

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Seneca Lake Terrace Operating, LLC d/b/a Seneca Terrace Assisted Living Center
Address: Geneva
County: Ontario
Structure: Limited Liability Company
Application Number: 2377-L

Description of Project:

Seneca Lake Terrace Operating, LLC d/b/a Seneca Terrace Assisted Living Center, a limited liability company, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Seneca Lake Terrace, Inc. d/b/a Seneca Lake Terrace was previously approved as a home care services agency by the Public Health Council at its May 21, 1999 meeting and subsequently licensed as 0781L001. At that time it was owned as follows: James Vitale – 40%, Joseph Vitale – 40%, Paul Vitale – 10% and Christopher Vitale – 10%. Through an Asset Purchase Agreement, the LHCSA will be sold and the previous owners will no longer be affiliated with the LHCSA. The applicant has submitted a Certificate of Need application for an identical change in membership of the Adult Home - Seneca Terrace Assisted Living Center.

The proposed members of Seneca Lake Terrace Operating, LLC d/b/a Seneca Terrace Assisted Living Center comprises the following individuals:

Wayne L. Kaplan, Esq. – Managing Member – 50%
Owner/Managing Member, Premier Senior Living, LLC

Paula J. Borsody – Managing Member – 50%
Trainer/Coach/Consultant, EI Schools/The Ruler
Approach to Social and Emotional Learning

Affiliations:

- The Inn at Orchard Park (Ohio): 2010 – Present
- The Inn at Westbrook (Ohio): 2010 – Present
- The Inn at Fountain Park (Ohio): 2010 – Present
- Summit at New Port Richey (Florida): April 2011 - Present
- Summit at Venice (Florida): April 2011 - Present
- Hampshire House (NY Adult Home): February 2011 – Present
- The 80th Street Residence (NY Adult Home): November 2011 - Present
- Premier Senior Living, LLC (NY Adult Home) 2006 – Present

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A Certificate of Good Standing has been received for Wayne Kaplan.

A seven year review was conducted for the following healthcare facilities:

- The Inn at Orchard Park (Ohio): 2010 – Present
- The Inn at Westbrook (Ohio): 2010 – Present
- The Inn at Fountain Park (Ohio): 2010 – Present
- Summit at New Port Richey (Florida): April 2011 - Present
- Summit at Venice (Florida): April 2011 - Present
- Hampshire House (NY Adult Home): February 2011 – Present
- The 80th Street Residence (NY Adult Home): November 2011 - Present

- Premier Senior Living, LLC (NY Adult Home) 2006 – Present

The information provided by the Division of Home and Community Based Services has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The information provided by the Division of Assisted Living has indicated that the applicant has provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.

The State of Florida reported that during the applicant's affiliation Summit at Venice the facility was fined in the amounts and for the conditions as follows:

April 2013 – A staff Member who was not a nurse assisted a resident in removing a compression stocking. The facility was fined \$3,000.00.

April 2013 – There was some stained carpet noted by the surveyors, and an employee did not change gloves after interacting with a resident with Clostridium Difficile, a contagious bacterial infection that can be passed person to person, before caring for that resident's dentures. The facility was fined \$3,000.00.

September 2013 – The water temperature tested above the maximum permitted by the regulations. The facility was fined \$1,500.00.

A compliance report was received from the State of Ohio that indicated that the facilities listed were in substantial compliance with applicable state laws and regulation.

The applicant proposes to continue to serve the residents the following counties from an office located at 3670 Pre-emption Road, Geneva, New York 14456:

Ontario	Seneca	Wayne	Yates
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The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Homemaker	Housekeeper	

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
 Date: February 3, 2015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 16th day of April, 2015, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

<u>NUMBER:</u>	<u>FACILITY:</u>
2063 L	Ace in Home Care, Inc. (Nassau, Suffolk, and Queens Counties)
2249 L	Act On It Home Care, Inc. (Bronx, Queens, Kings, Richmond, New York and Nassau Counties)
2216 L	Advanced Home Care Specialist, Inc. d/b/a Medical Home Care Services (Suffolk and Nassau Counties)
2354 L	Behr's Homecare, LLC (Oneida, Madison, Herkimer and Hamilton Counties)

- 2290 L Benevolent Home Care, LLC
(Bronx, Kings, Queens, Richmond, New York and Nassau Counties)
- 2367 L Black Diamond Roslyn, Inc.
d/b/a Right at Home Nassau Suffolk
(Nassau and Suffolk Counties)
- 2357 L Care in the Home, LLC
d/b/a Griswold Home Care of Scarsdale and Yonkers, NY
(Westchester County)
- 2277 L CaringHeart, Inc.
d/b/a ComForcare Senior Services South Orange
(Orange and Rockland Counties)
- 2233 L Cedas Home Care, LLC
(Bronx, Richmond, Kings, New York, Queens and Westchester Counties)
- 2395 L Ciambella Home Care, Inc.
d/b/a FirstLight Home Care of East Buffalo
(Erie, Cattaraugus, Monroe, Niagara, Allegany, Wyoming, Orleans, Chautauqua and Genesee Counties)
- 2345 L Graceland Home Care, Inc.
(Bronx, Richmond, Kings, Westchester, New York, Queens Counties)
- 2255 L Hafler Corporation
d/b/a Comfort Keepers of Pittsford
(Monroe, Yates, Ontario, Livingston, Wayne and Steuben Counties)
- 2308 L Happy Life Home Health Agency, Inc.
(Queens, Bronx, Kings, Richmond, New York, and Nassau Counties)
- 2312 L Help Home Health Care Agency, LLC
(Bronx, New York, Kings, Queens, Richmond, and Westchester Counties)
- 2271 L Home Assist Senior Care, Inc.
(Erie, Genesee, Niagara, Chautauqua, Cattaraugus, Wyoming, Allegany, and Monroe Counties)

- 2341 L JMD Care Services, Inc.
d/b/a Homewatch CareGivers of Nassau County
(Nassau, Suffolk, Queens, and Westchester Counties)
- 2227 L Karma Care, Inc.
(New York, Bronx, Kings, Richmond, Queens and Nassau
Counties)
- 2360 L K-REG, LLC
d/b/a Manhattan Office of Griswold Home Care
(New York, Bronx, Kings, Richmond, and Queens
Counties)
- 2284 L Kelly Sisters, Inc.
(Nassau and Suffolk Counties)
- 2156 L Liberty Healthcare Services, Inc.
d/b/a All Island Homecare Services
(Nassau and Suffolk Counties)
- 2248 L My HHA Care's, Inc.
(Suffolk and Nassau Counties)
- 2269 L NY Home Care Service, Inc.
(New York, Bronx, Queens, Kings, Richmond and Nassau
Counties)
- 2234 L Optimum Home Care, LLC
d/b/a Home Care Solutions
(New York, Queens, Bronx, Richmond, Kings and Nassau
Counties)
- 2194 L Pampered Parents, LLC
(Ontario, Yates and Monroe Counties)
- 2301 L Richmond Home Care Agency, Inc.
(Richmond County)

- 2387 L Royal Class Home Health Care Agency, Inc.
(New York, Bronx, Kings, Richmond, Queens and Nassau
Counties)
- 2297 L SDL Home Care Agent, Inc.
(Kings, New York, Queens, Bronx, Richmond and Nassau
Counties)
- 2278 L SLK Caregivers, Inc.
d/b/a Comfort Keepers
(Erie County)
- 2383 L The Impossible Dream Isn't It
d/b/a Home Helpers of Rochester
(Monroe County)
- 2171 L Yiming L Corp.
(New York, Richmond, Kings, Queens, and Bronx
Counties)
- 2358 L Zaweski Senior Care, Inc.
d/b/a Home Instead Senior Care
(Suffolk and Nassau County)
- 2569 L Seaview Manor, LLC
(Queens, Richmond, Kings, Bronx and New York
Counties)
- 2281 L Anchor Home Care LLC
(Allegany, Erie, Orleans, Cattaraugus, Genesee,
Wyoming, Chautauqua, and Niagara Counties)
- 2473 L Bayshore Home Healthcare, Inc.
(Nassau, Suffolk and Queens Counties)
- 2442 L HDA NY, LLC
(Kings, Queens, Bronx, New York, and Richmond
Counties)

2378 L Park Terrace Operating LLC
d/b/a Park Terrace at Radisson Assisted Living Program
(Cayuga, Onondaga and Oswego Counties)

2377 L Seneca Lake Terrace Operating, LLC
d/b/a Seneca Terrace Assisted Living Center
(Ontario, Seneca, Wayne and Yates Counties)

MEMORANDUM

To: Members of the Public Health and Health Planning Council

From: Charles P. Abel
Acting Director
Center for Health Care Facility Planning, Licensure and Finance

Date: April 9, 2015

Subject: CON #131347 Southtowns Ambulatory Surgery Center, LLC

In June, 2013, the Department received an application from Southtowns Surgery Center, LLC, a joint venture between 22 physicians and KH Venture Services, a subsidiary of Kaleida Health, for the establishment and construction of a multi-specialty ambulatory surgery center (ASC) at 5959 Big Tree Road in Orchard Park (Erie County). The proposed ASC would offer orthopedic and general surgical services.

The application was presented to the Establishment and Project Review Committee (EPRC), with a Department recommendation for five-year, limited life approval on March 27, 2014. Because the EPRC lacked a quorum for consideration of this project, the application was forwarded to the full PHHPC without a recommendation from the Committee. At the April 10, 2014 meeting of the full PHHPC, a motion to approve the application failed to carry. Because failure to approve the application would have left it “in limbo,” the PHHPC passed an alternate motion for disapproval, to allow the applicant the right to challenge the disapproval through the appeals process, pursuant to Public Health Law Section 2801-a.

A hearing was held on various dates in the fall of 2014. A DOH Administrative Law Judge (ALJ) heard testimony and received documents into evidence. On February 20, 2015, the ALJ issued his Report and Recommendation describing the evidence and recommending that the application be approved. The ALJ’s Report and Recommendation are attached, along with the original Department report and recommendation for limited life approval presented to the PHHPC at its April 10, 2014 meeting.



Public Health and Health Planning Council

Project #131347-B Southtowns Ambulatory Surgery Center, LLC

County: Erie (Orchard Park) **Program:** Ambulatory Surgery Center
Purpose: Establishment and Construction **Acknowledged:** July 2, 2013

Executive Summary

Description

Southtowns Ambulatory Surgery Center, LLC, a proposed limited liability company, requests approval for the establishment of a multi-specialty freestanding ambulatory surgery center to provide services in the specialties of orthopedics, urology, podiatry, chiropractic and general surgery. The center will be located in approximately 16,082 square feet on the first floor of a newly constructed building located at 5959 Big Tree Road, Orchard Park. The center will consist of four operating rooms, sixteen recovery bays, six pre-op areas, soiled utility room, staff lounge and dressing areas, administration offices, waiting room, nursing station, staff work spaces and patient and staff restrooms. The center will be staffed with 19 physicians consisting of three board certified physicians in general surgery, thirteen board certified physicians in orthopedics, and three board certified physicians in urology. The center will also have two podiatrists and one chiropractor.

Southtowns Ambulatory Surgery Center, LLC is a joint venture between nineteen individual medical practitioners with 2.25% interest each (total of 47.75%) and KH Venture Services (57.25%) interest. KH Ventures Service is a subsidiary of Kaleida Health. BFA Attachment A, is a list of proposed members and their ownership percentages.

DOH Recommendation

Contingent approval with an expiration of the operating certificate five (5) years from the date of its issuance.

Need Summary

Southtowns Venture proposes to provide multi-specialty ambulatory surgery services specializing in

orthopedic and general outpatient surgical services. This is a joint venture between physicians and Kaleida Health Ventures Services, a subsidiary of Kaleida Health. The number of projected surgical procedures to be performed is 4,160 in the first year of operation.

Program Summary

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

A transfer and affiliation agreement is expected to be provided by Buffalo General Medical Center.

Financial Summary

Total project costs of \$2,657,652, will be met with a \$2,391,887 bank loan and \$265,765 in member's equity. Total purchase price of \$2,290,896 will be financed from proposed member's equity.

Budget:

Revenues:	\$7,373,272
Expenses:	<u>6,496,832</u>
Net Income:	\$876,440

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

Recommendations

Health Systems Agency

There will be no HSA recommendation of this application.

Office of Health Systems Management

Approval with an expiration of the operating certificate five (5) years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed construction loan commitment, acceptable to the Department. [BFA]
7. Submission of an executed personal loan from Dr. Joshua Jones, acceptable to the Department. [BFA]
8. Submission of an executed administrative services agreement, acceptable to the Department. [BFA]
9. Submission of an executed subscription agreement from each proposed member, acceptable to the Department. [BFA]
10. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
11. Submission of a photocopy of the applicant's executed and Amended Articles of Organization, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
13. Submission of a photocopy of an executed assignment of the Lease Agreement, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within two years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-03, prior to the applicant's start of construction. [AER]
7. The applicant shall complete construction by May 30, 2014 in accordance with 10 NYCRR Part 710.2(b)(5) and 710.10(a), if construction is not completed on or before that date, this may constitute abandonment of the approval and this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
8. Kaleida Health decommissioning four (4) operating rooms at Buffalo General Medical Center on or before completion of this project. [RNR]

Council Action Date

April 10, 2014 – Council recommended disapproval

April 16, 2015

Need Analysis

Background

Southtowns Ambulatory Surgery Center, LLC, a for-profit limited liability company, is seeking approval to establish and construct a diagnostic and treatment center to provide multi-specialty ambulatory surgery services at 5959 Big Tree Road, Orchard Park, 14127, in Erie County.

Analysis

The service area is Erie County. The number of projected surgical procedures to be performed is 4,560 in Year 1 and 4,651 in Year 3. The applicant reports that the participating physicians intend to relocate cases from a variety of locations, thus having minimal impact on the existing facilities.

Erie County has a total of seven freestanding multi-specialty ASCs and two freestanding single-specialty ASCs.

Existing Ambulatory Surgery Centers: Erie County (Source: SPARCS 2012)

<u>ASC Type</u>	<u>Facility</u>	<u>2012 Patients</u>
Multi-Specialty	Amb Surgery Ctr of Western NY	4,995
Multi-Specialty	Buffalo Ambulatory Surgery Ctr	9,106
Multi-Specialty	Buffalo Surgery Center LLC*	5,721
Multi-Specialty	Center for Amb Surgery LLC	7,924
Multi-Specialty	Endoscopy Ctr Western NY LLC	10,530
Ophthalmology	Eye Health Associates Inc	4,599
Multi-Specialty	Millard Fillmore Amb Surg Ctr	6,167
Multi-Specialty	Sterling Surgical Center LLC	5,594
Single Specialty (Pain Management)	WNY Medical Management (Opened April 10, 2013)	n/a
Total		54,636

*Became a Multi-Specialty ASC effective June 28, 2013.

The applicant has provided a statement that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws with consultation of the legal counsel. This statement is acceptable to the Department.

The applicant is committed to serving all persons in need of surgery regardless of their ability to pay or the source of payment.

Conclusion

The proposed ASC, a joint venture between physicians and KH Ventures Services, will improve access to outpatient surgical services for the communities of Erie County.

Recommendation

From a need perspective, contingent approval is recommended.

Programmatic Analysis

Program Description

Southtowns Venture, LLC, a for-profit limited liability company, requests approval to establish and construct a multi-specialty ambulatory surgery center (ASC) in Orchard Park, NY. Upon approval, the name of the company will be changed to Southtowns Ambulatory Surgery Center, LLC. The proposed ASC will include 4 operating rooms and aims to improve access to and availability of ambulatory surgery services for patients within Erie County.

Proposed Operator	Southtowns Venture, LLC
Site Address	5959 Big Tree Road, Orchard Park
Surgical Specialties	Multi-Specialty (predominately orthopedic and general surgery)
Operating Rooms	4 (Class C)
Procedure Rooms	0
Hours of Operation	Monday through Friday, from 7:30 am to 5:00 pm
Staffing (1st Year / 3rd Year)	26.25 FTEs / 27.25 FTEs
Medical Director(s)	Michael Rauh, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Kaleida Health Buffalo General Medical Center 14.7 miles/17 minutes
On-call service	The surgeon's contact information will be provided to patients verbally and on discharge instructions.

Character and Competence

The Center will be a joint venture between physicians (42.75% owner) and KH Venture Services (57.25% owner), a subsidiary of Kaleida Health. A manager has not yet been identified. Members of the Corporation are:

<u>Name</u>	<u>Percentage</u>
Physician Members	42.75%
Shirley Anain, MD (General Surgery)	2.25%
Marc J. Anders, MD (Orthopedics)	2.25%
Geoffrey A. Bernas, MD (Orthopedics)	2.25%
Leslie J. Bisson, MD (Orthopedics)	2.25%
Lindsey Dolan Clark, MD (Orthopedics)	2.25%
Kenneth H. Eckhert III, MD (General Surgery)	2.25%
Marc Fineberg, MD (Orthopedics)	2.25%
Edward T. Fitzpatrick, DPM (Podiatry)	2.25%
Robert Galpin, MD (Orthopedics)	2.25%
Jennifer Gurske-dePerio, MD (Orthopedics)	2.25%
Christopher L. Hamill, MD (Orthopedics)	2.25%
Joshua Jones, MD (Orthopedics)	2.25%
Stephen A. Novelli, DC (Chiropractic)	2.25%
Daniel J. Patterson, DO (General Surgery)	2.25%
Sridhar Rachala, MD (Orthopedics)	2.25%
Michael A. Rauh, MD (Orthopedics)	2.25%
Peter J. Riznyk, DPM (Podiatry)	2.25%
Robert J. Smolinski, MD (Orthopedics)	2.25%
William M. Wind, Jr., MD (Orthopedics)	2.25%
KH Venture Services	57.25%
Donald N. Boyd (President)	
Robert J. Nolan, JD (Secretary)	
Joseph M. Kessler (Treasurer)	

Nineteen (19) of the members are practicing surgeons. The board of KH Venture Services consists of the three (3) individuals: an MBA-prepared Senior Vice President of a healthcare organization, a Harvard Law graduate with experience as General Counsel for a healthcare corporation, and a former certified public accountant (CPA) who has experience as a Chief Financial Officer.

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

Drs. Bernas and Rauh each disclosed one (1) settled malpractice case. Drs. Patterson and Eckhert each disclosed two (2) pending malpractice cases.

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

On 10/4/05, Kaleida – Millard Fillmore Suburban Hospital was fined \$4,000 based on an investigation where a patient was admitted for left sided hernia repair. The consent and marking indicated the left side, however, the operation proceeded on the right side and the error was not noted until the surgeon was dictating post-operative notes and others were closing the wound. The operation resumed at that point and the correct side was operated on.

On 12/14/06, Kaleida - Millard Fillmore Suburban Hospital was fined \$10,000 based on a complaint investigation of inadequate emergency care including ordered tests that were not done. Upon readmission, restraints were ordered without physical examination of the patient who deteriorated and died.

On 7/23/07, Kaleida - Woman's and Children's Hospital of Buffalo was fined \$24,000 based on a complaint investigation that revealed delayed emergency care and/or inappropriate treatment was rendered to two teenagers in the facility's ER which resulted in death in both cases.

Integration with Community Resources

The facility will ensure that patients have access to primary care services through its majority owner's relationship with Kaleida Health, a not-for-profit Article 28 health care delivery system operating in the Buffalo area.

The applicant did not indicate interest in becoming a part of an Accountable Care Organization (ACO). The applicant does intend on using an electronic medical record (EMR) system, as well as potentially to affiliate with a regional health information organization (RHIO) and/or Health Information Exchange (HIE).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant will lease approximately 16,082 square feet on the first floor of a newly constructed building located at 5959 Big Tree Road, Orchard Park, under the terms of the executed lease agreement summarized below:

Date: November 1, 2012
Landlord: Quaker 20A Realty, LLC
Lessee: Kaleida Health
Term: 20 years
Rental: \$355,500/year (\$22.11 per sq. ft.) increasing 2% yearly
Provisions: Lessee responsible for utilities, taxes, insurance and maintenance.

The members of Quaker 20A Realty, LLC are 5959 Big Tree Road, LLC (50%) and Bonedoc, LLC (50%), in which proposed member Dr. Michael A. Ruah is a member. Therefore, the lease is a non- arm's length agreement and letters of opinion from Licensed Commercial Real Estate Brokers have been submitted indicating rent reasonableness. Other non-related parties occupy the remainder of the building.

Subscription Agreement

The applicant has submitted proposed subscription agreements for each member, the terms of which are summarized below:

Purpose: Purchase 2.25% membership interest in Southtowns Venture, LLC, to be renamed Southtowns Ambulatory Surgery Center, LLC upon CON approval.
Seller: Southtowns Venture, LLC
Purchaser: Twenty two physician members
Purchase Price: \$51,545.16 each
Payment: \$5,154.52 deposit upon execution of the subscription agreement with the remaining \$46,390.64 due upon CON approval.
Purpose: Purchase 50.5% membership interest in Southtowns Venture, LLC, to be renamed Southtowns Ambulatory Surgery Center, LLC upon CON approval.
Seller: Southtowns Venture, LLC
Purchaser: KH Venture Services, Inc.
Purchase Price: \$1,156,902.48
Payment: \$115,690.25 deposit upon execution of the subscription agreement with the remaining \$1,041,212.23 due upon CON Approval

Administrative Services Agreement

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

Facility Operator: Southtowns Venture, LLC
Provider: Kaleida Health
Services Provided: Financial services; licensing; certification; credentialing services; equipment and facilities services; information system development and support and risk management.
Term: One year renewing automatically for successive terms of one year each.
Compensation: \$50,000/year

Total Cost and Financing

Total project costs for fixed and movable equipment are estimated at \$2,657,652, broken down as follows:

Fixed Equipment	\$1,308,301
Movable Equipment	832,825
Telecommunication	500,000
Application Fee	2,000
Additional Processing Fee	<u>14,526</u>

Total Project Cost \$2,657,652

The applicant's financing plan appears as follows:

Bank Loan (5yr, 4.5%) \$2,391,887
 Member's Equity \$265,765

A letter of interest from Key Bank has been submitted by the applicant. Kaleida Health will be providing KH Venture's portion of the project equity. A letter from Kaleida Health stating they are committed to contributing equity on behalf of KH Venture Services has been submitted by the applicant. BFA Attachment C is the financial summary of Kaleida Health, which indicates sufficient funds available.

Operating Budget

The applicant has submitted an operating budget in 2013 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenue:	\$6,813,741	\$7,373,272
Expenses:		
Operating	\$4,800,147	5,180,121
Capital	<u>1,194,545</u>	<u>1,316,711</u>
Total Expenses:	\$5,994,692	\$6,496,832
Net Income:	\$819,049	\$876,440
Utilization: (procedures)	4,560	4,651
Cost per procedure	\$1,314.63	\$1,396.87

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

	<u>Year One and Three</u>
Commercial Managed Care	70.4%
Medicare Fee for Service	6.6%
Medicare Managed Care	6.8%
Medicaid Managed Care	1.2%
Private Pay/Other	13.0%
Charity Care	2.0%

Cost per visit increases in year three are due to projected costs increasing more rapidly than visit volume. Expenses and utilization assumptions are based on the historical experience of the physician's private practices. Upon CON approval the physicians will continue to operate their private practices. Dr. Rauh, managing member, has provided a letter attesting to the number and types of procedures expected to be performed per year by all physicians expressing an interest in practicing at the center.

Capability and Feasibility

Total project costs of \$2,657,652, will be met with a \$2,391,887 bank loan from Key Bank at stated terms, with the remaining \$265,765 from proposed member's equity. Total purchase price of \$2,290,896 will be financed from proposed members' equity. Kaleida Health has committed to providing equity on behalf of KH Venture Services. BFA Attachment A is the net worth statement of the proposed members, which indicates the availability of sufficient funds for all except Joshua Jones, MD. Dr. Jones has submitted a letter of interest from Key Bank for his equity portion. As shown on BFA Attachment C, the financial summary of Kaleida Health indicates the availability of sufficient funds.

Working capital needs are estimated at \$1,082,805 based on two months of third year expenses, which will be funded by member's equity. BFA Attachment E is the pro-forma balance sheet of Southtowns Ambulatory Surgery Center, LLC as of the first day of operation, which indicates positive member's equity of \$1,305,292.

The submitted budget indicates a net income of \$819,049 and \$876,440 during the first and third years of operation, respectively. Department staff has noted that chiropractic procedures included in the submitted budget are non-surgical; therefore the projected budgets have been sensitized to exclude these procedures for year one and year three, as shown on BFA Attachment F. Revenues are based on current reimbursement methodologies for ambulatory surgery centers. The budget appears reasonable.

As shown on BFA Attachment C, the financial summary for Kaleida Health indicates the facility has maintained positive working capital, net assets and generated a net income from operations of \$15,610,000 for 2012. BFA Attachment D is the financial summary as of November 20, 2013 for Kaleida Health, and indicates the facility has maintained positive working capital, net assets and experienced a net loss from operations of \$17,068,000. The applicant has indicated the reason for the losses in 2013 is due to lagging inpatient volume, continued shifts from inpatient services to outpatient services, cuts in reimbursement and significant increases in length of stay. Key initiatives to improving operating results include process enhancements to reduce length of stay, productivity improvements, service line review and integration, corporate and fixed cost review and reductions and growth initiatives.

Based on the preceding, and subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Proposed Members and Membership Percentages
BFA Attachment B	Net Worth Statement
BFA Attachment C	Financial Summary 2012, Kaleida Health
BFA Attachment D	Financial Summary as of November 20, 2013 Kaleida Health
BFA Attachment E	Pro-forma Balance Sheet
BFA Attachment F	Budget Sensitivity Analysis

Supplemental Information

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Erie County Medical Center -- Submitted a letter in support of the project
462 Grider Street
Buffalo, New York 14215

Facility: Catholic Health System
2121 Main Street
Buffalo, New York 14214

Mercy Hospital of Buffalo

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
50.6%	6,517	5,308	2,065	Yes

Sisters of Charity Hospital

Current OR Use ¹ (% of capacity)	Surgery Cases ²		Amb. Surg. Cases by Applicant Physicians ³	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
80.4%	8,472	5,712	741	Yes

Catholic Health System's (CHS) estimate of the projected impact of the proposed ASC on its surgical revenues is based on the assumption that the application's total projected ASC caseload for each applicant physician who practices at CHS will migrate from CHS to the ASC. Using this volume of cases and the current average revenue per case for the 16 physicians associated with the proposed ASC who practice at Catholic Health System (CHS) facilities, CHS estimates that this transfer of cases to the ASC would result in a total loss to CHS facilities of \$3.3 million annually.

CHS speculates further that if the proposed ASC is approved, the participating physicians will eventually move all their current cases performed at CHS hospitals to the ASC, not merely the cases projected in the ASC application. CHS estimates that this would result in a loss to its hospitals of \$6.5 million annually.

CHS states that the projected loss of revenues to the ASC would adversely affect its six community-based clinics and outpatient sites, which provide primary care, OB and other services to large numbers of

¹ OR use at Sisters of Charity main site only. OR use at Sisters of Charity/St. Joseph's campus is 56.6%.

² Combined cases from Sisters of Charity main site and Sisters of Charity/ St. Joseph's campus.

³ Total from the two Sisters of Charity sites combined.

Medicaid clients and charity care patients. CHS also anticipates that the loss of revenues to the proposed ASC would jeopardize the system's community-oriented health screening, patient education and flu vaccination programs.

CHS also argues that, once established, the ASC will aggressively recruit surgeons with offices located in the vicinity of the proposed facility. CHS also speculates that the ASC, as an LLC, may incrementally expand its ownership without the benefit of PHHPC review, and that this carries the potential for additional ownership of the ASC by CHS surgeons, with an associated loss of more CHS surgical cases and revenues to the proposed facility.

In 2012, Mercy Hospital had expenses of \$335.1 million on net patient revenue of \$339.6 million. In 2011, the hospital had expenses of \$305.9 million on net patient revenue of \$310.1 million. The hospital's current assets in 2012 were \$117.0 million and current liabilities were \$96.6 million, for a working capital ratio of 1.2 to 1.0. In 2011, Mercy Hospital's current assets were \$95.4 million, and current liabilities \$85.7 million, for a working capital ratio of 1.1 to 1.0. In 2012, Mercy Hospital incurred bad debt costs of \$9.8 million and provided charity care of \$2.3 million. In 2011, Mercy Hospital incurred bad debt costs of \$8.2 million and provided charity care in the amount of \$3.1 million.

In 2012, Sisters of Charity Hospital had expenses of \$309.0 million on net patient revenue of \$307.7 million. In 2011, the hospital had expenses of \$291.0 million on net patient revenue of \$293.2 million. The hospital's current assets in 2012 were \$169.3 million and current liabilities were \$93.7 million, for a working capital ratio of 1.8 to 1.0. In 2011, Sisters of Charity Hospital's current assets were \$153.1 million, and current liabilities \$87.8 million, for a working capital ratio of 1.7 to 1.0. In 2012, Sisters of Charity Hospital incurred bad debt costs of \$10.3 million and provided charity care of \$3.3 million. In 2011, Sisters of Charity Hospital incurred bad debt costs of \$6.1 million and provided charity care in the amount of \$3.2 million.

Facility: Lake Erie Regional Health System of New York
529 Central Avenue
Dunkirk, NY 14048

The Lake Erie Regional Health System of New York (LERHSNY) operates Brooks Memorial Hospital in Dunkirk and TLC Health at Lake Shore Health Care Center in Irving. LERHSNY submitted an unsolicited letter in opposition to the Southtowns ASC application, stating that approval of the application would jeopardize LERHSNY's efforts to reorganize and operate the system's TLC/Lakeshore Hospital as an ambulatory services center offering urgent care, diagnostic services, primary care, chemical dependency clinics and ambulatory surgery. Ambulatory surgery is intended to be the linchpin of the redesigned facility, with orthopedics, gastroenterology and general surgery as the primary service lines. LERHSNY states that approval of the Southtowns ASC would financially cripple Lake Shore, since ambulatory surgery is expected to generate the bulk of the expected net revenue for the reorganized operation.

LERHSNY provided no additional financial information or other data on its current or projected services and associated revenues.

Facility: Bertrand Chaffee Hospital
224 East Main Street
Springville, NY 14141

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
42%	1,638	28	54	Yes

Bertrand Chaffee Hospital opposes the application, stating that lost case volume from the two applicant physicians who currently perform surgeries at the hospital would come \$16,000 per year. The hospital also speculates that additional physicians may choose to participate in the proposed ASC in the future, bringing a an additional potential loss of revenues for Bertrand Chaffee. The hospital does not specify the impact that any loss of revenues to the ASC would have on its operations or community-oriented programs.

Bertrand Chaffee had a working capital ratio of 1.28 in 2011 and 1.84 in 2012. In 2011, the hospital had unrestricted operating revenues and gains of \$17,529,126 on operating expenses of \$17,509,227. In 2012, the hospital had unrestricted operating revenues and gains of \$19,381,924 on operating expenses of \$18,377,541. In 2012, the hospital experienced bad debt and charity care of \$1,108,576. In 2013, bad debt and charity care totaled \$1,007,434.

Supplemental Information from Applicant

Need and Sources of Cases: The applicant states that the facility will be located in an area that lacks community-based ambulatory surgical facilities and in a region that has proportionately fewer ASC's than the rest of the State. The applicant also states that the project responds to physician preferences, which drive volume, and that the benefits of surgery in an ambulatory setting, including on-time procedure schedules, will attract both physicians and patients. The applicant also believes that the closure of operating rooms at the Lake Shore Health Center is a potential source of cases, but this is not quantified. The applicant further expects that a projected increase in the over-55 population in Erie County will contribute to demand for the ASC's services.

Staff Recruitment and Retention: The applicant proposes to recruit staff through traditional means, such as local newspapers and on-line advertising. Positions will also be open to current Kaleida Health employees wishing to work in the ASC setting. The applicant also expects to recruit staff from among personnel displaced by the forthcoming closure of the Lake Shore health Center. The applicant expects to retain staff through competitive salary and benefit packages and through the operation of a regular-hours Monday through Friday schedule.

Office-Based Cases: The applicant states that none of the procedures for the proposed ASC would be considered office-based procedures.

DOH Comment

The Department acknowledges that CHS's anticipated loss of cases to the proposed ASC may have an adverse impact on CHS facilities and services. However, CHS's prediction assumes that the applicant physicians who currently practice at CHS facilities would transfer all their current cases to the ASC. This seems unlikely, given that in any particular instance the patient or the physician may prefer to undergo or perform a procedure at a CHS facility—because of familiarity with staff and surroundings, distinctive amenities, geographic proximity or other reasons (we note that CHS furnished no patient origin data for any of its current cases projected to be lost to the proposed ASC). We must also consider speculative CHS's assumption that additional losses of CHS cases to the ASC would occur as a result of possible aggressive recruitment of additional area physicians by the ASC once it is established or by the future expansion of ASC ownership to include more physicians. We also note that in these instances CHS would not be precluded from mounting its own efforts to recruit additional physicians from the area or from entering into new participatory arrangements with its current physicians.

Because the Kaleida Health System (Kaleida) is a primary financing source for the proposed ASC, CHS has characterized the proposed ASC as "a Kaleida system driven profit venture." While the Department notes that the proposed Southtowns ASC, LLC is a legal entity entirely separate from Kaleida, it is doubtful that the project would have been developed without Kaleida's support and considerable financial participation through a subsidiary. It is arguable, then, that CHS is correct in characterizing the proposed facility as an effort by Kaleida to expand its surgical market share in the region.

If CHS's characterization of Kaleida's involvement with the proposed ASC is accurate, then CHS's comments on the project can also be seen as the objections of one health care entity to competition from another. Regardless of the merits of competition in the health care system, it is incumbent on any institution to adapt to changing circumstances, including the entry of new providers. The fact that a proposed provider would bring additional competition to a health care market, especially a market as large as Erie County and its contiguous southern counties, is not sufficient to dismiss the proposed entity from consideration for CON approval.

The Department notes the concerns of LERHSNY regarding the potential impact of the proposed ASC on the new Lake Shore arrangement. However, in the absence of more specific, measurable data on the possible effects of the proposed ASC on the cases and revenues of the reorganized Lake Shore operation, the Department has insufficient information on which to evaluate the strength of LERHSNY's objections. We also note that LERHSNY's conversion of a former inpatient site to a comprehensive ambulatory services facility is a model that has met with some success in other areas of the State; and that the facility's reorganized, integrated and more efficiently operated services may make it less dependent on ambulatory surgery revenues than its operators expect.

The Department concludes that the comments of CHS, the Lake Shore Health System and Bertrand Chaffee Hospital do not provide a sufficient basis for reversal or modification of the recommendation for limited life approval of the proposed Southtowns ASC, LLC, based on public need, financial feasibility and operator character and competence.

STATE OF NEW YORK: DEPARTMENT OF HEALTH

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IN THE MATTER :

OF :

THE PROPOSED DISAPPROVAL BY THE PUBLIC HEALTH COUNCIL OF AN APPLICATION FOR ESTABLISHMENT AND CONSTRUCTION :

Report and Recommendation

By :

SOUTHTOWNS VENTURE, LLC, as proposed owner and operator of SOUTHTOWNS AMBULATORY SURGERY CENTER, LLC :

Application No. 131347-B :

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To: The New York State Public Health Council
Department of Health, State of New York

Hearing Before: John Harris Terepka
Administrative Law Judge

Held at: 1120 Liberty Building
420 Main Street
Buffalo, New York 14202
September 29, 30, October 21, 22, 2014
259 Monroe Avenue
Rochester, New York 14607
November 17, 18, 2014
Record closed February 13, 2015

Parties: New York State Department of Health
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Hodgson Russ LLP
677 Broadway Suite 301
Albany, New York 12207

JURISDICTION

Southtowns Venture, LLC (the Petitioner) applied to the Department of Health for written approval to establish an ambulatory surgery center (ASC). (Joint 3.) The Department's Division of Health Facility Planning (DHFP), charged with initially reviewing the application, recommended that it be approved. (Joint 4.)

Pursuant to PHL 2801-a, the application came before the Department's Public Health and Health Planning Council (PHHPC). On April 10, 2014, the PHHPC proposed to disapprove it. (Joint 8.) The Petitioner requested this hearing pursuant to PHL 2801-a(2), which provides "If the [PHHPC] proposes to disapprove the application it shall afford the applicant an opportunity to request a public hearing."

The notice of hearing stated that the basis for the proposed disapproval by the PHHPC is the lack of public need for an ASC in the Petitioner's planning area, Erie County, pursuant to the need methodology of 10 NYCRR 709.5. (Joint 1.)

HEARING RECORD

Joint exhibits:	Joint 1-29
Petitioner witnesses:	Ashlee R. Lang Donald N. Boyd Michael A. Rauh, M.D. Allegra C. Jaros Michael Cain, M.D. Edward P. Hetrick Patricia Ann Hennelly Jennifer Gurske-DePerio, M.D.
Petitioner exhibits:	Petitioner A, C-JJ
Department witnesses:	Christopher Delker Michael Rade, M.D. Thomas Faith Nils Gunnerson Peter Bergmann Charles J. Urlaub Maria Foti

Department exhibits: Department 1-13, 18, 21, 22

ALJ exhibits: ALJ I-IV

Before the hearing commenced, a petition to intervene pursuant to 10 NYCRR 51.11(c) was submitted by Catholic Health System, and opposed by the Petitioner. (ALJ I-III.) The petition was denied. (Transcript, pages 11-15.)

A transcript of the proceedings was made. (Transcript, pages 1-1439.) Each side submitted two post hearing briefs.

SUMMARY OF FACTS

1. In early July, 2013 the Petitioner applied for a certificate of need (CON) to establish a freestanding multi-specialty ambulatory surgery center (ASC), to be known as Southtowns Ambulatory Surgery Center, at 5959 Big Tree Road, Orchard Park, New York. (Joint 3; Transcript, page 83.)

2. Over the next several months, the Department's Division of Health Facility Planning (DHFP) reviewed the application. The DHFP's review process included requests for additional or revised information from the Petitioner, and solicitation of comments from relevant and interested parties, including local hospitals. (Department 21; Joint 15, 16, 26, 27.)

3. Particularly extensive comments in opposition to the application were submitted by Catholic Health System (CHS) and its affiliate (Transcript, page 990), Bertrand Chaffee Hospital. (Joint 14, 18, 19, 21, 22, 23, 24, 25, 28; Petitioner FF, GG.) The opposition argues that the opening of the Southtowns facility will have adverse effects on Bertrand Chaffee and CHS' Mercy and Sisters of Charity/St. Joseph hospitals.

4. After considering all submitted information and objections, the DHFP recommended contingent approval of the application with an expiration of the operating certificate after five years. (Joint 4, page 1.) The DHFP concluded that the comments in

opposition “do not provide a sufficient basis for reversal or modification of the recommendation for limited life approval... based on public need, financial feasibility and operator character and competence.” (Joint 4, page 13.)

5. The application was presented to the Public Health and Health Planning Council (PHHPC) and its Establishment and Project Review Committee on March 27 and April 10, 2014 for disposition in accordance with procedures set forth at PHL 2801-a(1). (Joint 7-10.)

6. On April 10, 2014, a motion to approve the CON application failed to carry. (Joint 8, page 11.) On the understanding that the failure to approve the application would leave it in “a limbo state,” but that a disapproval “gives [Petitioner] the right to challenge the disapproval with the Department” through the appeal process, the PHHPC passed a motion to disapprove the application. (Joint 8, pages 11-16.)

7. The Petitioner was offered and requested a hearing. (Joint 5, 6.) By notice dated August 7, 2014, this hearing was scheduled. The notice of hearing stated:

The hearing shall be limited to the issue of whether the Petitioner can demonstrate that Application #131347-B should not be recommended for disapproval on the grounds that there is no public need for the ASC in the planning area. (Joint 1, page 3.)

8. The Petitioner proposes four operating rooms to provide specialty services in orthopedics, urology, podiatry, chiropractic, and general surgery. (Joint 3, 4.) It expects to handle 4,560 (later increased to 4,634) cases in the first year of operation. (Joint 3, page 59; Petitioner V; Transcript, pages 750-51.)

9. The industry standard for ASC capacity is 1,100 to 1,200 cases per room per year, or 4,400 to 4,800 cases for a four operating room facility. (Transcript, pages 747, 753, 939.)

10. New York State is second to last of all states in ASCs per capita. Western New York has a relatively low concentration of ASCs in comparison with the rest of the state. (Transcript, pages 187-89; Department 4, page 1; Petitioner D, pages 4, 18.)

11. The Petitioner's application includes a commitment from Kaleida Health, a majority owner of the proposed Southtowns ASC, to close four operating rooms at Buffalo General Medical Center before Southtowns ASC opens. (Transcript, pages 224-25, 411-15; Joint 4, page 3; Joint 17.)

12. The Petitioner's commitments set forth in its CON application are to serve a similar mix of Medicaid and self pay patients to that reported by the area hospitals. (Joint 3, page 19; Petitioner AA.) The Petitioner also provided the DHFP with a written commitment to serve persons without regard to their ability to pay or source of payment. (Transcript, pages 431-32; Joint 13.)

13. The Petitioner's expected volume of 4,560 cases in the first year is based upon letters of intent from physicians stating the number of ambulatory surgery cases they intend to perform at Southtowns. (Joint 3, page 59; Petitioner L, M.)

14. The Petitioner estimates this projected volume of 4,560 cases will include 1,290 cases moving from Mercy and Sisters/St. Joseph hospitals to Southtowns. Using CHS' own revenue figures, the Petitioner estimates 1,290 ambulatory surgery cases to be worth \$3.1 million in gross revenue to CHS. (Transcript, pages 761-62, 766; Petitioner V, Y.)

15. CHS estimates the projected volume of 4,560 cases will include 1,217 cases moving from Mercy and Sisters/St. Joseph Hospitals to Southtowns. CHS estimates 1,217 cases to be worth \$2.7 million in gross revenue to CHS. (Joint 14, page 4; Joint 18, page 2.)

16. CHS has consistently and repeatedly represented to the DHFP and PHHPC that Southtowns “will negatively impact Mercy and Sisters Hospitals by a minimum of \$6 million annually,” and has further alleged that “this impact can double to between \$10 to \$12 million in lost revenues annually.” (Joint 19, pages 1,4; Joint 22, page 3; Petitioner FF, GG.) CHS has consistently and repeatedly represented to the DHFP and PHHPC that this \$6 million annual impact will be “a direct hit to the bottom line.” (Joint 14, page 4; Joint 18, page 3; Joint 22, page 2.)

17. CHS’ claims that the financial impact of Southtowns on CHS revenues will be over \$6 million and “as much as \$10 to \$12 million” as “a direct hit to the bottom line” are inflated and substitute speculation for the verifiable evidence, including:

CHS’ projections of over \$6 million in lost revenue are inconsistent with the written representations of the physicians who plan to practice at Southtowns.

CHS’ projections of over \$6 million in lost revenue are implausible because they are based upon the assumption that all of the physicians involved will practice exclusively at the new Southtowns facility.

CHS’ projections of over \$6 million in lost revenue are implausible because they would require Southtowns to handle a volume of cases that would exceed its capacity.

CHS’ loss projections of \$3 to \$6 million are based on gross, not net revenues. The claimed “direct hit to the bottom line” does not recognize any costs associated with the revenue generated by ambulatory surgery cases.

CHS’ loss projections of \$3 to \$6 million are not consistent with its own representations to the PHHPC that five physicians have dropped their support of the Southtowns project.

18. CHS reported revenue of \$922 million for 2013, and \$878 million for 2012. Its excess of revenues over expenses was \$35 million in 2013, and \$29 million in 2012. At the close of 2013 it reported current assets of \$441.7 million and current

liabilities of \$175.2 million, for a working capital ratio (current ratio) of 2.52. (Joint 12, pages 4-5.)

19. Mercy Hospital reported a surplus of \$13.6 million on about \$348 million in revenue in 2012, and \$12.3 million on about \$318 million in 2011. It reported current assets of \$117 million and current liabilities of \$96.6 million in 2013, for a working capital ratio of 1.2. (Joint 18, pages 13-14.)

20. Sisters of Charity Hospital reported a surplus of \$9.2 million on about \$317 million in revenue in 2012, and \$11.3 million on about \$301 million in 2011. It reported current assets of \$169.2 million and current liabilities of \$93.6 million in 2013, for a working capital ratio of 1.8. (Joint 18, pages 51-2.)

21. Bertrand Chaffee Hospital estimated it would lose annual revenue in the amount of \$16,000 from three Bertrand Chaffee physicians moving cases to Southtowns. (Joint 28, page 1.) This projected loss recognizes no offset for associated expenses, and is based on an average over three years that show a declining volume of such cases. (Petitioner Z; Transcript, pages 794, 1009-10.) Bertrand Chaffee Hospital has operating revenue of about \$14 million per year, six to eight percent of which is derived from its operating rooms, and income from operations of about \$300 thousand. (Transcript, pages 970, 1021; Petitioner EE, page 62.)

22. Financial statements of CHS, Mercy, Sisters of Charity and Bertrand Chaffee show their financial condition to be sound and favorable in comparison to statewide averages for such measures as current ratio, cash on hand, operating margin, and cash flow in relation to debt. (Joint 12, pages 4-5; Joint 18, pages 13-14, 51-52; Petitioner X; Petitioner EE, pages 60-62; Transcript, pages 732-41.)

ISSUE

Has the Petitioner established that its CON application “should not be recommended for disapproval on the grounds that there is no public need of the ASC in the planning area?”

DISCUSSION

The PHHPC shall not approve an application for establishment unless it is satisfied as to:

- a. The public need for the existence of the institution;
- b. The character, competence and standing of the proposed operators;
- c. The financial resources of the proposed institution; and
- d. Such other matters as it shall deem pertinent. PHL 2801-a(3)(a).

The methodology to be utilized to evaluate applications for establishment of ambulatory surgery centers is set forth at 10 NYCRR 709.5. The factors to be considered in determining public need “shall include, but not be limited to:”

- (1) Documentation that the ASC will be financially feasible as demonstrated by a three-year analysis of projected costs and revenues.
- (2) Documentation that the ASC will enhance access to services by patients, including members of medically underserved groups which have traditionally experienced difficulties in obtaining equal access to health service.
- (3) Documentation that the facility’s hours of operation and admission policies will promote the availability of services to those in need of such services regardless of their ability to pay.
- (4) Documentation of the facility’s willingness and ability to safely serve patients. 10 NYCRR 709.5(d).

Public need for a proposed ASC shall be deemed to exist when review and consideration of evidence concerning each of the factors results in an affirmative finding. 10 NYCRR 709.5(e).

Character, competence and standing, and financial resources of the Petitioner are not at issue in this hearing. The notice of hearing stated:

The basis for the proposed disapproval by the [PHHPC] is the lack of public need for an ASC in the Petitioner's planning area (Erie County), pursuant to the need methodology of 10 NYCRR 709.5... The hearing shall be limited to the issue of whether the Petitioner can demonstrate that Application #131347-B should not be recommended for disapproval on the grounds that there is no public need of the ASC in the planning area. (Joint 1, pages 2,3.)

Regarding public need, the Department's opening statement described the issues as follows:

The department will present evidence, including the witness testimony and exhibits, supporting the PHHPC's determination that there is no public need for the applicant's ASC.

Specifically, that evidence will demonstrate that there is already an abundance of operating room capacity in the service area and that the diversion of patients to the petitioner's ASC from the hospitals, which are operating well below their existing capacity, will have a negative financial impact on the hospitals and threaten their ability to continue providing necessary health care services to historically underserved residents in the service area. (Transcript, pages 49-50.)

Operating room capacity in the service area and impact on area hospitals are not factors specifically enumerated in either PHL 2801-a or 10 NYCRR 709.5. However, the factors to be considered under the regulation "shall include, but not be limited to" the enumerated factors. 10 NYCRR 709.5(d). It appears, then, that the basis for disapproval, and focus of this hearing, is "such other matters as [the PHHPC] shall deem pertinent" pursuant to PHL 2801-a(3)(d), and public need factors that are "not limited to" the enumerated factors set forth in 10 NYCRR 709.5(d). (Transcript, pages 51-52, 58-59.)

The "other matters" that led to the PHHPC's provisional rejection of the DHFP's recommendation in this case, to the extent they can be determined from the record of the PHHPC's deliberations (Joint 7-10) and the Department's representations at this

hearing, are the objections by a local hospital and health care system, CHS, and an affiliated hospital, Bertrand Chaffee. The objections are that competition from Southtowns ASC's four ambulatory surgery operating rooms will have a "devastating" adverse impact on Mercy, Sisters of Charity/St. Josephs and Bertrand Chaffee hospitals.

I

The opposition to the Petitioner's application is driven by Catholic Health System (CHS). There are two dominant hospital and health care systems in the Erie County and Buffalo metropolitan area: CHS and Kaleida Health. Although the Petitioner's Southtowns proposal is trumpeted by it as a "physician driven" (Transcript, page 27) project, it is backed by Kaleida, which retains a controlling ownership over the interests of the individual investing physicians. (Joint 4, pages 1, 14.) CHS considers Southtowns to be a Kaleida facility, and is fiercely opposed to this expansion of Kaleida's presence in the Western New York region they both serve. The DHFP concluded "[i]t is arguable... that CHS is correct in characterizing the proposed facility as an effort by Kaleida to expand its surgical market share in the region." (Joint 4, page 12.)

CHS' opposition was coordinated and led by Maria Foti, its vice president for strategic planning. (Transcript, page 1190.) A September 2013 letter to Charles Abel, director of the DHFP, prepared by Ms. Foti (Transcript, pages 1376-77) for signature by Charles J. Urlaub and Peter Bergmann, the CEOs of Mercy and Sisters of Charity hospitals, announced CHS' opposition as follows:

Dear Mr. Abel:

We are writing to express the concerns of Catholic Health System (CHS) regarding the proposed Southtowns Ambulatory Surgery Center, LLC. As you are aware, institutional based health care services in Western New York are provided by two hospital dominated systems, CHS and Kaleida. In general, Kaleida serves residents in the greater Buffalo area and north while CHS serves patients in the

greater Buffalo, northwest and south. This is clearly demonstrated by the current geographical distribution of acute and outpatient facilities.

Although CHS has no valid claim to the south and Kaleida has none to the north, we view the Southtowns ASC application as a clear attempt to disrupt decades old referral patterns at the detriment to the residents of western New York for the sole purpose of a market share grab to shore up losses in the Kaleida system that can be better addressed through effective internal management and strategic planning. (Joint 14, page 1.)

This is a clever narrative that provides a superficially plausible spin on circumstances, but it does not withstand serious scrutiny or address genuine issues appropriate to a CON determination. The evidence does not support CHS' claims about a division of the greater Buffalo service area between CHS and Kaleida. (Department 5; Petitioner K.)

The Department does not support CHS' claims either, and maintains instead:

It is undisputed that the service area in which the Southtowns ASC is proposed to be sited is also the service area of the Kaleida affiliated hospitals and the CHS hospitals in Erie County... the service areas of the two organizations overlap (T at 1377). (Department brief, pages 16-17.)

When the tables were turned on CHS, on cross examination Ms. Foti acknowledged that CHS has recently sought and obtained approval of a CON application to acquire a hospital in what she agreed was "one of the most affluent areas" in the very northern part of greater Buffalo. (Transcript, pages 1378-80.) She conceded:

Q. Isn't it true that the Mount St. Mary's project is an overt attempt by Catholic Health System to increase its market share in Kaleida Health's service area?

A. I guess... Yes. (Transcript, page 1380.)

The DHFP accurately characterized CHS' opposition to Southtowns as "the objections of one health care entity to competition from another." (Joint 4, page 13.) Acting to protect one hospital system's claims about its turf is hardly identical with deciding what meets the health care needs of the region, and it is inconsistent with the

intent of PHL Article 28 to “promote competition in the health care marketplace by increasing reliance on market incentives.” L.1999, c.1, Statement of legislative intent.

Disapproving the establishment of an ASC because a hospital system wants to retain ambulatory surgery cases is also inconsistent with the explicit intent of the methodology for evaluating CON applications:

This methodology is intended to promote the development of ambulatory surgery programs as a cost-effective alternative to inpatient surgery where appropriate. 10 NYCRR 709.5(a).

It is uncontroverted that the cost for the care provided in a freestanding ASC is significantly lower for both patients and insurers, including government programs, than the same care provided in a hospital. (Transcript, pages 425, 645-46, 656, 706-707, 708-709, 921-22; Petitioner R, DD.)

II

When it developed 10 NYCRR 709.5, which sets forth the current methodology for evaluation of ASC applications, the Department considered but ultimately rejected public comments urging consideration of potential effects on existing hospitals. The Department’s response to the comments stated:

... consideration of the effects on existing providers of ambulatory surgery in a proposed service area would militate against the stated intention of the proposed changes to permit the opening of new ASCs where need can be demonstrated. Consideration of such effects has the potential to protect existing providers from competition and consequently to deprive consumers of a broader range of choices in undergoing ambulatory surgical procedures. This would also not be in keeping with the need for a more flexible regulatory climate in New York State nor with the favorable effects of such an environment on the cost and availability of ambulatory surgical services. DOH also disagrees with the implicit premise of the commenters that the presence of additional ASCs in a given area will necessarily affect existing providers adversely... NYS Register, March 11, 1998, Rule Making Activities page 22. (Petitioner A, page 22.)

Although the regulation does not recognize impact on local hospitals as a factor to be considered in determining public need, the Department has not ignored the views of hospitals in the area of a proposed ASC. The DHFP has developed a policy of contacting local hospitals and soliciting information and comments from them about proposed ASCs in their area. (Joint 9, pages 4-5; Transcript, pages 66, 70-73.) CHS has taken full advantage of this policy in an effort to prevent approval of this Kaleida sponsored ASC.

In testimony before the Public Health Council's Codes Committee at the time the current 10 NYCRR 709.5 was promulgated, Charles Murphy, then director of the DHFP, said:

...there is nothing in the regulation that talks about looking at the effect on the neighborhood hospital... it isn't that we're going to ignore the arguments put forward by the hospital, but they should be compelling if they want us to stop an ambulatory surgery program in their neighborhood. PHC Codes Committee meeting, January 23, 1998, transcript page 25. (Petitioner A, page 30.)

Christopher Delker, director of the Department's Division of Planning and Licensure, reiterated this view at the April 10, 2014 Establishment and Project Review Committee meeting that considered the Petitioner's Southtowns application:

[W]hen the current ambulatory surgery regulations were under discussion by the predecessor council in 1998... members at the time addressed that very concern about what about the impact on hospitals and at the time the discussion in that session where the regulation was adopted was that the information and impact on hospitals or other providers would have to be compelling and that was the word that was used... (Joint 9, page 6.)

The DHFP reviewed and considered the objections of CHS, Bertrand Chaffee and one other hospital in accordance with the stated intent of PHL Article 28 and the related regulations. (Joint 4, pages 10-13.) It concluded that the comments in opposition:

... do not provide a sufficient basis for reversal or modification of the recommendation for limited life approval... based on public need, financial feasibility and operator character and competence. (Joint 4, page 13.)

The PHHPC's April 10 provisional denial of the Petitioner's CON application was primarily based on a desire to keep the application process moving forward and to permit a review of the facts in an evidentiary hearing. (Joint 8, pages 11-16.) The evidence at this hearing fully supports the DHFP's assessment and recommendation.

III

It is recognized that Department regulations applicable to this hearing assign both the burden of proof and the burden of going forward to the Petitioner. 10 NYCRR 51.11(d)(6). However, where reasons for disapproval are not the enumerated factors, but rather "other matters," it is obvious that in order to meet its burden of proof the Petitioner must be provided with some idea of what those other matters, "not limited to" the enumerated factors, are. The Petitioner cannot be expected to go forward with and prove a negative - that there are no "other matters." The Petitioner can only meet its burden of proof by establishing that such other matters as have been identified are not supported by the evidence as valid reasons for disapproval.

In recognition of this reality, the parties agreed to a set of joint exhibits (Joint 1-29), and further agreed that this hearing would open with a Department witness who would outline the issues. (Transcript, pages 10-11.) That witness was DHFP director Christopher Delker, who participated in both the March 27 and April 10 PHHPC meetings that considered the Petitioner's application. (Transcript, page 85; Joint 4, 7, 8, 9, 10.) Mr. Delker edited the DHFP's summary report and recommendation to the PHHPC and was thoroughly familiar with the Petitioner's CON application. This

hearing then reverted to the usual order of proof consisting of the Petitioner's witnesses and evidence, followed by the balance of the Department's case.

Mr. Delker summarized the concerns expressed by PHHPC members that led to its vote intended to send the Petitioner's application on for this hearing:

Well, they were typical arguments. There were many who expressed concerns about the impact on hospitals and whether or not there was a need for another ambulatory surgery center.

... the argument was a common one that we have with ambulatory surgery centers where there is hospital opposition. It's, again, concerns about the impact on the hospital and whether, you know, it would affect safety net services and whether, you know, indeed there was a need for another facility.

... There was operating room capacity and then there was safety net capacity that these -- that the facility might be in an area that would not reach a lot of the underserved or Medicaid or charity care clients. (Transcript, pages 136-39.)

Mr. Delker also noted discussion favorable to the application:

And then also there was -- appeared to have been some discussion about choice. You know, where the health system is moving more towards a more ambulatory system and consumers may benefit from having other providers other than the traditional ones. (Transcript, pages 139-40.)

The Petitioner addressed each of these concerns, and presented substantial additional evidence in support of the application and the DHFP determination that it has met the statutory and regulatory criteria for approval. Support for the application included testimony from Michael Cain, M.D., Dean of the SUNY Buffalo School of Medicine, who is not an investor in or associated with Southtowns and will not practice there. (Transcript, page 625.) Dr. Cain explained that due to the national movement of health care into outpatient settings, his medical school's educational program includes training that takes place in clinics and other outpatient settings. He welcomes Southtowns as a facility that SUNY Buffalo School of Medicine expects to use for such training. (Transcript, pages 629-31; Petitioner O.)

The Department's opposition to the DHFP's conclusions and the Petitioner's evidence consisted almost entirely of the representations and evidence provided by CHS. Five of the Department's seven witnesses were CHS employees. All five are obviously motivated by their desire to limit a competitor in the health care market because, as Nils Gunnensen, CEO of Bertrand Chaffee Hospital, succinctly stated, "any level of competition for services is deleterious." (Transcript, page 972.)

The remaining two Department witnesses, Mr. Delker and Thomas Faith, were more supportive of the Petitioner's than of the Department's case. Mr. Delker stands by the DHFP's original assessment that the Petitioner has met the public need criteria in the statute and regulation and that objections made by CHS, Bertrand Chaffee and one other hospital are insufficiently compelling to justify denial of the application. (Transcript, page 94.) Mr. Faith, president of the New York State Association of ASCs, expressed no opposition to Southtowns even though he is vice president for operations at a competing ASC only five miles from it. (Transcript, pages 903, 928-29, 955.)

IV

The areas in which it has been suggested that the Petitioner did not meet its burden of proof are as follows.

A. Operating room capacity in the area

The Department claimed that the evidence would show there is already an abundance of capacity in the area. (Transcript, page 49.) This objection is essentially nullified by Kaleida Health's written commitment to the Department to close as many hospital operating rooms as the Petitioner opens. (Transcript, pages 224-25; 411-15; Joint 4, page 3; Joint 17.) The DHFP approval recommendation was specifically amended to add this provision. (*compare* Joint 4, page 3 & Joint 4a, page 3; Transcript,

pages 87-89.) The approval would be contingent for five years, thereby giving the Department the ability to ensure the conditions are met. (Transcript, pages 219-21, 224-26.)

If the PHHPC is genuinely concerned that “there is existing excess capacity in the services area” (Department brief, page 17), Southtowns is an opportunity to “promote the development of ambulatory surgery programs as a cost-effective alternative to inpatient surgery” (10 NYCRR 709.5(a)) without adding any further capacity, by shifting four operating rooms from a hospital to an ASC.

At this hearing, Mr. Delker agreed (Transcript, pages 284-85) with Mr. Abel’s account of the issue to the PHHPC:

... the fact is that we have a proposal here for four ORs in a community-based setting and at the same time a commitment to close four ORs that are in a hospital setting. So in our assessment, that is no net increase in OR space. You can argue all you want about utilization, but that’s what our assessment is. (Joint 10, page 30.)

The evidence about operating room utilization supports the DHFP’s conclusion that the objections based on utilization are not compelling. Mr. Bergmann said the operating rooms are 75-80% utilized at Sisters of Charity, and about 60% at its St. Joseph campus. (Transcript, pages 1076-77.) Mr. Urlaub said Mercy Hospital’s operating room utilization rate is about 50% capacity. (Transcript, pages 815, 1171.) This hardly constitutes “an abundance of operating room capacity” according to Michael Rade, M.D., chairman of the surgery department at Mercy Hospital. Dr. Rade, testifying for the Department, said “I think probably 60 percent” is an optimal utilization rate for a hospital operating room. (Transcript, page 816.)

It was the Petitioner’s witness, Patricia Hennelly, who said “you’re looking for a hospital-based operating room... to be roughly anywhere from 80 to 85 percent”

because of its inefficiencies. (Transcript, pages 713-15.) Ms. Hennelly, an accounting and tax consultant with twenty five years' experience specializing in health care finance and operations (Transcript, pages 687-88; Petitioner S), testified that she was unable to test CHS' representations about utilization rates in its operating rooms because there are many different ways to calculate utilization and many variables in such a calculation. In particular, calculations of utilization cannot be verified without information about actual hours of use, and CHS did not offer that information. (Transcript, pages 711-13; Joint 18, page 4.)

As this evidence indicates, claims about utilization can become complex without necessarily resolving anything: Arguments about capacity devolve into questions about "turnover time" and what counts as "regular hours" when utilization rates are calculated. (Transcript, pages 518-19, 666-68, 845-46, 1113, 1172.) As Mr. Delker said:

[I]t's hard to say what is a good standard for adequate usage and full capacity usage. Also... OR capacity, capacity of ORs – existing ORs is not a consideration in any methodology. So those two factors kind of make it difficult to give it a lot of weight, even though you recognize that maybe there is some underutilization. (Transcript, page 281.)

The evidence on the issue of operating room capacity fails to establish a basis for concluding that the Petitioner's proposal to open four operating rooms at Southtowns and simultaneously close four operating rooms at Buffalo General Medical Center should be disapproved because of an "abundance" of operating room capacity in the area.

B. Impact on local hospitals

There is little question, as the DHFP readily acknowledged, that the establishment of a new ASC can be expected to have some impact on local hospitals. Unless an ASC has the ability to create new cases out of thin air, the cases it does receive

will be cases that would otherwise be handled elsewhere. This effect does not necessarily count against the establishment of an ASC: It is the intention of the methodology for the review of ASC applications to encourage the movement of ambulatory surgery out of hospitals and into ASCs. 10 NYCRR 709.5(a).

In order to make its objections “compelling” CHS is seeking to persuade the PHHPC that the establishment of this four operating room freestanding ASC “will negatively impact Mercy and Sisters Hospitals by a minimum of \$6 million annually” (Petitioner FF & GG, pages 1) and that these hospitals “cannot absorb such a devastating loss.” (Joint 19, page 1.) Mr. Urlaub told the PHHPC’s Establishment and Review Committee on March 27, 2014: “This project... puts, quite frankly, at risk over 100,000 patients that we serve who truly are in need and who we take care of...” (Joint 10, pages 12-13.) It is these claims that appear to have been of most concern to the PHHPC.

DHFP director Charles Abel summarized the DHFP’s conclusions when he presented its recommendation to the PHHPC on April 10, 2014:

I think there’s little doubt that this ambulatory surgery center, if built, will have some impact on some of the hospitals in the area... [E]ven if that maximum estimated impact on revenues occurs, we don’t see that it will effect [sic] operations of those facilities to such a degree that it would warrant a reversal of our recommendation that is based on the statutory review criteria. (Joint 9, pages 2-3.)

Mr. Delker added:

We find, you know, some significant information in the opposition here, and as Charlie [Abel] said, you know, there will probably be some impact, but it’s not a compelling argument whereby we would feel that another health system would be jeopardized or its patients put at risk or lack access to care. (Joint 9, page 6.)

The evidence at this hearing is consistent with these assessments. It does not support CHS’ claims to the PHHPC that Southtowns “will negatively impact Mercy and Sisters

Hospitals by a minimum of \$6 million annually” nor does it support CHS’ claims to the PHHPC that whatever impact it does have will be “devastating” for its hospitals.

Loss of revenue to the hospitals. The Petitioner’s CON application includes specific representations from physicians who expect to practice at Southtowns about the number of cases they intend to bring to the new ASC. (Petitioner L, M.) The Petitioner, the Department and CHS turn out to be in substantial agreement about how many of these cases are likely to come from CHS hospitals and how much in gross revenue to CHS they represent.

CHS’ analysis, provided by Ms. Foti, was that investing physicians’ stated intentions would move 1,217 cases, representing \$2.7 million in gross revenue, from Mercy and Sisters of Charity/St. Joseph hospitals to Southtowns in its first year. (Joint 14, page 4; Joint 18, page 2.) The Petitioner’s consultant, Ms. Hennelly, agreed with CHS’ figures on the volume of cases and revenue per case attributable to physicians identified in the CON application. (Joint 18, page 3; Joint 22, page 3; Transcript, page 765.) Using a slightly different annual period, she estimated that 1,290 cases, representing gross revenue of \$3.1 million to CHS, would move to Southtowns. (Petitioner V, Y; Transcript, pages 761-62, 766.)

CHS, however, repeatedly represented to the DHFP and PHHPC that the annual “bottom line” impact will actually be over \$6 million, and even as much as \$10-12 million. (Petitioner FF, GG; Joint 19, pages 1&4; Joint 21, page 6; Joint 22, page 3.)

There are several reasons for skepticism about CHS’ representations.

1. CHS’ claim that Southtowns would cost CHS between \$5.9 and \$6.5 million annually (Joint 18, 19, 21, 22), is based on an assumption that, contrary to the written representations they have actually made to the Department (Petitioner L, M), physicians who have announced their intentions to move some cases to Southtowns would instead move all of their cases. (Transcript,

pages 246-48.) CHS' own figure for lost revenue based on the representations actually made by the physicians is \$2.7 million. (Joint 14, page 4; Joint 18, page 2.)

As the DHFP pointed out, CHS' claims ignore the choices that patients might make in these matters, and assume that physicians can move all of "their" cases wherever they choose. (Joint 4, page 12; Transcript, pages 262-63.) The Department itself suggested that many patients may prefer to have even ambulatory surgery performed at a hospital with all of its resources in case of need. (Transcript, pages 544, 673.)

CHS argues that physicians will be "targeted" and "aggressively recruited" to move cases from CHS hospitals. (Joint 21, page 5; Joint 22, page 2.) In one of her letters to the Department, Ms. Foti further inflated the \$6 million "devastating loss" to CHS "to between \$10 and \$12 million in lost revenues annually" from the recruitment of other unidentified physicians. (Joint 19, page 1.) On cross examination she was unable to provide any basis for her figures and admitted they were completely speculative. (Transcript, pages 1403-1404.)

The DHFP's response to CHS' objections included the observation:

We must also consider speculative CHS's assumption that additional losses of CHS cases to the ASC would occur as a result of possible aggressive recruitment of additional area physicians... in these instances CHS would not be precluded from mounting its own efforts to recruit additional physicians from the area or from entering into new participatory arrangements with its current physicians. (Joint 4, page 12.)

CHS has already begun to demonstrate that it has this ability to respond to competition from Southtowns: In January 2014, CHS advised the DHFP that three investing physicians who practice at Mercy Hospital were withdrawing from the Southtowns project. These changes of heart apparently took place after CHS negotiated with the physicians. (Joint 25; Transcript, pages 406-407.) CHS also obtained letters from two other physicians stating:

I do not intend to perform any procedures at the Kalieda Krog [sic] ASC. Our intentions are to perform as many cases as possible at Mercy Hospital. (Joint 25.)

2. CHS' predictions about the volume of cases it will lose to Southtowns are implausible because the numbers would, if accurate, exceed the capacity of Southtowns.

The Petitioner's CON application represented that it had commitments from physicians to bring 4,560 (later increased to 4,634) cases to Southtowns in the first year. (Joint 3, page 59; Transcript, pages 750-51.) Ms. Hennelly testified that the industry standard for ASC capacity is 1,200 cases per room per year, or 4,800 cases for a four operating room facility. (Transcript, page 747, 753.) Thomas Faith, president of the New York State

Association of ASCs and a Department witness, testified that the number was even lower, about 1,100 per room or 4,400 cases for four operating rooms. (Transcript, page 939.) As Dr. Rauh, Southtowns' proposed medical director (Joint 3, page 13; Transcript, page 474), said, "We anticipate to be full from day one." (Transcript, page 532.)

The CHS figure of \$6.5 million assumes that the physicians identified in the application will bring, not just the cases they committed to in letters provided to the Petitioner (Petitioner L, M) and included in the 4,560 figure given in the CON application, but hundreds of other cases as well. (Joint 22, page 3.) If CHS' predictions of its physicians moving all of their cases from CHS to Southtowns were accurate, the number of cases, in addition to the cases also expected to move from Kaleida, Erie County Medical Center, and other locations, would overwhelm the capacity of the Southtowns facility. (Transcript, pages 532, 787-89; Petitioner V, Y.)

3. CHS' loss projections are inflated because its figures do not recognize any costs associated with the revenue generated by ASC cases. (Transcript, pages 766, 790.) CHS repeatedly characterized a loss in gross revenue as a "direct hit to the bottom line." (Joint 14, page 4; Joint 18, page 3; Joint 22, page 2.)

The parties disagree about how revenue from ambulatory surgery cases should be adjusted to reflect a corresponding reduction in costs for such things as equipment, supplies, and staffing, but they do agree some adjustment is reasonable.

Not surprisingly, the Petitioner asserts there should be substantial adjustments for both staffing and other than personnel (OTPS) costs associated with the cases. Ms. Hennelly concluded that these savings would reduce gross revenue of \$6.5 million to around \$1.8 million net lost revenue. (Transcript, pages 766-87; Petitioner Y, CC.) Also not surprisingly, when testifying for the Department Mr. Bergmann acknowledged OTPS savings of only \$200-\$1600 per case (Transcript, page 1093) and Mr. Urlaub estimated them at around \$450 per case (Transcript, page 1159). They both denied any adjustment for staffing was appropriate. (Transcript, pages 1104, 1160.)

These witnesses all agreed that some adjustment for costs is reasonable, but CHS did not recognize any adjustment for costs in the figures it presented to the PHHPC. The claimed \$6 million "direct hit to the bottom line," the figure CHS repeatedly cited to the PHHPC, assumes that there are none whatsoever. (Transcript, page 1102.)

4. CHS continued to project a loss of over \$6 million in revenue even after its own claims about changes in expected physician participation necessitated a significant downward revision of its figures.

In January 2014, in one of its many letters in opposition to Southtowns, CHS advised the DHFP that five of the physicians whose cases were included in CHS' \$6.5 million loss estimate had withdrawn their support for and did not intend to move cases to Southtowns. Two of them signed letters that stated "Our intentions are to perform as many cases as possible at Mercy Hospital." (Joint 25.) The revenue CHS itself attributed to those physicians

amounted to about \$1.9 million, but CHS did not adjust its figures. (Transcript, page 1412.)

CHS omitted this January, 2014 development from the representations it made and materials it presented to the PHHPC in March and April 2014. (Transcript, pages 1110-11, 1413-17.) In testimony before the PHHPC, Mr. Urlaub and a CHS consultant continued to cite the \$6 million claim, which PHHPC took seriously, without mentioning that it was at that point \$1.9 million higher than CHS' own figures would support. (Joint 9, pages 22-23, 26; Joint 10, pages 9, 12.)

These reasons to doubt CHS' figures may explain why even the Department does not support them. Although CHS' vigorous campaign against Southtowns, culminating in its April 2014 presentation to the PHHPC, was largely built around its repeated claims about \$6 million or more in "devastating" losses that CHS' hospitals were threatened with, the Department did not defend, discuss or even mention this amount in its post hearing briefs. The Department's proposed fact finding for the expected reduction of CHS revenues is the roughly \$3 million in gross revenue that was substantiated by the analyses of both the Petitioner and CHS at this hearing. (Department brief, pages 11, 24.)

Financial condition of local hospitals. The evidence supports "approximately 3 million dollars... offset somewhat by the reduction in expenses associated with each case" (Department brief, page 24) as the best supported figure for the potential impact of Southtowns on CHS revenue. Mr. Delker allowed "it might be higher than the 3.3 [\$million], but not as high as the 6 and a half." (Transcript, page 262.) Whatever the actual impact turns out to be, the DHFP concluded that a loss of revenue from cases moving to Southtowns could be expected but would not be "devastating" to CHS or Bertrand Chaffee hospitals. (Joint 4, pages 10-12.) The evidence supports this view.

CHS is very large and is in financially sound condition. Its 2013 revenue was \$922 million, with an excess of revenues over expenses of \$35 million. Its 2012 revenue

was \$878 million, with an excess of revenues over expenses of \$29 million. In 2014, CHS had current assets of \$441.7 million and current liabilities of \$175.2 million, for a working capital ratio (current ratio) of 2.52. (Joint 12, pages 4-5.) Mr. Delker's testimony that "anything above one is a healthy ratio for a nonprofit organization" was uncontroverted. (Transcript, page 265.)

Mercy Hospital reported a surplus of \$13.6 million on about \$348 million in revenue in 2012, and \$12.3 million on about \$318 million in 2011. It reported current assets of \$117 million and current liabilities of \$96.6 million in 2013, for a working capital ratio of 1.2. (Joint 18, pages 13-14.) Sisters of Charity Hospital reported a surplus of \$9.2 million on about \$317 million in revenue in 2012, and \$11.3 million on about \$301 million in 2011. It reported current assets of \$169.2 million and current liabilities of \$93.6 million in 2013, for a working capital ratio of 1.8. (Joint 18, pages 51-2.)

The DHFP concluded that Southtowns' impact on Bertrand Chaffee Hospital would not be significant because few of its cases are performed by physicians involved in Southtowns. (Transcript, pages 276-77.) CEO Nils Gunnensen's letter to the Department in opposition to the application estimated an annual loss of revenue from three Bertrand Chaffee physicians to Southtowns at \$16,000. (Joint 28, page 1.) Even this figure recognizes no offset for associated expenses, and is a three year average based upon a steeply declining volume of cases over those three years. (Petitioner Z; Transcript, pages 794, 1009-10.) This is for a hospital that has operating revenue of about \$14 million per year, six to eight percent of which is derived from its operating rooms, and income from operations of about \$300 thousand. (Transcript, pages 970, 1021; Petitioner EE, page 62.)

Ms. Hennelly's analysis supported the DHFP's view. Financial statements of CHS and Bertrand Chaffee show their financial condition to be sound and favorable in comparison to statewide averages for such measures as current ratio, cash on hand, operating margin, and cash flow in relation to debt. (Petitioner X; Transcript, pages 732-41.) Operating margins of both Sisters of Charity and Mercy Hospital are lower than national, but higher than New York State averages. (Joint 18, pages 14, 52; Department 10.)

CHS' representatives did not dispute this evidence, which was drawn from CHS' own financial statements. They presented their own, less persuasive characterization of it. Mr. Bergmann repeatedly remarked that New York is "an extremely lean place to run a health care hospital... In terms of operating margins," preferring to compare Sisters of Charity Hospital with national rather than New York State averages. (Transcript, pages 1056-60; Department 10.) Mr. Urlaub claimed CHS' operating margin, in comparison with "the average 2 percent that New York State has... Catholic Health is slightly above I think the average. It's very close to the average, 2, 2.8 percent, something like that." (Transcript, pages 1143-44.) The 2012 New York State average was 1.2 percent (Petitioner X; Department 10), and CHS' operating margin was 3.06 percent in 2012 and 3.46 percent in 2013. (Joint 12, page 5; Petitioner X.)

Mr. Urlaub also testified about Mercy Hospital that "our balance sheet metrics are not very good. They're actually so poor..." (Transcript, page 1152.) Mr. Urlaub's November 2014 testimony at this hearing is markedly different in tone from his October 2014 appeal to the Department in connection with Mercy's participation in the Delivery System Reform Incentive Payment (DSRIP) program. For that appeal, he signed a

certification stating “Mercy Hospital is in the top tier best performing hospitals in NYS based on most financial metrics.” (Petitioner II.)

Three million dollars is about .325 percent of CHS’ revenue and about 8.5 percent of its excess of revenues over expenses in 2013. Six million dollars is about the amount by which CHS’ excess of revenue over expenses grew – from \$29 million to \$35 million – between 2012 and 2013. (Joint 12, page 5.) The evidence is consistent with the DHFP conclusion that a loss of revenue to CHS in the area of \$3-6 million, even if that full amount should materialize, does not present a compelling concern about a “devastating” effect that “puts at risk over 100,000 patients” served by CHS.

C. Access for the indigent, Medicaid, and “cherry picking”

The evidence supports the DHFP’s recommendation of an affirmative finding regarding the needs of indigent, Medicaid and self pay patients in the region. The Petitioner’s commitments are set forth in its CON application, and they are to serve a similar mix of patients to that reported by the area hospitals. (Joint 3, page 19; Petitioner AA.) The Petitioner also provided the DHFP with a written commitment to serve persons without regard to their ability to pay or source of payment. (Transcript, pages 431-32; Joint 13.) The opposition has presented no good, evidence based reason to question these commitments. Furthermore, as the DHFP recommendation is for contingent approval, this issue can be monitored by the Department as the actual facts become available. (Transcript, pages 219-21.)

Ms. Foti presented an analysis purporting to show that the Petitioner reworked schedule 13B of its CON application between July and November 2013 in ways that call into question the validity of its Medicaid numbers. (Department 21; Transcript, pages

1271-79.) She detailed numerous revisions, all made to the application before it was finalized, that CHS had tracked by making continuous FOIL requests:

I think the point here is the extreme difference throughout the process of the number of Medicaid cases that the applicant believed it could handle... Each time the CON came out, the numbers seemed to change. (Transcript, pages 1275-76, 1279.)

The credibility of these efforts to generate suspicion unraveled on cross examination. Changes in the CON application that CHS implies were a cooking of the numbers to stave off criticism were demonstrated to be the result of a completely typical and expected exchange between the DHFP and an applicant as a CON application is developed, corrected and revised in accordance with the Department's instructions and requests for clarification. (Transcript, pages 1355-75; Department 21.) When the same kinds of revisions were pointed out to her in documents she prepared for CHS, Ms. Foti acknowledged that they were simply corrections of errors. (Transcript, pages 1389-90; Joint 18, page 2; Joint 14, page 4.)

Equally disingenuous was Ms. Foti's offer of statistics purporting to show that Southtowns' participating physicians did not treat enough Medicaid patients to bring as many to Southtowns as projected. (Transcript, pages 1280-82; Petitioner JJ.) Her figures counted only the physicians' Erie County Medicaid cases and left out their Medicaid cases from anywhere else in the region. (Transcript, pages 1345-48.) These attempts to cast doubt on the Petitioner's Medicaid numbers did not bring out significant evidence one way or the other about the merits of the Southtowns application.

The accusation of "cherry picking" – somehow skimming off the most lucrative cases and leaving the lower paying and charity care to the hospitals - is an arresting

characterization offered by the Department and CHS but it has no evidentiary basis in this hearing record. (Department brief, pages 8, 23-26.) There are currently nine ASCs in Erie County. (Joint 4, page 4; Petitioner H; Transcript, pages 356, 420-21.) No evidence was offered to show nor was it claimed that any of them engage in “cherry picking.” No evidence was presented to show how or why Southtowns will be different in this regard. It is simply claimed that it will be.

Mr. Bergmann pointed out the importance of the indigent care function that Sisters of Charity fulfills by allocating resources to such services as “outreach clinics located in very challenged areas of Buffalo. You know, we seek out those populations that may not have access to health care.” (Transcript, pages 1062-63.) From this, it does not follow that a freestanding ASC without such programs is a “cherry picker.” Hospitals and ASCs can have different missions, advantages and disadvantages, and have different contributions to make to the overall needs of a health care planning area.

Mr. Delker readily acknowledged “there is a recognized need for some redistribution from the am/surg centers to the indigent care pool in recognition of the support of the safety net.” That need is addressed by the Health Care Reform Act (HCRA) indigent care pool: Both hospitals and freestanding ASCs pay into it, but hospitals receive payments out and ASCs do not. As Mr. Faith said, “It’s to help hospitals cover the cost of their responsibility to the poor and indigent.” (Transcript, pages 278-80, 940-42; Department 4, page 2.)

The Department’s and CHS’ evidence about “cherry picking” consisted of little more than a repeated claim that the PHHPC should be concerned about it, and Mr. Bergmann’s recollection of an unidentified endoscopy center in Pottsville, Pennsylvania that he said had engaged in such tactics at some unspecified time in the past.

(Transcript, page 1064; Department brief, pages 8, 23-26.) While some PHHPC members may have settled views about such matters as general concerns, this hearing produced no evidentiary support for them. (Joint 8, pages 7-10.)

In recommending approval of this application, the DHFP acknowledged a probable impact on CHS revenues. This is explainable as an effect of competition in the health care marketplace – which PHL Article 28 and its related regulations clearly intend to encourage. “Cherry picking” is a vivid and easy accusation to make, but it is little more than a colorful term of disparagement between competitors when, as in this case, it is not supported by evidence or explanation.

D. Location of the facility

The evidence about the proposed location of Southtowns (Petitioner G, H, I; Department 2, 5, 6, 7) fails to substantiate a reason for concern related to public need. The area to be served includes Erie County and greater Buffalo, one of the most populous metropolitan regions in the state. Hospitals and ASCs are scattered throughout the area. Most of these facilities are centered around and extend out within several miles of downtown Buffalo. Mercy Hospital is three miles and Bertrand Chaffee is about seventeen miles from the Southtowns site. (Transcript, pages 959, 1146.) Both claim that Southtowns will take enough cases from them to significantly harm their revenue. Mr. Faith, who operates an ASC five miles from the Southtowns site, testified his ASC draws cases from all eight counties in Western New York. (Transcript, pages 906, 943-45.) The Southtowns site can hardly be said to be significantly accessible or inaccessible relative to other health care facilities in the area.

The Petitioner’s witness Donald Boyd pointed out that the location expands the area where ASC’s are located to the south, an area with significant Medicaid

participation. (Transcript, pages 423-24.) Allegra Jaros, president of Kaleida's Women's and Children's Hospital, testified that Southtowns would be "a great opportunity for Children's Hospital" because it does not have an ASC or clinic location to serve pediatric patients in the south of Buffalo area. (Transcript, pages 565-66.)

The Department repeatedly drew attention to Orchard Park as having one of the most affluent zip codes in Erie County. (Transcript, pages 442, 546, 799.) Mr. Urlaub told the PHHPC "What needs are they really satisfying? This project's being located in one of the wealthiest areas of Western New York." (Joint 10, page 11.)

It is not at all clear just how or why the immediate neighborhood of this ASC is significant. This is not a proposal for a neighborhood clinic providing primary care services to local residents. It is a proposal for a specialized facility performing "surgical procedures... performed in an operating room on anesthetized patients" (10 NYCRR 709.5(b)) from all over the region. CHS' vice president for strategic planning, Ms. Foti, acknowledged that referral patterns in a community are determined by relationships, expertise, existing provider agreements, and contractual arrangements. Even when directly asked, she did not identify neighborhood demographics as an issue:

Q. How does the placement of a building disrupt referral patterns? ...

A. By—by having others—having folks go to that site. Having physicians practice at that site. (Transcript, page 1382.)

According to the Department:

It is likely that the export of procedures from the City of Buffalo hospitals to the Southtowns ASC will be more common for high income, privately insured patients than for low income patients covered by Medicaid or other lower reimbursing insurance providers, as the proposed Southtowns ASC will not be as accessible to the Medicaid patients. (Department brief, page 14.)

This suggestion that the location of Southtowns will enable it to accomplish a kind of passive “cherry picking” is presented more as an article of belief than as a fact supported by evidence:

Common sense dictates that by siting the Southtowns ASC in some of the wealthiest suburbs of Buffalo, it is not going to be serving many indigent patients, be they charity care or Medicaid. (Department brief, page 22.)

“Common sense” is not always readily distinguishable from a fixed opinion that starts with a conclusion and then looks for arguments in an attempt to substantiate it. Ms. Foti produced a Buffalo transit system bus schedule purporting to show that there are only two buses per day from downtown Buffalo to Orchard Park, and that both arrive in the evening. (Department 18.) According to Ms. Foti, this means Southtowns will not be accessible to Medicaid recipients because there is no morning bus to take them there. (Transcript, pages 1244-46.) Ms. Foti did not explain how transportation issues are not also a problem for Medicaid recipients going to Mercy Hospital, only three miles away from the Southtowns site, or to any other hospital ASC. She did not explain the basis for her presumption that Medicaid recipients, unlike anyone else, must take a public bus when they have ambulatory surgery. Confronted with the suggestion that (pursuant to SSL 365-a(2)(j) and 18 NYCRR 505.10) Medicaid recipients are entitled to reimbursement for transportation associated with necessary medical care, she said she was unaware of it. (Transcript, pages 1247-49.)

The irrelevance of the actual evidence to the criticisms of Southtowns’ location is exemplified by the Department’s post hearing claim that “many of the general hospitals in Erie County are located in the poorer areas of Buffalo [citing Transcript, pages 1062-63].” (Department brief, page 13.) For this factual assertion, the Department relies entirely upon a misrepresentation of Mr. Bergmann’s testimony that Sisters of Charity

Hospital has “several outreach clinics located in very challenged areas of Buffalo.” (Transcript, pages 1062-63.) Mr. Bergmann did not testify, nor did the Department present evidence to show, nor did CHS assert, that Sisters or any other hospital in the region is located in a “poorer area.”

The evidence does not support the view that the location of the Petitioner’s proposed facility is significantly inconvenient for Medicaid or underinsured patients in comparison with Mercy Hospital, the CHS facility three miles away that claims those patients are well served by it, or any other hospital in the area. The distances involved are not demonstrated to be more significant for such patients than for “high income, privately insured” patients.

The evidence about the location of Southtowns adds up to little of significance. The larger and more serious objection made by the opposition is that Southtowns will divert large numbers – indeed, it is even claimed all ambulatory surgery patients for the participating physicians - from the hospitals in the area. This claim implicitly presumes that the location of the facility will not be an issue for those patients. Like the narrative about the “historical” division of the region into northern and southern areas dominated by one hospital system or the other, like the allegations of “cherry picking,” the objection “this project’s being located in one of the wealthiest areas of Western New York” attempts to raise suspicion without actually explaining anything. These objections are easily made, but the evidence fails to substantiate them as genuine issues in this case or as reasons why Southtowns should be disapproved.

CHS’ real objection to the location of Southtowns is apparent in its September 2013 letter to the DHFP: Southtowns is “within the service areas” claimed by CHS and

“is clearly an attempt [by Kaleida] to overtly increase market share of surgical cases in the Southtowns communities” that CHS claims for its own. (Joint 14, pages 1-2.)

Conclusion

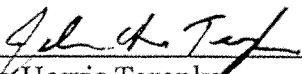
New York State is second to last of all states in ASCs per capita. Western New York is a region of the state with a particularly low concentration of ASCs. (Transcript, pages 187-89; Department 4, page 1; Petitioner D, pages 4, 18.) The evidence presented in support of the view that the effect of adding just one more, four operating room ASC to the nine ASCs that already exist in the region would be “devastating” to local hospitals and inconsistent with the health care needs of the region is driven by a competitor’s self interest, is exaggerated, and does not form a sound basis for decision. As Mr. Delker said about information that the DHFP routinely receives in opposition to ASCs:

You can’t verify a lot of it because many of it – often it is a statement generally in opposition to ambulatory surgery centers and raises issues of cherry-picking, if not using those terms. So a lot of the information is not verifiable. It is opposition, and it is often articulately argued, but it often does not have any measurable indicators for verification other than the ones I indicated. (Transcript, pages 110-11.)

That is why, as Mr. Delker and Mr. Abel explained, it makes sense to rely on the methodology set forth in the statute and regulation, and apply it in light of the stated purpose of encouraging the development of ASCs in New York. Unless it is presumed that the establishment of a new ASC will create new cases that would not otherwise have existed, it is obvious that the establishment of one facility will in some way impact the fortunes of another. Competition, reduction of health care costs, and a broader range of choices are precisely what state policy intends to foster, and the CHS objections implicitly support the view that many patients and physicians will welcome this new facility for ambulatory surgical care.

RECOMMENDATION: The evidence supports the analysis and recommendation the DHFP presented to the PHHPC in April 2014. The objections made by CHS are insufficiently compelling to justify denial of the application. The Petitioner's CON application should be approved.

DATED: Rochester, New York
February 20, 2015



John Harris Terepka
Administrative Law Judge

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X
IN THE MATTER :
OF :
THE PROPOSED DISAPPROVAL BY THE PUBLIC : ORDER
HEALTH COUNCIL OF AN APPLICATION FOR :
ESTABLISHMENT AND CONSTRUCTION :
By :
SOUTHTOWNS VENTURE, LLC, as proposed owner and :
operator of SOUTHTOWNS AMBULATORY SURGERY :
CENTER, LLC :
Application No. 131347-B :
-----X

A notice of hearing dated August 7, 2014 was served on Petitioner Southtowns Ambulatory Surgery Center, LLC. (Petitioner) to review the proposed disapproval by the Public Health and Health Planning Council (PHHPC) of the establishment and construction application of Southtowns Ambulatory Surgery Center. The basis for the proposed disapproval by the PHHPC is the lack of public need for an ambulatory surgery center (ASC) in the Petitioner's planning area, Erie County, pursuant to the need methodology of 10 NYCRR 709.5.

The hearing was held in Buffalo and Rochester, New York, on September 29, 30, October 21, 22, November 17, 18, 2014 before John Harris Terepka, Administrative Law Judge. The Department of Health appeared by Tina Marriner, Esq. and Jerry F. DeLuise, Esq. The Petitioner appeared by Jane Bello Burke, Esq. and Michelle L. Merola, Esq.

Evidence was received and witnesses were sworn and examined. A transcript of the proceedings was made. On, February 20, 2015, the Administrative Law Judge issued his Report and Recommendations.

NOW, on reading and filing the Notice of Hearing, the Record herein and the Administrative

Law Judge's Report, we hereby adopt the Report of the Administrative Law Judge as our own; and

IT IS HEREBY ORDERED:

1. Petitioner's application to establish a free standing ambulatory surgery center meets the requirements of 10 NYCRR 709.5 and is hereby approved.
2. This Order shall be effective upon service on the Petitioner by personal service or by certified or registered mail.

DATED: Albany, New York

, 2015

THE PUBLIC HEALTH COUNCIL
OF THE STATE OF NEW YORK

By: _____

TO: Tina Marriner, Esq.
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Public Health and Health Planning Council

Project # 142272-E
Specialists' One-Day Surgery Center, LLC

Program: Diagnostic and Treatment Center **County:** Onondaga
Purpose: Establishment **Acknowledged:** January 8, 2015

Executive Summary

Description

Specialists' One-Day Surgery, LLC (SODS) is an existing proprietary Article 28 single-specialty (orthopedic) freestanding ambulatory surgery center (FASC) located at 190 Intrepid Lane, Syracuse (Onondaga County). SODS is requesting approval to add two members, Bradley Raphael, M.D. and Naven Duggal, M.D. Each new member will purchase 10 units of membership interest which, when issued, will represent a 3.2258% ownership interest for each in the Company. When combined with membership issuances over the prior four years to new members, the issuance of this membership interest to Drs. Raphael and Duggal will exceed 25% of the membership in SODS, and thus, requires approval by the Public Health and Health Planning Council.

Robert L. Tiso, M.D.	2.0690%	1.9355%
Joseph A. Catania, M.D.	2.0690%	1.9355%
Todd C. Battaglia, M.D.	3.4483%	3.2258%
Eric A. Tallarico, M.D.	2.0690%	1.9355%
J. Alan Lemley, M.D.	3.4483%	3.2258%
Richard DiStefano, M.D.	3.4483%	3.2258%
Lawson R. Smart, M.D.	3.4483%	3.2258%
Colin B. Harris, M.D.	3.4483%	3.2258%
Mary C. Trusilo, M.D.	2.0690%	1.9355%
Aaron J. Bianco, M.D.	3.4483%	3.2258%
Jason Lok, M.D.	2.0690%	1.9355%
Bradley Raphael, M.D.	0%	3.2258%
Naven Duggal, M.D.	0%	3.2258%
Total	100.0000%	100.0000%

The current and proposed operational interest in SODS is as follows:

<u>Members:</u>	<u>Current</u>	<u>Proposed</u>
C. Perry Cooke, M.D.	3.4483%	3.2258%
Stephen P. Bogosian, M.D.	3.4483%	3.2258%
P. James Newman, M.D.	3.4483%	3.2258%
I. Michael Vella, M.D.	3.4483%	3.2258%
Richard G. Zogby, Jr., M.D.	3.4483%	3.2258%
John J. Cambareri, M.D.	3.4483%	3.2258%
John F. Fatti, M.D.	3.4483%	3.2258%
Norman A. Lasda, M.D.	3.4483%	3.2258%
Daniel C. Wnorowski, M.D.	3.4483%	3.2258%
Timothy Izant, M.D.	3.4483%	3.2258%
Glenn B. Axelrod, M.D.	3.4483%	3.2258%
Brett B. Greenky, M.D.	3.4483%	3.2258%
Seth S. Greenky, M.D.	3.4483%	3.2258%
Walter Short, M.D.	3.4483%	3.2258%
Warren E. Wulff, M.D.	3.4483%	3.2258%
Daniel J. Murphy, Jr., M.D.	3.4483%	3.2258%
John F. Parker, M.D.	3.4483%	3.2258%
Michael Clarke, M.D.	3.4483%	3.2258%
Thomas R. Maher, M.D.	3.4483%	3.2258%
Frederick Lemley, M.D.	3.4483%	3.2258%

OPCHSM Recommendation
Contingent Approval

Need Summary

Specialists' One-Day Surgery, LLC is seeking approval to transfer 6.416% membership interest to two new members. This is an existing Article 28 ambulatory surgery center providing orthopedic surgery services. The center is located at 190 Intrepid Lane, Syracuse, 13205, in Onondaga County. There will not be any changes in services as a result of the proposed change in ownership.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

There are no budgeted incremental operating expenses or revenues associated with this project since patient care services will not be affected or interrupted.

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

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 copy of the current Members' written consent to the admission of new Members Raphael and Duggal, acceptable to the Department. [CSL]
2. Submission of an Amended and Restated Administrative Services Agreement that conforms to the requirements set forth in 10 NYCRR § 600.9 and is acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 16, 2015

Need Analysis

Background

Specialists' One-Day Surgery, LLC, an existing ambulatory surgery center specializing in Orthopedics ambulatory surgery services, requests approval for the transfer of 6.416% membership interest to two new members. The center is located at 190 Intrepid Lane, Syracuse, 13205, in Onondaga County.

Analysis

Specialists' One- Day Surgery has been providing orthopedics surgery services to the residents of Onondaga County since 2002. The center served a total of 11,998 patients in 2011, 12,448 patients in 2012, and 12,308 patients in 2013. (Source: SPARCS)

The applicant reports that the percent of Medicaid was 8.2 % and the charity care provided was 0.7% in 2013.

Conclusion

There will be no changes in services as a result of the proposed change in ownership. From a need perspective, approval is recommended.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Specialists' One Day Surgery Center, LLC, an existing ambulatory surgery center, requests approval to transfer a portion of the Center's membership interests to two new members, Bradley Raphael, M.D. and Naven Duggal, M.D. Other than the proposed changes in membership (and membership percentages), there will be no programmatic changes as a result of this request.

The Company is filing this application because the issuance of such membership interest to Drs. Raphael and Duggal, when combined with issuance by the Company over the prior four years to new Members, would exceed 25% of the membership interest in the Company.

The following table details the proposed change in ownership:

<u>Member Name</u>	<u>Current</u>	<u>Proposed</u>
C. Perry Cooke, MD	3.448276%	3.225807%
Stephen P. Bogosian, MD	3.448276%	3.225807%
P. James Newman, MD	3.448276%	3.225807%
I. Michael Vella, MD	3.448276%	3.225807%
Richard G. Zogby, Jr. MD	3.448276%	3.225807%
John J. Cambareri, MD	3.448276%	3.225807%
John F. Parker, MD	3.448276%	3.225807%
John F. Fatti, MD	3.448276%	3.225807%
Norman A. Lasda, MD	3.448276%	3.225807%
Daniel C. Wnorowski, MD	3.448276%	3.225807%
Timothy Izant, MD	3.448276%	3.225807%
Glenn B. Axelrod, MD	3.448276%	3.225807%
Brett B. Greenky, MD	3.448276%	3.225807%
Seth S. Greenky, MD	3.448276%	3.225807%

Walter Short, MD	3.448276%	3.225807%
Warren E. Wulff, MD	3.448276%	3.225807%
Daniel J. Murphy, Jr., MD	3.448276%	3.225807%
Michael Clarke, MD	3.448276%	3.225806%
Thomas R. Maher, MD	3.448276%	3.225806%
Frederick Lemley, MD	3.448276%	3.225806%
Robert L. Tiso, MD	2.068965%	1.935483%
Joseph A. Catania, MD	2.068965%	1.935483%
Todd C. Battaglia, MD	3.448276%	3.225806%
Eric A. Tallarico, MD	2.068965%	1.935483%
J. Alan Lemley, MD	3.448276%	3.225806%
Richard DiStefano, MD	3.448276%	3.225806%
Lawson R. Smart, MD	3.448276%	3.225806%
Colin B. Harris, MD	3.448276%	3.225806%
Mary C. Trusilo, MD	2.068965%	1.935483%
Aaron J. Blanco, MD	3.448275%	3.225806%
Jason Lok, MD	2.068965%	1.935483%
**Bradley Raphael, MD	-----	3.225806%
**Naven Duggal, MD	-----	3.225806%

****Indicates new members subject to C&C review**

Character and Competence

The two new proposed individual members, Drs. Raphael and Duggal, are practicing board-certified orthopedic surgeons who are currently performing procedures at the Center.

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Costs and Financing

There are no project costs associated with this application.

There are no budgeted incremental operating expenses or revenues associated with this project since patient care services will not be affected or interrupted.

The proposed members will purchase their respective membership into SODS by providing equity upon closing of their agreements. Dr. Raphael's purchase price will be \$274,000 paid via personal assets and Dr. Duggal's purchase price will be \$350,000 paid via personal assets or a bank loan, for which a letter of interest has been submitted by M&T Bank for a maximum 3-year term loan of up to \$350,000, at fixed or variable rate loan to be determined at issuance, to assist in funding the required equity contribution. The purchase prices for the new members differ because they are based on a valuation for the year prior to the year in which the prospective member became a shareholder in Syracuse Orthopedic Specialists,

P.C. (SOS). Dr. Raphael became a SOS shareholder in 2014 (2013 valuation) and Mr. Duggal became a SOS shareholder as of January 1, 2015 (2014 valuation).

Financially, the transaction will be treated as if each of SODS's current members sold a portion of their ownership interest in the Company to Drs. Raphael and Duggal. Consequently, the entire purchase price paid by the new members will be distributed by the Company to the "selling" members.

Subscription Agreements

The applicant has submitted executed supplemental subscription agreements from the proposed new members, the terms of which are summarized below:

Date:	December 22, 2014
Description	Purchase 10 Units of Membership Interest
Seller:	Current Members of Specialists' One-Day Surgery, LLC
Buyer:	Bradley Raphael, M.D.
Purchase Price:	\$274,000
Payment of Purchase Price:	Equity via personal assets

Date:	December 22, 2014
Description	Purchase 10 Units of Membership Interest
Seller:	Current Members of Specialists' One-Day Surgery, LLC
Buyer:	Naven Duggal, M.D.
Purchase Price:	\$350,000
Payment of Purchase Price:	Equity via personal assets or bank loan.

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment A is the net worth statement of the proposed members, which indicates the availability of sufficient funds.

BFA Attachment B is a financial summary from the 2012 and 2013 audited financial statements of Specialists' One-Day Surgery Center, LLC and their internal financial statements for 2014. BFA Attachment C presents the 2014 internal financial statements for SODS. As shown, the entity had a positive working capital position and positive asset position for all years presented.

Based on the preceding, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and approval is recommended.

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Net Worth Statements of Proposed New Members
BFA Attachment B	Financial Summaries for 2012 and 2013 and 2014 (SODS)
BFA Attachment C	2014 Internal Financial Statements (SODS)

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 6.4516% membership interest to two (2) new members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142272 E

Specialists' One-Day Surgery Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a copy of the current Members' written consent to the admission of new Members Raphael and Duggal, acceptable to the Department. [CSL]
2. Submission of an Amended and Restated Administrative Services Agreement that conforms to the requirements set forth in 10 NYCRR § 600.9 and is acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Public Health and Health Planning Council

Project # 151035-E
Saratoga-Schenectady Endoscopy Center, LLC

Program: Diagnostic and Treatment Center **County:** Saratoga
Purpose: Establishment **Acknowledged:** February 9, 2015

Executive Summary

Description

Saratoga-Schenectady Endoscopy Center, LLC (SSEC) is a proprietary, Article 28 single specialty freestanding ambulatory surgery center (FASC) located at 848 Route 50, Burnt Hills (Saratoga County), specializing in endoscopy.

SSEC is requesting approval for the addition of one new member, Mark Metwally, M.D. Dr. Metwally is an existing member of the medical staff of SSEC. The purchase price will be \$214,125, to be paid via personal assets at closing. There are currently nine members of SSEC, each having 11.11% interest. Once Dr. Metwally is approved, all members will own 10.0% interest in the facility

The current and proposed operational interest in SSEC are as follows:

Members	Current	Proposed
Donald Morere, M.D.	11.12%	10.00%
George Boyar, M.D.	11.11%	10.00%
Gerardus Lee Jameson, M.D.	11.11%	10.00%
Howard Malamood, M.D.	11.11%	10.00%
Mark G. Adsit, M.D.	11.11%	10.00%
John DeFrancisco, M.D.	11.11%	10.00%
William Gusten, M.D.	11.11%	10.00%
David Goetz, M.D.	11.11%	10.00%
Natalya Belova, M.D.	11.11%	10.00%
Mark Metwally, M.D.	0	10.00%
	100.00%	100.00%

OPCHSM Recommendation
Contingent Approval

Need Summary

Saratoga-Schenectady Endoscopy Center, LLC, requests approval to transfer 10% membership interest to one new member. The facility is an existing ambulatory surgery center that provides single-specialty, gastroenterology surgery services. There will not be any changes in services as a result of the proposed change in ownership.

Program Summary

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

Financial Summary

There are no project costs associated with this application and no budgeted incremental operating expenses or revenues.

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

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval is Contingent upon:

1. Submission of a copy of a dated, executed and fully complete Amendment No. 3 to the Fourth Amended Operating Agreement of Saratoga Schenectady Endoscopy Center, LLC (including the written consent of the members), acceptable to the Department. [CSL]
2. Submission of a copy of a dated, executed and fully complete Amendment No. 2 to the Fourth Amended Operating Agreement of Saratoga Schenectady Endoscopy Center, LLC (including the written consent of the members), acceptable to the Department. [CSL]
3. Submission of a copy of a fully completed, dated Fourth Amended Operating Agreement acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 16, 2015

Need Analysis

Project Description

Saratoga-Schenectady Endoscopy Center, LLC, an existing single-specialty ambulatory surgery center, requests approval to transfer 10% membership to one new member. The facility is located at 848 Route 50, Burnt Hills, 12027, in Saratoga County.

Background

Saratoga-Schenectady Endoscopy Center, LLC currently provides gastroenterology surgery services. Saratoga-Schenectady served a total of 10,153 patients in 2012, 10,538 patients in 2013, and 10,519 patients in 2014. (Source: SPARCS)

The percent charity care provided was one percent and Medicaid was one percent in 2014 as reported by the applicant. The applicant reports that there will be no changes in services as a result of the proposed change in ownership.

Conclusion

There will be no changes in services as a result of the proposed change in ownership.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Description

Saratoga Schenectady Endoscopy Center, LLC, an existing Article 28 single-specialty (gastroenterology) ambulatory surgery center requests approval to transfer a portion of the Center's membership interests to one new member. Upon approval, there will be ten physician members, each with a 10% share. There are no programmatic changes anticipated as a result of this request.

Character and Competence

The following table details the proposed ownership:

Member Name	Proposed Ownership
Donald Morere, MD (Secretary)	10%
George Boyar, MD (President & Medical Director)	10%
Geradus Lee Jameson, MD (Treasurer)	10%
Howard Malamood, MD	10%
Mark G. Adsit, MD	10%
John DeFrancisco, MD	10%
William Gusten, MD	10%
David Goetz, MD	10%
Natalya Belova, MD	10%
Mark Metwally, MD**	10%
<i>** New Member subject to C&C Review</i>	

Dr. Metwally is a practicing Internist who completed a gastroenterology fellowship. He is presently a member of the medical staff of the Center

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Costs and Financing

There are no project costs associated with this application.

There are no budgeted incremental operating expenses or revenues associated with this project, since patient care services will not be affected or interrupted.

The proposed member will purchase his respective membership interest in SSEC by providing equity upon closing. Dr. Metwally's purchase price will be \$214,125, to be paid via personal assets.

Financially, the transaction will be treated as if each of SSEC's current members sold a portion of their ownership interest in the company to Dr. Metwally. After this approved transfer, each member will have a 10% interest in SSEC.

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

Purchase Interest Agreements

The applicant will purchase 10.0% membership interest for \$214,125 with personal assets upon approval. An executed purchase agreement has been submitted as follows:

Date:	02/25-2015
Description	Purchase 10% Membership Interest
Seller:	Current Members of Saratoga-Schenectady Endoscopy Center, LLC
Buyer:	Mark Metwally
Purchase Price:	\$214,125
Payment of Purchase Price:	Equity via personal assets

Capability and Feasibility

There are no project costs associated with this application.

BFA Attachment A is the net worth statement of the proposed member, which indicates the availability of sufficient funds.

BFA Attachment B is a financial summary from the 2012 and 2013 audited financial statements of Saratoga-Schenectady Endoscopy Center, LLC and their internal operating revenues and expenses for 2014. As shown, the entity had a positive working capital position and positive asset position for all years presented.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A Net Worth Statement of Proposed New Member
BFA Attachment B Financial Summaries for 2012 and 2013 and 2014

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 10% membership interest to one (1) new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

151035 E

Saratoga-Schenectady Endoscopy Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a copy of a dated, executed and fully complete Amendment No. 3 to the Fourth Amended Operating Agreement of Saratoga Schenectady Endoscopy Center, LLC (including the written consent of the members), acceptable to the Department. [CSL]
2. Submission of a copy of a dated, executed and fully complete Amendment No. 2 to the Fourth Amended Operating Agreement of Saratoga Schenectady Endoscopy Center, LLC (including the written consent of the members), acceptable to the Department. [CSL]
3. Submission of a copy of a fully completed, dated Fourth Amended Operating Agreement acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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*.

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 10% membership interest to one (1) new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

151035 E

Saratoga-Schenectady Endoscopy Center, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a copy of a dated, executed and fully complete Amendment No. 3 to the Fourth Amended Operating Agreement of Saratoga Schenectady Endoscopy Center, LLC (including the written consent of the members), acceptable to the Department. [CSL]
2. Submission of a copy of a dated, executed and fully complete Amendment No. 2 to the Fourth Amended Operating Agreement of Saratoga Schenectady Endoscopy Center, LLC (including the written consent of the members), acceptable to the Department. [CSL]
3. Submission of a copy of a fully completed, dated Fourth Amended Operating Agreement acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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*.



Public Health and Health Planning Council

Project # 142006-B
Partners Healthcare Network, LLC

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment and Construction **Acknowledged:** July 11, 2014

Executive Summary

Description

Partners Healthcare Network, LLC (PHN), a New York limited liability company, is requesting to be established as the operator of an Article 28 diagnostic and treatment center (D&TC), to be located at 8814 Foster Avenue, Suite B, Brooklyn (Kings County). PHN proposes to serve all underserved populations throughout Kings County, but its primary focus will be on serving the developmentally disabled from Brooklyn, Queens and parts of Staten Island. The proposed D&TC site was formerly operated by Versa Care Inc., which provided D&TC services to the developmentally disabled. This application seeks to ensure that the population formerly served by Versa Care, Inc. will have continued access to primary medical care.

The sole member of PHN is Human First, Inc., a New York not-for-profit corporation, which is an Article 16 provider of community habilitation services for the developmentally disabled in New York City and Long Island.

The proposed D&TC will be located in separate and distinct subleased space in a building where Human First, Inc. operates an Article 16 certified day habilitation program.

OPCHSM Recommendation
Contingent Approval

Need Summary

Partners Healthcare Network, LLC (PHN) proposes to establish and construct an Article 28 diagnostic and treatment center in Kings County. The target population is the developmentally disabled from Brooklyn, Queens, and parts of Staten Island. Proposed services are Dental, Medical Social Services, Ophthalmology, Optometry, Pediatrics, Physical Medicine and Rehabilitation, Podiatry, Prenatal, Primary Medical Care, Psychology, Therapy-Occupational, Therapy-Physical, and Therapy-Speech Language Pathology services.

The proposed D&TC was formerly operated by Versa Care, Inc., which closed in April 2014. PHN wants to ensure that the population formerly served by Versa Care will have continued access to primary care services.

Program Summary

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

Financial Summary

Total project cost is \$242,398, which will be met via equity from Human First, Inc.

Budget:	Revenues:	\$3,543,164
	Expenses:	<u>2,266,242</u>
	Gain/ (Loss)	\$1,276,922

Revenue and Expenses of Partners Healthcare Network, LLC are based on current reimbursement methodologies and historical utilization.

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

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 operating agreement acceptable to the Department of Health. [BFA]
3. Submission of documentation to address the following items:
 - a) Although required for submission per DSG-01, Existing Condition floor plans, use areas were not provided for the adjacent, non-Article 28 business occupancy. Since unrated separation has been indicated between tenancies, provide confirmation / documentation that the adjacent tenant spaces do not contain higher hazard uses or contents. Further, as it was not provided in the plans submitted, per review under new construction standards, please confirm compliance with the below NFPA 101, 2000 citation. (e.g. general storage, Soiled Storage, etc.). 8.4.1.2: In new construction, where protection is provided with automatic extinguishing systems without fire-resistive separation, the space protected shall be enclosed with smoke partitions in accordance with 8.2.4.
 - b) Per review under new construction standards, please confirm compliance with space ventilation requirements defined in Chapter 6, section 7 Space Ventilation, of the 2010 Guidelines for Design and Construction of Health Care Facilities (FGI).
 - c) To meet the requirement of common paths of travel, exit signage should also be provided for direction to westerly exit, looking right, upon exiting into the easterly leg of the clinical corridor. Plans submitted currently indicate direction to south end of corridor for easterly exit access only. [AER]
4. Submission of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Human First, Inc. acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]

7. The applicant shall start construction on or before September 1, 2015 and complete construction by December 1, 2015 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

Council Action Date

April 16, 2015

Need Analysis

Project Description

Partners Healthcare Network, LLC, is requesting approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located at 8814 Foster Avenue, Suite B, Brooklyn, 11236, in Kings County. The focus of this project is developmentally disabled individuals from Brooklyn, Queens, and parts of Staten Island.

Background and Analysis

The applicant reports that Versa Care provided specialized D&TC services to the developmentally disabled. The sole member of PHN is Human First, Inc., a New York not-for-profit corporation, which is an Article 16 provider of community habilitation and day habilitation services for the developmentally disabled in New York City and Long Island.

The service area includes all zip codes in Kings and Queens Counties, and seven (7) zip codes (10301 to 10305, 10310, and 10314) in northern Staten Island.

Prevention Quality Indicators-PQIs

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the PQI rates for major condition categories such as acute, circulatory, diabetes, and respiratory for identified zip codes in the service areas of the proposed project. It shows that Kings County has higher PQI rates for 'All Circulatory' 'All Diabetes,' and 'All Respiratory' conditions than those rates for the State. Queens County has a higher PQI rates for 'All Circulatory' and 'All Diabetes' Conditions than those rates for the State. The Staten Island area has higher PQI rates for 'All Diabetes' and 'All Respiratory' conditions than those rates for the State.

Finally, the overall PQI rates ('All Acute,' 'All Circulatory,' 'All Diabetes,' and 'All Respiratory' PQI conditions combined) for the identified zip codes in the service area of the proposed project are also higher, ranging from 1,600 hospital admissions per 100,000 adults to 1,694 hospital admissions per 100,000 adults vs. 1,563 hospital admissions per 100,000 adults for the State.

PQI Rates: Hospital Admissions/ 100,000 Adults	Kings County Zip Codes Combined*	Queens County Zip Codes Combined**	Staten Island Zip Codes Combined***	New York State
All ¹	1,694	1,655	1,600	1,563
All Acute	477	502	475	526
All Circulatory	531	520	428	456
All Diabetes	323	315	258	224
All Respiratory	363	315	436	357

Source – DOH PQI

¹Due to rounding, individual conditions may not sum to total

*Kings County Zip Codes: 11220, 11228, 11235, 11231, 11233, 11218, 11225, 11212, 11213, 11215, 11219, 11226, 11210, 11204, 11223, and 11236

**Queens County Zip Codes: 11418, 11419, 11421, 11411, 11429, 11423, 11432, 11433, 11412, 11364, 11365, 11367, 11368, and 11427

***Staten Island Zip Codes: 10301 to 10305, 10310, and 10314.

The applicant reports that in June 2014, Versa Care filed for bankruptcy; they did not respond to any requests pertaining to utilization in the past; the applicant does not have access to any of their files.

The number of projected visits is 10,154 in Year 1 and 19,968 in Year 3; of these, 30 percent will be primary care services.

Conclusion

The proposed project will ensure the continuity of needed services for the special population group, developmentally disabled, in Brooklyn, Queens, and parts of Staten Island. It will improve access to basic health care services for the communities in Kings and Queens Counties, northern Staten Island, and the surrounding areas.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Partners Healthcare Network, LLC (PHN), a not-for-profit corporation, seeks to be established as the operator of a Diagnostic and Treatment Center (D&TC) in Brooklyn. The proposed site, formerly operated by Versa Care, Inc., provided specialized D&TC services to the developmentally disabled. With this proposal, PHN seeks to ensure that those previously served by Versa Care continue to have access to primary medical care.

Proposed Operator	Partners Healthcare Network, LLC
Site Address	8814 Foster Avenue, Suite B Brooklyn NY 11236 (Kings County)
Services	<u>Certified Services</u> Medical Services-Primary Care Medical Services-Other Medical Specialties Dental <u>Other Services</u> Medical Social Services Optometry Podiatry Psychology Occupational Therapy Physical Therapy Speech Language Pathology Therapy
Hours of Operation	Monday through Friday from 9:00 am to 5:00 pm (Hours will be added with increased volume/demand)
Staffing (1st Year / 3rd Year)	12.8 FTEs / 19.15 FTEs
Medical Director(s)	Hossam Amin, MD, FCCP
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by State University of NY- Health Sciences Center of Brooklyn (SUNY Downstate Medical Center) 2.3 miles / 8 minutes away

Character and Competence

The sole member of Partners Healthcare Network, LLC is Human First, Inc., a New York not-for-profit corporation, which is an Article 16 provider of community habilitation and day habilitation services for the developmentally disabled in New York City and Long Island.

The proposed Board of Directors of Partners Healthcare Network, LLC is as follows:

Sharon Jones	President
Audrey Jackman-Wesson	Treasurer
Fadia Zahrieh	Secretary

Ms. Jones serves as the President of the Board of Human First, Inc. She graduated from CUNY Hunter College with a Certificate of Psychology and received her nursing degree from Phillips Beth Israel School of Nursing. She has been a practicing registered nurse for 35 years and currently works at the NYU Langone Medical Center. She has experience in a variety of outpatient settings to include emergency room, occupational health, dermatology, and maternal fetal medicine. Additionally, Ms. Jones is also the mother of a (now adult) son with autism.

Ms. Jackman-Wesson serves as the Treasurer of the Board of Human First, Inc. She graduated from the City College of New York with a Bachelor's Degree in Political Science and received a Commission as an Officer in U.S. Army Reserves (retired) from Polytechnic University. Currently, she is employed by the NYC Department of Transportation as the Permits Manager for Lower Manhattan. She has been an advocate for people with special needs for many years. She's a member of Community School Board 13 where she has served as the President and the Chair for the Community on Special Education for 13 years and serves as a parent advocate at Impartial Hearings at the Department of Education. Ms. Jackman-Wesson expressed a personal understanding of the plight of disabled consumers as she also has a child with autism.

Ms. Zahrieh is a founding member of Human First, Inc., and has held the position of Board Member in all capacities since its inception. She has participated in numerous non-profit leadership workshops and has experience in shared governance, grants development, fundraising, strategic planning, outcomes assessment and resources allocation. She has also been involved in progressive outreach to improving access to healthcare and is an advocate for people with intellectual disabilities and is committed to raising awareness about Autism Spectrum Disorder and treatments for associated medical conditions. Ms. Zahrieh is a Parent Advisor Member of the Middle Eastern Community and serves on several committees that work to access services for those most in need. She, too, has a son diagnosed with autism.

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

Recommendation

From a programmatic perspective, approval is recommended.

<h2>Financial Analysis</h2>

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site to be occupied, the terms of which are summarized below:

Premises:	4,442 square feet located at 8814 Foster Avenue, Brooklyn, NY 11236 Kings County,
Lessor:	Milea Associates, LLC
Lessee:	Human First, Inc.
Sub-Lessor:	Human First, Inc.
Sub-Lessee:	Partners Healthcare Network LLC

Rental:	Year 1- \$122,839 or (\$27.65 per Sq. Ft.) Year 2- \$125,057 or (\$28.15 per Sq. Ft.) Year 3- \$129,057 or (\$29.05 per Sq. Ft.) Year 4- \$132,283 or (\$29.78 per Sq. Ft.) Year 5- \$135,590 or (\$30.52 per Sq. Ft.) Year 6- \$138,890 or (\$31.26 per Sq. Ft.) Year 7- \$142,454 or (\$32.06 per Sq. Ft.) Year 8- \$146,106 or (\$32.89 per Sq. Ft.) Year 9- \$149,666 or (\$33.69 per Sq. Ft.) Year 10- \$153,408 or (\$34.53 per Sq. Ft.)
Term:	10 years (Commencing once project is approved by the Public Health and Health Planning Council).
Provisions:	Landlord to provide maintenance related to HVAC, plumbing, lobby, glass and electrical issues at landlords responsibility. Renewal option for (1) one five year period is available.

The applicant has provided two letters from licensed real estate agents attesting to the rent reasonableness. The applicant has indicated that the lease agreement will be a non-arms-length lease agreement.

Operating Agreement

The applicant has submitted a proposed operating agreement that will be submitted via the provisions of the law, in the office of the secretary of state of New York.

Operator:	Partners Healthcare Network, LLC.
Sole Member:	Human First, Inc.
Formation:	Upon approval from New York State Department of Health.
Purpose:	Limited to owning, operating and managing a diagnostic and treatment center known as Partners Healthcare Network LLC.
Provisions:	Nothing in the agreement shall be deemed to restrict in any way rights of any member. The Company shall be managed by one or more managers each of whom shall be a Member of the Company. *

* Note: Partners Healthcare Network, LLC will pay no compensation or fees to Human First, Inc.

Total Project Cost and Financing

Total project cost, which is for renovations, is estimated at \$242,398, further broken down as follows:

Renovation and Demolition	\$168,693
Design Contingency	16,869
Construction Contingency	16,869
Architect/Engineering Fees	12,652
Other Fees (Consultant)	24,000
CON Fee	2,000
Additional Processing Fee	1,315
Total Project Cost	\$242,398

Project costs are based on a construction start date of September 1, 2015, and a three month construction period.

The applicant will provide equity to meet the total project cost.

Operating Budget

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

	<u>Year 1</u>	<u>Year 3</u>
Revenues	\$1,795,134	\$3,543,164
Expenses		
Operating	\$1,486,101	\$2,127,489
Capital	<u>132,535</u>	<u>138,753</u>
Total Expenses	\$1,618,636	\$2,266,242
Net Income	\$176,498	\$1,276,922
Utilization Visits	10,154	19,968
Cost Per Visit	\$159.41	\$113.49

Utilization by payer source for the first and third year as follows:

	<u>Year 1</u>	<u>Year 3</u>
Commercial Fee-for-Service	2.5%	2.5%
Commercial Managed Care	15.0%	15.0%
Medicare Fee-for-Service	5.0%	5.0%
Medicaid Managed Care	75.0%	75.0%
Charity Care	2.5%	2.5%

Expense and utilization assumptions are based on the historical experience of Versa Care, Inc., which previously operated an Article 28 D&TC at the same location, using current reimbursement methodologies.

Capability and Feasibility

Total project cost of \$242,398 will be met via equity from Human First, Inc.

Working capital requirements are estimated at \$377,707, which appear reasonable based on two months of third year expenses. The proposed working capital will be met via equity from Human First, Inc. BFA Attachment A presents the financial summary of Human First, Inc., which indicates sufficient equity to fund the proposed project.

The submitted combined budget indicates a net income of \$176,498 and \$1,276,922 during the first and third years, respectively.

BFA Attachment B is the pro-forma balance sheet of Partners Healthcare Network LLC, as of the first day of operation, which indicates a positive member's equity position of \$620,218. BFA Attachment A is the 2014 certified financial statements of Human First, Inc. as of the fiscal year ending June 30, 2014. As shown on the 2014 certified financial statements, the facility had a positive working capital position and a positive net asset position through June 30, 2014. Also, the facility achieved an operating gain of \$16,940.

BFA Attachment C is the December 31, 2014 internal financial statements of Human First, Inc. As shown, the entity had a positive working capital position and a positive net asset position through December 31, 2014. Also, the entity achieved an excess of revenues over expenses of \$816,954 through December 31, 2014.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary of Human First, Inc
BFA Attachment B	Pro-forma Balance Sheet- Partners Healthcare Network, LLC
BFA Attachment C	December 31, 2014 internal financial statements of Human First, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center at 8814 Foster Avenue, Suite B, Brooklyn, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

142006 B

Partners Healthcare Network, LLC

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. 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 operating agreement acceptable to the Department of Health. [BFA]
3. Submission of documentation to address the following items:
 - a) Although required for submission per DSG-01, Existing Condition floor plans, use areas were not provided for the adjacent, non-Article 28 business occupancy. Since unrated separation has been indicated between tenancies, provide confirmation / documentation that the adjacent tenant spaces do not contain higher hazard uses or contents. Further, as it was not provided in the plans submitted, per review under new construction standards, please confirm compliance with the below NFPA 101, 2000 citation. (e.g. general storage, Soiled Storage, etc.). 8.4.1.2: In new construction, where protection is provided with automatic extinguishing systems without fire-resistive separation, the space protected shall be enclosed with smoke partitions in accordance with 8.2.4.
 - b) Per review under new construction standards, please confirm compliance with space ventilation requirements defined in Chapter 6, section 7 Space Ventilation, of the 2010 Guidelines for Design and Construction of Health Care Facilities (FGI).
 - c) To meet the requirement of common paths of travel, exit signage should also be provided for direction to westerly exit, looking right, upon exiting into the easterly leg of the clinical corridor. Plans submitted currently indicate direction to south end of corridor for easterly exit access only. [AER]
4. Submission of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's executed Operating Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of an executed Certificate of Amendment of the Certificate of Incorporation of Human First, Inc. acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
7. The applicant shall start construction on or before September 1, 2015 and complete construction by December 1, 2015 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]

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



Public Health and Health Planning Council

Project # 142133-B
Upstate Family Health Center, Inc.

Program: Diagnostic and Treatment Center **County:** Oneida
Purpose: Establishment and Construction **Acknowledged:** December 5, 2014

Executive Summary

Description

Upstate Family Health Center, Inc. (Upstate), a newly created New York not-for-profit corporation, is seeking approval for the establishment of Upstate as the new operator of four existing Article 28 diagnostic and treatment center (D&TC) sites and two School-Based Health Clinics (SBHCs) currently operated by Upstate Cerebral Palsy, Inc., aka UCP & Handicapped Persons of Utica Area (UCP). Upstate is also seeking approval to consolidate the four sites into three locations. Upon approval of this application Upstate will be submitting a request for federal designation under Section 330 HRSA as a Federally Qualified Health Center (FQHC) sub-recipient grantee of Rochester Primary Care Network d/b/a Regional Primary Care Network (RPCN).

The four UCP sites and two SBHCs are currently located and operated at the following addresses:

- 1427 Genesee Street, Utica
- 801 Cypress Street, Rome
- 130 Brookley Road, Rome
- 10708 North Gage Road, Trenton
- 929 York Street, Utica aka Kernan School (SBHC)
- 1701 Noyes Street, Utica aka Donovan School (SBHC)

Upon approval of this CON, UCP will continue to operate all locations until HRSA approval of Upstate's FQHC designation is finalized. Upon FQHC approval, Upstate will take ownership and begin a closure process for three of the current clinic locations. The sites to be closed are as follows:

1. 1427 Genesee Street, Utica
2. 801 Cypress Street, Rome
3. 130 Brookley Road, Rome

The operations of the two Rome sites will be combined into one clinic site to be located in leased space at 201-209 West Dominick Street, Rome and the operations of the clinic at 1427 Genesee Street will be relocated to leased space at 1002 Oswego Street, Utica. There will be no changes to the two SBHCs listed above or the D&TC site located at 10708 North Gage Road, Trenton.

There will be no disruption of services to patients during the transition time.

UCP is currently certified for the following Article 28 services: Primary Medical Care; Podiatry; Psychology; Speech, Physical and Occupational Therapies; Pediatric and Physical Medicine and Rehabilitation. There will be no changes in the services as currently provided.

The applicant has a Letter of Intent (LOI) to become a FQHC sub-recipient of RPCN, an existing FQHC. RPCN is a network of 23 health centers serving the Finger Lakes region. The applicant is proposing to join RPCN's network once they receive FQHC designation. As a FQHC sub-grantee, the applicant would receive cost-based reimbursement under Medicare and Medicaid law, and would be eligible for HRSA Section 330 Grant funding. Additionally, they would be eligible for participation in the Federal Tort Claims Act, which eliminates malpractice insurance costs.

OPCHSM Recommendation
Contingent Approval

Need Summary

Upstate Family Health Centers proposes to become the operator of several Article 28 diagnostic and treatment center locations in Oneida County. Proposed services being provided between the sites are: Medical Services-Primary Care, Podiatry O/P, Medical Social Services O/P, and Psychology O/P Services. The intention of this project is to provide effective, coordinated services to patients with multiple chronic conditions and disabilities as well as to the general population.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

The facility has completed several steps involved in the FQHC certification process and expects to receive FQHC designation before the end of the first year of operations.

FQHC Budget (Year 1)	Revenues:	\$4,128,052
	Expenses:	<u>\$4,116,040</u>
	Gain/(Loss):	\$12,012
FQHC Budget (Year 3)	Revenues:	\$5,268,360
	Expenses:	<u>\$4,636,012</u>
	Gain/(Loss):	\$632,348

As the facility is currently in the process of applying for FQHC designation, the Department requested a sensitized budget be provided for both Year 1 and Year 3 based on the current D&TC rates. The sensitized budget is as follows:

D&TC rate (Year 1)	Revenues:	\$3,160,341
	Expenses:	<u>\$3,391,668</u>
	Gain/(Loss):	<u>(\$231,327)</u>

D&TC rate (Year 3)	Revenues:	\$4,064,943
	Expenses:	<u>\$3,891,575</u>
	Gain/(Loss):	\$173,368

Review of the budgets under both rate structures indicates that the applicant can meet costs and maintain at least a break-even operating margin by Year 3 under current D&TC rates of payment.

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

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Management Support Services Agreement, acceptable to the Department. [HSP]
3. Submission of an executed acquisition agreement acceptable to the Department of Health. [BFA]
4. Submission of the applicant's executed Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of evidence of the transfer of operations from Upstate Cerebral Palsy to the applicant, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation of Federally Qualified Health Center (FQHC) designation for Upstate Family Health Center, Inc. [BFA]
3. Submission of an executed FQHC sub-recipient agreement between Rochester Primary Care Network d/b/a Regional Primary Care Network (RPCN) and Upstate Family Health Center, Inc. [BFA]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

April 16, 2015

Need Analysis

Project Description

Upstate Family Health Centers, Inc. (UFHC) is requesting approval to become the operator of four Article 28 diagnostic and treatment center locations currently operated by UCP & Handicapped Persons of Utica Area, Inc. and relocate three of these sites into two new locations for a total of three sites in Oneida County. The three locations will be at 1002 Oswego Street, Utica, 13502; 205 West Dominick Street, Rome, 13440; and 10708 North Gage Road, Barneveld, 13304.

Background and Analysis

The service area includes Oneida County. Upon approval of this CON, Upstate Family Health Center will be submitting paperwork for approval for federal designation as a Federally Qualified Health Center (FQHC) under Section 330. Approval of this application will help to establish a network of D&TC's with FQHC designation to provide coordinated primary and specialty medical services for low income people who are underserved, including those with developmental disabilities and chronic health conditions in Oneida County.

Areas of Oneida County are designated as a Health Care Professional Shortage Areas as follows (Source – HRSA):

Health Care Professional Shortage Areas for Primary Care Services:

- Medicaid Eligible - Utica
- Medicaid Eligible - Rome

Health Care Professional Shortage Area for Mental Health:

- Medicaid Eligible - Oneida County

The number of projected visits for Year 1 and Year 3 are shown in the table below.

Location Site	First Year visits	Third Year visits
1002 Oswego St, Utica	26,195	35,960
W. Dominick St, Rome	2,700	2,800
10708 No Gage Rd, Barneveld	343	343
Total visits	29,238	39,103

Prevention Quality Indicators-PQIs

PQIs are rates of admission to the hospital for conditions for which good outpatient care can potentially prevent the need for hospitalization, or for which early intervention can prevent complications or more severe disease.

The table below provides information on the PQI rates for major condition categories such as acute, circulatory, diabetes, and respiratory for zip codes in the service area of Oneida County. Almost all of the rates for major categories of these conditions are significantly higher for the service area than the rates for New York State.

PQI Rates:		
Hospital Admissions/100,000 Adults	Service Area	New York State
All ¹	1,838	1,506
All Acute	681	518
All Circulatory	484	414
All Diabetes	234	233
All Respiratory	440	342

Source: DOH Health Data, 2012 rates

¹ Due to Rounding, individual conditions may not sum to total

Conclusion

The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

Approval of this project will provide continued access to primary care services and specialty medical services to people with chronic conditions, as well as to the general population of Oneida County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program Proposal

The following sites are currently operated by Upstate Cerebral Palsy, Inc. (also known as UCP & Handicapped Persons of Utica Area) (Operating certificate number 3202200R):

Site	PFI	Site	PFI
1427 Genesee Street Utica, NY 13502 (Current Main Site)	4763	UCP & Handicapped Persons of Utica Area Rd #2 North Gage Road Barneveld, NY 13304	3185
UCP Clinic at Rome 801 Cypress Street Rome, NY 13440	7244	UCP & Handicapped Persons of Utica 1601 Armory Drive Utica, NY 13501	4231
UCP at Brookley Road Rome, NY 13440	601		

This application proposes to establish Upstate Family Health Center Inc., a newly created corporation, as the new operator of four sites currently operated by UCP & Handicapped Persons of Utica Area Inc. and relocate three sites to two new locations for a total of three sites. Upon approval, the sites would be certified (using the new certified services scheme) as follows:

<u>Current Site</u>	<u>PFI</u>	<u>New Site</u>	<u>Services Shall Be</u>	<u>Operator Shall Be</u>
1427 Genesee Street Utica, NY 13502 (Current Main Site)	4763	1002 Oswego Street, Utica NY (shall be new main site of UFHC)	Medical Services - Primary Care Medical Services – Other Specialties	Upstate Family Health Center Inc.
Walsh Clinic UCP Clinic at Rome 801 Cypress Street Rome, NY 13440	7244	205 West Dominick Street, Rome, NY	Medical Services – Primary Care Medical Services – Other Specialties	Upstate Family Health Center Inc.
Brookley Road Clinic UCP at Brookley Rd. Rome, NY 13440	601	No new site. Site will close and PFI will be retired.	None, site shall close.	None, site shall close.
UCP & Handicapped Persons of Utica Area RD #2 North Gage Rd. Barneveld, NY 13304	3185	No change	Medical Services- Primary Care	Upstate Family Health Center Inc.
UCP & Handicapped Persons of Utica 1601 Armory Drive Utica, NY 13501	4231	No Change	Medical Services- Primary Care Medical Services – Other Medical Specialties	UCP & Handicapped Persons of Utica Area, Inc.

The proposed sites aim to provide integrated behavioral and primary care treatment within the community as well as leverage coordination of care principles and patient centered medical home management within a family safety net center in key areas of this community. UCP will continue to operate the centers until HRSA has provided acceptance and will proceed with closure on notification thereof. There will be no disruption of service to patients.

With approval of this application, Upstate Family Health Centers anticipates becoming an FQHC compliant non-profit organization and, as such, their Board of Directors will be comprised of 51% primary care patients or their representatives.

Character and Competence

The board of Upstate Family Health Center, Inc.is:

Kathleen E. Dyman	Board Member – Chairperson Designate
Elizabeth A. Bowers	Board Member – Vice Chair Designate
David Mathis	Board Member –Treasurer Designate
Louis Tehan	Board Member – Secretary Designate
John S. Kowalczyk, DDS	Board Member
Linda E. Montemurro	Board Member – Patient Representative
Sheryl Slocum	Board Member – Patient Representative
Laura B. Watchers	Board Member – Patient Representative

Ms. Dyman current serves as the Executive Vice President of an organization that serves multiple counties and aims to advance education in the medical sciences and ensure high levels of integrity and courtesy in the medical profession. Ms. Bowers has an MBA in Finance and is employed as the Vice President for Corporate Benefits and HR Compliance for a global medical technology company. She is active in the community through volunteer service and on numerous committees and boards. Mr. Mathis has over 40 years of experience in workforce development and is currently the Director of Workforce Development for Oneida County. Additionally, he is currently the co-chair of the Oneida County Vision 2020 effort to prepare the region for nanotechnology. He has facilitated partnerships between workforce system and education providers and has provided leadership in providing opportunities for youth ensuring that over 300 youth per summer are served through a Summer Youth Employment Program. Mr. Tehan is the

President and CEO of Upstate Cerebral Palsy, Inc. which employs more than 1,900 full and part-time employees at 74 locations throughout Central New York. He is a past gubernatorial-appointed member of four (4) councils/committees related to hospital planning and mental retardation/developmental disabilities. Dr. Kowalczyk operated a private dental practice for 44 years. Upon retiring from private practice in 2008, he went to work as a Dentist/Dental Director for UCP providing clinical dentistry services to individuals who participated in programs operated by UCP.

Ms. Montemurro is the Director of Care Management at The Neighborhood Center, Inc. She has many years of experience providing service to diverse populations in the areas of mental and physical health. Through her current and past employment, she has gained direct care, supervisory and administration experience. Ms. Slocum is the parent of a patient of Community Health and Behavioral Services and, in that capacity, has gained experience in navigating the health care system for disabled family member. Ms. Watchers has been a patient of UCP's clinic for many years. She provides direct feedback to the clinic on quality of service and insight from the patient's perspective.

Additionally, information was submitted and reviewed for the Medical Director, James E. Frederick, M.D. Dr. Frederick is a Family Medicine Board-certified practicing physician with over 30 years of experience.

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

Compliance with Applicable Codes, Rules and Regulations

The medical staff will ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Acquisition Agreement

The change in ownership of the operation will be effectuated in accordance with the terms of the draft Acquisition Agreement summarized below:

Transferor:	Upstate Cerebral Palsy
Transferee:	Upstate Family Health Center, Inc.
Assets Transferred:	Article 28 Licenses for the following sites: <ul style="list-style-type: none"> • 1427 Genesee Street, Utica, NY(D&TC) • 801 Cypress St., Rome, NY (D&TC) • 130 Brookley Road, Rome, NY (D&TC) • 10708 N. Gage Road, Trenton, NY (D&TC) • 929 York Street, Utica, NY aka Kernan School (SBHC) • 1701 Noyes Street, Utica, NY aka Donovan School (SBHC) • All of the movable equipment associated with these facilities.
Liabilities Assumed:	None
Purchase Price:	N/A

Lease/Sublease Rental Agreements

The applicant has submitted an executed lease and sublease for the facility. The terms of the lease and sublease are summarized below:

Date:	September 26, 2014
Premise:	10708 N. Gage Road, Trenton, NY (204 sq.ft)
Lessor:	Mohawk Valley Handicapped Services, Inc.
Lessee/Sublessor:	Upstate Cerebral Palsy, Inc.
Sublessee	Upstate Family Health Center, Inc.
Rental:	\$4,470 annually (\$372.50 monthly or \$21.91 per sq.ft.)
Term:	10 years with (1) 5 year renewal option
Provision:	Sublessor pays for all utilities, waste removal, maintenance and real estate taxes
Type:	Arm's Length

The applicant has provided letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental amount for the site.

The applicant has submitted an executed lease and sublease for the facility. The terms of the lease and sublease are summarized below:

Date:	September 26, 2014
Premise:	1002 Oswego Street, Utica, NY (10,787 sq.ft.)
Lessor:	1002 Oswego Street, LLC
Lessee/Sublessor:	Upstate Cerebral Palsy, Inc.
Sublessee	Upstate Family Health Center, Inc.
Rental:	\$398,903 annually (\$33,241 monthly or 36.98 per sq.ft)
Term:	10 years with (1) 5 year renewal option
Provision:	Sublessor pays for all utilities, waste removal, maintenance and real estate taxes
Type:	Arm's Length

The applicant has provided letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental amount for the site.

The applicant has submitted an executed lease and sublease for the facility. The terms of the lease and sublease are summarized below:

Date:	September 26, 2014
Premise:	201-209 W. Dominick Street, Rome, NY (1,380 sq.ft.)
Lessor:	Rome Up and Running
Lessee/Sublessor:	Upstate Cerebral Palsy, Inc.
Sublessee	Upstate Family Health Center, Inc.
Rental:	\$45,512 annually (\$3,792.75 monthly/\$32.98 per sq.)
Term:	5 years with (1) 5 year renewal option
Provision:	Sublessor pays for all utilities, waste removal, maintenance and real estate taxes
Type:	Arm's Length

The applicant has provided letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental amount for the site.

Operating Budget

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

FQHC Budget:	<u>Year 1</u>	<u>Year 3</u>
Revenues *	\$4,128,052	\$5,268,360
Expenses		
Operating	\$3,593,734	\$4,095,595
Capital	\$522,306	\$540,417
Total Expenses	\$4,116,040	\$4,636,012
 Excess of Revenues over Expenses	 \$12,012	 \$632,348
 Visits	 32,110	 41,975
Cost Per Visit	\$128.19	\$110.45

* Revenues include the following:

	<u>Year 1</u>	<u>Year 3</u>
HCRA Funding	\$107,041	\$107,041
Meaningful Use Incentives	\$110,500	\$59,500
340B Program Revenue	\$119,016	\$119,016
DOH SBC Grant Revenue	\$165,198	165,198
Commercial Incentive Revenue	\$2,000	\$2,000
Nursing Services Contract	\$18,017	\$18,017
RPCN Grant	\$25,000	\$25,000
Procedure Revenue	\$15,680	\$20,498
Total Other Revenues	\$562,452	\$516,270

The applicant has provided a sensitized budget for the first and third years of operation, in 2015 dollars, based on the current D&TC reimbursement rates, as summarized below:

Sensitized Budget:	<u>Year 1</u>	<u>Year 3</u>
Revenues #	\$3,160,341	\$4,064,943
Expenses		
Operating	\$3,275,840	\$3,780,194
Capital	\$115,828	\$111,381
Total Expenses	\$3,391,668	\$3,891,575
Excess of Revenues over Expenses	(\$231,327)	\$173,368
Visits	32,110	41,975
Cost Per Visit	\$105.63	\$92.71

Revenues include the following:

	<u>Year 1</u>	<u>Year 3</u>
HCRA Funding	\$107,041	\$107,041
Meaningful Use Incentives	\$110,500	\$59,500
DOH SBHC Grant Revenue	\$165,198	165,198
Commercial Incentive Revenue	\$2,000	\$2,000
Nursing Services Contract	\$18,017	\$18,017
Procedure Revenue	<u>\$15,680</u>	<u>\$20,498</u>
Total Other Revenues	\$418,436	\$372,254

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

<u>FQHC or Sensitized:</u>	<u>Years 1 and 3</u>
Medicaid Managed Care	35.93%
Medicaid Fee-For-Service	16.29%
Medicare Managed Care	.82%
Medicare Fee-for-Service	30.54%
Commercial Fee-for-Service	13.42%
Private Pay	3.00%

Expense and utilization assumptions are based on the current operating experience of UCP. The Medicare, Medicaid and Private Pay rates are based on cost-based FQHC rates and the Commercial rates are based on UCP's experience. Budget differences in revenues resulting from the use of sensitized D&TC rate assumptions are due to the elimination of RPCN Grant revenue and 340B Program revenues from other revenues. Budget differences in expenses between the FQHC and D&TC sensitized rate constructs are due to expenses specific to the start-up of the new FQHC sites, including lease payments associated with the new FQHC clinic locations and start-up expenses associated with these locations.

Capability and Feasibility

The working capital are estimated at \$772,669 or \$648,596 under FQHC or D&TC constructs respectively, based on two months of year three expenses. The estimates appear reasonable based on their respective statuses. The applicant has provided an executed loan agreement sufficient to cover working capital requirements and start-up costs associated with this project. The loan agreement is for up to \$1,800,000 at 3.25% interest rate with a 6-year term and is issued by UCP. BFA Attachment B is UCP's most current certified and internal financial statements which show sufficient resource to cover the funding requirement.

The submitted FQHC rate based budget indicates a net income of \$12,012 in Year 1 and \$632,348 in Year 3. Revenues are based on current reimbursement methodologies for D&TC services for Commercial only, and are based on the FQHC rates for Medicaid, Medicare and Private Pay. The budget appear reasonable based on the facility receiving FQHC designation.

The submitted sensitized D&TC rate based budget indicates a net loss of (\$231,327) in Year 1 and a net income of \$173,368 in Year 3. Revenues are based on the current reimbursement methodologies for D&TC facilities. The sensitized budget appear reasonable.

BFA Attachment A is the pro-forma balance sheet of Upstate Family Health Center, Inc. which indicates a positive fund balance of \$ 36,993 as of the first day of operations.

BFA Attachment B is the 2012 and 2013 certified and the 2014 internal financial statements for UCP as of November 30, 2014. The 2012 and 2013 statements show the facility generated an average operating income of \$1,266,057 and had an average positive net asset position and average positive working capital position for the period shown. The latest 2014 internal financial statements show the facility generated an operating income of \$1,500,607 and had a positive net asset position and positive working capital position for the period shown.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Pro-forma Balance Sheet of Upstate Family Health Center, Inc.
BFA Attachment B	UCP 2012-2013 Certified and 2014 Internal Financial Statements

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Upstate Family Health Center Inc. as the new operator of four (4) sites currently operated by UCP & Handicapped Persons of Utica Area Inc., and relocate three (3) sites to two (2) new locations for a total of three (3) sites, 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:

142133 B

Upstate Family Health Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of an executed Management Support Services Agreement, acceptable to the Department. [HSP]
3. Submission of an executed acquisition agreement acceptable to the Department of Health. [BFA]
4. Submission of the applicant's executed Certificate of Incorporation, acceptable to the Department. [CSL]
5. Submission of evidence of the transfer of operations from Upstate Cerebral Palsy to the applicant, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation of Federally Qualified Health Center (FQHC) designation for Upstate Family Health Center, Inc. [BFA]
3. Submission of an executed FQHC sub-recipient agreement between Rochester Primary Care Network d/b/a Regional Primary Care Network (RPCN) and Upstate Family Health Center, Inc. [BFA]
4. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
5. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
6. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
7. The clinical space must be used exclusively for the approved purpose. [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*.



Public Health and Health Planning Council

Project # 142212-E
S.L.A. Quality Healthcare

Program: Diagnostic and Treatment Center **County:** Kings
Purpose: Establishment **Acknowledged:** November 19, 2014

Executive Summary

Description

S.L.A. Associates, LLC d/b/a S.L.A. Quality Healthcare (SLA), a New York limited liability company, is requesting approval to be established as the operator of an Article 28 diagnostic and treatment center (D&TC) located at 201 Kings Highway, Brooklyn (Kings County). The D&TC location is currently operated as the main clinic site of City Wide Health Facility, Inc. (City Wide), a proprietary Article 28 D&TC that also operates an extension clinic site located at 105 Kings Highway, Brooklyn, NY. Upon approval of this CON, City Wide's 201 Kings Highway site will transition to SLA, and the 105 Kings Highway location will convert to become City Wide's main and only site location.

SLA has entered into an Agreement of Purchase and Sale with City Wide to transfer ownership of the 201 Kings Highway site to SLA. City Wide will continue being a Medicaid provider after approval of this application. City Wide will retain, and SLA will not assume, any of the liabilities to Medicaid and/or Medicare Programs for the period prior to closing. SLA will continue to provide all of the services currently offered by City Wide at the 201 Kings Highway site, including the following: primary medical care, medical social services, optometry, physical medicine and rehabilitation, podiatry, psychology, occupational therapy, physical therapy, and speech language pathology.

SLA is a joint venture among Stephen Gersten, Psy. D., Abram Gersten, LCSW, and Interborough Developmental Consultation Center, Inc., a voluntary not-for-profit Article 31 licensed provider of outpatient mental health services in Kings County. It is noted that Stephen Gersten and Abram Gersten are, respectively, the CEO and COO of Interborough.

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

<u>Current Operator</u>	
City Wide Health Facility, Inc. Alexander Zharov	100%
<u>Proposed Operator</u>	
S.L.A. Associates, LLC d/b/a S.L.A. Quality Healthcare	
Interborough Developmental Consultation Ctr, Inc.	91.0%
Stephen Gersten, Psy. D.	4.5%
Abram Gersten, LCSW	4.5%

OPCHSM Recommendation
Contingent approval

Need Summary
S.L.A. Associates, LLC d/b/a S.L.A. Quality Healthcare proposes to become the new operator of an existing diagnostic and treatment center at 201 Kings Highway, Brooklyn, 11223, Kings County, currently operated by City Wide Health Facility, Inc. City Wide Health Facility will continue to operate its extension clinic at 105 Kings Highway, Brooklyn, 11223, Kings County. Upon approval of this project, City Wide Health Facility will convert its 105 Kings Highway site address to their main site.

The number of projected visits is 18,376 in Year 1. There are no changes in services.

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

Financial Summary

The purchase price of \$800,000 will be provided from members' equity. There are no project costs associated with this application.

Subject to the noted contingency, the applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

Budget:	Revenues:	\$1,927,095
	Expenses:	<u>\$1,691,077</u>
	Gain:	\$236,018

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of executed building lease acceptable to the Department. [BFA]
3. Submission of a Certificate of Assumed Name that is acceptable to the Department. [CSL]
4. Submission of site control that is acceptable to the Department. [CSL]
5. Submission of a fully executed Restated Articles of Organization that is acceptable to the Department. [CSL]
6. Submission of a fully executed Operating Agreement that is acceptable to the Department. [CSL]
7. Submission of seller's Certificate of Amendment or Certificate of Dissolution as the case may be that is acceptable to the Department. [CSL]
8. Submission of a Medicaid Affidavit that is acceptable to the Department. [CSL]
9. Submission of a Certificate of Amendment for the Certificate of Incorporation of Interborough Developmental and Consultation Center, Inc. that is acceptable to the Department. [CSL]
10. Submission of Bylaws for Interborough Developmental and Consultation Center, Inc. that are acceptable to the Department. [CSL]
11. Submission of a list providing the name and interest or position held for each member, director and officer of Interborough Developmental and Consultation Center, Inc. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from other adjacent entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

April 16, 2015

Need Analysis

Background

S.L.A. Associates, LLC d/b/a S.L.A. Quality Healthcare seeks approval to become the new operator of an existing diagnostic and treatment center at 201 Kings Highway, Brooklyn, 11223, Kings County, currently operated by City Wide Health Facility, Inc. City Wide Health Facility will continue to operate its extension clinic at 105 Kings Highway, Brooklyn, 11223, Kings County. Upon approval of this project, City Wide Health Facility will convert its 105 Kings Highway site address to their main site.

Analysis

The service area is Southern Kings County. The existing D&TC currently provides Medical/Social Services O/P, Optometry O/P, Physical Medicine and Rehabilitation O/P, Podiatry O/P, Primary Medical Care O/P, Psychology O/P, Therapy Occupational O/P, Therapy-Physical O/P, and Therapy-Speech Language Pathology O/P. There will be no changes in the services offered at the clinic due to the change in ownership. The number of projected visits is 18,376 in Year 1 and 19,111 in Year 3.

Conclusion

As there are no changes in services, there is no impact on need.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

S.L.A. Associates, LLC d/b/a S.L.A. Quality Healthcare seeks approval to become the new operator of an existing diagnostic and treatment center at 201 Kings Highway in Brooklyn (Kings County) which is currently operated by City Wide Health Facility, Inc. City Wide will continue to operate its (current extension clinic) site at 105 Kings Highway and will re-designate that address as its main site upon approval of this CON application.

S.L.A Quality Healthcare is a joint venture among Stephen Gersten, Abram Gersten, and Interborough Developmental and Consultation Center, Inc. Interborough currently refers patients who need medical services to a variety of community based health care providers, however, coordination of care and feedback pose challenges. This project aims to enhance the ability to coordinate mental health and medical services to assure that patients receive necessary care and to help avoid the high cost results when patients do not access the care recommended.

There are no significant programmatic changes anticipated as a result of this proposal. It is anticipated that staffing will increase by 16.80 FTEs in the first year and 17.10 FTEs in the third year of operation.

Character and Competence

The members of S.L.A. Associates, LLC are:

Name	Percentage
Stephen Gersten, Psy.D.	4.5%
Abram Gersten, LCSW	4.5%
Interborough Developmental & Consultation Center, Inc.	91.0%

Board Members

Mark Feldman
Louisa Jimenez
Augusta Wilson, RN
Jacqueline Caesar
Phyllis Pariser
Charles Levine

Since 1974, Interborough Developmental and Consultation Center, Inc. (a not-for-profit corporation) has been providing Article 31 Mental Health Services. It currently operates four licensed clinics, nine licensed school-based clinics serving 21 schools, and provides Mobile Response Team services to school crises in Brooklyn. Dr. Gersten has been an Interborough employee for nearly 22 years and currently serves as the Chief Operating Officer. Mr. Gersten has been employed by Interborough for 20 years and serves as its Chief Administrative Officer.

Information was similarly submitted for the Medical Director, Dr. Igor Zakharov, a family practice physician with over ten years of experience.

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

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement, which is summarized as follows:

Date:	July 7, 2014
Seller:	City Wide Health Facility, Inc.
Purchaser:	S.L.A. Associates, LLC d/b/a S.L.A. Quality Healthcare
Acquired Assets:	The business and operation of the facility; the Seller's, right, title and interest in and to all furniture, fixtures, equipment, furnishings, appliances, tools, instruments, machinery, computers, computer equipment and hardware, websites, office equipment, parts, supplies, and other tangible property owned by the Seller at and prior to the Closing Date, which are used in the operation of the facility; all inventory, supplies and other articles of personal property; all of the Seller's interests in the assumed contracts; patient and resident funds held in trust; all security deposits and prepayments, if any, for future services held by the seller; all policies and procedure manuals, referral sources, computers excluding software to maintain seller's ledgers or financial records; all telephone numbers; e-mail and websites used by the facility; copies of all business records in seller's possession relating to the facility, except general ledgers; all patient records relating to the facility; copies of all employee and payroll records; goodwill in connection with the business and to the extent assignable all license and permits held or owned by Seller relating to the ownership and operation of the facility.
Excluded Assets:	The seller shall retain and continue to operate an extension clinic at 105 Kings Highway and retains all assets not listed above, accrued and accumulated through the Closing, including: all of the Seller's cash and cash equivalents, accounts receivable, claims, causes of action and legal rights, tax refunds, replacement reserves, security and utility deposits, prepaid expenses, books and records related to the Seller, retroactive rate increases, proceeds from any rate appeal revisions or adjustments, and all insurance policies and payments due thereunder.

Purchase Price:	\$800,000
Payment:	\$ 50,000 deposit with Escrow Agent upon execution of Agreement; \$250,000 deposit with Escrow Agent upon completion due diligence review; \$500,000 balance paid at closing.

The applicant's financing plan appears as follows: cash equity \$800,000.

BFA Attachments A through C are the 2013 and 2014 certified financial statements of Interborough Development Consultation Center, Inc. and their internal financial statements through to December 31, 2014. BFA Attachment D presents the net worth statements of proposed members Stephen Gersten and Abram Gersten. BFA Attachments A through D indicate sufficient resources to meet the equity requirement.

Lease Agreement

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

Premises:	5,464 sq. ft. located at 201 & 201A Kings Highway, Brooklyn, NY 11223
Owner/Landlord:	Rellim Realty, LLC
Lessee:	S.L.A. Associates, LLC d/b/a S.L.A. Quality Healthcare
Term:	10 years with an option to extend for five additional years
Rent:	\$151,140 per year (\$27.66 sq. ft.) plus 5% annual increase starting in the 2nd year.
Provisions:	Utilities, insurance, and maintenance

The applicant states the lease is an arm's length agreement and has provided two letters from New York State licensed realtors attesting to the rent reasonableness.

Operating Budget

The applicant has submitted first year's operating budget, in 2015 dollars, as summarized below:

	<u>Current Year</u>	<u>Year 1 Incremental</u>	<u>Year 3 Incremental</u>	<u>Year 3 Total</u>
Revenues	\$1,651,185	\$201,791	\$275,910	\$1,927,095
Expenses:				
Operating	\$1,452,512	\$14,076	\$29,845	\$1,482,357
Capital	\$195,578	(\$11,866)	\$13,142	\$208,720
Total Expenses	\$1,648,090	\$2,210	\$42,987	\$1,691,077
Revenues over Expenses (Loss)	\$3,095	\$199,581	\$232,923	\$236,018
Utilization (visits)	16,375	2,001	2,736	19,111
Cost Per Treatment	\$100.65			\$88.49

Utilization by payer source for the current year and the first and third year subsequent to the change in operator, is summarized below:

Medicaid Managed Care	32.48%
Medicare Fee-For-Service	14.27%
Medicare Managed Care	21.41%
Commercial Managed Care	26.06%
Private Pay & All Other	5.78%

Revenues are based on current reimbursement methodologies for Medicaid and Medicare, while commercial revenues were based on experience. Utilization is based on City Wide's current experience, with projected increases due to community outreach and patient referrals from area mental health providers. Expense assumptions are based on current operations with increases to Year 3 related to increased utilization. Capital costs decrease in Year 1, as the applicant will not be assuming rental

expense related to non-attached leased space used by the Seller for storage. By Year 3 those savings are offset by an increase in the rental rate. The projected volume to cover cost is expected to be approximately 89% of budgeted visits.

Capability and Feasibility

Total purchase price of \$800,000 will be met with members' equity. Review of BFA Attachments A through D shows sufficient liquid assets to complete the transaction. There are no project costs associated with this application.

Working capital requirements are estimated at \$275,050 based on two months of first year expenses, which will be met with members' equity. Interborough's 2014 certified financial statements (BFA Attachment B) shows that the facility had a positive net asset position of \$13,663,404 through June 30, 2014, and their internal financial statements as of December 31, 2014 (BFA Attachment C) show a positive net asset position of \$14,793,727. The net worth statements of proposed members Stephen Gersten and Abram Gersten (BFA Attachment D) show sufficient liquid assets to meet their proportionate share. The applicant has sufficient resources to meet the working capital requirement.

BFA Attachment E is the pro forma balance sheet of SLA as of the first day of operations, which indicates a positive members' equity of \$1,118,000.

The submitted budget projects positive income for the first and third years of \$202,676 and \$236,018, respectively. Revenues are based on current D&TC reimbursement methodologies for Medicaid and Medicare, while commercial revenues were based on City Wide's historical experience. The budget appears reasonable.

BFA Attachments F and G are City Wide's 2013 certified financial summary and cash basis internal summary as of December 18, 2014, which shows the D&TC had positive working capital position and generated positive operating income.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Interborough Developmental Consultation Center, Inc.'s June 30, 2013 certified financial statements.
BFA Attachment B	Interborough Developmental Consultation Center, Inc.'s June 30, 2014 certified financial statements.
BFA Attachment C	Interborough Developmental Consultation Center, Inc.'s internal financial statements as of December 31, 2014.
BFA Attachment D	Net Worth Statements of Steven Gersten and Andrew Gersten
BFA Attachment E	Pro Forma Balance Sheet for S.L.A. Quality Healthcare.
BFA Attachment F	City Wide Health Facility, Inc.'s 2013 certified financial summary
BFA Attachment G	City Wide Health Facility, Inc.'s 2014 internal financial summary

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish S.L.A. Associates as the new operator of the facility located at 201 Kings Highway, Brooklyn which is currently operated by City Wide Health Facility Inc., and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

RESOLVED, that 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:

142212 E

S.L.A. Quality Healthcare

APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of executed building lease acceptable to the Department. [BFA]
3. Submission of a Certificate of Assumed Name that is acceptable to the Department. [CSL]
4. Submission of site control that is acceptable to the Department. [CSL]
5. Submission of a fully executed Restated Articles of Organization that is acceptable to the Department. [CSL]
6. Submission of a fully executed Operating Agreement that is acceptable to the Department. [CSL]
7. Submission of seller's Certificate of Amendment or Certificate of Dissolution as the case may be that is acceptable to the Department. [CSL]
8. Submission of a Medicaid Affidavit that is acceptable to the Department. [CSL]
9. Submission of a Certificate of Amendment for the Certificate of Incorporation of Interborough Developmental and Consultation Center, Inc. that is acceptable to the Department. [CSL]
10. Submission of Bylaws for Interborough Developmental and Consultation Center, Inc. that are acceptable to the Department. [CSL]
11. Submission of a list providing the name and interest or position held for each member, director and officer of Interborough Developmental and Consultation Center, Inc. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from other adjacent entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]

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*.



Public Health and Health Planning Council

Project # 142257-B
Liberty Resources, Inc. d/b/a Liberty Resources Family Health Clinic

Program: Diagnostic and Treatment Center **County:** Onondaga
Purpose: Establishment and Construction **Acknowledged:** December 18, 2014

Executive Summary

Description

Liberty Resources, Inc. d/b/a Liberty Resources Family Health Clinic (Liberty), a New York State not-for-profit corporation, requests approval for the establishment of an Article 28 diagnostic and treatment center (D&TC) to be located at 1045 James Street, Syracuse (Onondaga County), New York. The proposed D&TC will be co-located within Liberty’s Brownell Center for Behavioral Health, a NYS Office of Mental Health (OMH) Article 31 licensed outpatient mental health clinic. Liberty Resources, Inc. has been awarded a 3-year grant from the OMH totaling \$500,000 to integrate primary care into the mental health setting at the James Street site. The proposed D&TC will be certified to provide medical services-primary care and will work collaboratively with Liberty’s Article 31 program to coordinate and improve health care services delivery to individuals with mental health and/or substance abuse conditions. The D&TC will occupy 1,437 square feet on the first floor of the 1045 James Street location.

Liberty Resources, Inc. has been designated as a DSRIP safety net OMH provider and is participating as a partner provider in several performing provider systems (PPSs), including Central New York DSRIP PPS with University Hospital as the lead entity. The applicant states that approval of the proposed D&TC will facilitate achievement of the PPS’s DSRIP project to integrate primary care services and behavioral health.

OPCHSM Recommendation
Contingent Approval

Need Summary

Liberty Resources, Inc. proposes to establish a new diagnostic and treatment center to provide medical services-primary care at 1045 James Street, Syracuse, 13203, Onondaga County. Liberty Resources currently operates its Brownell Center for Behavioral Health, an Article 31 licensed outpatient mental health clinic, at 1045 James Street. The proposed D&TC will be called Liberty Resources Family Health Clinic (LRFHC), and it will be co-located within the Brownell Center for Behavioral Health. The Office of Mental Health (OMH) awarded a three year grant to LRFHC to integrate primary care into a mental health setting at the James Street site. The proposed project will improve access to care for the special needs of individuals with mental health and/or substance abuse conditions. The number of projected visits is 3,415 in Year 1.

Program Summary

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

Financial Summary

There are no project cost associated with this application other than the CON application fee.

Budget:	Revenues	\$632,677
	Expenses	<u>632,677</u>
	Gain/Loss	\$0

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

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 transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of executed building lease acceptable to the Department of Health. [BFA]
3. Submission of the signed and dated Certificate of Amendment of the Certificate of Incorporation of Liberty Resources, Inc., acceptable to the Department. (CSL)
4. Submission of the applicants amended by-laws, acceptable to the Department. (CSL)

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to completion of the project, for record purposes. [AES]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]

Council Action Date

April 16, 2015

Need Analysis

Background

Liberty Resources, Inc. (LR) seeks approval to establish a new diagnostic and treatment center (D&TC) to provide medical services-primary care. It will be located at 1045 James Street, Syracuse, 13203, Onondaga County. LR currently operates its Brownell Center for Behavioral Health (BCBH), an Article 31 licensed outpatient mental health clinic, at 1045 James Street in Syracuse. The proposed new D&TC, which will be called Liberty Resources Family Health Clinic (LRFHC), will be co-located within the Brownell Center for Behavioral Health.

Analysis

The service area is the City of Syracuse and surrounding communities. The proposed project is located in a Health Professional Shortage Area as follows (Source-HRSA):

- Health Professional Shortage Area for Primary Care Services:
Medicaid Eligible-Syracuse
- Health Professional Shortage Area for Mental Health Services:
Medicaid Eligible-City of Syracuse

The number of projected visits is 3,415 in Year 1 and 9,204 in Year 3. The applicant will have a back-up and transfer agreement with Upstate University Hospital, located 1.7 miles and 7 minutes away. The applicant is committed to serving individuals needing care regardless of their ability to pay or the source of payment.

Conclusion

The proposed new D&TC will better address the needs of individuals with mental health and/or substance abuse conditions. The integration of primary care services into a mental health setting in one location will improve access to primary care services for these individuals.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Liberty Resources, Inc. (Liberty), a not-for-profit human service agency which currently operates the Brownell Center for Behavioral Health, an Article 31 licensed outpatient mental health clinic located at 1045 James Street in Syracuse, seeks approval to establish a diagnostic and treatment center to be co-located with the Brownell Center that will provide primary care medical services.

Liberty has been awarded a three year grant by the Office of Mental Health (OMH) to integrate primary care into a mental health setting at the James Street site. As individuals with mental health conditions and/or substance abuse disorders are at greater risk for complex physical health problems, Liberty's aim is to enhance access for its diverse population due to the numerous special needs and conditions which significantly impact their ability to obtain adequate primary care in existing clinics.

Proposed Operator	Liberty Resources, Inc.
Doing Business As	Liberty Resources Family Health Clinic
Site Address	1045 James Street, Syracuse (Onondaga County)
Hours of Operation	8:30 am – 7:00 pm Monday through Thursday and 8:30 am – 5:00 pm Friday (hours to be added as volume & demand increases)
Services	Medical Services – Primary Care
Staffing (1st Year / 3rd Year)	2.20 FTEs / 4.20 FTEs
Medical Director(s)	Dr. David Kang
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by University Hospital 1.7 miles / 7 minutes away

Character and Competence

Liberty Resources, Inc. is a not-for-profit corporation. The members of the Board (with their respective positions) are listed below.

<u>Name</u>	<u>Title</u>
Robert Toole	President, Board of Directors
Kasia Anthis	Member, Board of Directors
David Bowles	Member, Board of Directors
William Conole	Member, Board of Directors
Daniel DeGirolamo	Member, Board of Directors
Scott Gucciardi	Member, Board of Directors
David Harris	Member, Board of Directors
Michael Madigan	Member, Board of Directors
Daniel Manning	Member, Board of Directors
Regina McGraw	Member, Board of Directors
Nancy Mudrick	Member, Board of Directors
Winthrop Thurlow	Member, Board of Directors
Leo Tully	Member, Board of Directors

Additionally, information was submitted and reviewed for the Chief Executive Officer, Mr. Carly Coyle, and the Medical Director, David E. Kang, M.D.

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

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Agreement

The applicant has leased the 18,743 sq. ft. building at 1045 James Square since March 2008 from the landlord, Mesa of NY, Inc. The D&TC will occupy 1,437 sq. ft. on the first floor of the building. The applicant has submitted an addendum to the term of the existing lease for D&TC site control, as summarized below:

Premises:	18,734 sq. ft. located at 1045 James Street, Syracuse, NY, of which 1,437 sq. ft. will be D&TC space.
Landlord:	Mesa of NY, Inc.
Lessee:	Liberty Resources, Inc.
Term:	6 years commencing 1/1/2014, 1 automatic 6 year renewal commencing 1/1/2020.
Rent:	\$306,675 per annum (\$16.37 per square feet)
Provisions:	Tenant responsible for utilities and insurance

The applicant states that the lease is an arm's length agreement and has provided letters from two NYS licensed realtors attesting to the rental rate as being of fair market value.

Total Project Cost and Financing

There are no project cost associated with this application.

Operating Budget

The applicant has submitted first and third years operating budgets for the proposed D&TC, in 2015 dollars, as summarized below:

	<u>Year 1</u>	<u>Year 3</u>
Revenues		
Medicaid Fee-for-Service	\$83,510	\$224,772
Medicaid Managed Care	167,003	451,659
Medicare Fee-for-Service	911	2,485
Medicare Manage Care	777	2,096
Commercial Fee-for-Service	12,508	33,756
Private Pay	3,134	7,190
Bad Debt	(44,640)	(89,281)
NYS OMH Grant	<u>200,000</u>	<u>0</u>
Total Revenue	\$423,203	\$632,677
Expenses		
Operating	\$396,090	\$605,564
Capital	<u>\$27,113</u>	<u>\$27,113</u>
Total Expenses	\$423,203	\$632,677
Net Income or (Loss)	\$0	\$0
Utilization (visits)	3,415	9,204
Cost per visits	\$123.92	\$68.74

The NYS OMH has awarded Liberty Resources, Inc. a 3-year \$500,000 grant payable in quarterly installments effective 1/1/2014 - 12/31/2016 to integrate primary medical and behavioral health care. First year revenue includes \$200,000 of this grant funding to support start-up of the D&TC operation. The applicant has indicated that first year expenses are inflated due to anticipated startup costs.

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

Medicaid Fee-For-Service	30.5%
Medicaid-Managed Care	61.3%
Medicare Fee for Service	0.3%
Medicare Managed Care	0.3%
Commercial Fee-For-Service	4.6%
All Other	1.0%
Charity Care	<u>2.0%</u>
Total	100.0%

Revenue, expense, and utilization assumptions are based on the actual experience of two existing Article 28 clinics in the local area, Medical Home Upstate and Upstate United Cerebral Palsy. Both clinics provide the same type of primary care services as proposed by Liberty. Medicaid revenues are based on current APG rates.

Capability and Feasibility

BFA Attachments B and C are Liberty Resources, Inc.'s 2012-2013 certified financial summary and their internal financial summary as of September 30, 2014, which indicate the availability of sufficient resources.

Working capital requirements are estimated at \$105,446 which appears reasonable based upon two months of third year expenses. The working capital requirement will be provided from equity. Review of BFA Attachments B and C indicates sufficient resources to meet the working capital requirement. BFA Attachment D is the pro-forma balance sheet that shows operation will start off with \$105,446 in equity.

The budget projects revenues will equal expenses during for the first and third years of operations. Revenues are projected based on actual experience of two existing Article 28 clinics in the local area, who are providing the same type of primary care services proposed by the Liberty. Reimbursement rates are based on the APG rates. The budget appears reasonable.

As shown on BFA Attachment B, Liberty Resources Inc. has maintained an average income from operation of \$1,025,468 for 2012 through 2013. The internal financial summary as of September 30, 2014, shows an operating surplus of \$363,487.

It appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Liberty Resources, Inc. Organization Chart
BFA Attachment B	Financial Summary for 2012 and 2013, Liberty Resources Inc.
BFA Attachment C	Financial Summary-Internal 09/30/2014, Liberty Resources Inc.
BFA Attachment D	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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Liberty Resources, Inc., as the operator of a new diagnostic and treatment center to be located at 1045 James Street, Syracuse, 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:

142257 B

FACILITY/APPLICANT:

Liberty Resources, Inc. d/b/a Liberty Resources
Family Health Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
2. Submission of executed building lease acceptable to the Department of Health. [BFA]
3. Submission of the signed and dated Certificate of Amendment of the Certificate of Incorporation of Liberty Resources, Inc., acceptable to the Department. (CSL)
4. Submission of the applicants amended by-laws, acceptable to the Department. (CSL)

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to completion of the project, for record purposes. [AES]
3. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
4. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
5. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
6. The clinical space must be used exclusively for the approved purpose. [HSP]

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*.



Public Health and Health Planning Council

Project # 131349-E
 Sea-Crest Acquisition 1, LLC d/b/a Sea-Crest Health Care Center

County: Kings
Purpose: Establishment

Program: Residential Health Care Facility
Acknowledged: July 19, 2013

Executive Summary

Description

Sea Crest Acquisition 1, LLC, an existing New York limited liability company, requests approval to be established as the operator of Sea-Crest Health Care Center, a 320-bed Article 28 residential health care facility (RHCF) located at 3035 West 24th Street, Brooklyn (Kings County). The proposed operator will be decertifying 15 beds and as a result, upon approval of this application the total certified bed capacity of the RHCF will be 305 beds. The applicant will not be purchasing the real estate as part of this application. There will be no change in services provided. The applicant entered into an asset purchase agreement dated April 4, 2013 with New Sea Crest Health Care Center, LLC.

The current and proposed operator is as follows:

CURRENT

New Sea Crest Health Care Center, LLC	
Members:	
Alissa Dicker	24.63%
Jaclyn Dicker	24.62%
Mathias Dicker Stein	49.25%
Patricia Pyle	.50%
Howard Present	.50%
Howard Small	.50%

PROPOSED

Sea Crest Acquisition 1, LLC	
Members:	
Pasquale Debenedictis	32.50%
Alex Solovey	32.50%
Solomon Rutenberg	5.00%
Michael Schreiber	30.00%

OPCHSM Recommendation

Contingent Approval

Need Summary

There will be a change in bed capacity at this facility upon approval of this application by the Public Health and Health Planning Council as shown in the following table.

Sea-Crest Health Care Center	Current	Proposed Action	Upon Completion
RHCF Beds	320	(15)	305
Total	320	(15)	305

Sea-Crest Health Care Center's utilization was 94.1% in 2011, 79.8% in 2012, and 33.7% in 2013. Current utilization, as of February 11, 2015 was 92.2%. With the reduction of 15 certified beds, utilization is expected to increase to approximately 96%. The proposed operator also plans to make the following additional changes to the facility to further improve census, case mix, and marketing:

- Implement a full line of Chinese centric services, ranging from dietary taste to nurses who speak Cantonese to cater directly to the growing Chinese population;
- Develop a cardiac rehabilitation unit to minister to the high prevalence of congestive heart failure within the population;
- Create a state of the art rehabilitation center; and
- Create more space for the residents to enjoy in an effort to make the environment more comfortable and home-like.

Program Summary

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

Financial Summary

The purchase price of \$10 will be met via cash at Closing.

Budget:

Revenues	\$33,643,846
Expenses	<u>30,087,621</u>
Net Income	\$3,556,225

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission and programmatic review of the plan to reduce the bed count by fifteen (15) beds. The plan submitted must specify the actual beds to be decertified in the bed count reduction. [LTC]
5. Submission of an executed building lease, acceptable to the Department. [BFA]
6. Submission of a copy of the amended Operating Agreement of Sea Crest Acquisition I, acceptable to the Department. [CSL]
7. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of a copy of the executed lease agreement between the applicant and D&S Real Estate Company, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 16, 2015

Need Analysis

Analysis

There is currently a need for 8,357 beds in the New York City Region as indicated in Table 1 below. However, the average occupancy for New York City was 91.6% in 2013 as indicated in Table 2.

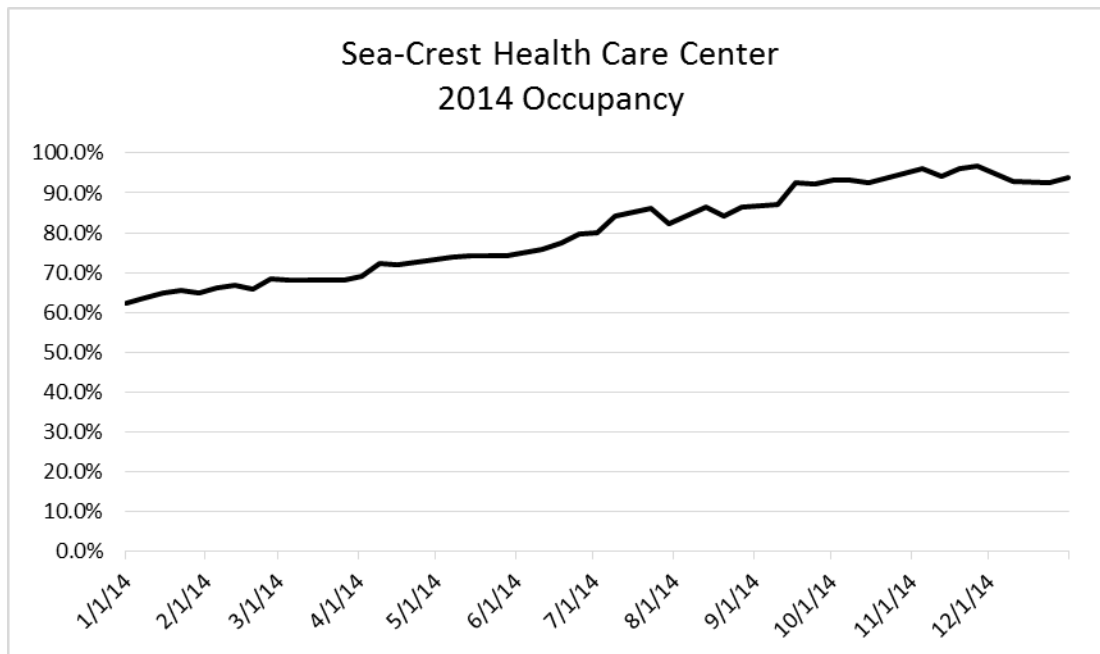
Table 1: RHCN Need – New York City Region

2016 Projected Need	51,071
Current Beds	42,178
Beds Under Construction	536
Total Resources	42,714
Unmet Need	8,357

Table 2: Sea-Crest Health Care Center/Kings County/New York City Region Occupancy

Facility/County/Region	Occupancy 2011	Occupancy 2012	Occupancy 2013
Sea-Crest Health Care Center	94.1%	79.8%	33.7%
Kings County	94.3%	94.4%	91.4%
New York City Region	94.8%	94.8%	91.6%

Sea-Crest Health Care Center's utilization was 94.1% in 2011, 79.8% in 2012, and 33.7% in 2013. According to the applicant, declining utilization could be attributed to the physical appearance of the building along with the outdated services that were being provided. The low occupancy in 2012 and 2013, was because of the October, 2012 Superstorm Sandy, which caused first floor flooding, which housed electrical switch gears, boilers, cogeneration, communication, and medical equipment; split unit air conditioners; data servers; laundry room; staff locker rooms; elevators and their motor rooms; central supply storage; and the kitchen (including all equipment and food). As a result, Sea-Crest Health Care Center had to close for renovations and did not reopen until May 6, 2013. Although self-reported occupancy averaged about 80% in 2014, the facility showed a steady increase throughout the year, as shown in the following chart:



Access

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

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

Sea-Crest Health Care Center's Medicaid admissions of 34.9% matched the Kings County 75% rate in 2012. In 2013, Sea-Crest Health Care Center's Medicaid admissions of 64.0% exceeded the Kings County 75% rate of 24.8%.

Conclusion

The steadily increasing restoration of occupancy at Sea Crest since the end of 2013, together with the proposed reduction of 15 beds and the new owner/operator's described efforts to further improve census, case mix and marketing, suggest that the facility has returned to a sustainable level of high occupancy and efficient utilization.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Barnwell Nursing and Rehabilitation Center	10/2004 to present
East Neck Nursing and Rehabilitation Center	02/2006 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Sayville Nursing & Rehab Center	12/2012 to present
Workmen's Circle Multicare Center	07/2013 to present
Shore View Nursing and Rehabilitation Center	06/2014 to present

Connecticut Nursing Home

Cassena Care at Norwalk	08/2013 to present
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Individual Background Review

Pasquale DeBenedictis is a certified public accountant (CPA) with license in good standing. He has been employed as the Director of Finance at the Carillon Nursing and Rehabilitation Center since 1997. Mr. DeBenedictis discloses ownership interests in the following residential health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (CT)	08/2013 to present

Alex Solovey is a New York State licensed physical therapist considered to be in good standing. He has been employed as the Director of Rehabilitation at Theradynamics Physical Therapy Rehabilitation P.C. since 1999. Mr. Solovey discloses ownership interests in the following residential health care facilities:

Barnwell Nursing and Rehabilitation Center	11/2003 to present
East Neck Nursing and Rehabilitation Center	02/2005 to present
Mills Pond Nursing and Rehabilitation Center	10/2010 to present
Sayville Nursing and Rehabilitation Center	12/2012 to present
Workmen's Circle Multicare Center	07/2013 to present
Cassena Care at Norwalk (CT)	08/2013 to present

Michael Schreiber holds an active New York Nursing Home Administrator's license and is considered to be in good standing. Mr. Schreiber is employed as the Vice President of Strategic Planning at PJA Consulting Services LLC located in Woodbury, NY and as the President of MAS Consulting Associates located in Great Neck, NY. He is also currently employed as the Assistant Executive Director at Shore View Nursing Home and as the Executive Director at Sea-Crest Health Care Center, both located in Brooklyn, NY. Mr. Schreiber discloses ownership interests in the following residential health care facilities:

Shore View Nursing and Rehabilitation Center	06/2014 to present
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Soloman Rutenberg is employed as CEO at Workmen's Circle Multicare Center, a skilled nursing facility located in Bronx, NY and has been in that position since 2006. Mr. Rutenberg discloses an ownership interest in the following health care facility:

Workmen's Circle Multicare Center	07/2013 to present
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Character and Competence - Analysis

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

A review of Barnwell Nursing and Rehabilitation Center for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-15-001 issued January 12, 2014 for surveillance findings on March 13, 2012. Deficiencies were found under 10 NYCRR 415.12(h)(1) – Quality of Care : Accidents/Supervision.

A review of operations of Barnwell Nursing and Rehabilitation Center for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no repeat enforcements.

A review of operations for East Neck Nursing and Rehabilitation Center, Mills Pond Nursing and Rehabilitation Center, Sayville Nursing and Rehabilitation Center, Workmen's Circle Multicare Center, and Shore View Nursing and Rehabilitation Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of a letter from the Department of Public Health in the State of Connecticut as well as an affidavit submitted by the applicant for Cassena Care at Norwalk in the State of Connecticut for the periods identified above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements. The facility is operating in compliance with state and federal laws and regulations.

Project Review

This application is proposing to reduce the bed count at the nursing home by fifteen (15) licensed RHCf beds to operate at a capacity of 305 RHCf beds. The nursing home fully complies with the 2013 CMS sprinkler mandate.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the nursing home, summarized below:

Date:	April 4, 2013
Seller:	New Sea Crest Health Care Center, LLC
Purchaser:	Sea Crest Acquisition 1, LLC
Assets Acquired:	Business and operation of the Facility; all inventory, supplies and other articles of personal property; all contracts, agreements, leases, undertakings, commitments and other arrangements which Buyer agrees to assume at the Closing; the name "Sea Crest Health Care Center"; all security deposits and prepayments; all menus, policies and procedures manuals and computer software; all telephone numbers and telefax numbers used by the Facility; all resident/patient records relating to the Facility; goodwill in connection with the operation of the Facility; all accounts receivable relating to services rendered by the Facility on and after the Effective Date; all rate increases and/or lump payments resulting from rate appeals with respect to third party payments, which become effective or paid on or after the Effective Date; all cash, marketable securities, deposits and cash equivalents, and all accrued interest and dividends and all reimbursement made prior to, on or after the Closing Date by Medicare, Medicaid or any third party payor, excluding insurance proceeds, for storm damage suffered by Seller and/or the Facility relating to or caused by Hurricane Sandy.
Excluded Assets:	All insurance policies and claims, and the proceeds thereof, relating to events occurring prior to the Effective Date; all retroactive rate increases, resulting from rate appeals, with respect to third party payments for services rendered at the Facility prior to the Effective Date and all accounts receivable relating thereto and proceeds thereof, all claims, rights, causes of action, rights of recovery, rights of set off and recoup against and third parties; all amounts due from third parties related to Seller; all leasehold improvements, furniture, fixtures and equipment owned by Seller; all financial books and records of Seller; all accounts receivable related to services rendered by the Facility prior to the Effective Date; any assets of Seller not used in connection with the operation of the Seller and the real property and improvements thereon.
Assumed Liabilities:	All liabilities and obligations relating to the Facility and/or Basic Assets arising on or after the Effective Date or otherwise relating to services rendered by, or the operation of, the Facility on and after the Effective Date; all of Seller's Accounts Payable and other Liabilities and all healthcare, Medicaid and Medicare overpayments and assessments liabilities and all of Seller's Liabilities relating to the Transferred Employees for vacation, holiday time and personal days, all of which were earned but not yet taken or paid prior to the Effective Date.
Retained Liabilities:	Seller is retaining and shall remain liable for the following liabilities: any liability relating to the Excluded Assets; any liability relating to or arising out of use, ownership or operation of the Facility prior to the Effective Date other than the Assumed Liabilities; all of Seller's sick pay Liabilities existing on the day before the Effective Date and all of Seller's Accounts Payable existing on the day prior to the Effective Date, other than the Assumed Liabilities.
Purchase Price:	\$10 and the assumption of the Assumed Liabilities.
Payment of Purchase Price:	Cash at Closing

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

Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that the new operator will occupy; which is summarized below:

- Premises: The premises located at 3035 West 24th Street, Brooklyn, New York
- Lessor: New Sea Crest Acquisition 1, LLC
- Lessee: Sea Crest Acquisition 1, LLC
- Term: The lease shall terminate on March 30, 2061.
- Rental: From March 15, 2014 through March 14, 2019; \$1,500,000 per year
 From March 15, 2019 through March 14, 2024; \$2,000,000 per year
 From March 15, 2024 through March 14, 2029, \$2,100,000 per year
 For every 5 year period subsequent to March 15, 2029, the minimum annual rent shall be equal to the fair market value of the leased premises.
- Provisions: The lessee shall be responsible for real estate taxes, utilities and maintenance.

The applicant has indicated that the lease agreement will be an arm's length lease arrangement.

Operating Budget

The applicant has submitted an operating budget for 305 beds, in 2015 dollars, for the first year after the change in operator, summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues		
Medicaid Managed Care	\$249.78	\$18,886,042
Medicare Fee For Service	\$600.00	9,174,427
Medicare Managed Care	\$600.00	971,867
Commercial Fee For Service	\$300.00	3,631,544
Private Pay	\$375.00	421,142
Hospice	\$250.00	<u>558,824</u>
Total Revenues		\$33,643,846
Expenses		
Operating	\$258.32	\$27,894,163
Capital	<u>20.31</u>	<u>2,193,458</u>
Total Expenses	\$278.93	\$30,087,621
Net Income		\$3,556,225
Utilization (patient days)		107,985
Occupancy		97.00%

Utilization for the RHCf beds, broken down by payor source during the first year after the change in operator is as follows:

Medicaid Managed Care	70.02%
Medicare Fee for Service	14.16%
Medicare Managed Care	1.50%
Commercial Fee For Service	11.21%
Private Pay	1.04%
Hospice	2.07%

Revenues are projected to increase from historical (2014) because the facility was at low utilization during part of 2014 due to the effect of Hurricane Sandy. The facility has improved utilization through 2014 and currently is at pre Hurricane Sandy utilization level.

Expenses are projected to increase because of the increase in labor costs (salaries and wages and employee health benefits) due to the increased census projections.

Utilization assumptions are based on current historical experience and taking into account the reduced bed capacity to 305. Currently, the facility had utilization of 93.9% as of January 31, 2015 for 320 beds.

Capability and Feasibility

The purchase price of \$10 will be met via equity from the proposed members. The applicant will also assume some of the current operator's liabilities.

Working capital requirements are estimated at \$5,014,604, which is equivalent to two months of first year expenses. The applicant will finance \$2,507,302 at an interest rate of 1 month LIBOR + 275 basis points (approximately 2.67% as of 2/27/2015) for a five year term. A letter of interest has been provided M & T Bank for the working capital financing. The remaining \$2,507,302 will be met via equity from the proposed members' personal resources. BFA Attachment A is the personal net worth statements of the proposed members of Sea Crest Acquisition 1, LLC, which indicates the availability of sufficient funds for the equity contribution. The applicant has provided an affidavit indicating that the proposed members will provide equity disproportionate to their ownership percentages. BFA Attachment C is the pro forma balance sheet of Sea Crest Acquisition 1, LLC as of the first day of operation, which indicates a positive net asset position of \$6,507,302.

The submitted budget indicated a net income of \$3,556,225 during the first year after the change in operator. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective February 1, 2015, all eligible beneficiaries in NYC age 21 and over, in need of long term placement in a nursing facility, will be required to join a Medicaid Managed Care Plan (MMCP) or a Managed Long Term Care Plan (MLTCP). On April 1, 2015, the counties of Nassau, Suffolk, and Westchester will be phased in, and the rest of the State is scheduled to transition beginning July 1, 2015, for both dual and non-dual eligible populations. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. In order to mitigate the financial impact to NH providers during the transition to managed care, a department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided further guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to January 31, 2018 (NYC), March 31, 2018 (Nassau, Suffolk and Westchester), and June 30, 2018 (upstate), respectively.

BFA Attachment B is the financial summary of Sea-Crest Health Care Center from 2011 through 2013. As shown, the facility had an average negative working capital position and an average negative equity position from 2011 through 2013. The reason for the average negative working capital position is the result of prior year historical losses and significant losses due to Hurricane Sandy in 2012. Also, the entity incurred average historical losses of \$765,308.

BFA Attachment D is the November 30, 2014 internal financial statements of Sea Crest Health Care Center. As shown, the facility had a positive working capital position and a positive capital position through November 30, 2014. Also, the entity achieved a net income of \$1,857,020 through November 30, 2014.

BFA Attachments E through H are the financial summaries of the RHCs the proposed members have ownership interest in, and for which data subsequent to ownership transfer is available. The applicant members also have ownership interest in 2 other recently acquired RHCs, Workmen’s Circle Multicare Center (524 beds, effective 7/19/2013) and Shore View Nursing and Rehabilitation (320 beds, effective 6/19/2014), for which financial data subsequent to ownership transfer is not available.

BFA Attachment E presents the financial summary of Barnwell Nursing and Rehabilitation (236 beds) from 2011 through 2013. As shown, the entity had an average positive working capital position and an average positive net asset position from 2011 through 2013. Also, the entity achieved an average net income of \$406,533 from 2011 through 2013.

BFA Attachment F presents the financial summary of East Neck Nursing Home (300 beds) from 2011 through 2013. As shown, the entity had an average positive working capital position and an average positive net asset position from 2011 through 2013. Also, the entity achieved an average net income of \$716,835 from 2011 through 2013.

BFA Attachment G presents the 2013 financial summary of Sayville Nursing and Rehabilitation Center (180 beds, acquired 12/21/12). As shown, the entity had a positive working capital position and a negative net asset position in 2013. The negative net asset position was the result of the loss in 2013. Also, the entity achieved a net loss of \$231,056 in 2013, which was an improvement from prior years before the new operator took over.

BFA Attachment H presents the financial summary of Mills Pond Nursing & Rehabilitation (250 beds) from 2011 through 2013. As shown, the entity had an average negative working capital position and an average positive net asset position from 2011 through 2013. Also, the entity achieved an average net income of \$862,878 from 2011 through 2013.

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary- Sea Crest Health Care Center
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summary- November 30, 2014 internal financial statements
BFA Attachment E	Financial Summary- Barnwell Nursing and Rehabilitation
BFA Attachment F	Financial Summary- East Neck Nursing Home
BFA Attachment G	Financial Summary- Sayville Nursing and Rehabilitation Center
BFA Attachment H	Financial Summary- Mills Pond Nursing and Rehabilitation Center
BNHLC Attachment A	Quality Measures and Inspection Reports

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Sea-Crest Acquisition 1, LLC as the new owner and operator of Sea-Crest Health Care Center, reduce certified beds to 305, 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:

131349 E

FACILITY/APPLICANT:

Sea-Crest Acquisition I, LLC d/b/a Sea-Crest
Health Care Center

APPROVAL CONTINGENT UPON:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission and programmatic review of the plan to reduce the bed count by fifteen (15) beds. The plan submitted must specify the actual beds to be decertified in the bed count reduction. [LTC]
5. Submission of an executed building lease, acceptable to the Department. [BFA]
6. Submission of a copy of the amended Operating Agreement of Sea Crest Acquisition I, acceptable to the Department. [CSL]
7. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
8. Submission of a copy of the executed lease agreement between the applicant and D&S Real Estate Company, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Public Health and Health Planning Council

Project # 141079-E
 Hollis Park Manor Nursing Home

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: February 25, 2014

Executive Summary

Description

Hollis Park Nursing Home, Inc., the operator of Hollis Park Manor Nursing Home, an 80-bed proprietary skilled nursing facility located at 191-16 Hillside Avenue, Hollis (Queens County), requests approval to transfer 66% of the stock of the operation to six new shareholders and one current shareholder. There are currently 200 outstanding shares, and there will be 200 outstanding shares after the proposed transaction.

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

Current		
Member	Shares	%
Ahron Ebert	172 shares	86.0%
Robert Iszak	10 shares	5.0%
Susan Rubin	9 shares	4.5%
Robert Re	9 shares	4.5%
		100.0%
Proposed		
Member	Shares	%
Ahron Ebert	40 shares	20.0%
Robert Iszak	10 shares	5.0%
Susan Rubin	28 shares	14.0%
Robert Re	18 shares	9.0%
Jonathan Gewirtz	30 shares	15.0%
Yosef Ruben	28 shares	14.0%
Paul Goldfarb	28 shares	14.0%
Todd Unger	9 shares	4.5%
Kevin Unger	9 shares	4.5%
		100.0%

The purchase price for the purchase of the shareholders' interests is as follows: Jonathan Gewirtz \$75,000, Yosef Ruben \$70,000, Paul Goldfarb \$70,000, Susan Rubin

\$92,500, Robert Re \$45,000, Todd Unger \$22,500, and Kevin Unger \$22,500.

There will be no change in the day to day operation of the nursing home as a result of the shareholder change.

OPCHSM Recommendation
 Contingent Approval

Need Summary
 There will be no Need recommendation for this application.

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

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates

Financial Summary
 There are no project costs associated with this transaction.

Budget:	Revenues:	\$7,180,493
	Expenses:	<u>7,053,100</u>
	Gain:	\$ 127,393

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

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 the executed shareholder agreements acceptable to the Department of Health. [BFA]
2. Submission of the resolution of the Board of Directors of Hollis Park Manor Nursing Home, Inc., authorizing the project, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed bylaws of Hollis Park Manor Nursing Home Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 16, 2015

Program Analysis

Facility Information

	<u>Existing</u>	<u>Proposed</u>
Facility Name	Hollis Park Manor Nursing Home	Same
Address	191-06 Hillside Avenue Hollis, NY. 11423	Same
RHCF Capacity	80	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Hollis Park Manor Nursing Home, Inc.	Same
	Ahron Ebert 86.0%	Ahron Ebert * 20.0%
	Robert Iszak 5.0%	Jonathan Gewirtz 15.0%
	Susan Rubin 4.5%	Susan Rubin * 14.0%
	Robert Re 4.5%	Yosef Ruben 14.0%
		Paul Goldfarb 14.0%
		Robert Re * 9.0%
		Robert Iszak 5.0%
		Todd Unger 4.5%
		Kevin Unger 4.5%
		* Board Member

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Windsor Park Nursing Home	04/2005 to present
Fieldston Lodge Care Center	04/2005 to present
Bethany Gardens Skilled Living Center	04/2005 to present
Sunrise Manor Center for Nursing and Rehabilitation	04/2005 to present

Connecticut Nursing Homes

Crescent Manor	04/2005 to 10/2008
Alexandria Manor	04/2005 to present
Blair Manor	04/2005 to present
Ellis Manor	04/2005 to present

Individual Background Review

Jonathan Gewirtz lists his employment as providing fiscal oversight in the business office at Gold Crest Care Center, a nursing home located in the Bronx, New York. Mr. Gewirtz discloses no health facility interest.

Susan Rubin discloses no employment history. Ms. Rubin discloses the following health facility interests:

Windsor Park Nursing Home	06/1986 to present
Crescent Manor (CT)	12/1994 to 10/2008
Alexandria Manor (CT)	10/1993 to present
Blair Manor (CT)	12/1994 to present
Ellis Manor (CT)	05/1997 to present

Yosef Ruben lists his employment as the Director of Maintenance and as a partner at Fieldston Lodge Care Center, a nursing home located in the Bronx, New York. Mr. Ruben discloses the following health facility interests:

Fieldston Lodge Care Center	09/2003 to present
Bethany Gardens Skilled Living Center	08/2002 to present

Paul Goldfarb is a retired masonry contractor. Mr. Goldfarb discloses the following health facility interests:

Windsor Park Nursing Home	05/1996 to present
Sunrise Manor Center for Nursing and Rehabilitation	08/2004 to present

Robert Re is a New York State licensed attorney and is considered to be in good standing. He lists his employment as an administrative law judge at the New York City Department of Motor Vehicles, Traffic Violations Bureau. Mr. Re discloses the following health facility interests:

Windsor Park Nursing Home	1984 to present
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Todd Unger is a licensed attorney in the states of New York, New Jersey, and Florida. He is considered to be in good standing in all three states. Mr. Unger is self-employed at his own law firm based out of Mt. Laurel, New Jersey. Todd Unger discloses the following health facility interests:

Windsor Park Nursing Home	10/2009 to present
Sunrise Manor Center for Nursing and Rehabilitation	10/2009 to present

Kevin Unger is a licensed attorney in the states of New York, New Jersey, Pennsylvania, and Florida. He is considered to be in good standing in all four states. Mr. Unger is self-employed at his own law firm based out of Plantation, Florida. Kevin Unger discloses the following health facility interests:

Windsor Park Nursing Home	10/2009 to present
Sunrise Manor Center for Nursing and Rehabilitation	10/2009 to present

Character and Competence - Analysis

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

A review of Fieldston Lodge Care Center for the period identified above reveals the following:

- The facility was fined \$10,000 pursuant to Stipulation and Order NH-11-040 issued July 11, 2011 for surveillance findings on August 26, 2008. Deficiencies were found under 10 NYCRR 415.3(c)(1)(iii) – Resident’s Rights; 10 NYCRR 415.4(b) – Staff Treatment of Residents; 10 NYCRR 415.12(h)(2) – Quality of Care: Accidents and Supervision; 10 NYCRR 415.26 – Administrator; and NYCRR 415.15(a) – Medical Director.
- The facility was fined \$12,000 pursuant to Stipulation and Order NH-12-019 issued March 19, 2012 for surveillance findings on January 11, 2011. Deficiencies were found under 10 NYCRR 415.4(b)(1)(i) – Free From Abuse; and NYCRR 415.12 – Quality of Care: Highest Practicable Potential.

A review of Sunrise Manor Center for Nursing and Rehabilitation for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to Stipulation and Order NH-10-032 issued September 13, 2010 for surveillance findings on May 8, 2009. Deficiencies were found under 10 NYCRR 415.12 – Quality of Care.

A review of operations of Fieldston Lodge Care Center and Sunrise Manor Center for Nursing and Rehabilitation for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no repeat enforcements.

A review of operations for Windsor Park Nursing Home and Bethany Gardens Skilled Living Center for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no enforcements.

The State of Connecticut, Department of Public Health has provided the Bureau of Nursing Home Licensure and Certification a certified letter stating that Crescent Manor, Alexandria Manor, Blair Manor, and Ellis Manor located in the state of Connecticut for the time periods indicated above results in a conclusion of substantially consistent high level of care. Although the facilities may have experienced periods of non-compliance, plans of corrections were developed and implemented in accordance with state and federal laws and regulations with substantial compliance being achieved. Currently, there are no open enforcement activities for these facilities for the time periods identified above.

Project Review

No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Conclusion

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

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Shareholder Agreement

The applicant submitted draft shareholder agreements for the purchase of the stock. The proposed shareholders will purchase the shares at the following purchase prices: Jonathan Gewirtz \$75,000; Yosef Ruben \$70,000; Paul Goldfarb \$70,000; Susan Rubin \$92,500; Robert Re \$45,000; Todd Unger \$22,500 and Kevin Unger \$22,500. The applicant has indicated that the new shareholders have already paid for their interests. The applicant provided documentation from the seller stating that he has already received the proceeds.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year subsequent to the change in the stock ownership, summarized below:

	PER DIEM	TOTAL
Revenues		
Medicaid Managed Care	\$201.02	\$4,839,758
Medicare Fee-For-Service	\$580.00	2,135,560
Commercial Fee-For-Service	\$400.00	113,200
Private Pay	\$325.00	<u>91,975</u>
Total Revenues		\$7,180,493
Expenses		
Operating	\$234.45	\$6,640,600
Capital	<u>14.56</u>	<u>412,500</u>
Total Expenses	\$249.01	\$7,053,100
Net Income		\$127,393
Utilization (patient days)		28,324
Occupancy		97.00%
Breakeven Occupancy		95.29%

Revenue assumptions are based on current payment rate for all payor sources.

Expense assumptions are based on the historical experience of the facility. Medicaid utilization is decreasing and Medicare/Private Pay is increasing from 2013 based on 2014 historical experience.

Utilization by payor source anticipated during the first year after the transfer of stock is summarized below:

Medicaid Managed Care	85.00%
Medicare Fee For Service	13.00%
Commercial Fee For Service	1.00%
Private Pay	1.00%

Capability and Feasibility

The applicant submitted draft shareholder agreements for the purchase of the stock. The shareholders will purchase their respective number of shares for the following total purchase prices: Jonathan Gewirtz \$75,000; Yosef Ruben \$70,000; Paul Goldfarb \$70,000; Susan Rubin \$92,500; Robert Re \$45,000; Todd Unger \$22,500 and Kevin Unger \$22,500. As stated in a previous section, the new shareholders already paid for their interests.

Working capital requirements are estimated at \$1,175,517, which is equivalent to two months of first year expenses. The applicant has indicated that the new shareholders will provide equity from their personal resources. BFA Attachment A is the personal net worth statements of the new shareholders, which indicates the availability of sufficient funds to meet the equity contribution for the working capital requirement.

The submitted budget indicates a net income of \$127,393 during the first year after the change in stock ownership. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective February 1, 2015, all eligible beneficiaries in NYC age 21 and over, in need of long term placement in a nursing facility, will be required to join a Medicaid Managed Care Plan (MMCP) or a Managed Long Term Care Plan (MLTCP). On April 1, 2015, the counties of Nassau, Suffolk, and Westchester will be phased in, and the rest of the State is scheduled to transition beginning July 1, 2015, for both dual and non-dual eligible populations. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. In order to mitigate the financial impact to NH providers during the transition to managed care, a department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided further guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to January 31, 2018 (NYC), March 31, 2018 (Nassau, Suffolk and Westchester), and June 30, 2018 (upstate), respectively.

BFA Attachment B is the financial summary of Hollis Park Nursing Home from 2011 through 2013. As shown, the facility had an average negative working capital position and an average positive net asset position from 2011 through 2013. The reason for the average negative working capital position is historical losses. Also, the facility achieved an average net loss of \$215,076 from 2011 through 2013. The applicant has indicated that the reason for the losses was due to low census in 2011 and 2012. During that time period, the facility was under a different management who sold their shares to one of the current shareholders who had not played an active role in the management of the facility. After the transaction in November 2012, replacement beds were purchased and the census dramatically improved to 97.3% for 2013. Many of the new patients were Medicare patients.

BFA Attachment C is the 2011 through 2013 financial summaries of the other skilled nursing facilities the proposed members have ownership interest in, and their respective membership interest percent in each. The facilities are as follows:

- Fieldston Lodge Care (200 beds) had an average negative working capital position and an average positive net asset position from 2011 through 2013. The applicant indicated that the reasons for the average negative working capital position were due to monies owed to DOH as a result of a base year audit, of which the balance was \$1,737,007 as of 12/31/2013, and a line of credit balance of \$965,000 which is reflected as all current. Also, the facility achieved an average net income of \$298,594 from 2011 through 2013. The applicant incurred a loss of \$686,388 in 2011 due to a retroactive rate adjustment, which was a one-time event.
- Windsor Park Nursing Home (70 beds) had an average negative working capital position and an average negative net asset position from 2011 through 2013. The applicant has indicated that the reason for the average negative working capital position and the average negative net asset position is due to historical losses. Also, the facility incurred an average net income of \$25,005 from 2011 through 2013. The applicant has indicated that the reason for the historical losses is the result of management fees and significant legal fees. The applicant discontinued the management fees until operations improved.
- Sunrise Manor Nursing Home (84 beds) had an average positive working capital position and an average negative net asset position from 2011 through 2013. The applicant has indicated that the reason for the average negative net asset position is that the commonly owned real estate entity had a negative net asset position of \$2,013,241, which contributed to the overall average negative net asset position. Also, the facility achieved an average net income of \$157,710 from 2011 through 2013. The applicant incurred a loss of \$34,585 in 2013 due to an adjustment for a HITNY liability of more than \$400,000 which was a one-time event.

Subject to the noted contingency, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner; and contingent approval is recommended.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements of Shareholders
BFA Attachment B	Financial Summary- Hollis Park Manor Nursing Home
BFA Attachment C	Financial Summary of proposed members' related facilities
BFA Attachment D	Hollis Park Manor Nursing Home Balance Sheet
BNHLC Attachment A	Quality Measures and Inspection Report

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 66% of ownership interest from one member to new and existing members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

141079 E

Hollis Park Manor Nursing Home

APPROVAL CONTINGENT UPON:

1. Submission of the executed shareholder agreements acceptable to the Department of Health. [BFA]
2. Submission of the resolution of the Board of Directors of Hollis Park Manor Nursing Home, Inc., authorizing the project, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed bylaws of Hollis Park Manor Nursing Home Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 66% of ownership interest from one member to new and existing members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

141079 E

Hollis Park Manor Nursing Home

APPROVAL CONTINGENT UPON:

1. Submission of the executed shareholder agreements acceptable to the Department of Health. [BFA]
2. Submission of the resolution of the Board of Directors of Hollis Park Manor Nursing Home, Inc., authorizing the project, acceptable to the Department. [CSL]
3. Submission of a photocopy of the executed bylaws of Hollis Park Manor Nursing Home Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Public Health and Health Planning Council

Project # 141153-E
River Meadows, LLC d/b/a James Square Nursing and Rehabilitation Centre

Program: Residential Health Care Facility
Purpose: Establishment

County: Onondaga
Acknowledged: April 11, 2014

Executive Summary

Description

River Meadows, LLC, an existing New York limited liability company, requests approval to be established as the operator of James Square Nursing and Rehabilitation Centre, a 455-bed Article 28 residential healthcare facility (RHCF) located at 918 James Street, Syracuse, NY (Onondaga County). The proposed operator will be decertifying 15 beds bringing the new certified bed capacity of the RHCF to 440 beds. There will be no change in services provided.

River Meadows, LLC entered into an Operations Transfer Agreement (OTA) on June 11, 2013, with James Square Nursing Home, Inc., a New York corporation, for the sale and acquisition of the operating interest of James Square Nursing and Rehabilitation Centre. Pursuant to the OTA, and subject to CON approval, River Meadows, LLC will acquire the operations of the RHCF and assume certain liabilities and certain assets. Liberty Senior Holdings, LLC, a New York limited liability company with sole member Eliezer Freidman, is pursuing the acquisition of the real estate. Upon establishment as operator, the applicant will lease the premises from Liberty Senior Holdings, LLC.

The facility is currently in receivership and has been left without clear management authority due to the passing of the principal of the current receiver, Mr. Mark J. Squire, in July 2012.

The current operator and proposed operator are as follows:

<u>Current</u>	<u>Proposed</u>	
James Square Nursing Home, Inc. (Receivership)	River Meadows, LLC	
	Judy Kushner	50%
	Abraham Gutnicki	50%

OPCHSM Recommendation
Contingent Approval

Need Summary

River Meadows, LLC, is seeking approval to become the established operator of James Square Health and Rehabilitation Centre, a 455-bed Article 28 residential health care facility (RHCF), located at 918 James Street, Syracuse, 13203, in Onondaga County. In addition, the applicant is proposing to decertify 15 RHCF beds, bringing the new certified bed capacity to 440 beds.

Program Summary

The facility was previously operated by James Square Nursing Home, Inc. The principal of the current receiver, Mr. Mark J. Squire, passed away in July 2012 and the applicant entered into an Operational Transfer Agreement for the sale and acquisition of the operating interest.

This application is proposing to reduce the bed count at the nursing home by fifteen (15) licensed RHCF beds to operate at a capacity of 440 RHCF beds.

No negative information has been received concerning the character and competence of the proposed applicants. No administrative services or consulting agreements are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

The purchase price for the acquisition of the operating interests of James Square Nursing Home, Inc. is \$0. The purchase price for the acquisition of the real estate interests is \$33,725,981, which includes the assumption of HUD mortgages and also assumption of other liabilities. The realty purchase price will be met as follows: \$1,500,000 deposit in escrow and the remaining \$32,225,981 via a bank loan at an interest rate of 5.75% for a ten-year term.

Budget:

Revenues	\$35,188,621
Expenses	<u>33,173,294</u>
Net Income	\$2,015,327

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Health Systems Management

Approval contingent upon:

1. Submission of an executed bank loan commitment for the real estate portion, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real estate purchase agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed operations transfer agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed agreement for the assumed liabilities that arise after the new operator is operating the building, acceptable to the Department of Health. [BFA]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
8. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a) Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b) Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c) Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d) Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e) Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
9. Submission and programmatic review of the plan to reduce the bed count by fifteen beds. The plan submitted must specify the actual beds to be decertified in the bed count reduction. [LTC]
10. Submission of an amended lease agreement between Liberty Senior Holdings, LLC and the applicant, acceptable to the Department. [CSL]
11. Submission of a revised Certificate of Amendment of the Articles of Organization of River Meadows, LLC, acceptable to the Department. [CSL]

12. Submission of an executed Operating Agreement of River Meadows, LLC, acceptable to the Department. [CSL]
13. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of James Square Nursing Home, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 16, 2015

Need Analysis

Project Description

River Meadows, LLC, is seeking approval to become the established operator of James Square Health and Rehabilitation Centre, a 455-bed Article 28 residential health care facility (RHCF), located at 918 James Street, Syracuse, 13203, in Onondaga County. In addition, the applicant is proposing to decertify 15 RHCF beds, bringing the new certified bed capacity to 440 beds.

Analysis

There is currently a surplus of 558 beds in Onondaga County as indicated in Table 1 below. The average occupancy for Onondaga County is 89.2% in 2013 as indicated in Table 2.

Table 1: RHCF Need – Onondaga County

2016 Projected Need	2,416
Current Beds	2,900
Beds Under Construction	0
Total Resources	2,900
Unmet Need	-484

Table 2: James Square Health & Rehabilitation Centre/Onondaga County

Facility Name	Occupancy 2011	Occupancy 2012	Occupancy 2013
James Square Health & Rehab Centre	92.7%	91.1%	85.2%
Onondaga County	95.9%	94.0%	89.2%

There will be a change in bed capacity at this facility upon approval of this application by the Public Health and Health Planning Council as shown in the table below.

James Square Health and Rehabilitation Centre	Current Beds	Proposed Action	Upon Completion
RHCF Beds	450	(15)	435
Vent Beds	5	0	5
Total	455	(15)	440

James Square Health and Rehabilitation Centre's utilization was 92.7% in 2011, 91.1% in 2012, and 85.2% in 2013. Current utilization as of February 4, 2015 was 93.3% with 30 vacant beds. The facility has been in receivership since March 30, 2007 when the owner of the facility died. The receiver appointed was experienced in residence care, but lacked the resources and support needed to maintain and/or grow census. The applicant believes that during 2011 and 2012, the principal receiver, Mark Squire, contemplated selling the facility and, as a result, fewer resources were devoted to the facility. To complicate the situation further, Mr. Squire died in July, 2012, leaving the facility without an executive manager.

In an effort to increase utilization, the proposed applicant and new management team plan to incorporate the following strategies:

- Decertify 15 beds;
- Improve the physical plant;
- Increase direct involvement of health care professionals in the day-to-day care provided to patients;
- Develop shared physician relationships with local hospitals, thus obtaining a "preferred provider" status; and
- Provide on-site coverage 7 days per week, including holidays, to allow for 24-hour weekend admissions, which is unique in the region.

Access

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

James Square Health and Rehabilitation Centre's Medicaid admissions of 14.4 % in 2012 and 16.8% exceeded Onondaga County 75% rates of 9.9% in 2012 and 11.8% in 2013.

Conclusion

It is reasonable to expect that the proposed reduction in beds, together with the described strategies of the applicant and new management team to increase utilization, will result in consistently higher occupancy and more efficient operation of the facility. Approval of this transaction will help maintain access to RHCF care for Medicaid clients and the general population in the Onondaga County planning area.

Recommendation

From a need perspective, contingent approval is recommended.

<h2 style="margin: 0;">Program Analysis</h2>
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Facility Information

	Existing	Proposed
Facility Name	James Square Nursing and Rehabilitation Centre	James Square Nursing and Rehabilitation Centre
Address	918 James Street Syracuse, New York 13203	Same
RHCF Capacity	455	440
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	918 James Receiver, LLC (Receivership) Previous operator: James Square Nursing Home, Inc.	River Meadows, LLC Managing Members: Judy Kushner 50.00% Abraham Gutnicki 50.00%

Character and Competence - Background

Facilities Reviewed

<u>Illinois Nursing Homes</u>	
Pavilion of Waukegan	11/2007 to 12/2012
Crossroads Care Center of Woodstock	12/2007 to 12/2012
Riverwood Rehab (f/k/a East Moline Nursing and Rehab Center)	10/2010 to 04/2013

<u>New Jersey Nursing Homes</u>	
Cranford Rehab & Nursing Center	06/2013 to present
Rehab at River's Edge	06/2013 to present

<u>Michigan Nursing Home</u>	
Lynwood Manor Healthcare Center	06/2011 to present

<u>Maryland Nursing Home</u>	
Oakwood Rehabilitation and Nursing	05/2013 to present

<u>New Jersey Assisted Living Facility</u>	
Birchwood Square at Cranford	06/2013 to present

Individual Background Review

Judy Kushner is a licensed nursing home administrator in New York and New Jersey and is considered to be in good standing in both states. Ms. Kushner lists her employment as the executive director at The Brookside Assisted Living Facility in Freehold, New Jersey. Ms. Kushner discloses the following ownership interest in health facilities:

Nursing Homes:

Cranford Rehab & Nursing Center (NJ)	06/2013 to present
Rehab at River's Edge (NJ)	06/2013 to present
Oakwood Rehabilitation and Nursing (MD)	05/2013 to present
Lynwood Manor Healthcare Center (MI)	03/2012 to present

Assisted Living Facility:

Birchwood Square at Cranford (NJ)	06/2013 to present
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Abraham Gutnicki is an attorney and counselor of law in good standing in the state of Illinois. He is currently a managing partner at Gutnicki LLP, a law firm located in Skokie, Illinois. Mr. Gutnicki has disclosed the following ownership interest in health facilities:

Nursing Homes:

Cranford Rehab & Nursing Center (NJ)	06/2013 to present
Rehab at River's Edge (NJ)	06/2013 to present
Pavilion of Waukegan (IL)	11/2007 to 12/2012
Crossroads Care Center of Woodstock (IL)	12/2007 to 12/2012
Riverwood Rehab (IL)	10/2010 to 04/2013
Lynwood Manor Healthcare Center (MI)	06/2011 to present
Oakwood Rehabilitation and Nursing (MD)	05/2013 to present

Assisted Living Facility:

Birchwood Square at Cranford (NJ)	06/2013 to present
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Character and Competence - Analysis

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

A review of Pavilion of Waukegan in the state of Illinois for the period identified above reveals the following:

- The facility was fined \$2,860 for surveillance findings during cycle of 06/23/2011.
- The facility was fined \$9,454 for surveillance findings during cycle of 12/26/2007.
- The facility is currently operational and in compliance with all applicable codes, rules and regulations. None of the actions cited were for repetitive violations.

A review of Crossroads Care Center of Woodstock in the state of Illinois for the period identified above reveals the following:

- The facility was fined \$5,460 for surveillance findings during cycle of 02/01/2010.
- The facility was fined \$8,840 for surveillance findings during cycle of 02/20/2009.
- The facility was fined \$19,200 for surveillance findings during cycle of 04/07/2008.
- The facility is currently operational and in compliance with all applicable codes, rules and regulations. None of the actions cited were for repetitive violations.

A review of Riverwood Rehab f/k/a East Moline Nursing and Rehab Center in the state of Illinois for the period identified above reveals the following:

- The facility was fined \$1,462 for surveillance findings during cycle of 02/09/2012.
- The facility was fined \$13,487 for surveillance findings during cycles of 08/31/2011 and 11/09/2011.
- The facility is currently operational and in compliance with all applicable codes, rules and regulations. None of the actions cited were for repetitive violations.

A review of Cranford Rehab & Nursing Center in the state of New Jersey for the period identified above reveals the following:

- The facility was fined \$12,870 for surveillance findings on standard survey of November 13, 2013.
- The facility is currently operational and in compliance with all applicable codes, rules and regulations. None of the actions cited were for repetitive violations.

A review of operations for the Pavilion of Waukegan, Crossroads Care Center of Woodstock, and Riverwood Rehab f/k/a East Moline Nursing and Rehab Center in the state of Illinois for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Cranford Rehab & Nursing Center in the state of New Jersey for the period identified above, results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

A review of operations for Rehab at River's Edge in the state of New Jersey for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Lynwood Manor Healthcare Center in the state of Michigan for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for Oakwood Rehabilitation and Nursing in the state of Maryland for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

A review of operations for the Birchwood Square at Cranford in the state of New Jersey for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

Project Review

In 2007, 918 James Receiver, LLC was approved to become the voluntary receiver of James Square Nursing and Rehabilitation Centre in Onondaga County. The facility was previously operated by James Square Nursing Home, Inc. The principal of the current receiver, Mr. Mark J. Squire, passed in July 2012 and the applicant entered into an Operational Transfer Agreement for the sale and acquisition of the operating interest.

This application is proposing to reduce the bed count at the nursing home by fifteen (15) licensed RHCF beds to operate at a capacity of 440 RHCF beds. No administrative services or consulting agreements are proposed in this application. The nursing home fully complies with the 2013 CMS sprinkler mandate.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Operations Transfer Agreement

The applicant has submitted a draft operations transfer agreement for the purchase of the operations of James Square Nursing and Rehabilitation Centre, which is summarized below:

Date:	June 11, 2013, Amended February 1, 2014
Seller:	James Square Nursing Home, Inc.
Purchaser:	River Meadows, LLC
Assets Acquired:	The assumed contracts; patient trust funds; accounts receivables and the resident agreements.
Purchase Price:	\$0

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments, made to the facility and/or surcharges, assessments, or fees due from the Seller pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the Seller of its liability and responsibility.

Real Estate Purchase Agreement

The applicant has submitted a draft real estate purchase agreement for the acquisition of the real estate, which is summarized below:

Date:	February 1, 2014
Premises:	To purchase the real estate located at 918 James Square, Syracuse, New York.
Seller:	James Square Nursing Home, Inc. and James Square Associated Limited Partnership
Purchaser:	Liberty Senior Holdings, LLC
Purchase Price:	The outstanding balance on the Closing Date with respect to the HUD loans and \$8,650,000. The total purchase price will also assume the following liabilities: Accounts Payable; Capital Lease; Accrued Expenses; Taxes Withheld and Payable; New York State Workers' Compensation Trust; Pension Liability; HITNY and Penalty Tax Liability.
Payment of Purchase Price:	\$250,000 in Deposit in escrow; \$1,250,000 Second Deposit in escrow; and \$32,225,981 at Closing

The purchaser will financing via a bank loan for \$32,225,981 at an interest rate of 5.75% for a ten year term.

As previously mentioned, the real estate entity will assume certain operating liabilities. The sole member of the real estate entity has indicated that if there are any assumed operating liabilities that arise after the new operator is operating the building, the realty entity will either reimburse the operating entity the dollar amount or provide a credit to the rent obligations. The parties will enter into a formal agreement that memorializes the foregoing. As a contingency of approval, the parties must provide an executed agreement to the Department that addresses this issue.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the site that they will occupy, which is summarized below:

Date:	October 16, 2013
Premises:	The site located at 918 James Street, Syracuse, New York.
Lessor:	Liberty Senior Holdings, LLC
Lessee:	River Meadows, LLC
Term:	20 years, effective upon PHHC approval.
Rental:	Year One- \$2,640,000 annually Year Two- \$3,780,000 annually Year Three- \$4,200,000 annually Beginning in year 4 and each year thereafter during the Term, the rent shall increase by 2% over the prior year.
Provisions:	Lessee shall be responsible for insurance, utilities, maintenance and real estate taxes.

The lease agreement is an arm's length lease arrangement.

Operating Budget

The applicant has submitted an operating budget for the 440-bed facility, in 2015 dollars, during the first year after the change in ownership, summarized below:

	Per Diem	Total
Revenues		
Medicaid Managed Care	\$187.84	\$23,262,888
Medicare Fee-For-Service	\$411.30	7,369,178
Private Pay	\$320.01	4,486,555
Other		<u>70,000</u>
Total Revenues		\$35,188,621
Expenses		
Operating	\$194.60	\$30,314,020
Capital	18.35	<u>2,859,274</u>
Total Expenses	\$212.95	\$33,173,294
Net Income		<u>\$2,015,327</u>
Utilization (patient days)		155,782
Occupancy		97.00%
Breakeven Occupancy		91.83%

Utilization broken down by payor source during the first year after the change in operator is as follows:

Medicaid Managed Care	79.50%
Medicare Fee-For-Service	11.50%
Private Pay	9.00%

Expense assumptions are based on the facility's prior year expenses, except for payroll and benefits and the other cost reductions. Utilization is projected to increase from 84.19% in 2013, to 90.99% during the first year after the change in operator. The applicant's projected utilization is in line with 2011 and 2012 utilization. The applicant has indicated that the projected increase in utilization from 2013, is because of the following steps the new management will take: working with local hospitals to obtain "preferred provider" status, which will lead hospital patients to be more efficiently directed to the nursing home when their acuity level develops to a degree that requires skilled nursing care; and investing substantial funds for further beautification and improvement of the James Square physical plant.

The applicant has projected the following expense reductions:

- Salaries and Wages - The applicant intends to reduce overall staffing by approximately 27 FTEs, which will result in \$695,773 in savings.
- Employee Benefits - Employee Benefit expense will be reduced by \$200,000 due to FTE reduction.
- Legal expense - Legal expense will be reduced by \$150,000 due to the facility now being under stable ownership and no longer in receivership.
- Administrative and Consulting Fees - These fees will be reduced by \$150,000. The proposed members have extensive experience operating nursing homes in other states.

Capability and Feasibility

The purchase price for the operation will be \$0. The purchase price of \$33,725,981 for the real estate portion will be met as follows: \$1,500,000 deposit in escrow and \$32,225,981 via a bank loan at an interest rate of 5.75% for a ten year term. The real estate entity is also assuming certain other liabilities of the operator. The real estate entity's sole member has indicated that, to the extent that any assumed operating liabilities arise after the new operator is established, the realty entity will either reimburse the operating entity or provide a credit to the rent obligations. The parties will enter into a formal agreement that memorializes this arrangement.

Working capital requirements are estimated at \$5,528,882, which appears reasonable based on two months of first year expenses. The applicant will finance \$2,600,000 via an interest rate of 5.00% for a three year term. Also, the applicant will acquire the current operator's account receivable, which totaled \$4,109,945 on December 31, 2013. If any additional funds are necessary, the proposed members will contribute funds from their personal net worth statements. BFA Attachment A is the personal net worth statements of the proposed members of River Meadows, LLC, which indicates the availability of sufficient funds if additional working capital requirements are deemed necessary. BFA Attachment C is the pro-forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$684,945.

The submitted budget indicates a net income of \$2,105,327 during the first year subsequent to the change in operator. The applicant has indicated that Medicaid utilization is projected to decrease while Medicare and Private Pay utilization are projected to increase because the facility will be hiring additional therapy personnel to offer a higher quality of care to residents and will target the marketing of its services to individuals who require post-hospitalization therapy. The applicant anticipates that this strategy will increase the facility's census and simultaneously increase Medicare and Private Pay utilization, while decreasing Medicaid utilization. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective February 1, 2015, all eligible beneficiaries in NYC age 21 and over, in need of long term placement in a nursing facility, will be required to join a Medicaid Managed Care Plan (MMCP) or a Managed Long Term Care Plan (MLTCP). On April 1, 2015, the counties of Nassau, Suffolk, and Westchester will be phased in, and the rest of the State is scheduled to transition beginning July 1, 2015, for both dual and non-dual eligible populations. Under the managed care construct, Managed Care

Organizations (MCOs) will negotiate payment rates directly with the NH providers. In order to mitigate the financial impact to NH providers during the transition to managed care, a department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided further guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to January 31, 2018 (NYC), March 31, 2018 (Nassau, Suffolk and Westchester), and June 30, 2018 (upstate), respectively.

BFA Attachment B is the financial summary of James Square Nursing and Rehabilitation Center from 2011 through 2013. As shown on BFA Attachment B, the facility had an average positive working capital position and an average negative net asset position from 2011 through 2013. The applicant has indicated that the reason for the negative net asset position is due to historical losses. Also, the facility incurred average losses of \$255,716 from 2011 through 2013. The applicant has indicated that the reason for the losses are the following: a decline in patient census and the death of the receiver in July 2012, which led to a further decline in patient census. The applicant hired a marketing and consulting firm that specializes in skilled nursing facilities, which led to an increase in patient census.

BFA Attachment D is the September 30, 2014 internal financial statements of James Square Nursing Home, Inc. As shown on BFA Attachment D, the facility had a positive working capital position and a negative net asset position through September 30, 2014. The applicant has indicated that the reason for the negative net asset position is the result of past losses and undercapitalization of the facility; due to the death of the owner in 2006 and current receivers lead members in 2012. Also, the entity achieved a net income of \$2,247,329 through September 30, 2014.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary- James Square Nursing Home
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	September 30, 2014 internal financial statements of James Square Nursing Home
BNHLC Attachment A	Quality Measures and Inspection Report

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish River Meadows, LLC d/b/a James Square Nursing and Rehabilitation Centre as the new owner of James Square Nursing and Rehabilitation Centre, reducing certified beds to 440, 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:

141153 E

River Meadows, LLC d/b/a James Square
Nursing and Rehabilitation Centre

APPROVAL CONTINGENT UPON:

1. Submission of an executed bank loan commitment for the real estate portion, acceptable to the Department of Health. [BFA]
2. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed real estate purchase agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed operations transfer agreement, acceptable to the Department of Health. [BFA]
5. Submission of an executed agreement for the assumed liabilities that arise after the new operator is operating the building, acceptable to the Department of Health. [BFA]
6. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
7. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a) Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b) Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
 - c) Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
8. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
 - a) Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b) Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c) Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
 - d) Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e) Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period.
[RNR]

9. Submission and programmatic review of the plan to reduce the bed count by fifteen beds. The plan submitted must specify the actual beds to be decertified in the bed count reduction. [LTC]
10. Submission of an amended lease agreement between Liberty Senior Holdings, LLC and the applicant, acceptable to the Department. [CSL]
11. Submission of a revised Certificate of Amendment of the Articles of Organization of River Meadows, LLC, acceptable to the Department. [CSL]
12. Submission of an executed Operating Agreement of River Meadows, LLC, acceptable to the Department. [CSL]
13. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of James Square Nursing Home, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Public Health and Health Planning Council

Project # 141207-E
Delaware Operations Associates, LLC d/b/a Buffalo Center for Rehabilitation and Health **Care**

Program: Residential Health Care Facility
Purpose: Establishment

County: Erie
Acknowledged: May 14, 2014

Executive Summary

Description

Delaware Operations Associates, LLC d/b/a Buffalo Center for Rehabilitation and Health Care requests approval to be established as the operator of Delaware Nursing & Rehabilitation Center, a 200-bed residential health care facility (RHCF) located at 1014 Delaware Avenue, Buffalo, New York (Erie County). There will be no change in services provided upon the change in ownership.

Pursuant to Public Health Law Section 2810 (2) and effective since May 13, 2014, the RHCF has been operating under a court ordered receivership agreement with Delaware Heights Receiver LLC (DHR). DHR replaced the facility's prior receiver, BTNH, Inc., which had been appointed as receiver of the RHCF effective November 18, 1995. BTNH, Inc. acknowledged to the court that it was financially unable to continue long-term as receiver of the RHCF and agreed that a substitute receiver was necessary.

Delaware Operations Associates, LLC entered into an Operational Transfer and Surrender Agreement on August 30, 2013, with BTNH, Inc. for the sale and acquisition of the operating interest of Delaware Nursing & Rehabilitation Center. Concurrent with entering into the Operating Transfer and Surrender Agreement, BTNH, Inc. entered into a Land Sale Contract with Delaware Real Property Associates, LLC for the sale acquisition of the real property interest of Delaware Nursing & Rehabilitation Center. There are no identical owners in the proposed operating entity and the proposed real estate entity. Daryl Hagler and Jonathan Hagler will be the owners of the real estate entity.

The current and proposed operators are as follows:

<u>CURRENT</u>	<u>PROPOSED</u>	
Delaware Heights (Receiver) Receiver, LLC	Delaware Operations Associates, LLC Members:	
	Kenneth Rozenberg	90%
	Jeffrey Sicklick	10%

OPCHSM Recommendation
Contingent Approval

Need Summary

Delaware Nursing and Rehabilitation Center's utilization was 92.3% in 2011, 94.8% in 2012, and 88.3% in 2013. Current utilization, as of February 11, 2015, is 96.5%. Once approved by the Public Health and Health Planning Council, the applicant plans to continue its relationships with local hospice providers and local hospital discharge planners as well as continuing community outreach and marketing efforts. Some of these efforts include:

- Purchasing upgraded supplies and services, as well as retaining the facility's existing administrator, allowing the facility to provide care to the hardest to place and most medically complex patients;
- Re-establishing a 20-bed hospice unit at the request of Hospice Buffalo Inc.; and
- Comprehensive short- and long-term rehabilitative services, including PT, OT, and Speech Therapy.

The change in ownership will not result in any change in beds or services.

Program Summary

This application seeks to meet the requirements of a February 2014 Erie County Supreme Court order placing Delaware Heights Receiver, LLC as the substitute receiver of the Delaware Nursing & Rehabilitation Center and requiring an application to be filed for Public Health and Health Planning Council approval to establish a permanent ownership group at the facility.

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

No changes in the program or physical environment are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Financial Summary

The purchase price for the acquisition of the operating interest of Delaware Nursing & Rehabilitation Center is \$10. The applicant will meet the purchase price with equity. The purchase price for the acquisition of the real estate interest is \$5,000,000. The purchase price will be financed via a bank loan at an interest rate of 5.00% for a ten year term.

Budget:

Revenues	\$11,430,457
Expenses	<u>10,398,878</u>
Net Income	\$1,031,579

Subject to the noted contingencies, it appears that the applicant has demonstrated the capability to proceed in a financially feasible manner, and contingent approval is recommended.

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. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. The report should include, but not be limited to:
 - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identifying community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and inform them about the facility's Medicaid Access policy.
 - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - e. Other factors as determined by the applicant to be pertinent. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - d. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above;
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.

The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Programmatic review and approval of an operating name for the facility that clearly delineates it as a residential health care facility. [LTC]
5. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]
7. Submission of an executed payment agreement for amounts owed to the Department, acceptable to the Department of Health. [BFA]
8. Submission of a revised Certificate of Amendment of the Articles of Organization of Delaware Operations Associates, LLC, acceptable to the Department. [CSL]
9. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of BTNH, Inc., acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 16, 2015

Need Analysis

Project Description

Delaware Operations Associates, LLC d/b/a Buffalo Center for Rehabilitation and Health Care seeks approval to become the established operator of Delaware Nursing and Rehabilitation Center, a 200-bed Article 28 residential health care facility, located at 1014 Delaware Avenue, Buffalo, 14209, in Erie County.

Analysis

There is currently a surplus of 457 beds in Erie County as indicated in Table 1 below. The overall occupancy for Erie County is 84.4% for 2013 as indicated in Table 2.

Table 1: RHCF Need – Erie County

2016 Projected Need	5,291
Current Beds	5,698
Beds Under Construction	0
Total Resources	5,698
Unmet Need	-407

Table 2: Delaware Nursing and Rehabilitation Center/Erie County Occupancy

Facility/County	Occupancy 2011	Occupancy 2012	Occupancy 2013
Delaware Nursing and Rehab Ctr	92.3%	94.8%	88.3%
Erie County	92.1%	91.2%	84.4%

Delaware Nursing and Rehabilitation Center's utilization was 92.3% in 2011, 94.8% in 2012, and 88.3% in 2013. The reason utilization was below the Department's planning optimum during this period was due to disruption in management and operations resulting from the death of the operator. The facility is under receivership and the current receiver is Delaware Heights Receiver, LLC. Since taking over as temporary receiver of this facility in June, 2014, the proposed applicant has increased utilization at the facility as noted in the chart below. Average occupancy thus far for 2015 is 95.2%.

Month	Occupancy
June	86.5%
July	87.3%
August	93.8%
September	96.8%
October	94.9%
November	94.4%
December	97.0%
January, 2015	94.6%
February, 2015	96.3%

Access

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

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

Delaware Nursing and Rehabilitation Center's Medicaid admission rates for 2012 and 2013 were 24.4% and 38.0%, respectively. This facility exceeded Erie County 75% rates in 2012 and 2013 of 22.1% and 28.5%, respectively.

Conclusion

The restoration of occupancy to a more optimum level for a sustained period, under the current applicant acting as receiver, suggests that the proposed change of ownership will result in the efficient operation of the facility and its maintenance as a resource for RHCF care for Medicaid clients and the general population in the Erie County planning area.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1998 to present
Brooklyn Center for Rehabilitation and Residential HC	03/2007 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Chittenango Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Chittenango)	07/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Delaware Nursing & Rehabilitation Center	06/2014 to present
Dutchess Center for Rehabilitation and Healthcare	03/2005 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Queens Center for Rehabilitation and Residential Health Care	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care (formerly Stonehedge Health & Rehabilitation Center - Rome)	07/2008 to present
Steuben Center for Rehab	07/2014 to present
University Nursing Home	03/2005 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	11/1997 to present

<u>Certified Home Health Agency</u> Alpine Home Health Care	07/2008 to present
<u>Licensed Home Care Services Agency</u> Amazing Home Care	05/2006 to present
<u>Ambulance Company</u> Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present
<u>Managed Long Term Care Company</u> Center Plan for Health Living (MLTC)	01/2013 to present

Individual Background Review

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation & Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care	03/2007 to present
Bushwick Center for Rehabilitation and Health Care	06/2008 to present
Chittenango Center for Rehabilitation and Health Care	07/2008 to present
Corning Center for Rehab	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Essex Center for Rehab	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehab	11/2010 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Queens Center for Rehabilitation and Residential Health Care	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	07/2008 to present
Steuben Center for Rehab	07/2014 to present
University Nursing Home	08/2001 to present
Waterfront Center for Rehabilitation	08/2011 to present
Washington Center for Rehab	02/2014 to present
Williamsbridge Manor Nursing Home	11/1996 to present
Delaware Nursing & Rehab Center (REC)	06/2014 to present
Daughters of Jacob Nursing Home Company Inc. (REC)	08/2013 to present
Center Plan for Health Living (MLTC)	01/2013 to present
Alpine Home Health Care (CHHA)	07/2008 to present
Amazing Home Care (LHCSA)	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS)	06/2005 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bushwick Center for Rehabilitation and Health Care	05/2011 to present
Chittenango Center for Rehabilitation and Health Care	05/2011 to present
Corning Center for Rehabilitation	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Rome Center for Rehabilitation and Health Care	05/2011 to present
Waterfront Center for Rehabilitation	01/2013 to present

Character and Competence - Analysis

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

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.

A review of the operations of Chittenango Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$20,000 pursuant to a Stipulation and Order issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters
- The facility, at the time named Stonehedge Health & Rehabilitation Center – Chittenango, was fined \$4,000 pursuant to a Stipulation and Order issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

The review of operations for Bronx Center for Rehabilitation and Health Care, Chittenango Center for Rehabilitation and Health Care, Waterfront Center for Rehabilitation and Healthcare, and Williamsbridge Manor Nursing Home for the time periods indicated above results in a conclusion of substantially consistent high level of care since there were no repeat enforcements.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Dutchess Center for Rehabilitation and Healthcare, Fulton Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, Richmond Center for Rehabilitation and Specialty Healthcare, Rome Center for Rehabilitation and Health Care, and University Nursing Home for the time periods indicated above reveals that a substantially consistent high level of care has been provided since there were no enforcements.

A review of Alpine Home Health Care, LLC and Amazing Home Care reveals that a substantially consistent high level of care has been provided since there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that a substantially consistent high level of care has been provided since there were no enforcements.

Project Review

BTNH, Inc. was operating as the Erie County Supreme Court (the Court) appointed receiver of Delaware Nursing & Rehabilitation Center since 1995. In November of 2013, the owner of the real estate on which the facility resides successfully filed with the Court to have a substitute receiver put in place. As part of the proceedings, BTNH, Inc. acknowledged that they were financially unable to continue indefinitely as receiver, and agreed to cooperate with the Court in placing a substitute receiver in the facility. In February, 2014, the Court issued an order for Delaware Heights Receiver, LLC, comprised of members Kenneth Rozenberg 50% and Jeremy Strauss 50%, to be appointed as the substitute receiver pending a positive character and competence determination by the Department of Health (DOH). In March, 2014 DOH successfully completed the character and competence review and transfer was subsequently consummated. As per the Court order placing them as substitute receiver, Delaware Heights Receiver, LLC was required to file a Certificate of Need (CON) application to be filed seeking Public Health and Health Planning Council approval to establish the substitute receiver as the new operator of the facility. Consistent with the Court order, the subject CON seeks to establish Delaware Operations Associates LLC, a related entity, as permanent operator of the nursing home. Subsequent to the filing of the CON Jeremy Strauss withdrew his membership from of the court appointed receiver, Delaware Heights Receiver, LLC.

Under an agreement with the current receiver, Centers Health Care, formerly Centers for Specialty Care Group, provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. These services will continue upon approval of the change of ownership. It should be noted that Centers Health Care does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in Buffalo Center for Rehabilitation and Health Care. Despite the common ownership of one of its members, Delaware Operations Associates, LLC will be a wholly independent and distinct legal entity, in no way controlled by Centers Health Care. It was disclosed that Kenneth Rozenberg, individually, and not in his capacity as CEO of Centers Health Care, negotiated the purchase agreement for this facility.

Kenneth Rozenburg was approved by the Public Health and Health Planning Council on December 4, 2014 to be established as an operator of Hope Center for HIV as a member of Hope Center Operations, LLC (CON# 142056). Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence – Background because the transaction is currently being processed to effectuate the establishment of ownership.

No changes in the program or physical environment are proposed in this application. The facility is in compliance with CMS 2013 sprinkler mandates.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the sale of the operation, which is summarized below:

Date:	August 30, 2013
Transferor:	BTNH, Inc.
Transferee:	Delaware Operations Associates, LLC
Assets Acquired:	All furniture, fixtures, furnishings, equipment, appliances, tools, instruments, machinery, computer, computer equipment owned by Transferor as of the Receivership Date or acquired by Transferor and/or the Facility prior to the Closing Date which are used in connection with the operation of the Facility; all inventory and supplies consistent with such quantities customarily maintained at the Facility; all contracts, agreements, leases, purchase orders, insurance policies and other arrangements; all menus, policies and procedure manuals, operation manuals, training materials and computer software owned by Transferor and/or used by the Facility; all rights to telephone and facsimile numbers used by the Facility; all patient medical records, medical staff records and medical/ administrative libraries; goodwill and the transferor's rights and interests in and to its provider numbers and reimbursement agreements under the Medicare Program, Medicaid Program and any other third party payor programs.
Assumption of Liabilities:	All obligations and liabilities under the Assumed Contracts.
Purchase Price:	\$10

The applicant has submitted an affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of December 18, 2014, the accounts receivable (AR) balance due the Department totals \$3,798,285. The applicant is pursuing discussions with the Office of Health Insurance Programs to establish a viable AR repayment schedule to be formalized through a legal Repayment Agreement with the Department to address the outstanding AR balance due.

Real Property Purchase Agreement

The applicant has submitted an executed real estate purchase agreement for the transfer of the real estate, which is summarized below:

Date:	August 30, 2013
Premises:	The site located at 1014 Delaware Avenue, Buffalo, New York
Seller:	HBF Finance, LLC
Purchaser:	Delaware Real Property Associates, LLC
Purchase Price:	\$5,000,000

The purchaser will finance the purchase price at an interest rate of 5.00% for a ten year term.

Lease Rental Agreement

The applicant has submitted an executed lease rental agreement, which is summarized below:

Date:	April 2, 2014
Premises:	The site located at 1014 Delaware Avenue, Buffalo, New York
Lessor:	Delaware Real Property Associates, LLC
Lessee:	Delaware Operations Associates, LLC
Term:	10 years
Rental:	\$600,000 annually
Provisions:	The lessee shall be responsible for insurance, utilities, maintenance and real estate taxes.

The lease agreement will be an arms-length lease arrangement.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, summarized below:

	PER DIEM	TOTAL
Revenues		
Medicaid Managed Care	\$134.56	\$7,895,688
Medicare Fee For Service	\$431.46	1,157,774
Commercial Fee For Service	\$254.36	<u>2,376,995</u>
Total Revenues		\$11,430,457
Expenses		
Operating	\$139.79	\$9,698,695
Capital	10.09	700,183
Total Expenses	\$149.88	\$10,398,878
Net Income		\$1,031,579
Utilization (Patient Days)		69,379
Occupancy		95.03%
Breakeven Occupancy		88.00%

Utilization broken down by payor source during the first year after the change in ownership is summarized below:

Medicaid Managed Care	82.86%
Medicare Fee For Service	3.67%
Commercial Fee For Service	13.47%

Expense assumptions are based on historical costs adjusted for the following projected expense reductions:

- Salaries and Wages: Staffing reductions totaling 49.8 FTEs overall will result in total savings of \$1,030,716 compared to 2012 historical. The main areas of reduction include: aides, orderlies & attendants (24.5 FTEs), technician & specialists (12.0 FTEs), and licensed practical nurses (12.0 FTEs). No registered nurse reductions are anticipated.
- Employee Health Benefits: There will be a reduction of employee health benefits of \$874,078 due to the reduction of FTEs and bringing employee health benefits percentage more in line with normal levels.
- Medical & Surgical Supplies will be reduced by \$60,507.
- Non-medical, non-surgical supplies will be reduced by \$120,652.
- Purchased services will be reduced by \$28,225.
- Other Direct Expenses will be reduced by \$139,579.

Utilization assumptions by payor source are consistent with historical experience. The applicant has indicated that the projected utilization of 95% is in line with the facility's 2012 utilization. Staff has verified per the RHCF cost report filings with the Department that the facility maintained utilization at 95% in 2012, but utilization fell to 88.34% in 2013. The applicant's anticipated increase in utilization from 2013 (88.34%) is the result of having developed improved relationships with local hospital discharge planners and hospice providers and improved marketing and community outreach efforts.

Capability and Feasibility

The purchase price of \$10 for the operation will be met via equity from the proposed members of Delaware Operations Associates, LLC. The purchase price for the acquisition of the real property interests is \$5,000,000. The purchase price will be met via a bank loan at an interest rate of 5.00% for a ten year term.

Working capital requirements are estimated at \$1,733,146, which appears reasonable based on two months of first year expenses. The applicant will finance \$866,573 at an interest rate of 5.00% for a five year term. The remaining \$866,573 will be provided as equity from the proposed members of Delaware Operations Associates, LLC. BFA Attachment A is the personal net worth statements of the proposed members of Delaware Operations Associates, LLC, which indicates the availability of sufficient funds for the equity contribution. BFA Attachment C is the pro-forma balance sheet of Delaware Operations Associates, LLC as of the first day of operation, which indicates a negative net asset position of \$2,931,712. The negative net asset position is due to the \$3,798,285 Medicaid AR liability.

The submitted budget indicates a net income of \$1,031,579 during the first year subsequent to the change in operator. The submitted budget appears reasonable.

A transition of nursing home (NH) residents to Medicaid managed care is currently being implemented statewide. Effective February 1, 2015, all eligible beneficiaries in NYC age 21 and over, in need of long term placement in a nursing facility, will be required to join a Medicaid Managed Care Plan (MMCP) or a Managed Long Term Care Plan (MLTCP). On April 1, 2015, the counties of Nassau, Suffolk, and Westchester will be phased in, and the rest of the State is scheduled to transition beginning July 1, 2015, for both dual and non-dual eligible populations. Under the managed care construct, Managed Care Organizations (MCOs) will negotiate payment rates directly with the NH providers. In order to mitigate the financial impact to NH providers during the transition to managed care, a department policy, as described in the "Transition of Nursing Home Benefit and Population into Managed Care Policy Paper," provided further guidance requiring MCOs to pay the benchmark Medicaid FFS rate, or a negotiated rate acceptable to both plans and NHs, for 3 years after a county has been deemed mandatory (phased in) for NH population enrollment. As a result, the benchmark FFS rate remains a reliable basis for assessing NH Medicaid revenues through to January 31, 2018 (NYC), March 31, 2018 (Nassau, Suffolk and Westchester), and June 30, 2018 (upstate), respectively.

BFA Attachment B is the financial summary of Delaware Nursing & Rehabilitation Center from 2011 through 2013. As shown, the entity had an average negative working capital position and an average negative net asset position from 2011 through 2013. The applicant has indicated that the reason for the average negative working capital position and the average negative net asset position is due to historical losses. Also, the entity incurred average net losses of \$632,915 from 2011 through 2013. The applicant has indicated that the reason for the historical losses were due to overstaffing and low utilization in 2013. The applicant implemented the following steps to improve operations: increase in private pay days, which receive a higher reimbursement rate; termination of defined contribution 401(K) plan and a reduction in different expense categories such as administrative fees and laboratory services.

BFA Attachment E is the September 30, 2014 internal financial statement of Delaware Nursing & Rehabilitation Center. As shown, the entity had a negative working capital position and a negative net asset position through September 30, 2014. The applicant has indicated that the reason for the average negative working capital position and the average negative net asset position is due to historical losses. Also, the entity achieved income from operations of \$511,958.

The 2010 through 2013 financial summaries of the other skilled nursing facilities currently owned by the proposed members, and their respective membership interest percent in each, are presented as BFA Attachment D. The facilities are as follows:

- Queens Center (179-beds) had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the negative working capital position is the result of a third party payor liability, as well as vacation and sick time accrual. Also, the entity achieved an average operating net income of \$625,327 from 2010 through 2013.
- University Nursing Home (46-beds) had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the applicant achieved an average operating net income of \$295,821 from 2010 through 2013.
- Williamsbridge Manor (77-beds) had an average positive working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the 2011 negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$345,289 from 2010 through 2013.
- Bronx Center for Rehab (200-beds) had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of an \$800,000 Medicare Part B receivable owed to the facility. Also, the facility achieved an average operating net income of \$905,495 from 2010 through 2013.
- Brooklyn Center for Rehabilitation (215-beds) had an average positive working capital position and an average positive net asset position from 2010 through 2013. Also, the entity incurred an average net income of \$1,993,711 from 2010 through 2013.
- Dutchess Center (122-beds) had an average negative working capital position and an average positive net asset position from 2010 through 2013. The applicant has indicated that the reason for the negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an average operating net income of \$684,086 from 2010 through 2013.
- Bushwick Center (225-beds) had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of pending CMI and capital reimbursement from the State, vacation and sick time accruals and pending HUD reimbursement. Also, the entity achieved an average operating net income of \$491,025 from 2012 through 2013.
- Rome Center (160-beds) had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an average operating net income of \$701,374 from 2012 through 2013.
- Chittenango Center for Rehab (80-beds) had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an average net income of \$383,205 from 2012 through 2013. The applicant has indicated that the reason for the 2012 losses were the result of a \$400,000 capital audit take back. The applicant further indicated that they implemented the following steps to improve operations: renegotiating vendor contracts, analyzing overtime utilization and making adjustments necessary to reduce the overtime expense, and enhanced efforts on collections on accounts receivable.
- Boro Park Center (504-beds) had an average negative working capital position and an average positive net asset position from 2012 through 2013. The applicant has indicated that the reason for the average negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$3,725,321 from 2012 through 2013.
- Waterfront Healthcare Center (160-beds) had a positive working capital position and a positive net asset position in 2013. Also, the entity achieved an operating net income of \$155,117 in 2013.
- Fulton Center (176-beds) had a negative working capital position and a positive net asset position in 2013. The applicant has indicated that the reason for the negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$568,318 in 2013.

- Richmond Center (300-beds) had a negative working capital position and a positive net asset position in 2013. The applicant has indicated that the reason for the negative working capital position is the result of vacation and sick time accrual. Also, the entity achieved an operating net income of \$2,576,814 in 2013.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Financial Summary- Delaware Nursing & Rehabilitation Center
BFA Attachment C	Pro-forma Balance Sheet
BFA Attachment D	Financial Summaries of affiliated entities.
BFA Attachment E	September 30, 2014 internal financial statements of Delaware Nursing & Rehabilitation Center
BNHLC Attachment A	Quality Measures and Inspection Report

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Delaware Operations Associates, LLC d/b/a Buffalo Center for Rehabilitation and Health Care as the new operator of Delaware Nursing & Rehabilitation Center with no changes in services provided upon the change in ownership 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:

141207 E

FACILITY/APPLICANT:

Delaware Operations Associates, LLC d/b/a
Buffalo Center for Rehabilitation and
Health Care

APPROVAL CONTINGENT UPON:

1. The submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. The report should include, but not be limited to: a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program; b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; c. Identifying community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and inform them about the facility's Medicaid Access policy. d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and e. Other factors as determined by the applicant to be pertinent. [RNR]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
 - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy; and
 - d. Submit an annual report for two years to the DOH, which demonstrates substantial progress with the implement of the plan. The plan should include but not be limited to:
 - Information on activities relating to a-c above;
 - Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
 - Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Programmatic review and approval of an operating name for the facility that clearly delineates it as a residential health care facility. [LTC]
5. Submission of a bank loan commitment that is acceptable to the Department of Health. [BFA]
6. Submission of a working capital loan commitment that is acceptable to the Department of Health. [BFA]

7. Submission of an executed payment agreement for amounts owed to the Department, acceptable to the Department of Health. [BFA]
8. Submission of a revised Certificate of Amendment of the Articles of Organization of Delaware Operations Associates, LLC, acceptable to the Department. [CSL]
9. Submission of an executed Certificate of Amendment of the Certificate of Incorporation or an executed Certificate of Dissolution of BTNH, Inc., acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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


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



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel 

DATE: March 17, 2015

SUBJECT: Proposed Dissolution of Guthrie Same Day Surgery Center, Inc.

Guthrie Same Day Surgery Center, Inc. requests Public Health and Health Planning Council approval of its proposed Dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

Guthrie Same Day Surgery Center, Inc. was formed in 2002 under Section 402 of the Not-for-Profit Corporation Law and operated a free-standing ambulatory surgery center in Horseheads, New York until 2012. In 2012, Guthrie Same Day Surgery Center, Inc. transferred its license to operate to Corning Hospital as part of the overall restructuring of the Guthrie Health Care System, which includes both the corporation and Corning Hospital. Following the transfer, the Corporation distributed all of its remaining assets to the Hospital in compliance with the Corporation's Certificate of Incorporation. There are no outstanding liabilities.

Attached are a copy of the duly executed proposed Certificate of Dissolution, a letter from Guthrie Same Day Surgery Center, Inc.'s attorney explaining the need for the proposed Dissolution, a proposed Plan of Dissolution, and the Attorney General's approval of the Corporation's Certificate of Dissolution.

The Certificate of Dissolution is in legally acceptable form.

Attachments

cc: C. Jolicoeur
B. DelCogliano



NIXON PEABODY LLP
ATTORNEYS AT LAW

NIXONPEABODY.COM
@NIXONPEABODYLLP

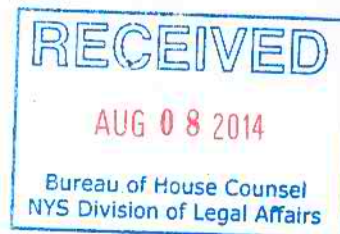
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Nixon Peabody LLP
1300 Clinton Square
Rochester, NY 14604-1792
585-263-1000

August 7, 2014

VIA FEDERAL EXPRESS

New York Department of Health
Division of Legal Affairs
Corning Tower, Room 2464
Empire State Plaza
Albany, New York 12237



RE: Guthrie Same Day Surgery Center, Inc.
Dissolution

Dear Sir/Madam:

Enclosed for your review and consent please find the Certificate of Dissolution and Plan of Dissolution for Guthrie Same Day Surgery Center, Inc. (the "Corporation"), along with a copy of its Certificate of Incorporation, as amended.

The dissolution of the Corporation is part of the overall restructuring of the Guthrie Health Care System, which includes the Corporation, Corning Hospital (the "Hospital"); Guthrie Health Care System, the prior sole member of the Corporation; and The Guthrie Clinic, as the current sole member of the Corporation.

On December 28, 2012 the Department gave its consent to CON Application #122032 submitted on behalf of the Hospital approving the transfer of the Corporation's license to operate a free-standing ambulatory surgery center in Horseheads, New York to the Hospital. In connection with the Department's consent and Sections 510 and 511 of the Not-for-Profit Corporation Law ("the "N-PCL"), the Corporation transferred its operating license to the Hospital (the "Transfer").

Following the Transfer, the Corporation distributed all of its remaining assets to the Hospital in compliance with the Corporation's Certificate of Incorporation, as amended, to be used by the Hospital for the continued operation of the surgery center. The Corporation has no outstanding liabilities.

We respectfully request the Department's consent to dissolve the Corporation pursuant to the terms of the Plan of Dissolution included herein. The New York State Attorney General's Office has given its final consent as set forth on the Certificate of Dissolution included herein. Please contact us if you require anything further. Thank you for your attention to this matter.

Very truly yours,

Anita L. Pelletier

cc: Francis Macafee (via email – letter only)

Enclosures

CERTIFICATE OF DISSOLUTION
OF
GUTHRIE SAME DAY SURGERY CENTER, INC.
Under Section 1003 of the Not-for-Profit Corporation Law

THE UNDERSIGNED, being the President of Guthrie Same Day Surgery Center, Inc. (the "Corporation"), does hereby certify:

1. The name of this Corporation is Guthrie Same Day Surgery Center, Inc.
2. The Certificate of Incorporation of the Corporation was filed in the office of the Secretary of State of the State of New York on January 25, 2002.
3. The names and addresses of the directors and officers of the Corporation are as follows:

<u>Name/Address</u>	<u>Title</u>	<u>Name/Address</u>	<u>Title</u>
Paul Chacona 506 Welles Avenue Athens, PA 18810	Director	R. Lois Allen, RN 2 Lois Lane Athens, PA 18810	Director
Edward Jones, M.D. 620 South Main Street Athens, PA 18810	Director	Dr. Thomas McDonald 755 South Main Street Athens, PA 18810	Chair/President/ Director
Marie Droege 111 Murray Street Sayre, PA 18840	Director	David Gibbs 33 Pine Street Waverly, NY 14892	Secretary/Treasurer/ Director
John Vanzanten 29 Antler Road Big Flats, NY 14814	Director	David E. Iocco 2434 Morrcrest Drive Corning, NY 14830	Director

4. The dissolution of the Corporation was authorized by a majority vote of the Board of Directors of the Corporation at a meeting held on February 24, 2014 and approved by the member on March 21, 2014.
5. At the time of dissolution, the Corporation is a Type B corporation.
6. The Corporation filed with the Attorney General a certified copy of its Plan of Dissolution.


7. The Plan of Dissolution filed with the Attorney General included a statement, required pursuant to N-PCL Section 1001(b) that at the time of dissolution the Corporation had no assets and no liabilities.

8. The Corporation elects to dissolve.

9. At the time the Corporation authorized its plan of dissolution, the Corporation did not hold assets that were legally required to be used for a particular purpose pursuant to the New York N-PCL.

10. Prior to the filing of this Certificate with the Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate this 24th day of February, 2014.


Name: ~~Dr. Thomas McDonald~~
Title: President

THE ATTORNEY GENERAL HEREBY APPROVES
THE FOREGOING CERTIFICATE OF DISSOLUTION
FOR FILING WITH THE DEPARTMENT OF STATE.

Michael J. ...

ASSISTANT ATTORNEY GENERAL

4/17/14

DATE

**CERTIFICATE OF DISSOLUTION
OF
GUTHRIE SAME DAY SURGERY CENTER, INC.**

Under Section 1003 of the Not-for-Profit Corporation Law

FILED BY:

**Nixon Peabody LLP
1300 Clinton Square
Rochester, New York 14604**

**PLAN OF DISSOLUTION
OF
GUTHRIE SAME DAY SURGERY CENTER, INC.**

The Board of Directors of Guthrie Same Day Surgery Center, Inc. (the "Corporation"), at a meeting convened on February 24, 2014, a quorum being present at all times, by a majority vote of the Directors, having considered the advisability of voluntarily dissolving the Corporation, and it being the opinion of the Board of Directors that dissolution is advisable and it is in the best interests of the Corporation to effect such a dissolution, and the Board having adopted, by a majority vote, a Plan for a voluntary dissolution of the Corporation, does hereby recommend to its members for authorization, that the Corporation be dissolved in accordance with the following Plan:

PROCEDURE FOR DISSOLUTION

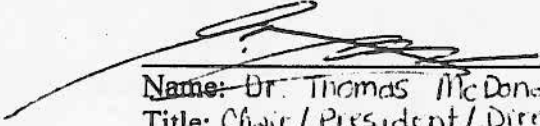
- A. Upon resolution of the Board of Directors adopting this Plan of Dissolution, the Board shall submit this Plan to a vote of its member.
- B. Approval of the dissolution of the Corporation is required to be obtained by the New York State Department of Health.
- C. The Corporation has no assets or liabilities.
- D. Within ten (10) days after the authorization of the Plan of Dissolution, a certified copy of the Plan shall be filed with the Attorney General of the State of New York pursuant to Section 1002(d) of the New York Not-for-Profit Corporation Law.
- E. Within two hundred seventy days of filing of the Plan of Dissolution with the Attorney General, the Corporation shall carry out the Plan.
- F. A Certificate of Dissolution shall be executed and all approvals required under Section 1003 of the Not-For-Profit Corporation Law shall be attached thereto.

CERTIFICATION

STATE OF Pennsylvania)
COUNTY OF Barford) ss:

I, Thomas McDonald the President of Guthrie Same Day Surgery Center, Inc., hereby certify under penalties of perjury that the within Plan of Dissolution was duly submitted and passed by a majority vote of the Board of Directors at a meeting duly held on February 24, 2014.

Dated: February 24, 2014


Name: Dr. Thomas McDonald
Title: Chair / President / Director

CERTIFICATE OF INCORPORATION
OF
GUTHRIE SAME DAY SURGERY CENTER, INC.

1020125000577

Under Section 402 of the Not-for-Profit Corporation Law

The undersigned, acting as the sole incorporators, for the purpose of forming a corporation pursuant to Section 402 of the Not-for-Profit Corporation Law of the State of New York, hereby certify as follows:

FIRST: The name of the corporation is Guthrie Same Day Surgery Center, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in Section 102(a)(5), and is a Type B corporation as defined in Section 201, of the Not-for-Profit Corporation Law of the State of New York ("NPCL").

THIRD: The nature of the business and of the purposes to be conducted and promoted by the Corporation is: (i) to plan, construct, erect, build, acquire, alter, reconstruct, own, maintain and operate an ambulatory surgery center in Chemung County, New York pursuant to Article 28 of the Public Health Law; (ii) to provide at such location services and facilities to out-of-hospital or ambulatory patients, by or under the supervision of a physician, for the prevention, diagnosis and treatment of human disease, pain, injury, deformity or physical condition; and (iii) to do any other lawful thing incidental to, connected with or useful, suitable or proper for the furtherance or accomplishment of the foregoing purposes.

The objects and purposes provided for herein shall be subject to the approvals or consents of such regulatory authority as may be required by law. The Corporation is not being formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

The powers and purposes of the Corporation are specifically limited to the ownership and operation of an ambulatory surgery center located at Chemung County, New York, and nothing

contained herein shall authorize the Corporation to own or operate any other hospital facility, hospital service, or health-related services, a drug maintenance program, a certified home health agency, a hospice, a health maintenance organization or a comprehensive health services plan, as provided by Articles, 28, 33, 36, 40 and 44, respectively, of the Public Health Law or to solicit, collect or otherwise raise or obtain any funds, contributions or grants from any source for the establishment or operation of any hospital.

FOURTH: The Corporation shall not directly or indirectly engage in or include among its purposes any of the activities set forth in subsections (b) through (v) of Section 404 of the NPCL without having first obtained the approvals or consents required in such subsections. The Corporation shall not engage in the practice of the profession of medicine or any other profession required to be licensed under Title VIII of the Education Law of the State of New York, or operate a school or engage in any other activity requiring the approval of the New York State Commissioner of Education.

FIFTH: The corporation shall have one member, Guthrie Healthcare System. With respect to the Corporation, the member shall have the power to elect and remove directors; to approve operating and capital budgets; to approve non-budgeted purchases of equipment or renovations of real property in excess of \$50,000; to approve the purchase, acquisition, sale or mortgage of real property; to approve applications for government licenses, certificates of need and other approvals; to approve contracts in excess of \$50,000; to approve new members; to approve any amendments to the certificate of incorporation or bylaws of the Corporation; and to ensure that the Corporation pursues a consistent mission, philosophy and goals and promotes a consistent culture and community service orientation. With respect to the Corporation, Guthrie Health, a corporation incorporated under the laws of the Commonwealth of Pennsylvania, shall have the power to:

- (a) develop and execute a strategic plan;
- (b) establish the enterprise's mission, vision and values;
- (c) approve the capital and operating budgets;

- (d) allocate cash flow from operations, and realized capital gains and realized income from all investments;
- (e) impose debt as a joint and several obligation of and require that such debt be secured by property or guarantees;
- (f) require contributions of cash or cash equivalents to support capital needs or capital projects;
- (g) approve the aggregate physician compensation and income distribution plan for employed physicians;
- (h) approve restrictive covenants in employed physician contracts;
- (i) determine the number and type of employed physicians required;
- (j) approve variations in or waivers of employed physician non-compete covenants;
- (k) approve incurrence of material debt and disposition of material assets, including transfers of cash and liquid assets and other property;
- (l) require and approve participation in key strategic relationships;
- (m) require and approve the addition, deletion or modification of programs and services;
- (n) approve participation in managed care contracts and other health care service purchasing arrangements;
- (o) approve fundamental transactions, including mergers, consolidations, dissolution, sale of substantially all assets and creation and acquisition of subsidiaries;
- (p) monitor and enforce compliance with the policies and directives of the Corporation;
- (q) approve certain changes to articles and bylaws; and
- (r) approve withdrawal from the joint enterprise.

SIXTH: The office of the Corporation is to be located in the County of Chemung within the State of New York.

SEVENTH: The names and addresses of the persons who are to serve as the initial directors of the Corporation until the first annual meeting of the Corporation are:

AFFILIATION	NAME	ADDRESS
Guthrie Healthcare System	David L.R. Gibbs	33 Pine Street Waverly, NY 14892
Guthrie Healthcare System	Edward L. Jones, M.D.	620 South Main Street Athens, PA 18810
Guthrie Healthcare System	George G. Houser	POB 325, Coddling Road Burlington, PA 18814
Guthrie Healthcare System	Mark Stensager	RR#1, Box 302 Athens, PA 18810
Corning Hospital	Stephen L. Albertalli	3 Meadow Drive Big Flats, NY 14874
Corning Hospital	George Connors	2905 Downing Street Big Flats, NY 14874
Guthrie Clinic	Terence M. Devine, M.D.	RD #2, Box 184E Athens, PA 18810
Guthrie Clinic	Paul Chacona	506 Wells Avenue Athens, PA 18810

EIGHTH: Pursuant to Section 504 of the NPCL, the Corporation shall, upon a resolution duly adopted by the Board of Directors of the Corporation, be authorized to accept subventions from Members and/or non-members, and to issue certificates therefor.

NINTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary shall mail a copy of any process against the Corporation served upon the Secretary is: Guthrie Same Day Surgery Center, Inc., 31 Arnot Road, Big Flats, New York 14814.

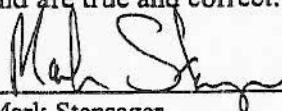
TENTH: In the event of the dissolution of the Corporation, all remaining assets and property of the Corporation remaining after payment of all necessary expenses thereof, shall be distributed (i) to organizations exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") or under corresponding provisions of any subsequent federal tax laws or (ii) to the federal, state or local government for a public purpose, subject to the approval of a Justice of the Supreme Court of the State of New York.

ELEVENTH: Other provisions of this Certificate notwithstanding, the Corporation shall be organized exclusively for one or more of the purposes set forth in Code Section 501(c)(3), or in corresponding provisions of any subsequent federal tax laws, and shall not carry on or engage in any activities not permitted to be carried on by an organization exempt from federal income tax under Code Section 501(c)(3) or corresponding provisions of any subsequent federal tax laws.

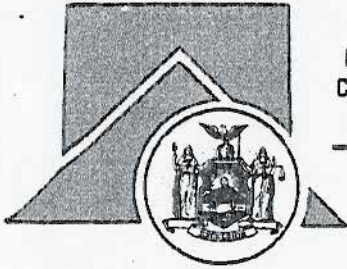
TWELFTH: In any year in which the Corporation is classified as a private foundation described in Code Section 509(a), the Corporation shall distribute its income for said period in such a time and manner as not to subject the Corporation to tax under Code Section 4942. During such period, the Corporation shall not:

- (i) engage in any act of self-dealing as defined in Code Section 4941(d);
- (ii) retain any excess business holdings as defined in Code Section 4943(c);
- (iii) make any investment in such a manner as to subject the Corporation to tax under Code Section 4944; or
- (iv) make any taxable expenditure as defined in Code Section 4945(d) or in corresponding provisions of any subsequent federal tax laws.

IN WITNESS WHEREOF, we have signed this Certificate this 19th day of December, 2001 and do hereby affirm, under the penalties of perjury, that the statements contained therein have been examined by us and are true and correct.



Mark Stensager
President and CEO, Guthrie Healthcare System
Incorporator, Guthrie Same Day Surgery Center, Inc.



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

January 23, 2002

Mr. Peter J. Millock
Attorney-at-Law
Nixon Peabody, LLP
Omni Pl., Suite 900-30
South Pearl Street
Albany, New York 12207

Re: Certificate of Incorporation of Guthrie Same Day Surgery Center, Inc.

Dear Mr. Millock:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 19th day of October, 1998, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Guthrie Same Day Surgery Center, Inc., dated December 19, 2001.

Sincerely,

Karen S. Westervelt
Executive Secretary

F 020125000577

CERTIFICATE OF INCORPORATION
OF
GUTHRIE SAME DAY SURGERY CENTER, INC.

Under Section 402 of the Not-for-Profit Corporation Law

2cc
STATE OF NEW YORK
DEPARTMENT OF STATE

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NIXON PEABODY LLP
Omni Plaza
30 South Pearl Street
Albany, NY 12207

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**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
GUTHRIE SAME DAY SURGERY CENTER, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

The undersigned, being the President and Secretary of Guthrie Same Day Surgery, Inc. (the "Corporation"), respectively, in order to amend the Corporation's Certificate of Incorporation, certify that:

FIRST: The name of the Corporation is Guthrie Same Day Surgery Center, Inc.

SECOND: The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on January 25, 2002, under Section 402 of the Not-for-Profit Corporation Law ("N-PCL").

THIRD: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the N-PCL. The Corporation is a Type B corporation under Section 201 of the N-PCL, and after the amendment of its Certificate effect herein, the Corporation shall be a Type B corporation under Section 201 of the N-PCL.

FOURTH: The Certificate of Incorporation is hereby amended to effect the following:

(a) To amend Paragraph "ELEVENTH," presently reading in its entirety as follows:

"ELEVENTH: Other provisions of this Certificate notwithstanding, the Corporation shall be organized exclusively for one or more of the purposes set forth in Code Section 501(c)(3), or in corresponding provisions of any subsequent federal tax laws, and shall not carry on or engage in any activities not permitted to be carried on by an organization exempt from federal income tax under Code Section 501(c)(3) or corresponding provisions of any subsequent federal tax laws."

(b) Paragraph ELEVENTH is amended to read in its entirety as follows:

"ELEVENTH: Notwithstanding any other provision of this Certificate, the Corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of the Code; or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Code."

(c) To add a new paragraph THIRTEENTH to read as follows:

"No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting to influence legislation, except as


otherwise provided by Section 501(h) of the Code. The Corporation shall not participate or intervene (including the publication or distribution of statements) in any political campaign on behalf of, or in opposition to, any candidate for public office."


FIFTH: This Certificate of Amendment to the Certificate of Incorporation was authorized by majority of the Board of Directors present at a meeting duly held on September 14, 2004; and by written consent of the Corporation's sole corporate member.

SIXTH: The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The Post Office address to which the Secretary shall mail a copy of any such process against the Corporation served is:

Guthrie Same Day Surgery, Inc.
31 Arnot Road
Big Flats, New York 14814

IN WITNESS WHEREOF, we have made and subscribed this certificate and hereby affirm under the penalties of perjury that its contents are true this 24th day of September, 2004.


Name: Thomas L. McDonald, Jr.
Title: President


Name: David L.R. Gibbs
Title: Secretary

SEP. 24. 2004 12:28PM

LIBERTY

NO. 304 P. 5

F040927000200

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

GUTHRIE SAME DAY SURGERY CENTER, INC.

Under Section 803 of the Not-for-Profit Corporation Law

FILED

2004 SEP 27 AM 10:46

2004 SEP 23 PM 1:00

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DRAWDOWN - #A1.

Filed by:

Nixon Peabody LLP
• Omni Plaza
30 South Pearl Street
Albany, NY 12207

Customer Reference# 2247

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lcc
STATE OF NEW YORK
DEPARTMENT OF STATE

FILED SEP 27 2004

TAX \$
BY:

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NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

December 28, 2012

Ms. Shirley Magana
President & Chief Operating Officer
Corning Hospital
176 Denison Parkway East
Corning, New York 14830

Re: 122032
Corning Hospital
(Chemung [Horseheads]) County
Certify a multi-specialty ambulatory
surgery extension clinic at a location
operating as a diagnostic and treatment
center

Dear Ms. Magana:

The Department of Health approves the above application in accordance with the full review provisions set forth in 10 NYCRR section 710.1(c)(2). Approval of this application was subject to the enclosed contingencies first being satisfied.

On December 13, 2012, the Department received a copy of the executed building lease as well as a copy of the executed movable equipment lease required to satisfy the contingencies attached to this project. This letter will serve as your written approval from the Division of Health Facility Planning (DHFP) indicating satisfaction of the contingencies.

In addition to the contingencies, the Department approves this application with the enclosed condition(s). You are responsible for ensuring that this project complies with all applicable statutes, codes, rules and regulations. Should violations be found when reviewing documents, or at the time of on-site inspections or surveys, you will be required to correct them. Additional costs incurred to address any violations will not be eligible for reimbursement without the prior approval of the Department. Also, in accordance with 10 NYCRR section 710.5, any change in the scope of this project requires prior approval from the Department and may require a new or amended application.

In order to ensure reimbursement and/or receive a revised operating certificate, you must contact your regional office. It is my understanding that the regional office can facilitate project closure by December 31, 2012.

If you have any additional questions or need further assistance, please contact the Mr. Abel or Mr Schmidt in the division of health Facility Planning at (518) 402-0911, New York State Department of Health, Division of Health Facility Planning, Corning Tower, Room 1842, Empire State Plaza, Albany, New York, 12237.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen Westervelt", with a long, sweeping horizontal stroke extending to the right.

Karen Westervelt
Deputy Commissioner
Offices of Primary Care and Health
Systems Management

122032-C Corning Hospital

Approval contingent upon:

1. Submission of an executed building sub lease that is acceptable to the Department of Health. [BFA]
2. Submission of an executed movable equipment lease that is acceptable to the Department of Health. [BFA]

Approval conditional upon:

1. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
2. The signage must clearly denote the facility is separate and distinct from the other adjacent entities. [HSP]
3. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
4. The clinical space must be used exclusively for the approved purpose. [HSP]

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 16th day of April, 2015, approves the filing of the Certificate of Dissolution of Guthrie Same Day Surgery Center, Inc., dated February 24, 2014.



STATE OF NEW YORK - DEPARTMENT OF HEALTH

MEMORANDUM

TO: Public Health and Health Planning Council

FROM: James E. Dering, General Counsel *JED*

DATE: March 17, 2015

SUBJECT: Certificate of Amendment of the Certificate of Incorporation of The Hortense and Louis Rubin Dialysis Center, Inc. ("the corporation")

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of The Hortense and Louis Rubin Dialysis Center, Inc. This not-for profit corporation seeks approval to change its name to "The Hortense and Louis Rubin Center, Inc." The corporation has transferred its diagnostic and treatment center and two extension clinics in Rensselaer and Saratoga Counties to Dialysis Centers, Inc. as described in CON application # 141160-C, which was approved by the Department on August 1, 2014. Accordingly, the attached certificate also removes from the purposes of the corporation the operation of an Article 28 facility. Public Health and Health Planning Council approval for a change of corporate name and purposes is required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (1).

The proposed Certificate of Amendment is in legally acceptable form.

Attachment

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE HORTENSE AND LOUIS RUBIN DIALYSIS CENTER, INC.
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

The undersigned, being the President of The Hortense and Louis Rubin Dialysis Center, Inc. (the "Corporation,"), in order to amend the Corporation's Certificate of Incorporation, certifies that:

1. The name of the Corporation is The Hortense and Louis Rubin Dialysis Center, Inc. The Corporation was formed under the name The Hortense and Louis Rubin Dialysis Center, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State of the State of New York on May 8, 1985, under the New York Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in Subparagraph (a)(5) of Section 102 of the New York Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended to remove the word "Dialysis" from the Corporation's name. To effect such change, Paragraph FIRST of the Certificate of Incorporation of the Corporation is amended to read as follows:

"FIRST. The name of the Corporation is "The Hortense and Louis Rubin Center, Inc."
5. Paragraph THIRD of the Certificate of Incorporation of the Corporation is hereby amended as follows:
 - (a) Subparagraph (1) of the Corporation's Certificate of Incorporation, setting forth one of the Corporation's purposes (to operate a diagnostic and

treatment center) is hereby deleted and Subparagraphs (2) through (5) are hereby renumbered (1) through (4) respectively.

6. This Certificate of Amendment of the Certificate of Incorporation was authorized the unanimous written consent of the Corporation's board of directors and the Corporation's members.

7. Annexed hereto are the consents of the New York State Public Health and Health Planning Council, and the Office of the Attorney General of New York State, approving the filing of this Certificate of Amendment.

8. The Secretary of State of the State of New York is hereby designated as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any such process against the Corporation served upon the Secretary is: Peter J. Millock, Nixon Peabody LLP, 677 Broadway, 10th Floor, Albany, New York 12207.

[Signature Page to Follow]

IN WITNESS WHEREOF, I have executed this Certificate of Amendment this 5th
day of September, 2014.



Neil Roberts
President

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
THE HORTENSE AND LOUIS RUBIN DIALYSIS CENTER, INC.
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

**NIXON PEABODY LLP
677 Broadway, 10th Floor
Albany, New York 12207**

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 16th day of April, 2015, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Hortense and Louis Rubin Dialysis Center, Inc., dated September 5, 2014.



Public Health and Health Planning Council

Project # 151027-E
NYP Community Programs, Inc.

Program: Hospital
Purpose: Establishment

County: Queens
Acknowledged: January 26, 2015

Executive Summary

Description

NYP Community Programs, Inc. (NYPCP), an existing not-for-profit corporation, requests approval to become the active parent and co-operator of New York Hospital Medical Center of Queens (NYHQ), a 535-bed, voluntary not-for-profit, acute care hospital located at 56-45 Main Street, Flushing (Queens County). Upon approval of this application, the hospital will be renamed New York-Presbyterian/Queens (NYP/Q). NYPCP will be the sole member of NYP/Q. The sole member of NYPCP is The New York and Presbyterian Hospital, which serves in a passive parent capacity.

The purpose of this transaction is to establish a more integrated system with the objective of improving quality, increasing access and lowering the costs of health care in the communities served by NYHQ. There will be no change in authorized services or the number or type of beds as a result of approval of this project. Also, there are no projected changes in the utilization, revenues or expenses of NYHQ as a direct result of this project. The hospital will remain a separate not-for-profit corporation licensed under Article 28 of the Public Health Law, maintaining its separate operating certificate.

As active parent and co-operator, NYPCP will have the following rights, powers and authorities with respect to NYP/Q:

- Appointment of the members of the Board of Trustees of NYP/Q;
- Appointment or dismissal of officers, managers and medical staff of NYP/Q;
- Approval of the operating and capital budgets and strategic and operating plans of NYP/Q;

- Adoption or approval of operating policies and procedures of NYP/Q;
- Approval of certificate of need applications filed by or on behalf of NYP/Q;
- Approval of any indebtedness of NYP/Q;
- Approval of management or clinical service contracts of NYP/Q;
- Adoption or approval of any amendment, repeal or other change to the organizational documents (including the Certificate of Incorporation and Bylaws) of NYP/Q, including the adoption of any new By-Laws of NYP/Q; and
- Approval of settlements of administrative or other litigation or proceedings to which NYP/Q is a party.

BFA Attachment A is the organizational chart of NYP Community Programs, Inc. post-closing.

OPCHSM Recommendation
Contingent Approval

Need Summary

This transition will help establish an integrated health system and is expected to improve quality of care while expanding access. The facility is expected to continue servicing the patients in Queens County as it has in the past with a more streamlined approach. There will be no changes in beds, services or utilization with this project.

Program Summary

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

Financial Summary

There are no project costs associated with this application.

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

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 the executed Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., acceptable to the Department. [CSL]
2. Submission of the finalized Amended and Restated Bylaws of NYP Community Programs, Inc., acceptable to the Department. [CSL]
3. Submission of the executed Restated Certificate of Incorporation of The New York Hospital Medical Center of Queens, acceptable to the Department. [CSL]
4. Submission of the finalized Bylaws of New York-Presbyterian/Queens, acceptable to the Department. [CSL]

Approval conditional upon:

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

Council Action Date

April 16, 2015

Need Analysis

Project Description

NYP Community Programs, Inc. seeks approval to be established as the active parent and co-operator of New York Hospital Medical Center of Queens (NYHQ), a 535 bed voluntary not for profit facility located at 56-45 Main Street Flushing, New York 11355 in Queens County.

Background

New York Hospital Medical Center of Queens	
Category	Beds
Top of Form AIDS/Bottom of Form	20
Coronary Care	13
Intensive Care	29
Maternity	30
Medical / Surgical	393
Neonatal Continuing Care	5
Neonatal Intensive Care	3
Neonatal Intermediate Care	6
Pediatric	20
Transitional Care	16
Total	535

Conclusion

This project will allow the health system to operate in a more cost effective manner, provide a more streamlined patient health system, and offer better access to care.

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

NYP Community Programs, Inc. (NYPCP), an existing not-for-profit corporation, seeks approval to become the active parent and co-operator of New York Hospital Medical Center of Queens (NYHQ). The purpose of this transaction is to establish a coordinated and integrated system that will improve quality, increase access and lower costs of health care in the communities the hospital serves. No projected changes in staffing, authorized services, or the number or type of beds are anticipated as a result of the proposed change in governance structure.

New York Hospital Medical Center of Queens, now a 535-bed voluntary acute care hospital located at 56-45 Main Street in Flushing (Queens County), originally began operations in Manhattan in 1892 under the leadership of the Salvation Army. In 1957, the facility, then known as Booth Hospital, relocated to Queens. In the early 90's, it became an affiliate of New York Hospital and was renamed The New York Hospital Medical Center of Queens, later shortened to New York Hospital Queens. In 1997, the hospital became a member of the New York-Presbyterian Healthcare System following a merger of The New York Hospital and The Presbyterian Hospital. Upon approval of this project, the hospital will be renamed New York-Presbyterian/Queens (NYP/Q).

The sole member of NYPCP is The New York and Presbyterian Hospital which serves in a passive parent capacity. Upon approval, NYPCP will have the ability to exercise Article 28 active powers and gain oversight with respect to day-to-day-operations over the following:

New York Hospital Medical Center of Queens (NYHQ)

and

NYHQ Extension Clinics

- The Cardiac Health Center (Fresh Meadows)
- Obstetrical Clinic at NYMCQ (Fresh Meadows)
- NYHQ Special Care Center (Flushing)
- NYHQ – Primary Medical Care Clinic (Fresh Meadows)
- NYHQ Center for Wound Healing at Silvercrest (Jamaica)
- NYHQ Eye Center (Flushing)
- Medical Extension Clinic of NYHMCQ (Flushing)
- Trude Weishaupt Memorial Satellite Dialysis Center (Fresh Meadows)
- Jackson Heights Family Health Center (Jackson Heights)
- Immediate Care Center (Astoria)
- Hollis Women’s Center (Hollis)
- Family Health Center (Flushing)
- Center for the Developmental Disability & Neuro Science Center (Flushing)
- NYHQ Pediatric Asthma Van (Long Island City)

Character and Competence

The proposed Directors for NYP Community Programs, Inc. are:

<u>NYPCP</u>	<u>Title</u>
John J. Mack	New York-Presbyterian Hospital, Trustee
Jeffrey W. Greenberg	New York-Presbyterian Hospital, Trustee
Arthur J. Hedge, Jr.	New York-Presbyterian Hospital, Trustee
Alfred F. Kelly, Jr.	New York-Presbyterian Hospital, Trustee
Ivan G. Seidenberg	New York-Presbyterian Hospital, Trustee
Seymour Sternberg	New York-Presbyterian Hospital, Trustee
Steven J. Corwin, MD	New York-Presbyterian Hospital, CEO & Trustee

The proposed directors of New York Presbyterian/Queens following the establishment of NYPCP as the Hospital's active parent are:

Laura L. Forese, MD, MPH	Phyllis Lantos
Gary J. Zuar	Brian Regan
Jaclyn Mucaria	Kerry DeWitt
Cam Patterson, MD	Kimlee Roldan-Sanchez
Richard Gemming	Arthur Dawson
Wen-Hui Chiang	Joseph R. Ficalora

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

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

From a programmatic perspective, approval is recommended.

Financial Analysis

Capability and Feasibility

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

BFA Attachment B is the 2012 and 2013 certified financial statements of The New York and Presbyterian Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the hospital achieved an average operating income of \$197,785,500 from 2012 through 2013.

BFA Attachment C is the November 30, 2014 internal financial statements of The New York and Presbyterian Hospital. As shown, the hospital had a positive working capital position and a positive net asset position through the period November 30, 2014. Also, the entity achieved an operating income of \$178,145,000 through November 30, 2014.

BFA Attachment D is the 2012 and 2013 certified financial statements of New York Medical Center of Queens. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2013. Also, the entity incurred an average loss of \$2,903,500 from 2012 through 2013. The applicant indicated that the reason for the losses was the result of changes in the healthcare environment that led to changes in payor mix from Commercial to Medicaid. The hospital's management team worked with an outside consultant to identify and implement an action plan to improve their financial position. The action plan included implementation of over 30 initiatives in the following categories: hospital and physician revenue cycle improvements, supply chain and pharmaceutical sourcing, and labor productivity and staffing changes. The hospital also strategized to increase patient volumes, reduce length of stay, and reduce unnecessary testing/resource utilization. The initiatives generated over \$8M in fiscal impact in 2014, with continued savings in 2015. Further projects for financial improvement are targeted for additional savings in 2015.

BFA Attachment E is the November 30, 2014 internal financial statements of New York Medical Center of Queens. As shown, the entity had a positive working capital position and a positive net asset position through November 30, 2014. Also, the entity achieved an excess of revenues over expenses of \$15,586,000 through November 30, 2014.

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

Recommendation

From a financial perspective, approval is recommended.

Attachments

BFA Attachment A	Organizational Chart
BFA Attachment B	Financial Summary - 2012 and 2013 certified financial statements of The New York and Presbyterian Hospital
BFA Attachment C	Financial Summary - November 30, 2014 internal financial statements of The New York and Presbyterian Hospital
BFA Attachment D	Financial Summary - 2012 and 2013 certified financial statements of New York Medical Center of Queens
BFA Attachment E	Financial Summary - November 30, 2014 internal financial statements of New York Medical Center of Queens

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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish NYP Community Programs, Inc. as the active parent and co-operator of New York Hospital Medical Center of Queens, which will be renamed New York Presbyterian/Queens, 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:

151027 E

NYP Community Programs, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of the executed Certificate of Amendment of the Certificate of Incorporation of NYP Community Programs, Inc., acceptable to the Department. [CSL]
2. Submission of the finalized Amended and Restated Bylaws of NYP Community Programs, Inc., acceptable to the Department. [CSL]
3. Submission of the executed Restated Certificate of Incorporation of The New York Hospital Medical Center of Queens, acceptable to the Department. [CSL]
4. Submission of the finalized Bylaws of New York-Presbyterian/Queens, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

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

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



Public Health and Health Planning Council

Project # 142197-B
Surgical Pain Center of the Adirondacks LLC

Program: Diagnostic and Treatment Center **County:** Clinton
Purpose: Establishment and Construction **Acknowledged:** November 14, 2014

Executive Summary

Description

Surgical Pain Center of the Adirondacks, LLC, a to-be-formed limited liability company, requests approval for the establishment and construction of a single specialty freestanding ambulatory surgery center to perform pain management procedures including, but not limited to, procedures of the spine. The center will be located in leased space of a newly built single story building at Feathers Drive, Plattsburgh (Clinton County).

The sole proposed member of Surgical Pain Center of the Adirondacks, LLC is Dr. Thierry Bonnabesse, who is board certified in Physical Medicine and Rehabilitation and Pain Medicine.

OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate five (5) years from the date of its issuance.

Need Summary

Surgical Pain Center of the Adirondacks, LLC, a to-be-formed limited liability company, proposes to establish and construct a single specialty Article 28 diagnostic and treatment center to perform pain management procedures at Feathers Drive, Plattsburgh in Clinton County. The procedures to be performed at SPCA are presently being performed in physicians' private offices.

The number of projected procedures is 5,100 in Year 1 with Medicaid at 12.8 percent and charity care at 2.1 percent.

Program Summary

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

Financial Summary

Project costs of \$2,346,733 will be met with \$256,000 in cash and a \$2,090,733 bank loan at 4.5% over 25 years.

Budget:	Revenues:	\$2,219,732
	Expenses:	<u>1,763,575</u>
	Gain:	\$456,157

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

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 (5) years from the date of its issuance, contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment acceptable to the Department of Health. [BFA]
4. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
 - Data showing actual utilization including procedures;
 - Data showing breakdown of visits by payor source;
 - Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
5. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
6. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. The submission of State Hospital Code (SHC) Drawings and approval as described in BAER Drawing Submission Guidelines DSG-03 (See Attached). [AER]
9. Submission of a photocopy of the executed Operating Agreement of the applicant, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Lease Agreement between TB Enterprise Development LLC, and the applicant, acceptable to the Department. [CSL]
11. Submission of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
7. The applicant shall start construction on or before June 1, 2015 and complete construction by April 1, 2016 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
8. No additional specialties beyond pain management may be approved for the facility without a full review and recommendation of approval by the PHHPC. [PMU]
9. No additional physicians may be added to the ownership of the facility without a full review and recommendation of approval by the PHHPC. [PMU]
10. No additional operating rooms or procedure rooms may be added to the facility without a full review and recommendation of approval by the PHHPC. [PMU]

Council Action Date

April 16, 2015

Need Analysis

Project Description

Surgical Pain Center of the Adirondacks, LLC (SPCA), a to-be-formed limited liability company, requests approval for the establishment and construction of a single specialty Article 28 ambulatory surgery center to perform pain management procedures. The proposed location is Feathers Drive, Plattsburgh, 12901, Clinton County. The facility will have two procedure rooms.

Analysis

The proposed service area includes Clinton County and parts of Franklin and Essex Counties. The number of projected procedures is 5,100 in year 1 and 5,350 in year 3. These projections are based on the current practices of the participating physicians.

The projected payor source utilization for year 1 and year 3 is as follows:

142197: Projections	Year 1	Year 3	Year 1	Year 3
Commercial Ins.-Managed Care	2,142	2,247	42.0%	42.0%
Medicare Fee-For-Service	944	990	18.5%	18.5%
Medicaid Managed Care	653	685	12.8%	12.8%
Private Pay	556	583	10.9%	10.9%
Charity Care	107	112	2.1%	2.1%
Other	699	733	13.7%	13.7%
Total	5,101	5,350	100.0%	100.0%

There are no freestanding multi-specialty ASC's in Clinton County. Champlain Valley Physicians Hospital (CVPH) is part of the University of Vermont Health Network; CVPH is opposing this project. CVPH Ambulatory Surgery Center (CVPH-ASC), a CVPH extension clinic, provides multi-specialty ambulatory surgery services. It is located at 77 Plaza Boulevard, Plattsburgh, 12901, in Clinton County, at a distance of approximately 1.1 miles from the proposed project.

The applicant is committed to serving all patients in need of care regardless of their ability to pay or the source of payment.

Conclusion

With the approval of this project, the proposed ambulatory surgery services will be provided in an Article 28 facility rather than in a private practice office based setting. The facility will also represent a consolidation of services currently performed locally.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

Surgical Pain Center of the Adirondacks, LLC seeks approval to establish and construct a single specialty ambulatory surgery center to provide pain management services.

Proposed Operator	Surgical Pain Center of the Adirondacks, LLC
Site Address	Feather Drive, Plattsburgh (Clinton County)
Surgical Specialties	Single Specialty: Pain Management
Operating Rooms	1 (Class B)
Procedure Rooms	1 (Class C)
Hours of Operation	Monday through Friday from 8:00 am to 6:00 pm
Staffing (1st / 3rd Year)	14.0 FTEs / 14.5 FTEs
Medical Director	Thierry Bonnabesse, MD
Emergency, In-Patient & Backup Support Services Agreement and Distance	Expected to be provided by Champlain Valley Physicians Hospital Medical Center 1.0 miles/3 minutes
On-call service	Patients will be provided with the phone number of the Center and an on-call service will be available during non-operational hours.

Character and Competence

The sole member of the LLC is:

<u>Name</u>	<u>Membership Percentage</u>
Thierry Bonnabesse, MD	100%

The sole member of Surgical Pain Center of the Adirondacks, LLC is Dr. Thierry Bonnabesse. Dr. Bonnabesse is a practicing physician who is board-certified in physical medicine and rehabilitation with board subcertification in Pain Medicine. He is the founder, owner and medical director of Champlain Spine and Pain Management.

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

Dr. Bonnabesse disclosed that he has one (1) pending malpractice case.

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

Integration with Community Resources

Outreach to the underserved will include participation in community based education and awareness programs in the region in cooperation with Champlain Valley Physicians Hospital. The Center is committed to serving all persons in need of pain management care without regard to ability to pay or source of payment and charity care will be provided.

The applicant will be utilizing an electronic medical record (EMR) and intends on affiliating with all developing Accountable Care Organizations or Medical Homes. Further, for important clinical data exchange that may enhance the outcome of patient care, the facility plans on participating in the Hixny Network of Northeastern New York (a Health Information Exchange).

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Lease Rental Agreement

The applicant will lease approximately 6,930 square feet of space of a single story building at Feathers Drive, Plattsburgh, NY 12901, under the terms of the proposed lease agreement summarized below:

Lessor:	TB Enterprise Development, LLC
Lessee:	Surgical Pain Center of the Adirondacks , LLC
Term:	25 Years with two consecutive five year renewals.
Rental:	Rent is \$164,802.96 per year (\$13,733.58/month), \$23.78/sq. ft. and will increase 5% for each renewal.
Provisions:	Utilities, maintenance, insurance and taxes.

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

Total Project Cost and Financing

Total project costs for new construction and the acquisition of movable equipment is estimated at \$2,346,733, broken down as follows:

New Construction	\$ 1,608,028
Design Contingency	160,603
Construction Contingency	101,352
Architect/Engineering Fees	155,925
Other Fees (Consulting)	50,000
Movable Equipment	256,000
Application Fee	2,000
Additional Processing Fee	<u>12,825</u>
Total Project Cost	<u>\$2,346,733</u>

Project costs are based on a June 1, 2015 construction start date and a nine month construction period. The applicant's financing plan appears as follows:

Equity	\$ 256,000
Bank Loan @4.5% over a 25 year term	\$ 2,090,733

A letter of interest has been submitted by Glens Falls National Bank and Trust company on behalf of the applicant.

Operating Budget

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

	<u>YEAR ONE</u>	<u>YEAR THREE</u>
Revenues	\$2,116,390	\$2,219,732
Expenses		
Operating	\$1,492,524	\$1,547,584
Depreciation and Rent	<u>215,991</u>	<u>215,991</u>
Total Expenses	\$1,708,515	\$1,763,575
Net Income	<u>\$407,875</u>	<u>\$456,157</u>
Utilization (procedures)	5,100	5,350
Cost Per Procedure	\$335.00	\$329.64

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

	<u>First and Third Year</u>
Commercial Insurance-Managed Care	42.0%
Medicare Fee-For-Service	18.5%
Medicaid Managed Care	12.8%
Self-Pay	10.9%
Other *	13.7%
Charity Care	2.1%

*Other represents Workers Compensation.

Expense and utilization assumptions are based on the combined historical experience of the proposed physician member's private practice. The applicant has submitted physician referral letters in support of utilization projections.

Capability and Feasibility

Project cost will be satisfied by a loan from Glens Falls National Bank and Trust company for \$2,090,733 at stated terms, with the remaining \$256,000 from proposed member's equity.

Working capital requirements, estimated at \$293,929, appear reasonable based on two months of third year expenses which will be provided from equity of the proposed member. BFA Attachment A is a summary of net worth statement of the proposed member of Surgical Pain Center of the Adirondacks, LLC, which indicates the availability of sufficient funds for the stated levels of equity. BFA Attachment B is the pro forma balance sheet of Surgical Pain Center of the Adirondacks, LLC as of the first day of operation, which indicates positive member's equity position of \$544,000.

The submitted budget indicates a net income of \$407,875 and \$456,157 during the first and third years of operation, respectively. The budget appears reasonable.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Supplemental Information

Supplemental Information from Surrounding Hospitals

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

Facility: Champlain Valley Physicians Hospital
75 Beekman Street
Plattsburgh, NY 12901

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
55% main campus 27% off-campus ASC	89%	11%	No	No

Champlain Valley Physicians Hospital (CVPH) argues that it has more than sufficient capacity to accommodate the cases projected by the applicant and that the establishment of the proposed ASC would be competitive, duplicative and constitute an increase in health care costs for the community. CVPH states further that the ASC would erode the hospital's operating margin and affect its ability to provide Medicaid based services such as its dental clinic and mental health services, which operate at a loss.

In 2012, CVPH had a working capital ratio of 1.70 and a loss of \$5.3 million on revenues of \$286.7 million. In 2013, the hospital's working capital ratio was 1.97 and its operating gain was \$2.8 million on revenues of \$292.9 million. The hospital's expenditures for charity care were \$2.6 million in 2012 and \$3.5 million in 2013. In 2012, CVPH experienced bad debt of \$7.9 million. In 2013, its bad debt amounted to \$6.8 million.

Supplemental Information from Applicant

Need and Source of Cases: The utilization projected for the proposed ASC are based on the current volume of cases now performed in the office-based practices of the applicant physicians. The applicant also states that the ASC will have the capacity to offer more complex procedures than are currently available in the physician office setting and for which area residents are now leaving the area to obtain.

Staff Recruitment and Retention: The applicant states that staff of the applicant physicians' office-based surgery practices will be moved to the proposed ASC. Additional staff recruitment, if necessary, will be directed at the general marketplace.

Office-Based Cases: All of the cases projected for the proposed ASC are currently performed in office-based settings.

DOH Comment

Because the cases for the proposed ASC would be drawn exclusively from those currently performed in office-based settings, and therefore would not adversely affect the objecting hospital, the Department finds no basis for reversal or modification of the recommendation for approval of the proposed facility based on public need, financial feasibility and operator character and competence.

Attachments

- BFA Attachment A Summary Net Worth Statement of Proposed Member of Surgical Pain Center of the Adirondacks, LLC
- 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 16th day of April, 2015 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty free-standing ambulatory surgery center for pain management to be located at Feathers Drive, Plattsburg , 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

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NUMBER:

FACILITY/APPLICANT:

142197 B

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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]
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 - Data showing actual utilization including procedures;
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 - Data showing number of emergency transfers to a hospital;
 - Data showing percentage of charity care provided, and
 - Number of nosocomial infections recorded during the year in question. [RNR]
5. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
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 - Number of nosocomial infections recorded during the year in question. [RNR]
5. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
6. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. The submission of State Hospital Code (SHC) Drawings and approval as described in BAER Drawing Submission Guidelines DSG-03 (See Attached). [AER]
9. Submission of a photocopy of the executed Operating Agreement of the applicant, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed Lease Agreement between TB Enterprise Development LLC, and the applicant, acceptable to the Department. [CSL]
11. Submission of the applicant's executed Articles of Organization, acceptable to the Department. [CSL]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and Department's granting approval for the start of construction. [AER]
7. The applicant shall start construction on or before June 1, 2015 and complete construction by April 1, 2016 upon the filing of Final Construction Documents in accordance with 10 NYCRR section 710.7. In accordance with 10 NYCRR Part 710.2(b)(5), if construction is not started on or before the start date, this shall constitute abandonment of the approval. In accordance with Part 710.10(a), this approval shall be deemed cancelled, withdrawn and annulled without further action by the Commissioner. [AER]
8. No additional specialties beyond pain management may be approved for the facility without a full review and recommendation of approval by the PHHPC. [PMU]
9. No additional physicians may be added to the ownership of the facility without a full review and recommendation of approval by the PHHPC. [PMU]
10. No additional operating rooms or procedure rooms may be added to the facility without a full review and recommendation of approval by the PHHPC. [PMU]

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