

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

**COMMITTEE DAY**

**AGENDA**

*September 24, 2015*

*10:00 a.m.*

- *90 Church Street 4<sup>th</sup> Floor, Room 4A & 4B, New York City*
- *New York State Department of Health Offices at Rochester, Conference Room 1*
  - *Sturman Conference Room, Wadsworth Center, NYS Department of Health, Empire State Plaza, Albany*

**I. COMMITTEE ON HEALTH PLANNING**

John Rugge, M.D., Chair

Residential Health Care Facility Bed Need Methodology

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

Gary Kalkut, M.D., Vice Chair

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

**Acute Care Services – Construction**

**Exhibit # 1**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	151204 C	Vassar Brothers Medical Center (Dutchess County)
2.	151213 C	Strong Memorial Hospital (Monroe County)

**Hospice Services – Construction**

**Exhibit # 2**

	<b><u>Number</u></b>	<b><u>Applicant/Facility</u></b>
1.	151270 C	Hospice Buffalo Inc (Erie County)

**Residential Health Care Facilities Ventilator Beds – Construction**

**Exhibit # 3**

<u>Number</u>	<u>Applicant/Facility</u>
1. 132127 C	Four Seasons Nursing and Rehabilitation Center (Kings County)

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

**Acute Care Services- Establish/Construct**

**Exhibit # 4**

<u>Number</u>	<u>Applicant/Facility</u>
1. 151216 E	Columbia Memorial Hospital (Columbia County)
2. 152008 E	NYU Hospitals Center (Kings County)

**Ambulatory Surgery Centers - Establish/Construct**

**Exhibit # 5**

<u>Number</u>	<u>Applicant/Facility</u>
1. 142216 B	NHPE, LLC d/b/a New Hyde Park Endoscopy (Nassau County)
2. 151008 B	Pittsford Pain Center LLC (Monroe County)
3. 151019 B	Liberty Endo, LLC d/b/a Liberty Endoscopy Center (New York County)
4. 151186 B	Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Erie County)
5. 151200 E	South Shore Surgery Center (Suffolk County)
6. 151201 E	Crystal Run Ambulatory Surgery Center of Middletown (Orange County)
7. 151226 E	DHCH, LLC d/b/a Digestive Health Center of Huntington (Suffolk County)
8. 151246 B	Mid-Bronx Endoscopy Center (Bronx County)
9. 151258 E	Suffolk Surgery Center, LLC (Suffolk County)



- 10. 151288 B                    Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region (Albany County)
- 11. 152036 E                    AGCNY East, LLC d/b/a Endoscopy Center of Central New York (Onondaga County)

**Diagnostic and Treatment Centers - Establish/Construct**

**Exhibit # 6**

- | <u>Number</u> | <u>Applicant/Facility</u>                            |
|---------------|--|
| 1. 151250 B   | LISH, Inc.<br>(Suffolk County)                       |
| 2. 152015 B   | Community Health Initiatives, Inc.<br>(Kings County) |

**Dialysis Services - Establish/Construct**

**Exhibit # 7**

- | <u>Number</u> | <u>Applicant/Facility</u>   |
|---------------|---|
| 1. 151308 B   | Brooklyn Gardens Dialysis Center<br>(Kings County)  |
| 2. 151269 B   | Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center<br>(Schenectady County) |
| 3. 152025 E   | Mohawk Valley Dialysis Center<br>(Montgomery County)  |

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

**Exhibit # 8**

- | <u>Number</u> | <u>Applicant/Facility</u>                            |
|---------------|--|
| 1. 151131 E   | Latta Road Nursing Home West, LLC<br>(Monroe County) |
| 2. 151133 E   | Latta Road Nursing Home East, LLC<br>(Monroe County) |
| 3. 151134 E   | Hamilton Manor Nursing Home, LLC<br>(Monroe County)  |
| 4. 151196 E   | Daleview Care Center<br>(Nassau County)              |

**Certified Home Health Agency - Establish/Construct**

**Exhibit # 9**

<u>Number</u>	<u>Applicant/Facility</u>
1. 151099 E	HCR (Monroe County)

**C. Home Health Agency Licensures**

**Home Health Agency Licensures**

**Exhibit # 10**

<u>Number</u>	<u>Applicant/Facility</u>
1909 L	MedPro Homecare Agency, Inc. (Queens, New York, Kings, Richmond, Bronx, and Nassau Counties)
2042 L	Touch of Love Homecare Agency Inc. (Bronx, Richmond, Kings, New York, Queens, and Nassau Counties)
2059 L	Victory Home Care Services, Inc. (Suffolk and Nassau Counties)
2133 L	Theresa Home Care, Inc. (New York, Kings, Bronx, Queens, Richmond, and Nassau Counties)
2184 L	Kirenaga Home Care Brooklyn, Inc. (New York, Bronx, Kings, Richmond, Queens and Nassau Counties)
2186 L	Kirenaga Home Care Queens, Inc. (New York, Bronx, Kings, Richmond, Queens, and Nassau Counties)
2193 L	Imo's Nursing Agency, Inc. (Queens, New York, Kings, Richmond, and Bronx Counties)
2260 L	ABR Homecare of NY, Inc. (Suffolk and Nassau Counties)
2280 L	CDS Monarch, Inc. (Monroe and Wayne Counties)

- 2293 L Loyal Home Care, Inc.  
(Kings, Bronx, Queens, Richmond and New York Counties)
- 2362 L HT&T Corporation d/b/a HT&T Home Care  
(Queens, Kings, Brooklyn, Richmond, New York and Nassau Counties)
- 2381 L Sundance Home Care, Inc.  
(Kings, Queens, New York, Bronx, Richmond, and Nassau Counties)
- 2405 L Queens Home Care, Inc.  
d/b/a Home Instead Senior Care Franchise #765  
(Queens, New York, Bronx, Richmond, Kings and Nassau Counties)
- 2414 L Collins Anyanwu-Mueller  
d/b/a Angelic Touching Home Health Care Agency  
(Westchester and Rockland Counties)
- 2437 L Artful Home Care, Inc.  
(Suffolk and Nassau Counties)
- 2452 L Companion Angels Home Care Solutions, LLC  
(New York, Queens, Bronx, Richmond, and Kings Counties)
- 2456 L America Homecare Agency Services Corporation  
(Schenectady, Rensselaer, Warren, Saratoga, Schoharie, Albany and Washington Counties)
- 2459 L Family First Home Companions of New York, Inc.  
(Suffolk, Nassau, and Queens Counties)
- 2467 L 1<sup>st</sup> Home Care of NY Corp.  
(Queens, New York, Bronx, Richmond, Kings and Nassau Counties)
- 2469 L Zenith Home Care of NY, LLC  
(Westchester, Putnam, and Bronx Counties)
- 2474 L Acute Care Experts of New York, Inc.  
(Nassau, Rockland, Suffolk, Sullivan, Dutchess, Ulster, Orange, Westchester, and Putnam Counties)

- 2475 L SR Miracle Care Agency, Inc.  
(Bronx, Queens, New York, Richmond, Kings, and Westchester Counties)
- 2485 L Qualycare Home Care  
(Bronx, New York, and Queens Counties)
- 2490 L ZaQia Chaplin, LLC  
d/b/a Trusting Hands Homecare Agency  
(Nassau, Suffolk, and Queens Counties)
- 2492 L Trivium of New York, LLC  
Queens, Bronx, Kings, Richmond, New York and Nassau Counties)
- 2493 L Brookside Home Care Inc.  
(Nassau, Suffolk and Queens Counties)
- 2503 L L. Woerner, Inc. d/b/a HCR/HCR Home Care  
(Schoharie, Otsego, and Delaware Counties)
- 2504 L L. Woerner, Inc. d/b/a HCR/HCR Home Care  
(Clinton, Hamilton, St. Lawrence, Franklin, Warren, Essex and Washington Counties)
- 2505 L L. Woerner, Inc. d/b/a HCR/HCR Home Care  
(Madison, Oswego, Onondaga, Jefferson, Cayuga and Cortland Counties)
- 2521 L GM Family Resources, Inc.  
(Richmond, New York, Kings, Bronx, Queens, and Nassau Counties)
- 2546 L Edira Family Home Care LLC  
(Queens, Bronx, Kings, Richmond, New York and Nassau Counties)
- 2573 L Exceptional Home Care Services, Inc.  
(Bronx, Richmond, Kings, New York and Queens Counties)
- 2300 L Albemarle Terrace, Inc. d/b/a Terrace Home Care  
(Bronx, Queens, Kings, New York and Richmond Counties)

- 2605 L Samuel Konig d/b/a Park Inn Home Care  
(Queens, New York, Bronx, Richmond, Kings and Nassau  
Counties)
- 2158 L Azor Care at Home, Inc. d/b/a Azor Home Care  
(New York, Bronx, Kings, Richmond, Queens, and  
Westchester Counties)
- 2188 L Marquis Home Care, Inc.  
(Queens, Bronx, Kings, Richmond, New York and  
Westchester Counties)
- 2436 L Paramount Homecare Agency, Inc.  
(Kings, New York, Queens, Richmond, Bronx, and  
Nassau Counties)
- 2441 L Kirenaga Home Care Manhattan, Inc.  
d/b/a Synergy Homecare  
(New York, Kings, Bronx, Richmond, Queens, and  
Westchester Counties)
- 2501 L CareGuardian, Inc. d/b/a Hometeam  
(New York, Kings, Queens, Bronx, and Richmond  
Counties)
- 2542 L Better Choice Home Care, Inc.  
(Bronx, Richmond, Kings, Nassau, New York, and  
Queens Counties)
- 2547 L All Boro Home Care, Inc.  
(Bronx, Richmond, Kings, Westchester, New York and  
Queens Counties)
- 2554 L Surfside Manor Home for Adults Licensed Home Care  
Services Agency, LLC d/b/a ExtraCare Home Care  
Agency  
(Bronx, Queens, Nassau, Richmond, New York, and  
Kings Counties)
- 2592 L Hakuna, Inc.  
(New York, Bronx, Kings, Richmond, Queens, and  
Westchester Counties)
- 2606 L L Woerner, Inc. d/b/a HCR/HCR Home Care  
(Genesee, Wyoming, Monroe, Orleans, Orleans,  
Livingston, Wayne, and Ontario Counties)

151264 E

Allcare Family Services, Inc.  
(Erie County)

**D. Certificates**

**Exhibit # 11**

**Restated Certificate of Incorporation**

Applicant

1. Housing Works Health Services III, Inc.

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

Applicant

1. Samaritan Village, Inc.
2. The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

**Certificate of Dissolution**

Applicant

1. River Hospital Foundation, Inc.

**III. JOINT MEETING OF THE PUBLIC HEALTH COMMITTEE AND THE AD HOC COMMITTEE TO LEAD THE PREVENTION AGENDA**

Jo Ivey Boufford, M.D., Chair



**Project # 151204-C  
Vassar Brothers Medical Center**

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

**County:** Dutchess  
**Acknowledged:** May 7, 2015

## Executive Summary

### Description

Vassar Brothers Medical Center (VBMC), a 365-bed, voluntary not-for-profit, Article 28 hospital located at 45 Reade Place, Poughkeepsie (Dutchess County), requests approval to replace and modernize significant portions of the existing VBMC campus and to decertify fifteen total licensed beds, bringing the total licensed beds to 350.

The major components of the applicant's proposal are as follows: construction of a new 696,440 sq. ft. patient bed tower; replacement and expansion of the emergency department; replacement of most of the operating rooms and interventional suites; expansion and modernization of the central plant; addition of conference space, educational space and amenities; addition of six intensive care beds; decertification of nine pediatric beds; and decertification of twelve medical/surgical beds.

Health Quest Systems, Inc. is the sole corporate member and active parent of VBMC, Putnam Hospital Center and Northern Dutchess Hospital. VBMC is a member of the Health Quest Systems, Inc. obligated group. BFA Attachment C provides the organizational chart of Health Quest Systems, Inc.

### OPCHSM Recommendation Contingent Approval

### Need Summary

The current bed capacity is 365 and will be reduced to 350 beds. The facility will reduce twelve medical/surgical beds and nine pediatric beds while increasing critical care beds by six.

### Program Summary

The facility is deemed to be operating in substantial compliance with all applicable State and Federal codes, rules and regulations.

### Financial Summary

Project costs of \$466,164,933 will be met as follows: Equity of \$100,000,000 and tax-exempt bonds for \$366,164,933 with a maturity of 30 years bearing interest at 4.1% for tax-exempt debt.

Budget:	Revenues	\$487,814,700
	Expenses	<u>\$343,148,644</u>
	Net	\$144,666,056
	Income/(Loss)	

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON upon submission. [PMU]
2. Submission of a bond resolution for the project, acceptable to the Department of Health. [BFA]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-05. [AER]
4. Submission of State Environmental Quality Review Act (SEQRA) Findings as required under Section 617.4 of the New York Codes, Rules, and Regulations (NYCRR). [SEQ]

**Approval conditional upon:**

1. The project must be completed within five years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. Construction must start on or before July 1, 2016 and construction must be completed by December 31, 2019, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**October 8, 2015**



## Need Analysis

### Project Description

Vassar Brothers Medical Center, a 365 bed tertiary care hospital located at 45 Reade Place, Poughkeepsie (Dutchess County), New York 12601, is seeking approval to construct a 696,440 sq. ft. bed tower. The end result will be a 4.1 percent reduction in beds, or a reduction of 15. In addition, the Emergency Department will be expanded.

### Background

	Current Beds	Proposed Change	Proposed Beds
Medical/Surgical	276	-12	264
Critical Care	24	6	30
Pediatrics	18	-9	9
Obstetrics	32	0	32
Neonatal Continuing Care	4	0	4
Neonatal Intensive Care	5	0	5
Neonatal Intermediate Care	6	0	6
<b>Total Beds</b>	<b>365</b>	<b>-15</b>	<b>350</b>

Service Category	2010	2011	2012	2013	2014
Med/Surg	70.5%	73.5%	69.4%	67.4%	69.3%
Pediatric	31.0%	31.8%	37.9%	34.1%	31.8%
Obstetric	74.9%	74.5%	72.9%	74.1%	70.1%
High-Risk Neonates	71.9%	90.6%	75.3%	70.5%	75.5%
<b>Total</b>	<b>69.3%</b>	<b>72.5%</b>	<b>68.6%</b>	<b>66.7%</b>	<b>68.1%</b>

Adult Surgical Discharges			
Year	Inpatient	Amb. Surg.	Total
2011	5,415	8,436	13,851
2012	4,948	7,316	12,264
2013	4,681	8,329	13,010
2014	4,590	8,628	13,218

### Conclusion

The addition of private patient rooms and a streamlined system of care will make it easier to directly see patients, increase patient accessibility, improve efficiency, improve the quality of care and help improve patient stays. This is a much needed renovation at an aging facility.

### Recommendation

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

## Program Analysis

### Project Proposal

Vassar Brothers Medical Center (VBMC), a 365-bed tertiary care hospital located at 45 Reade Place in Poughkeepsie (Dutchess County) requests approval to replace and modernize significant portions of the existing campus and decrease total bed count to 350. VBMC seeks to build a contemporary facility with all private rooms and current industry standard in-room space for clinical care, as well as appropriate space and amenities for family to participate in the care plan. The facility would also house modern systems and mechanicals to run an efficient operation.

The construction project would involve building a new, nearly 700,000 square foot patient bed tower, replacing and expanding the emergency department (ED), and replacing most of the operating rooms (ORs) and interventional suites. Additionally, VBMC's central plant would be updated, and conference, educational space and other amenities added to enhance physician, visitor, and employee experiences in the new bed tower.

Upon completion of this project, staffing is anticipated to increase by 21.0 FTEs (Environmental Services) and remain at that level through the third year of operation.

### Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

### Recommendation

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

## Financial Analysis

### Total Project Cost

Total project cost is estimated at \$466,164,933 broken down as follows:

New Construction	\$313,462,253
Renovation and Demolition	\$4,312,465
Site Development	\$27,439,850
Temporary Utilities	\$6,156,201
Asbestos Abatement or Removal	\$436,000
Design Contingency	\$25,776,809
Construction Contingency	\$17,805,962
Fixed Equipment	\$13,458,884
Architect/Engineering Fees	\$21,311,000
Other Fees (Consultant)	\$702,632
Movable Equipment	\$20,316,783
Telecommunications	\$8,000,000
Interim Interest Expense	\$4,434,222
CON Fee	\$2,000
Additional Processing Fee	<u>\$2,549,872</u>
Total Project Cost	\$466,164,933

Project costs are based on a construction start date of July 1, 2016, with a 36-month construction period.

The applicant's financing plan appears as follows:

Equity from Health Quest Systems, Inc. (Active Parent)	\$100,000,000
Tax-Exempt fixed rate bonds (4.1% interest, 30-year term)	<u>\$366,164,933</u>
Total	\$466,164,933

Cain Brothers and Company LLC has provided a letter of interest for underwriting the bond financing. The bonds will be issued either by the Dormitory Authority of the State of New York or a local issuer.

#### Operating Budget

The applicant has submitted operating budgets, in 2015 dollars, for the Current Year and for Year One of operations, as shown below:

	<u>Current Year</u>		<u>Year One</u>	
Revenues:				
<u>Inpatient</u>	<u>Per Disch.</u>		<u>Per Disch.</u>	
Commercial FFS	\$29,586	\$139,160,478	\$29,834.56	\$156,625,560
Medicare FFS	\$8,753	\$89,216,003	\$8,810.69	\$100,222,985
Medicaid FFS	\$3,359	\$9,649,371	\$3,398.81	\$10,897,089
Private Pay	\$16,460	\$3,765,357	\$16,659.73	\$4,252,239
Other Operating Revenue*		<u>\$8,437,000</u>		<u>\$8,631,000</u>
Total Inpatient Revenue		\$250,228,209		\$280,628,873
<u>Outpatient</u>	<u>Per Visit</u>		<u>Per Visit</u>	
Commercial FFS	\$1,552.87	\$123,990,204	\$1,551.36	\$125,140,239
Medicare FFS	\$472.50	\$38,387,696	\$472.04	\$38,743,750
Medicaid FFS	\$889.73	\$37,156,005	\$888.85	\$37,500,635
Private Pay	<u>\$362.80</u>	<u>\$5,747,890</u>	<u>\$362.44</u>	<u>\$5,801,203</u>
Total Outpatient Revenue		\$205,281,795		\$207,185,827
Total Overall Revenue		\$455,510,004		\$487,814,700
Expenses:				
Operating		\$272,321,000		\$284,728,311
Capital		<u>\$30,927,000</u>		<u>\$58,420,333</u>
Total Expenses		\$303,248,000		\$343,148,644
Net Income/(Loss)		<u>\$152,262,004</u>		<u>\$144,666,056</u>
Discharges (Inpatient)		17,998		20,086
Visits(Outpatient)		218,693		220,938

\*Other Operating Revenue consists of:

- Cafeteria sales: Current year \$1,572,000 and Year One incremental \$194,000
- Meaningful use: Current year \$2,976,000 and Year One incremental \$0 (federal funding for implementation of facility-wide electronic medical records systems.
- Other operating revenue: Current year \$ 3,889,000 and Year One incremental \$0 and is composed of the following items:

Rental Income	\$905,000
Ulster Radiation Oncology Mgmt. Fee	\$685,000
Rebates/Refunds/Discounts	\$575,000
Physician Stipends	\$480,000
Quality Incentive Payments	\$419,000
Study/Research Revenue	\$318,000
Other (Parking, Catering, Vending)	\$318,000

Continuing Medical Education Fees	\$163,000
Fitness Center	\$112,000
Medical Staff Application Fees	\$35,000
Patient Education Programs	<u>(\$121,000)</u>
Total	\$3,889,000

Utilization by payor source for the first year of operation is anticipated as follows:

<u>Inpatient</u>	<u>Discharges</u>	<u>%</u>
Commercial FFS	5,250	26.14%
Medicare FFS	11,375	56.63%
Medicaid FFS	3,206	15.96%
Private Pay	255	1.27%
Total	20,086	100.00%

<u>Outpatient</u>	<u>Visits</u>	<u>%</u>
Commercial FFS	80,665	36.51%
Medicare FFS	82,077	37.15%
Medicaid FFS	42,190	19.10%
Private Pay	16,006	7.24%
Total	220,938	100.00%

The following is noted with respect to the submitted budget:

- Revenues are based upon VBMC's current experience in operating the hospital. Outpatient revenues are derived from three service lines: Emergency Department, Ambulatory Surgery, and Referred Ambulatory services. The hospital has no outpatient clinic services.
- Expense assumptions are based upon VBMC's historical experience in operating the hospital.
- Utilization assumptions are based on the facility's current operations with increases factored in due to a substantial increase in the over 65+ population in the region and significant improvements to the facility that has allowed the facility to increase their overall patient population by limiting the amount of outmigration for specific services.

#### Capability and Feasibility

Project costs of \$466,164,933 will be met as follows: Equity of \$100,000,000 from the parent entity Health Quest Systems, Inc. and \$366,164,933 financed via Tax-Exempt fixed rate bonds at an interest rate of 4.1% for a 30-year term. As shown on BFA Attachment B, the parent entity has enough liquid assets to cover the project's equity requirement.

Working capital requirements are estimated at \$57,191,441, which is equivalent to two months of year one expenses. The applicant will provide the entire amount of the working capital from operations. As shown on BFA Attachment A, the applicant has enough liquid assets to cover the working capital requirement.

BFA Attachment A is VBMC's 2012-2014 certified financial statements, which shows the facility generated an average net income of \$35,626,000 and had both average positive net asset and average positive working capital positions for the period shown.

BFA Attachment B is Health Quest Systems, Inc. and Subsidiaries' 2012-2014 certified financial statements, which shows that the entity generated an average net income of \$34,006,000 and had both average positive net asset and average positive working capital positions for the period shown.

The submitted budget indicates a net income of \$144,666,056 for Year One. Revenues are based on the current reimbursement methodologies for hospitals. The submitted budget is reasonable.

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

Recommendation

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

## Attachments

- BFA Attachment A 2012-2014 Certified Financial Statements for Vassar Brothers Medical Center
- BFA Attachment B 2012-2014 Certified Financial Statements for Health Quest Systems, Inc. and Subsidiaries.
- BFA Attachment C Health Quest Systems, Inc. Org Chart



Project # 151213-C
Strong Memorial Hospital

Program: Hospital
Purpose: Construction

County: Monroe
Acknowledged: May 14, 2015

Executive Summary

Description

Strong Memorial Hospital (SMH), an 830-bed, voluntary not-for-profit, Article 28 hospital located at 601 Elmwood Avenue, Rochester (Monroe County), requests approval to certify eight new pediatric intensive care unit (PICU) beds, and to construct six pediatric operating rooms, a GI procedure room, and a pediatric catheterization laboratory with support space to be housed on the fourth floor of SMH's new Golisano Children's Hospital (GCH). The construction will accommodate a total of twenty-eight pediatric beds on the sixth floor of the GCH: twenty PICU beds comprised of the eight incremental plus twelve current PICU beds to be relocated from the legacy SMH, and eight general pediatric beds that will also be relocated to the sixth floor GCH space. The hospital's total licensed bed capacity will increase to 838 beds.

In 2012, CON approval authorized the construction of the GCH, a new tower connected to SMH that opened in July 2015. The tower includes two shelled floors designed to accommodate the existing Pediatric Operating Program and Pediatric Intensive Care Unit, currently located in the legacy SMH, as well as eight additional pediatric beds. The current proposal seeks to complete this planned fit-out of the shelled space. Subsequent CON's are anticipated to process backfilling space vacated in the legacy SMH facility as a result of this proposal.

OPCHSM Recommendation
Contingent Approval

Need Summary

Strong Memorial is expecting a 63 percent increase in pediatric ICU discharges from the current year to the third year after completion. Strong Memorial handles very complex pediatric cardiovascular surgery, neurology, and electrophysiology cases. These procedures, along with more routine procedures, can fill the beds, resulting in overflows that force Strong Memorial to transfer patients to other facilities. These complex cases typically take longer than average procedures. The addition of the eight new pediatric ICU beds included in this build-out at GCH will help treat the growing number of patients in the only dedicated pediatric facility in the Finger Lakes Region.

Program Summary

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

Financial Summary

The total project costs of \$45,283,688 will be funded by SMH as follows: \$26,483,688 from accumulated funds, and the remaining \$18,800,000 to be financed via a bank loan. The applicant has indicated that if the bank loan is not available, they will fund the entire project with accumulated funds.

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

## Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency recommends Approval of this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON upon submission [PMU]
2. Submission of a final financing package for the project, inclusive of an executed loan commitment if applicable, acceptable to the Department of Health. [BFA]
3. The applicant is required to submit design development drawings, complying with requirements of 10 NYCRR Part 710.4, for review and approval by DASNY. [DAS]

**Approval conditional upon:**

1. The project must be completed within five 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, 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]
3. Construction must start on or before December 1, 2015, and must be completed by February 1, 2017, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date, this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**October 8, 2015**

## Need Analysis

	Current Beds	Bed Change	Beds Upon Completion
Burns Care	7		7
Coronary Care	8		8
Intensive Care	67		67
Maternity	45		45
Medical / Surgical	458		458
Neonatal Continuing Care	14		14
Neonatal Intensive Care	26		26
Neonatal Intermediate Care	20		20
Pediatric	60		60
Pediatric ICU	12	8	20
Physical Medicine and Rehabilitation	20		20
Psychiatric	93		93
<b>Total</b>	<b>830</b>	<b>8</b>	<b>838</b>

	Current Year	1st Year	3rd Year
Pediatric ICU	952	1,252	1,552

Bed Category	Current Beds	Discharges				Occupancy			
		2011	2012	2013	2014	2011	2012	2013	2014
Med/Surg	560	27,066	27,642	26,703	25,986	85.8%	87.6%	90.3%	92.9%
Pediatric	72	3,776	3,800	3,700	3,946	64.0%	64.2%	66.6%	64.2%
Obstetric	45	3,584	3,374	3,396	3,458	70.0%	68.6%	65.4%	71.4%
General Psychiatric	93	2,477	2,511	2,305	2,199	75.9%	79.6%	78.9%	80.3%
Chem. Dependence	0	368	409	364	348	0.0%	0.0%	0.0%	0.0%
High-Risk Neonates	60	882	898	1,019	1,027	98.1%	100.7%	99.9%	106.7%
<b>Total</b>	<b>830</b>	<b>38,153</b>	<b>38,634</b>	<b>37,487</b>	<b>36,964</b>	<b>83.3%</b>	<b>85.2%</b>	<b>86.8%</b>	<b>89.3%</b>

SMH has the only pediatric ICU in the Finger Lakes Region. The PICU's average occupancy for the last three years has been consistently close to capacity, with the current year's census up to 112%, necessitating intensive care to be provided in regular pediatric beds co-located in the PICU. Census has been driven by recruitments in complex pediatric specialties not available elsewhere in the region. Given the high occupancy, SMH is inadequately prepared to accommodate any surge in pediatric cases due to flu epidemics, community or trauma related emergencies.

Utilization assumptions are based on the facility's historical per day occupancy pattern for pediatric intensive care services. SMH is the regional provider of pediatric services for the sixteen counties that make up the primary and secondary service areas of the hospital. With the addition of the eight net new PICU beds, occupancy is expected to be at 88% in Year 1, based on the current average length of stay (LOS) of SMH PICU patients.



Conclusion

Modernization and consolidation of services will better serve patients and families of the Finger Lakes Region, reducing travel and inconvenience.

Recommendation

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

**Program Analysis**

Project Proposal

Strong Memorial Hospital, an existing Article 28 830-bed hospital located at 601 Elmwood Avenue in Rochester (Monroe County) requests approval to construct six operating rooms, a procedure suite, and a pediatric catheterization laboratory with support space to be housed on the fourth floor of the new Golisano Children's Hospital (GCH). Additionally, the construction will accommodate a total of twenty-eight pediatric beds to be located on the sixth floor GCH. The pediatric bed complement will include eight incremental pediatric ICU beds, as well as the relocation of twelve pediatric ICU beds and eight general pediatric beds.

Centralizing all pediatric procedural cases in one facility improves the efficiency of pediatric anesthesiologists, pediatric nurses and other support staff and minimizes the duplication of support space specifically designed for pediatric cases.

Staffing will increase by 38.30 FTEs, in the first year of operation and to 39.30 by the third year of operation to include registered nurses, nurse practitioners, aides, technicians and administrative and management staff

Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

Recommendation

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

**Financial Analysis**

Total Project Cost and Financing

Total project costs for the renovation and acquisition of moveable equipment is estimated at \$45,283,688, broken down as follows:

New Construction	\$ 22,532,447
Design Contingency	2,253,245
Construction Contingency	1,126,622
Fixed Equipment	5,412,621
Planning Consultant Fees	745,811
Architect/Engineering Fees	1,313,590
Construction Manager Fees	562,967
Movable Equipment	9,311,522

Telecommunications	741,176
Financing Costs	282,000
Interim Interest Expense	752,000
Application Fee	2,000
Processing Fee	<u>247,687</u>
Total Project Cost	\$ 45,283,688

Total project costs are based on a start date of December 1, 2015, with a fourteen-month construction period.

The applicant's financing plan for the project is as follows:

SMH's Accumulated Funds	\$26,483,688
Bank Loan (25-year term, 4% interest rate)	<u>\$18,800,000</u>
Total	\$ 45,283,688

A letter of interest has been provided by Barclay Bank for the capital financing at the above stated terms. SMH has provided a letter stating that they will fund the entire project with accumulated funds in the event that the bank financing cannot be obtained.

#### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenue:		
Medicaid Fee-For-Service	\$6,215,600	\$6,260,680
Medicaid Managed Care	\$16,870,916	\$16,993,276
Commercial Fee-For-Service	\$17,314,889	\$17,440,469
Commercial Managed Care	\$2,219,858	\$2,235,958
Private Pay	\$443,972	\$447,192
Other Income	<u>\$1,331,915</u>	<u>\$1,341,575</u>
Total Revenues:	\$44,397,150	\$44,719,150
Expenses:		
Operating	\$25,697,000	\$25,955,000
Capital	<u>\$13,998,000</u>	<u>\$13,959,000</u>
Total Expenses:	\$39,695,000	\$39,914,000
Net Income:	<u>\$4,702,150</u>	<u>\$4,805,150</u>
Utilization (Patient Days)	6,427	7,011
Cost Per Patient Day	\$6,176.29	\$5,693.05

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

	<u>Year One</u>		<u>Year Three</u>	
Payor:	<u>Days</u>	<u>%</u>	<u>Days</u>	<u>%</u>
Medicaid Fee-For-Service	902	14%	902	13%
Medicaid Managed Care	2,447	38%	2,973	42%
Commercial Fee-For-Service	2,511	39%	2,511	36%
Commercial Managed Care	322	5%	322	5%
Private Pay	64	1%	78	1%
All other	<u>181</u>	<u>3%</u>	<u>225</u>	<u>3%</u>
Total	6,427	100%	7,011	100%

The following is noted with respect to the submitted budget:

- Expense assumptions are based upon SMH's current experience operating the PICU beds.
- Utilization assumptions are based on the facility's historical per day occupancy pattern for pediatric intensive care services. SMH is the regional provider of pediatric services for the sixteen counties that make up the primary and secondary service areas of the hospital. The applicant noted that their current occupancy rate for the twelve-bed PICU is 112%, requiring intensive care to be provided in co-located general pediatric beds. With the addition of the eight PICU beds, occupancy is expected to be at 88% in year one based on the current average length of stay (LOS) of their PICU patients.
- Revenue assumptions are based on the GCH's actual 2014 payor mix experience for PICU care and the related net patient revenue, projected by a 1.5% increase in Year One (held constant for Year Three).

#### Capability and Feasibility

Total project cost of \$45,283,688 will be satisfied via equity of \$26,483,688 and a loan for \$18,800,000 from Barclay Bank at the above stated terms. SMH has provided a letter stating that in the event that they are unable to obtain the desired financing, they will fund the project entirely with equity. Working capital requirements are estimated at \$6,652,333 based upon two months of Year Three expenses. The applicant will provide working capital from operations. BFA Attachment A is SMH's 2013-2014 certified financial statements, which indicates the availability of sufficient resources to fund the project's equity and working capital requirements.

The submitted budget indicates an excess of revenues over expenses of \$4,702,150 in Year One and \$4,805,150 in Year Three. Revenues are projected based on current PICU experience and payor mix with a projected increase of 1.5% in Year One (held constant for Year Three). SMH indicated that it is part of Accountable Health Partners (AHP), a physician/hospital network organization participating in a shared savings arrangement with commercial payors, and has contracted to be part of Medicare's Bundled Payment Incentive Program beginning July 1, 2015. In the PICU, care is highly specialized and they anticipate that patient volume will continue to grow based on the referral patterns from an expanding region in Upstate New York. They expect some impact of value based payment (VBP) methodologies on this population as it relates to reduced readmission rates and reduced hospital infections which can impact LOS, and note that while it is difficult to model the potential impact of VBP, their projections used for this application reflect a unit that is currently operating at 112% of capacity. The addition of eight PICU beds will result in an occupancy of almost 90%, which is considered optimal by SMH, and assumes minimal growth in volumes over the next three years.

As shown on BFA Attachment A, SMH has maintained an average working capital position of \$440,561,906, average net asset position of \$600,738,683, and generated an average income from operation of \$119,799,875 for the 2013 - 2014 time period. BFA Attachment B is SMH's internal financial summary as of April 30, 2015, which shows income from operations after clinical transfers of \$78,851,409 and an increase in unrestricted net assets totaling \$44,488,267.

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 Statement for 2013 and 2014, Strong Memorial Hospital
BFA Attachment B	Internal Financial Summary for April 30, 2015, Strong Memorial Hospital





Project # 151270-C
Hospice Buffalo Inc

Program: Hospice
Purpose: Construction

County: Erie
Acknowledged: July 10, 2015

Executive Summary

Description

Hospice Buffalo, Inc., a not-for-profit corporation that operates an Article 40 Hospice Program serving Erie County at two sites, requests approval to decertify eight residence beds, close one site, and consolidate their remaining beds at their main campus with an inpatient designation.

The hospice currently operates from the following two locations:

- The Center for Hospice and Palliative Care-Mitchell Campus (main site) located at 225 Como Park Blvd, Cheektowaga, NY, which currently has a ten-bed residence unit that includes eight residence specific beds and two beds dually certified for inpatient and residence care. Also on the campus, but not affected by this proposal, is a newly renovated 22-bed inpatient unit.
St. John Baptist Hospice Buffalo House (off-campus site) located at 111 Maple Street, Buffalo, NY, which has eight inpatient beds and no residence beds.

The off-campus site will close and the residence site on the Mitchell campus will become a 10-bed inpatient unit. Upon approval of this project the final bed complement will be 32 inpatient beds and no residence beds.

Due to recent collaborations with area nursing homes, Hospice of Buffalo, Inc. finds it unnecessary to continue maintaining residence beds. Rather, providing hospice care as an overlay to nursing home care

has proven to be a more cost effective way to spend limited resources.

OPCHSM Recommendation Approval

Need Summary

Hospice Buffalo, Inc. intends to decertify its eight-bed hospice residence unit and cease operating any hospice residence beds at any location and close their leased offsite location which housed some of their hospice inpatient beds. Upon approval of this application, there will still be a remaining need for six additional hospice beds in the County.

Program Summary

Based on 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 project.

Incremental Budget:

Table with 3 columns: Category, Year One, Year Three. Rows: Revenues (\$2,084,121), Expenses (\$3,092,372), Net Income/(Loss) (\$1,008,251)

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval conditional upon:**

1. 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

**October 8, 2015**

# Need Analysis

## Background

Hospice Buffalo, Inc. is currently certified to operate 32 hospice inpatient beds and 10 hospice residence beds and offer the following services:

Audiology	Nursing
Bereavement	Nutritional
Clinical Laboratory Service	Pastoral Care
Home Health Aide	Personal Care
Homemaker	Pharmaceutical Service
Hospice Residence	Physician Services
Housekeeper	Psychology
Inpatient Certified	Therapy-Occupational
Inpatient Services	Therapy-Physical
Medical Social Services	Therapy-Respiratory
Medical Supplies Equipment and Appliances	Therapy-Speech Language Pathology

Hospice Buffalo, Inc. is authorized to provide services in Erie County.

## Analysis

The Hospice Bed Need Methodology for Erie County shows a need for 38 hospice beds. The allocation of resources in this county is shown below in the following table:

<i>Hospice Bed Need</i>						
<i>County</i>	<i>Inpatient Bed Need</i>	<i>Current Inpatient Unit/Facilities</i>	<i># of Operating Hospice Beds</i>	<i># of Beds Approved, Not Yet Operational</i>	<i># of Beds Pending Approval</i>	<i>Remaining Inpatient Bed Need</i>
Erie	38	Hospice Buffalo, Inc. – Cheektowaga	22 (+ 2 dual cert)	0	0	6
		Hospice Buffalo, Inc. – Buffalo	8	0	0	
<b>Total</b>	<b>38</b>		<b>32</b>	<b>0</b>	<b>0</b>	<b>6</b>

Hospice Buffalo Inc. will decertify the eight residence beds currently located in Cheektowaga and convert the two dually certified beds to inpatient only beds. The current Residence Unit was originally constructed and licensed as an inpatient unit and served as a temporary inpatient unit during the renovation of the existing 22-bed hospice inpatient unit. The proposed ten-bed hospice inpatient unit will operate in the same manner as the facility's existing 22-bed hospice inpatient unit and the Hospice Buffalo's Director of Inpatient Services will provide oversight of both units.

## Conclusion

Hospice Buffalo, Inc. intends to decertify all of its residence beds and has determined that providing hospice care as an overlay to nursing home care is a much more cost effective way to spend limited resources. Upon approval of this application, there will be a continued need for additional hospice beds in the County.

## Recommendation

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

## Program Analysis

### Program Description

Hospice Buffalo, Inc., a voluntary corporation, currently operates an Article 40 hospice which serves the residents of Erie County. It is also currently certified to operate a 22-bed hospice inpatient unit and a 10-bed hospice residence unit (with 2 of these 10 residence beds dually certified for both inpatient care and residence care) in a freestanding facility located in Cheektowaga, which also houses their hospice's main parent office practice location, and another 8-bed hospice inpatient unit in leased space in a freestanding facility located in Buffalo.

The current proposal seeks approval to close the current 8-bed hospice inpatient unit located in leased space in a freestanding facility located in Buffalo, and to convert the 10-bed hospice residence unit (with 2 of these 10 residence beds dually certified for both inpatient care and residence care) located in Cheektowaga, into a 10-bed hospice inpatient unit. Since this hospice residence already required hospice inpatient level construction standards when initially approved due to its 2 dually certified beds, the proposed conversion of the 10 hospice residence beds into 10 hospice inpatient level beds requires no construction reconfigurations or changes in staffing. The Hospice Buffalo Director of Inpatient Services will continue to oversee both the existing 22-bed hospice inpatient unit, and the newly converted 10-bed hospice inpatient unit, all located within the same building.

The proposal will result in Hospice Buffalo operating 32 total hospice inpatient beds in two units (one 22-bed unit and one 10-bed unit), both located in the same building at their main offices in Cheektowaga. The proposal will also result in Hospice Buffalo no longer operating any hospice residence beds at any location, and closing their leased offsite location which housed hospice inpatient beds.

Hospice Buffalo, Inc. is currently in compliance with all applicable codes, rules, and regulations.

### Recommendation

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

## Financial Analysis

### Operating Budget

The applicant has submitted their incremental first and third year operating budgets for the ten-bed unit, in 2015 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicare	\$1,722,091	\$1,774,141
Medicaid	\$119,918	\$123,543
Private Pay/Other	<u>\$242,112</u>	<u>\$249,430</u>
Total Revenues	\$2,084,121	\$2,147,114
Expenses:		
Operating	\$2,903,124	\$3,035,210
Capital	<u>\$189,248</u>	<u>\$192,754</u>
Total Expenses	\$3,092,372	\$3,227,964
Net Income/(Loss)	(\$1,008,251)	(\$1,080,850)
Utilization (patient days)	3,321	3,321
Cost per patient day	\$931.16	\$971.99



Utilization by payor source for both Year One and Year Three is as follows:

Medicaid	5.48%
Medicare	80.30%
Private Pay	4.70%
Other	9.52%
Total	100.00%

The following is noted with respect the submitted budget:

- Revenue was calculated based on the entity's 2014 reimbursement by payer mix with an annual increase of 1.5% per year.
- Expense assumptions are based upon Hospice Buffalo, Inc.'s historical experience operating inpatient beds, with an annual 2% cost of living increase for years two and three.
- Utilization assumptions are based on the applicant's actual inpatient bed occupancy trends, prorated to the ten-bed unit.
- The applicant indicated that, like the eight-bed inpatient unit currently operating at the Buffalo House site, the new ten-bed unit on the main campus is expected to operate at a loss to be covered by funding from the Hospice Foundation of WNY. An affidavit from the Hospice Foundation of WNY, has been provided attesting that they are willing to contribute necessary funds to cover losses.

Based on the above, the budget is reasonable.

#### Capability and Feasibility

There are no project costs associated with this project.

The submitted budget indicates a net loss of \$1,008,251 and \$1,080,850 during the first and third years of operation, respectively. The losses will be covered through philanthropic funding from the Hospice Foundation of WNY. As of December 31, 2014, the Foundation had a net equity position of over \$28 million, showing sufficient resources to cover the projected losses for the new inpatient unit.

BFA Attachment A is the 2013-2014 certified financial statements of The Center for Hospice & Palliative Care, Inc. and Related Entities, which show that the organization had an average positive working capital position and an average positive net asset position and generated an average net loss of \$471,219 for the period shown. The financial statements for 2014 also show the financial status for Hospice of Buffalo, Inc. specifically, which shows that the facility generated both a positive work capital and net asset position and generated a net loss of \$2,136,740 for 2014. The applicant indicated that the 2014 losses were due to the facility's nine-month renovation of the clinical building on the Mitchell Campus. This renovation project forced the facility to operate out of the vacant ten-bed residence unit which reduced their overall operating capacity by twelve beds and greatly reduced their revenue.

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 2013 and 2014 certified financial statements of the Center for Hospice and Palliative Care, Inc. and Related Entities and the 2014 certified financial statements for Hospice Buffalo, Inc. and Hospice Foundation of WNY



Project # 132127-C  
Four Seasons Nursing and Rehabilitation Center

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

**County:** Kings  
**Acknowledged:** September 9, 2013

Executive Summary

Description

Four Seasons Nursing and Rehabilitation Center (Four Seasons) is an existing, 270-bed residential health care facility (RHCF) located at 1555 Rockaway Parkway, Brooklyn, 11236, in Kings County. Four Seasons seeks approval to expand its existing 20-bed ventilator-dependent unit to 30-beds. The 10-bed expansion would be accomplished through the conversion of 10 emergency-approved long-term ventilator beds to permanent certification, but with a corresponding reduction of 10 RHCF beds, so as to result in no net increase in the facility's overall bed capacity.

Under 10 NYCRR §709.17, the need methodology for long-term ventilator beds, there is no need for additional long-term ventilator beds in the New York City Region.

OPCHSM Recommendation

Disapproval on the basis of Need

## 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

**October 8, 2015**

# Need Analysis

## Project Description

Four Seasons Nursing and Rehabilitation Center (Four Seasons) is an existing, 270-bed residential health care facility (RHCF) located at 1555 Rockaway Parkway, Brooklyn, 11236, in Kings County. Four Seasons seeks approval to expand its existing 20-bed ventilator-dependent unit to 30-beds. The 10-bed expansion would be accomplished through the conversion of 10 emergency-approved long-term ventilator beds to permanent certification, with a corresponding reduction of 10 RHCF beds, so as to result in no net increase in the facility's overall bed capacity.

## Background

Four Seasons Nursing and Rehabilitation Center received emergency DOH approval on November 6, 2012 to temporarily certify an additional 10 long-term ventilator beds to serve ventilator-dependent residents displaced from other facilities by Superstorm Sandy. Approval of the additional beds was for one year, with a required submission of a CON application for consideration of permanent certification.

The applicant describes several reasons for approval of the additional 10 long-term ventilator beds:

- At the time of application submission, the facility had 34 ventilator-dependent patients in-house, exceeding the capacity of the facility's combined 20 permanent and 10 emergency-approved beds;
- Referrals to the expanded ventilator unit would come from a variety of sources, including Maimonides Medical Center, University Hospital in Brooklyn, Brookdale Hospital Medical Center, and Wyckoff Heights Medical Center;
- Four Seasons would also reach out to hospitals in southern Kings County, including Coney Island Hospital, Beth Israel Medical Center-Kings Highway Division, and New York Community Hospital of Brooklyn.
- A 20-station chronic renal dialysis center, operated by Gateway Dialysis Center, is located on the first floor of Four Seasons, providing easy access for ventilator-dependent patients who also need dialysis.

## Analysis

In addition to Four Seasons, five other RHCFs in Kings County operate ventilator beds, whose occupancy and distance/travel time from Four Seasons are shown in Table 1:

<b>Table 1</b>			
<b>Facility Name</b>	<b>Vent Beds</b>	<b>Distance/Time</b>	<b>Current Occupancy</b>
Four Seasons Nursing	20 + 10 Temp	0.0	95.7% (8/5/15)
Schulman and Schachne	28	1.4 mi/9 mins	100.0% (3/12/14)
Rutland Nursing Home	30	2.9 mi/16 mins	96.7% (8/12/15)
Concord Nursing Home	17	4.8 mi/26 mins	58.8% (7/15/15)
Palm Gardens Center	38	5.2 mi/25 mins	94.7% (2/18/15)
Lutheran Augustana	12	15.6 mi/37 mins	91.7% (8/12/15)
<b>Total in Kings County</b>	<b>145 + 10 Temp</b>		<b>92.3% (12 vacant)</b>

\*Source: New York State Health Data Website – <https://health.data.ny.gov/>

The need methodology for long-term ventilator beds set forth in 10 NYCRR section 709.17 became effective in 2005. At that time, the methodology specified that hospital inpatient discharges with the Federal DRG 475 should be used as a base patient population to calculate RHCF ventilator bed need. However, the definitions of the Federal DRGs changed in 2007, causing discharges which were previously coded as 475 to fall under DRGs 541, 542, and 565 (DRGs 541 and 542 had already existed to code certain inpatients who required mechanical ventilation). The Federal DRG definitions changed again in 2008, causing ventilator patients to be reclassified and coded under DRGs 003, 004, and 207. These codes remain current and have been used in in the application of section 709.17 since 2008.

The specific DRG definitions under the 2005, 2007 and 2008 iterations are as follows:

**2005 ventilator code definitions:**

- **475** – Respiratory system diagnosis with ventilator support
- **541** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis with major operating room procedure
- **542** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis without major operating room procedure

**2007 ventilator code definitions:**

- **541** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis with major operating room procedure
- **542** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis without major operating room procedure
- **565** – Respiratory system diagnosis with ventilator support greater than 96 hours

**2008 ventilator code definitions:**

- **003** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis with major operating room procedure
- **004** – Tracheotomy with mechanical ventilation greater than 96 hours, or pulmonary diagnosis excluding face, mouth and neck diagnosis without major operating room procedure
- **207** – Respiratory system diagnosis with ventilator support greater than 96 hours

The five boroughs of New York City, which include Kings County, are treated as a single region for purposes of calculating need under section 709.17. The application of the need methodology based on current long-term ventilator bed capacity and employing the 2008 DRGs as described above shows an actual bed capacity in the region considerably in excess of that deemed to be needed under section 709.17, as shown in Table 2:

<b>Region</b>	<b>Existing Vent Beds</b>	<b>Approved Vent Beds<sup>1</sup></b>	<b>Total Resources</b>	<b>2014 Vent Bed Need</b>	<b>Remaining Need</b>
New York City	646	71	717	533	-184

**Conclusion**

The absence of need for additional long-term ventilator beds in the New York City region as a whole is reinforced by the current 92.3% occupancy rate for currently certified and emergency-approved beds in Kings County (Table 1). Furthermore, consideration of only the permanently certified long-term ventilator beds in Kings County (i.e., without the 10 emergency-approved beds at Four Seasons) would yield an occupancy rate of 92.4%:

<b>Facility Name</b>	<b>Vent Beds*</b>	<b>Occupancy</b>	<b>Filled</b>	<b>Vacant</b>
Four Seasons Nursing	20	100.0%	20	0
Schulman and Schachne	28	100.0%	28	0
Rutland Nursing Home	30	96.7%	29	1
Concord Nursing Home	17	58.8%	10	7
Palm Gardens Center	38	94.7%	36	2
Lutheran Augustana	12	91.7%	11	1
<b>Total in Kings County</b>	<b>145</b>	<b>92.4%</b>	<b>134</b>	<b>11</b>

<sup>1</sup> Beds approved but not yet operational.

Based on these circumstances, together with the presence of excess long-term ventilator bed capacity in the New York City region as a whole, the Department concludes that there is no need for permanent certification of the 10 emergency-approved beds operated by Four Seasons Nursing and Rehabilitation Center.

Recommendation

**From a need perspective, disapproval is recommended**



**Project # 151216-E  
Columbia Memorial Hospital**

**Program: Hospital  
Purpose: Establishment**

**County: Columbia  
Acknowledged: May 14, 2015**

**Executive Summary**

**Description**

Columbia Memorial Hospital (CMH), a 192-bed, voluntary not-for-profit, Article 28 hospital located at 71 Prospect Avenue, Hudson (Columbia County), requests approval to establish Albany Medical Center (AMC) as the active parent and co-operator of CMH. AMC will be the sole corporate member of CMH, and its active parent.

On April 17, 2015, CMH and AMC entered into an Affiliation Agreement with the goal of creating a strong and effective long-term relationship between the two entities. The benefits and efficiencies that will result from the Affiliation include:

- Clinical and administrative integration, producing efficiencies and synergy through coordination and collaboration on strategic planning, budgeting, other administrative and management activities; and
- Integration of the health care delivery system in the region, resulting in access to a geographic distribution of health care services and cost savings.

There will be no change in authorized services or the number or type of beds as a result of approval of this CON. Also, there are no projected changes in utilization, revenues or expenses of CMH as a 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 following completion of the project.

As active parent and co-operator, AMC will have the following rights, powers and authorities with respect to CMH:

- Appointment of the members of the Board of Directors of CMH;
- Adoption or approval of any amendments to the Certification of Incorporation, Bylaws, and Medical Staff Bylaws of CMH;
- Appointment or dismissal of officers, managers and medical staff of CMH;
- Approval of the operating and capital budgets and strategic and operating plans of CMH;
- Approval of certificate of need applications filed by or on behalf of CMH;
- Approval of any indebtedness of CMH, where the total principal amount is in excess of \$1,000,000 in the aggregate for all such debt or which is secured by a mortgage or security interest in CMH's assets or property;
- Approval of any sale or transfer of CMH's assets to a non-affiliated entity or third-party entity, if such assets have a value in excess of \$250,000, other than as a component part of an approved budget;
- Approval of management or clinical service contracts, and contracts to provide covered healthcare services to beneficiaries of health insurance, managed care or payor contracts; and
- Approval of settlements of administrative proceedings or other litigation or proceedings to which CMH is a party

BFA Attachment A provides the organizational chart of CMH post-closing.

OPCHSM Recommendation  
Contingent Approval

Need Summary

This project is the addition of a co-operator and is not expected to have an impact on services provided by the facility or the utilization of those services. The applicant believes that clinical and administrative integration between Columbia Memorial Hospital and Albany Medical Center will provide synergies, cost savings, and strategic planning opportunities that will make health care more efficient and stable in the affected counties.

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.



## 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 documentation of approval by the NYS Office of Mental Health. [PMU]
2. Submission of a photocopy of Albany Medical Center's executed Articles of Incorporation, acceptable to the Department. [CSL]
3. Submission of a photocopy of Columbia Memorial Hospital's executed Restated Certificate of Incorporation, acceptable to the Department. [CSL]
4. Submission of a photocopy of Columbia Memorial Hospital's bylaws, 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

**October 8, 2015**

## Need Analysis

### Project Overview

Columbia Memorial Hospital, an existing voluntary non-profit 192-bed hospital located at 71 Prospect Ave, Hudson NY 12534 in Columbia County, with numerous extension clinics, is seeking approval to enter into an affiliation with Albany Medical Center, a hospital operator located at New Scotland Avenue, Albany NY 12208. Albany Medical Center will become the active parent and co-operator of Columbia Memorial Hospital.

No changes in services or beds are proposed.

### Background

Columbia Medical Center's bed chart and historical utilization is provided below for reference. This project is not expected to have an effect on beds or services at the Center.

Category	Current Beds	2010	2011	2012	2013	2014
Med/Surg & ICU	156	36.6%	38.7%	39.2%	36.0%	36.2%
Pediatric	4	6.5%	3.6%	3.5%	3.4%	3.1%
Maternity	10	42.1%	34.7%	32.4%	31.6%	25.4%
General Psychiatric	22	75.8%	81.8%	79.5%	78.8%	73.3%
<b>Total</b>	<b>192</b>	<b>42.4%</b>	<b>44.3%</b>	<b>44.4%</b>	<b>41.5%</b>	<b>40.6%</b>

### Recommendation

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

## Program Analysis

### Program Proposal

Columbia Memorial Hospital (CMH), an existing not-for-profit health system which operates a 192-bed hospital at 71 Prospect Avenue in Hudson (Columbia County), as well as numerous extension clinics, requests approval to become an affiliated entity with Albany Medical Center (AMC), an existing hospital located on New Scotland Avenue in Albany (Albany County).

The agreement is structured so that Albany Medical Center will become the active parent and co-operator of Columbia Memorial Hospital. Both organizations shall have Board representation on one another's boards.

Efficiencies produced through the coordination and centralization of activities will result in the preservation of health care for residents in the service area. The applicant does not anticipate any change in authorized services or number or type of beds.

### Character and Competence

The proposed members of the board for Columbia Memorial Hospital are:

Raimundo C. Archibold, Jr.  
James J. Barba  
Robert T. Cushing, *Chairman*  
Joyce M. DeFazio  
R. Wayne Diesel

Sharon Duker  
Peter H. Elitzer  
Marc N. Fecteau, *Vice-Chair*  
Margaret Gillis  
David Golub

Douglas Hamlin, *Vice-Chair*  
Peter H. Heerwagen  
Robert J. Higgins  
James O. Jackson, PhD  
Robert Jones  
Ruth Mahoney  
Morris Massry  
Lillian Moy, Esq.  
John J. Nigro  
John B. O'Connor

Steven M. Parnes, MD  
Daniel T. Pickett III  
W. Michael Reickert  
John B. Robinson, Jr.  
Janice Smith  
Jeffrey Sperry  
Jeffrey Stone, *Vice-Chair/Secretary*  
Todd M. Tidgewell  
Omar Usmani  
Candace King Weir

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

*Mr. Barba disclosed a relationship with University Heights Association which, in 2006, filed in federal bankruptcy court to prevent the execution of a large judgment against it. The matter was later settled with all debts being fully paid.*

*Ms. Gillis disclosed three legal actions not naming her individually, but against the firm with which she is affiliated. One, a malpractice action, has been settled. Two actions remain pending (one malpractice claim, one foreclosure action where the firm holds a judgment lien on property).*

*Mr. Golub disclosed that, as a large supermarket retailer, his employer has been involved in routine civil litigation, none of which has had an adverse impact on his employer.*

*Mr. Nigro disclosed an affiliation with a real estate company which owned a shopping center. Due to severe economic market conditions and the recession of 2008, the company defaulted on their mortgage. A receiver was appointed to operate the property until the future of the property is resolved*

*Mr. Pickett disclosed that a legal action had been initiated by a former employee over the terms and conditions of a stock option granted to the former employee in 2005. The matter was settled in 2013.*

*Ms. Weir disclosed three (3) legal matters. On October 10, 2011, she was named (as a director of a corporation) as a defendant and the matter was subsequently settled. On May 14, 2013, a former employee filed a civil lawsuit alleging constructive discharge in violation of the Dodd-Frank Act for providing information to the Securities and Exchange Commission (SEC). The civil suit was dismissed and the matter was settled through a subsequent arbitration claim filed with FINRA. In June 2014, Ms. Weir and an investment management corporation for which she is the Chief Investment Officer settled an administrative proceeding with the SEC. As part of the settlement, Ms. Weir agreed in the future to cease and desist from violating Section 203(6) of the Investment Advisers Act (relating to the requisite disclosures and consents regarding certain related-party transactions).*

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 March 8, 2009, a Stipulation and Order and a \$6,000 fine were issued against Albany Medical Center Hospital – South Clinical Campus for wrong-sided surgery. A pediatric patient was admitted for a left side inguinal hernia, however, a right side inguinal hernia repair was performed. Further review of records*

*identified multiple instances where the facility was out of compliance with internal policy and state guidelines for performing surgery involving laterality.*

Recommendation

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

## Financial Analysis

Capability and Feasibility

There are no project costs or budgets associated with this application.

BFA Attachment B is the 2013 and 2014 consolidated certified financial statements of Columbia Memorial Hospital. As shown, the hospital had an average positive working capital position and an average positive net asset position from 2013 through 2014. The hospital reported an operating loss for both 2013 and 2014. The applicant provided the following explanations for the losses:

- The 2013 loss from operations of \$2,217,532 was due to significantly reduced inpatient discharges for the year, coupled with additional expenses associated with the acquisition of multiple local outpatient physician practices.
- The 2014 loss from operations of \$549,590 represents an improvement from the prior year; however, operations continued to be negatively impacted by lower inpatient volumes in 2014 and operational inefficiencies in the outpatient departments which were identified and addressed.
- In 2015, both inpatient and outpatient service areas have experienced favorable improvements to their operational workflows, which has led to increased efficiencies and continues the trend toward a positive operating margin.

BFA Attachment C is the financial summaries of the 2013 and 2014 consolidated certified financial statements of AMCH and CMH, and the 2015 internal financial statements for CMH. As shown, AMCH had an average positive working capital position and an average positive net asset position from 2013 through 2014, and incurred an average positive operating net income for 2013 and 2014. CMH's internal financial summary as of June 30, 2015 shows a positive working capital position, positive net assets and operating revenue at \$80.4M, a \$5M increase over the same period in 2014.

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
BFA Attachment B	Financial Statements – Columbia Memorial Hospital Consolidating financials
BFA Attachment C	Financial Summaries – AMCH and CMH



**Project # 152008-E  
NYU Hospitals Center**

**Program: Hospital  
Purpose: Establishment**

**County: Kings  
Acknowledged: July 7, 2015**

**Executive Summary**

**Description**

NYU Hospitals Center (NYUHC), a 1,069-bed not-for-profit hospital located in Kings County, requests approval to acquire and certify NYU Lutheran Medical Center (NYU Lutheran), a 450-bed not-for-profit hospital also located in Kings County, as a division of NYUHC via a merger agreement. Effective April 1, 2015, NYU Langone Health System, Inc., a New York not-for-profit corporation, became the active parent of NYU Lutheran and the passive parent of NYUHC. After approval of this application, NYU Lutheran will cease to exist as a separate corporate entity, and its operations (including all assets and liabilities) will merge into NYUHC, which will continue to have NYU Langone Health System, Inc. as its sole member and passive parent.

NYUHC anticipates that a full-asset merger will result in substantial savings to NYUHC that would accrue through efficiencies in IT, patient care management, revenue cycle management, and managed care contracting. The merger would bring to the combined operations discounted pharmacy benefits from 340B programs; improved Medicare and Medicaid rates; a potentially improved credit rating due to key performance indicator improvements; and reduced costs of malpractice premiums through the use of NYUHC's wholly owned captive insurance company. Subsequent to the merger, NYUHC will refinance NYU Lutheran's outstanding HUD insured bonds through a draw under an existing line of credit, with permanent financing for that debt to be included in NYUHC's next public bond offering. Repaying the HUD debt will provide substantial operational flexibility for NYU Lutheran by removing HUD's

relatively stringent financial and operational covenants. This merger will preserve the health care services provided by NYU Lutheran, preserve needed jobs for current NYU Lutheran employees, and ensure that the health care needs of the community are met. There will be no change in authorized services or the number or type of beds as a result of this project.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**  
Merger of these facilities will help to expand services in the region and allow improvement through an influx of cash to be provided by NYU Hospitals Center. Modernization and growth in services is an anticipated and expected result of this project.

**Program Summary**  
Based on the results of this review, a favorable recommendation can be made for the proposal.

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

The applicant has submitted an incremental operating budget, in 2015 dollars, for the first year subsequent to the change in operator.

The budget is summarized below:

Incremental Revenues	\$669,329,248
Incremental Expenses:	
Operating	\$618,705,862
Capital	<u>27,727,850</u>
Total Expenses	\$646,433,712
Excess of Revenues over Expenses	<u>\$22,895,536</u>
Enterprise Budget:	
Revenues	\$2,897,054,574
Expenses	<u>2,743,559,734</u>
Excess of Revenues over Expenses	<u>\$153,494,840</u>

## 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 merger agreement that is acceptable to the Department of Health. (BFA).
2. Submission of a photocopy of the fully executed Certificate of Merger of NYU Lutheran Medical Center into NYU Hospitals Center, acceptable to the Department. [CSL]
3. Submission of a photocopy of the fully executed Plan of Merger between NYU Hospitals Center and NYU Lutheran Medical Center, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Certificate of Incorporation of NYU Langone Health System, acceptable to the Department. [CSL]
5. Submission of the fully executed Amendment to Certificate of Incorporation of NYU Hospitals Center, acceptable to the Department. [CSL]
6. Submission of the fully executed bylaws of the NYU Hospitals Center, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 8, 2015**

## Need Analysis

### Background

NYU Hospitals Center is an 844-bed hospital located at 550 First Avenue, New York 10016. The Center is seeking approval to acquire and certify NYU Lutheran Medical Center (NYU Lutheran), a 450-bed not-for-profit hospital also located in Kings County, as a division of NYUHC via a merger agreement.

### Analysis

Through this merger, comprehensive care will be more accessible to residents in the service area. Care and services may be expanded and updated through the creation of a larger network, which will better serve patients via the use of state of the art equipment and the latest procedures available as well as an expanded pool of physicians.

This merger will provide support to NYU Lutheran MC's Federally Qualified Health Centers (FQHC's) and allow a transformation so the facility can provide necessary services to Brooklyn residents. NYU Lutheran plans to enhance cardiac catheterization and upgrade the emergency and ambulatory departments.

### Conclusion

Merger of these facilities will help to expand services in the region and allow improvement through an influx of cash to be provided by NYU Hospitals Center. Modernization and growth in services is an anticipated and expected result of this project.

### Recommendation

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

## Program Analysis

### Project Proposal

NYU Hospitals Center (NYUHC) requests approval for the proposed merger of NYU Lutheran Medical Center (NYU Lutheran) with and into NYU Hospitals Center, with NYU Hospitals Center being the surviving corporation.

Previously, PHHPC had approved Lutheran's affiliation with NYUHC whereby NYUHC and NYU Lutheran would come under the common control of a single parent. The affiliation was completed on April 1, 2015 and NYU Langone Health System became the active parent of NYU Lutheran and the passive parent of NYUHC. Pursuant to the Affiliation Agreement, NYUHC made commitments to NYU Lutheran consisting of cash grants for capital and clinical improvement projects and loans to implement an electronic medical records system and certain infrastructure projects.

As efforts to integrate clinical programs and corporate services progressed, it became evident that the most optimal way to expedite the growth of NYU Lutheran and to address the increasing financial challenges it faces is to pursue a full-asset merger. NYUHC anticipates that a full-asset merger will result in approximately \$56.9 million in savings to NYUHC annually that would accrue through efficiencies in IT, patient care management, revenue cycle and managed care contracting. The merger would bring to the combined operations discounted pharmacy benefits; improved Medicare and Medicaid rates; potential improved credit rating due to key performance indicator improvement; and reduced costs of malpractice premiums.

NYUHC has 1,069 licensed beds and has received recognition for clinical excellence and quality as evidenced by being awarded the Gold Seal of Approval by The Joint Commission; a #1 ranking for patient safety and quality by the University Health System Consortium in 2013 and 2014; and Magnet Designation for nursing excellence.



NYU Lutheran is the principal provider of health care for the residents of southwest Brooklyn with 450 licensed beds and an emergency department that has been designated a Level I trauma center and a regional stroke center.

In addition to the inpatient facility, NYU Lutheran is the co-operator with Sunset Park Health Council, Inc. of Lutheran Family Health Centers, one of the largest federally qualified health center (FQHC) networks in the country, with 9 primary care sites, 28 school-based health/dental clinics and social support services. Currently, Sunset Park has been the licensed co-operator of all of NYU Lutheran's outpatient extension clinics as well as the clinics located at NYU Lutheran's main facility, all of which are operated as FQHCs sites. Accordingly, NYUHC is hereby requesting that co-operator status of the FQHC outpatient clinics be maintained following the merger, and that co-operator status be noted on the new operating certificate issued to NYUHC.

NYU Lutheran is also the sole passive member of Lutheran Augustana Center, a 240-bed nursing home located on NYU Lutheran's main campus at 150 55th Street in Brooklyn, and indirectly controls a certified home health agency (Lutheran CHHA, Inc.) and a licensed home health agency (Community Care Organization, Inc.). The Bylaws of the two stand-alone entities require that their directors be officers, directors or employees of NYU Lutheran or, in the case of Community Care, NYU Lutheran or a related entity. As NYU Lutheran is a passive parent, Augustana is not included in this proposal. Furthermore, the certified home health agency and the licensed home health agency, both stand-alone corporations without any members, are licensed under Article 36 of the Public Health Law and thus not a part of this application.

Upon approval, NYU Lutheran will cease to exist as a separate corporate entity and its operations (including all assets and liabilities) will merge into NYU Hospitals Center, which will continue to have NYU Langone Health System as its sole member and passive parent. In connection with the proposed transaction, NYU Lutheran is developing an advisory board that will provide input on local issues directly to the NYUHC Board of Trustees and senior management team.

#### Compliance with Applicable Codes, Rules and Regulations

The 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.

#### Conclusion

Based on the results of this review, a favorable recommendation can be made for the proposal.

#### Recommendation

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

## Financial Analysis

### Merger Agreement

The applicant has submitted a draft merger agreement, which is summarized below:

Purpose:	The merger of NYU Lutheran Medical Center into NYU Hospitals Center.
Terms:	All assets and liabilities of NYU Lutheran, as well as all pension plan and other liabilities, will be transferred to and assumed by NYUHC; NYUHC will develop and maintain NYU Lutheran's premises and maintain commitment to its mission; NYUHC's existing, more generous, charity care policy will apply to NYU Lutheran; all existing employment and union agreements will be honored; the management of the two organizations will be integrated, with Senior Executive responsible for operations at the NYU Lutheran site.
Governance:	The members of the Board of Trustees of NYU Hospitals Center immediately prior to the Effective Date shall continue to be the Trustees of the Surviving Corporation upon consummation of the Merger.
Closing:	Closing is contingent upon approval or waiver of approval from: NYS Attorney General, NYS Department of Health, Justice of the Supreme Court of New York County, and HUD

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

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first year of operation, as summarized below:

Revenues:	
Operating Revenues	\$2,639,013,665
Other Operating Revenues	<u>258,040,909</u>
Total Revenues	\$2,897,054,574
Expenses:	
Operating	\$2,571,101,308
Capital	<u>172,458,426</u>
Total Expenses	\$2,743,559,734
Excess of Revenues over Expenses	\$153,494,840
Utilization:	
Inpatient (Discharges)	64,652
Outpatient (Visits)	1,634,401

Other operating revenues includes grants and affiliations, return on short term investments, contributions, parking lot and space rental, EHR incentive payments, payments from offshore medical schools to train medical students, and income from Calvary Hospital within a hospital program.

Utilization for the combined NYUHC/NYU Lutheran operations by payor source for inpatient and outpatient services is as follows:

	<u>Inpatient</u>	<u>Outpatient</u>
Medicaid Fee For Service	5.97%	8.40%
Medicaid Managed Care	20.65%	28.55%
Medicare Fee For Service	23.42%	15.85%
Medicare Managed Care	8.61%	6.01%
Commercial Fee For Service	32.85%	25.17%
Commercial Managed Care	4.42%	6.21%
Private Pay	4.08%	9.81%

Expense and utilization assumptions are based on the historical experience of NYU Hospital Center and NYU Lutheran Medical Center.

#### Capability and Feasibility

There are no issues of capability associated with this application.

The submitted budget indicates an excess of revenues over expenses of \$153,494,840 during the first year for the combined operations. Revenues are based on current reimbursement methodologies.

BFA Attachment A is the certified financial statements of NYU Hospital Center as of August 31, 2013, and August 31, 2014. As shown, the entity had an average positive working capital position and an average positive net asset position for the period shown. Also, the entity achieved an average income of operations of \$131,299,500 during the period shown.

BFA Attachment B is the 2013 and 2014 certified financial statements of Lutheran Healthcare. As shown, the entity had an average positive working capital position and an average positive net asset position from 2013 through 2014. Also, the entity incurred average losses of \$14,256,500 from 2013 through 2014. The applicant indicated that the losses were attributed to supporting the operating losses that the physician group (Professional Corporation) and Lutheran Augustana Center for Extended Care and Rehabilitation incurred.

BFA Attachment C is the internal financial statements of NYU Hospitals Center as of May 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position for the period ending May 31, 2015. Also, the entity incurred an income from operations of \$167,596,000 through May 31, 2015.

BFA Attachment D is the internal financial statements of NYU Lutheran Medical and Family Health Centers as of May 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position through May 31, 2015. Also, the entity incurred a loss of \$2,500,187 through May 31, 2015. The applicant indicated that the losses were the result of the following: decreases in volume and case mix during January through March as a result of the extreme weather patterns experienced during these months; an increase in observation cases; and Lutheran Medical Center's focus on decreasing readmissions especially from Lutheran Augustana Center for Extended Care and Rehabilitation. The applicant indicated that they implemented the following steps to improve operations: negotiated contracts expiring after April 1, 2015, with significant increases in payment rates; augmented staff and resources to critical areas such as HIM, CDI and Revenue Management; evaluated purchase agreements and leases to drive lower prices and better value through combining purchasing power; and evaluated opportunities to lower insurance premiums by consolidating policies.

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

#### Recommendation

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

## Attachments

- BFA Attachment A Financial Summary - August 31, 2013 and August 31, 2014 certified financial statements of NYU Hospital Center.
- BFA Attachment B Financial Summary - 2013 and 2014 certified financial statements of Lutheran Healthcare
- BFA Attachment C Financial Summary - May 31, 2015 internal financial statements of NYU Hospitals Center.
- BFA Attachment D Financial Summary - May 31, 2015 internal financial statements of NYU Lutheran Medical and Family Health Centers.



Project # 142216-B  
NHPE, LLC d/b/a New Hyde Park Endoscopy

**Program:** Diagnostic and Treatment Center      **County:** Nassau  
**Purpose:** Establishment and Construction      **Acknowledged:** November 24, 2014

**Executive Summary**

**Description**

NHPE, LLC d/b/a New Hyde Park Endoscopy (NHPE), an existing New York State limited liability company, requests approval for the establishment and construction of an Article 28 freestanding ambulatory surgery center (FASC) to be certified as a single-specialty FASC in the discipline of gastroenterology. The applicant will lease 8,000 square feet on Mezzanine Level 2 (basement) of an existing building located at 1991 Marcus Avenue, Lake Success (Nassau County). The FASC will include three procedure rooms, a pre-operating area and eleven recovery bays, along with the requisite support areas.

- Putnam GI, LLC d/b/a Putnam Endoscopy ASC;
- Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center;
- Queens Boulevard ASC, LLC;
- Flushing Endoscopy Center, LLC;
- Queens Endoscopy ASC, LLC;
- Long Island Digestive Endoscopy Center, LLC;
- Great South Bay Endoscopy Center, LLC;
- PBGS, LLC d/b/a Downtown Brooklyn Gynecology Center; and
- West Side GI, LLC.

The proposed members of NHPE and their ownership percentages are as follows:

<b>Proposed Members:</b>	<b>%</b>
<b>Shri Bherav &amp; Co., LLC</b>	<b>90%</b>
Nilesh Mehta, M.D.	50%
Preeti Mehta, M.D.	50%
<b>Frontier Healthcare Associates, LLC</b>	<b>10%</b>
Jordan C Fowler	39%
Oleg Gutnik, M.D.	29.25%
Roy Bejarano	29.25%
Jason Schifman	2.5%
<b>Total</b>	<b>100%</b>

Concurrently under review, Dr. Oleg Gutnik, Jordan Fowler, Roy Bejarano and Jason Schifman, as members of Frontier Healthcare Associates, LLC, are requesting approval to acquire 10% operating interest in Liberty Endo, LLC (CON #151019).

**OPCHSM Recommendation**

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

**Need Summary**

The number of projected procedures is 2,500 in Year 1 with Medicaid at 13 percent and charity care at two percent. All of the projected procedures are currently being performed in the participating physicians' private practices.

As members of Frontier Healthcare Associates, LLC, Dr. Oleg Gutnik, Jordan Fowler, Roy Bejarano and Jason Schifman have ownership interest in the following FASCs:

- Digestive Diseases Diagnostic & Treatment Center;
- Manhattan Endoscopy Center, LLC;

Program Summary

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

Financial Summary

Total project costs of \$3,459,543 will be met through members' equity of \$691,909 and the remaining \$2,767,634 balance will be financed over five years through JP Morgan Chase Bank at 5% interest.

Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$2,572,956	\$2,608,212
Expenses:	<u>\$2,241,225</u>	<u>\$2,290,980</u>
Gain/(Loss)	\$331,731	\$317,232

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of 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:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payor source;
  - c. Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data showing number of emergency transfers to a hospital;
  - e. Data showing percentage of charity care provided, and
  - f. Number of nosocomial infections recorded during the year in question. [RNR]
3. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
4. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
5. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed Consultative Agreement, acceptable to the Department. [HSP]
7. Submission of a loan commitment, acceptable to the Department of Health. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
9. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
10. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
11. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
12. Submission of the Articles of Organization for Shri Bherav & Co., LLC, acceptable to the Department. [CSL]
13. Submission of the Operating Agreement of Shri Bherav & Co., LLC, acceptable to the Department. [CSL]
14. Submission of the Certificate of Amendment to the Articles of Organization of NHPE, LLC, acceptable to the Department. [CSL]
15. Submission of the amended Operating Agreement for NHPE, LLC, acceptable to the Department. [CSL]
16. Submission of a photocopy of the executed Agreement of Lease between, Lalezarian Properties, LLC and 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. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by May 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date  
**October 8, 2015**



## Need Analysis

### Background

The service area is Nassau County. The number of projected procedures is 2,500 in Year 1 and 2,653 in Year 3. These projections are based on the current practices of participating physicians. The projected payor mix is as follows:

Projected Procedures	% Years 1 and 3
Commercial FFS	78.0%
Medicare FFS	6.0%
Medicare MC	1.0%
Medicaid FFS	1.0%
Medicaid MC	12.0%
Charity Care	2.0%
Total	100.0%

Nassau County currently has four single specialty and five multi-specialty ambulatory surgery centers. The table below shows the number of patient visits at ambulatory surgery centers in Nassau County for 2013 & 2014.

Specialty Type	Name of Facility	2013 Visits	2014 Visits
Multi	Day Op of North Nassau Inc.	654	149
Multi	Day-Op Center of Long Island	3,952	3,259
Single	Endoscopy Center of LI	7,141	7,981
Single	Island Eye Surgicenter LLC	10,396	10,269
Single	Long Island Digestive Health LLC	5,772	6,020
Single	Meadowbrook Endoscopy Center	6,617	7,702
Multi	Nassau Center for AmSurg.	5,870	6,035
Multi	Prohealth Amb Surg Ctr Inc.	6,595	12,149
Multi	South Shore Amb Surg Ctr LLC	5,537	4,646
	Total Above	52,534	58,210

Source: SPARCS

For Nassau County, the total number of patient visits was 52,534 in 2013 and 58,210 in 2014. This represents a 10.8% year to year increase in the number of patients served by ambulatory surgery centers in Nassau County. For gastroenterology services, the total number of visits was 19,530 in 2013 and 21,703 in 2014. This represents an 11.1% year to year increase in the number of patients served by Gastroenterology ambulatory services in Nassau County.

The applicant is committed to serving all persons in need of surgical care without regard to their ability to pay or the source of payment.

### Conclusion

The proposed project will bring procedures that are currently being performed in private physicians' offices under a regulated Article 28 entity.

### Recommendation

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

## Program Analysis

### Project Proposal

NHPE, LLC, d/b/a New Hyde Park Endoscopy requests approval to establish and construct a single specialty diagnostic and treatment center specializing in gastroenterology that will also be federally certified as an ambulatory surgery center.

<b>Proposed Operator</b>	NHPE, LLC
<b>Doing Business As</b>	New Hyde Park Endoscopy
<b>Site Address</b>	1991 Marcus Avenue, Lake Success (Nassau County)
<b>Surgical Specialties</b>	Single Specialty: Gastroenterology
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	3
<b>Hours of Operation</b>	Monday through Friday from 7:30 am to 3:30 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	8.0 FTEs / 8.0 FTEs
<b>Medical Director(s)</b>	Nilesh Mehta, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by New York Hospital Queens 9.2 miles/18 minute drive time
<b>On-call service</b>	24/7 on-call service to connect patients to the facility's on-call physician during hours when the facility is closed.

### Character and Competence

The members are:

**Shri Bherav & Co., LLC (SBC) 90%**

Nilesh Mehta, MD 50%  
Preeti Mehta, MD 50%

**Frontier Healthcare Associates, LLC (FHA) 10%**

Jordan Fowler 39.00%  
Oleg Gutnik, MD 29.25%  
Roy Bejarano 29.25%  
Jason Schifman 2.50%

Drs. Mehta will act as managers of New Hyde Park Endoscopy. They are practicing surgeons and board-certified gastroenterologists. Mr. Fowler has over a decade of experience in physician practice management and ambulatory surgery center development. Most recently, he has overseen the development and opening of over ten Article 28-licensed ambulatory surgery centers in the New York metropolitan area. Dr. Gutnik has practiced medicine as a gynecologist in New York since 1986 and has previously developed and managed several primary care/multispecialty diagnostic and imaging medical facilities, as well as Article 28 facilities. Mr. Bejarano is a former CEO and founder of a boutique advisory firm. Since October 2011, he has served as the President of Frontier Healthcare Holdings, LLC and is responsible for ASC management company operations. Mr. Schifman has over six years of providing financial analysis, strategic advisory and consulting services to a variety of companies. For the last two years, he has served as Frontier Healthcare Management Services' Vice President of Finance.

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.

*On September 10, 2015, the Department issued a Stipulation and Order and \$16,000 fine to Yorkville Endoscopy, LLC based on Federal non-compliance identified in a Statement of Deficiencies issued on October 10, 2014 by the Centers for Medicare and Medicaid (CMS) and violations of Article 28 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR) which the Department discovered during inspections conducted in May 2015. Specifically, deficient practice was identified in the following areas: Organization and Administration (Operator); Medical Record System; Patients' Rights; Surgery Services; and Anesthesia Services. As a result of this enforcement, the facility has been directed to submit semi-annual reports for a one year period (or until the Department determines full compliance has been achieved with every item required). Reporting requirements include (but are not limited to): medical staff rosters and privileges, quality assessment and performance improvement minutes and audits, complaint and incident logs, and patient discharge/transfer data.*

#### Integration with Community Resources

The Center plans to work closely with its patients to educate and provide them with information regarding the availability of primary care services offered by local providers, to include the broad array of outpatient primary care services offered by The New York Hospital Medical Center of Queens (the Center's designated provider of backup and emergency services). Patients will be treated on the basis of need for gastroenterology procedures, without discrimination due to any personal characteristics or ability to pay. To this end, the Center will utilize a sliding fee scale and provide charity care.

The Center plans on utilizing an Electronic Medical Record (EMR) system, as well as integrating and exchanging information with an established Regional Health Information Organization (RHIO).

#### Recommendation

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

## Financial Analysis

#### Lease Rental Agreement

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

Premises:	Approximately 8,000 gross square feet located on Mezzanine Level 2 (basement) of an existing building located at 1991 Marcus Avenue, Lake Success, NY 11042
Landlord:	Lalezarian Properties, LLC
Lessee:	NHPE, LLC d/b/a New Hyde Park Endoscopy
Term:	15 years and 11 months; tenant shall have one (1) option to renew for a five (5) year term.
Rental:	Year 1 base rent at \$236,000 (\$29.50 per sq. ft.); annual base rent shall increase each subsequent year of the lease term at a rate of 2.5% per year.
Provisions:	Electric Service (by a sub-meter) and pro rata share of Real Estate Taxes

The applicant has provided an affidavit stating that the lease is an arm's length arrangement. The applicant has submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

### Administrative Service Agreement

The applicant has submitted an executed administrative services agreement, as summarized below:

Dated:	April 15, 2014
Facility:	NHPE, LLC d/b/a New Hyde Park Endoscopy
Contractor:	Frontier Healthcare Management Services, LLC
Services Provided:	Oversight of: staffing & scheduling; accounting including accounts payable, cashier & banking; compliance with policies, procedures, medical staff by-laws and accreditation; physical plant/materials management; nursing and administration; business office policies & procedures; prepare quarterly financial reports; conduct annual strategic planning; assist /prepare annual business plan/budget; attend board meetings; familiarize staff with clinical policies, procedures, regulatory requirements; attend clinical and operations meetings; monitor clinical benchmarks and quality of care indicators; assist with medical staff credentialing. Facilitate acquisition of electronic health records.
Term:	One (1) year – renewable for an additional one (1) year term
Fee:	Annual Fee \$125,000 (1/12 to be paid monthly = \$10,416.67). Fee will increase by 2% per year after the first year

### Billing Services Agreement

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

Dated:	April 15, 2014
Facility:	NHPE, LLC d/b/a New Hyde Park Endoscopy
Contractor:	Frontier Healthcare Billing Services, LLC
Services Provided:	Claims processing, coding oversight, billing & collection services including: preparation and data entry, responding to inquiries, follow-up support; billing payors and co-pays, coinsurance and deductible amounts; perform billing in accordance with the applicable laws; ensure appropriate coding entered on each bill; reprocess and resubmit claims improperly denied or paid; follow owner's policies and procedures for handling accounts deemed uncollectible; maintain accurate billing/collection records along with timely reporting; provide owners with electronic access to computerized records; ensure the records are safeguarded; allow audits/reviews to ensure regulatory compliance.
Term:	3 years - renewable for one additional one (1) year term
Fee:	Fee \$22.50 per claim (paid monthly)

### Development Services Agreement

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

Dated:	April 15, 2014
Facility:	NHPE, LLC d/b/a New Hyde Park Endoscopy
Contractor:	Frontier Healthcare Management Services, LLC
Services Provided:	Pre-development activities: determining objectives, long-term viability analysis, initial financial analysis, assist in structuring development parameters for members, financing, physical plant, management, timeframe and equipment needs; review and coordinate with consultants on regulatory issues; assess and develop hospital relationship. Prepare business plan and file CON; assess market; activities needed to construct the facility and respond to CON contingencies; act as project manager; meet with contractors and architects to begin construction phase; facilitate site-surveys; prepare policy/procedure manuals; ensure compliance with standards for accreditation, licensure, Medicare certification; contact third-party payors to accredit the facility; oversee implementation of EMR system; prepare billing and collection protocols; establish banking relationships; assist with lease negotiations; coordinate recruitment of center management; negotiate with vendors; acquire inventory; develop related controls and policies; oversee physician credentialing of physicians; and prepare list of necessary computer and IT equipment.

Term:	Until date of first procedure performed
Fee:	Flat fee of \$150,000 (1/18 to be paid monthly for 18 months = \$8,333.33)

The administrative services provider, Frontier Healthcare Management Services, LLC, and the billing service provider, Frontier Healthcare Billing Services, LLC, are owned by Frontier Healthcare Holdings, LLC whose members are: Oleg Gutnik, M.D. (30%), Jordan Fowler (40%), and Roy Bejarano (30%). Dr. Gutnik, Jordan Fowler, and Roy Bejarano are investors in the applicant through Frontier Healthcare Associates, LLC. BFA Attachment D provides a flow chart of related ownership and agreements being provided.

While Frontier Management Healthcare Services, LLC and Frontier Healthcare Billing Services, Inc. will be providing all of the above services, the applicant retains ultimate control in all of the final decisions associated with the services.

#### Total Project Cost and Financing

Total project costs for renovation and acquisition of moveable equipment is estimated at \$3,459,543, broken down as follows:

Renovation & Demolition	\$1,152,320
Design Contingency	148,512
Construction Contingency	148,512
Architect/Engineering Fees	223,600
Construction Manager Fees	148,508
Other Fees	352,257
Movable Equipment	1,177,005
Financing Costs	30,000
Interim Interest Expense	57,917
CON Application Fee	2,000
CON Processing Fee	<u>18,912</u>
Total Project Cost	\$3,459,543

Project costs are based on a start date of November 1, 2015, with a six-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$691,909
Bank Loan (5% for a 5-year term)	<u>2,767,634</u>
Total	\$3,459,543

A letter of interest has been provided from JP Morgan Chase Bank.

#### Operating Budget

The applicant has submitted their year one and year three operating budgets, in 2015/16 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
<b>Revenues:</b>		
Medicaid Fee-For-Service	\$16,944	\$17,176
Medicaid Managed Care	\$172,829	\$175,198
Medicare Fee-For-Service	\$116,914	\$118,516
Medicare Managed Care	\$19,486	\$19,753
Commercial Fee-For-Service	<u>\$2,246,783</u>	<u>\$2,277,569</u>
Total Revenues	\$2,572,956	\$2,608,212
<b>Expenses:</b>		
Operating	\$1,482,985	\$1,578,444
Capital	<u>758,240</u>	<u>712,536</u>
Total Expenses	\$2,241,225	\$2,290,980

Net Income or (Loss)	\$331,731	\$317,232
Utilization (procedures)	2,500	2,652
Cost Per Procedure	\$896.49	\$863.87

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

Medicaid Fee-For-Service	1.0%
Medicaid Managed Care	12.0%
Medicare Fee-For-Service	6.0%
Medicare Managed Care	1.0%
Commercial Fee-For-Service	78.0%
Charity	<u>2.0%</u>
Total	100.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current and projected Federal and State government reimbursement rates, with private payer rates reflecting adjustments based on experience in the region.
- Utilization projections are based on the current caseload of the participating physicians, Nilesh Mehta, M.D. and Preeti Mehta, M.D., who are board-certified in gastroenterology. The procedures are currently being performed in the physicians' office-based practices, which are located in the same community that the FASC will serve. The applicant indicated that none of the projected procedures will come from any hospital. Each practicing physicians has submitted letters in support of their projections.
- Expense assumptions are based upon staffing, operating and capital costs experienced by the participating physicians, as well as the experience of other FASCs in New York State in providing similar service patient care.
- The breakeven point is approximately 87% of the projected utilization or 2,178 procedures in year one, and 88% or 2329 procedures in year three.

#### Capability and Feasibility

The total project cost of \$3,459,543 will be satisfied by the proposed members' equity contribution of \$691,909 with the balance of \$2,767,634 to be financed by JP Morgan Chase Bank at the above stated terms.

Working capital requirements are estimated at \$380,830, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from JP Morgan Chase Bank to finance \$190,415 of the working capital with a one year payback period at an estimated 4% interest rate. The remaining \$190,415 in working capital will be provided from the members' own financial resources. BFA Attachment A is the net worth statements of the applicant members, which indicates sufficient liquid resources to meet the equity and working capital requirements. BFA Attachment B is NHPE's pro-forma balance sheet which shows operations will start off with \$882,324 in equity.

NHPE projects an operating excess of \$331,731 and \$317,232 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected reimbursement rates and the payment levels for commercial payors have been determined by contacting various providers and obtaining their current rate schedules. The budgets appear reasonable.

BFA Attachment C is the 2014 and 2013 financial summaries for the FASCs that the members of Frontier Healthcare Associates, LLC have ownership interest in, with the exception of Long Island Digestive Endoscopy Center, LLC, Great South Bay Endoscopy Center, LLC, and PBGS, LLC as the facilities were newly licensed in 2104. As shown, the entities had a positive working capital position, positive net asset position and generated positive net operating income in 2013 and 2014, except for Putnam Endoscopy ASC and Queens Boulevard ASC, LLC. Putnam Endoscopy ASC had a negative working capital position

in 2013 because the financial statements are reported on an income tax basis which excludes accounts receivable from its current assets. Queens Boulevard ASC, LLC had negative net assets and a negative working capital position in 2013. The facility was in its first year of operations and has added an additional physician and is proposing to add another physician to increase cash flow.

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.**

## Supplemental Information

### Supplemental Information from Surrounding Hospitals

Below are summaries of responses by hospitals to letters from the Department requesting information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. Also included is a summary of the applicant's response to DOH's request for information on the proposed ASC's volume of surgical cases, sources of those cases, staff recruitment and retention.

**Facility:** North Shore University Hospital -- **No Response**  
300 Community Drive  
Manhasset, NY 11030

**Facility:** Long Island Jewish Medical Center -- **No Response**  
270-05 76<sup>th</sup> Avenue  
New Hyde Park, NY 11040

**Facility:** New York Hospital Queens -- **No Response**  
56-45 Main Street  
Flushing, NY 11355

**Facility:** Winthrop-University Hospital -- **No Response**  
259 First Street  
Mineola, NY 11501

### Supplemental Information from Applicant

**Need and Sources of Cases:** The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private practice of the applicant physicians. The applicant also cites data showing a continued growth in Nassau County in the number of persons 45 years and older, which is the primary service group for colorectal cancer screening. The applicant also states that there are only three ASCs specializing in gastroenterology in Nassau County, a jurisdiction of over 1.3 million people. This current lack of local capacity to provide gastroenterology services will ensure attainment of the projected volume of cases.

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

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

DOH Comment

The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year, limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

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## Attachments

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BPNR Attachment A	Map
BFA Attachment A	Personal Net Worth Statement of Proposed Members of NHPE, LLC
BFA Attachment B	Pro Forma Balance Sheet of NHPE, LLC
BFA Attachment C	Applicant's Offices/Ownerships Interest of Frontier Healthcare Associates, LLC
BFA Attachment D	Service Agreement – Related Ownership Flow Chart





## MEMORANDUM

**To:** Members of the Establishment and Project Review Committee  
Public Health and Health Planning Council

**From:** Christopher Delker  
Director  
Division of Planning and Licensure

**Date:** September 15, 2015

**Subject:** CON #151008 Pittsford Pain Center, LLC

This application first came before the full Council at its meeting of June 11, 2015, following earlier review by the Establishment and Project Review Committee, whose members were unable to agree on a recommendation.

The proposed ASC was the subject of considerable discussion at the PHHPC meeting, mainly because of the recommendation of the Finger Lakes Health Systems Agency (HSA) for disapproval (see attached memo). With two members recusing, 14 of the 16 members in attendance were eligible to vote on the application. By a tally of 11 in favor and three opposed, the motion to accept the Department's recommendation for approval of the proposed ASC fell two votes short of the required 13.

Rather than entertain an alternate motion for disapproval of the application, members noted the absence of six members and elected to defer further consideration of the proposal until a PHHPC meeting with fuller attendance. Because it was anticipated that the PHHPC's August meeting would also have the low attendance typical of the summer vacation season, the Department has scheduled the application for consideration in this September/October cycle.



## MEMORANDUM

**To:** Members of the Public Health and Health Planning Council

**From:** Charles P. Abel *CPA*  
Acting Director  
Center for Health Care Facility Planning, Licensure and Finance

**Date:** May 14, 2015

**Subject:** CON #151008 Pittsford Pain Center, LLC - Revised

The Finger Lakes Health Systems Agency (HSA) has recommended disapproval of the proposed Pittsford Pain Center, LLC, an ambulatory surgery center (ASC) specializing in pain management. The HSA's recommendation for disapproval is based principally on three considerations:

- the availability of pain management services from four hospitals in the Rochester area (at main campus and off-campus sites);
- the higher cost of delivering services that can be effectively delivered in office-based settings;
- a lack of well-established evidence in the medical literature on the clinical efficacy and utility of certain of the procedures to be performed at the proposed ASC.

Although the Department finds the HSA's comments thoughtful and well-considered, the three cited factors do not fall within the elements listed in 10 NYCRR Section 709.5, the need methodology for ambulatory surgery centers. Specifically:

- **Hospital Services:** Section 709.5 does not list the availability of services from hospitals as a factor for consideration in the evaluation of public need for a proposed ASC. Public need for a new ASC rests principally on the applicant's demonstration that the proposed facility will be utilized sufficiently to be financially feasible, as demonstrated by a three-year analysis of costs and revenues from the volume of procedures to be performed. There is no provision for consideration of existing services, whether from hospital-based or independent ASCs, in the evaluation of this factor.

It is also the case that when section 709.5 was amended in 1998 to allow the establishment of more ASCs (which had hitherto been limited to one ASC per

500,000 population) the changes were intended to expand access to ambulatory surgical care and allow greater consumer choice. The HSA's recommendation would leave Article 28 surgical pain management services solely in the hands of hospitals, which would be at odds with regulatory intent.

Although the Department routinely seeks comments from hospitals in the service areas of proposed ASC's, these invitations to comment are not to aid in determining public need. Rather, their purpose is to help ascertain whether the proposed ASC would have an adverse impact on hospital surgical revenues, and in particular on the hospitals' community oriented services that may be subsidized by income from ambulatory surgical cases.

- **Costs:** The Department agrees with the HSA that the delivery of the proposed pain management services in an ASC setting would be more expensive than if these procedures remained in the applicant physicians' office-based practices. However, the Department has for years accepted such higher costs as a tradeoff for the greater safety that comes from Article 28 monitoring and oversight. It would be inconsistent with many past approvals for conversions of office-based practices to Article 28 ASCs if we were to give special weight to the cost factor in this instance. Additionally, there are some procedures appropriate for the ASC setting that would not be appropriate for the office-based setting.
- **Procedures:** Although the HSA refers to a lack of medical consensus regarding the utility and efficacy of certain spinal procedures to be performed by the proposed ASC, the majority of the procedures to be performed at the facility are listed under the Medicaid Products of Ambulatory Surgery and are reimbursed accordingly.

In summary, we respectfully conclude that the HSA's comments provide no basis for reversal or modification of the Department's recommendation for approval of this ASC based on public need, financial feasibility and owner/operator character and competence.



**Project # 151008-B  
Pittsford Pain Center LLC**

**Program:** Diagnostic and Treatment Center    **County:** Monroe  
**Purpose:** Establishment and Construction    **Acknowledged:** January 14, 2015

**Executive Summary**

**Description**

Pittsford Pain Center, LLC, a to-be-formed New York limited liability company, requests approval to develop a single-specialty Article 28 freestanding ambulatory surgery center (FASC) to provide pain management services. The Center will be located in leased space at 727 Linden Avenue, Pittsford (Monroe County), and will consist of four operating rooms.

The proposed members of Pittsford Pain Center, LLC and their ownership percentages are as follows:

Ajai Nemani, M.D.	47.50%
Roser Ng, M.D.	47.50%
Heritage Ambulatory Surgery Center Alliance	5.00%

The members of Heritage Ambulatory Surgery Center Alliance, LLC are as follows:

Robert Tiso, M.D.	37.50%
Eric Tallarico, M.D.	5.00%
Joseph Catania, M.D.	37.50%
Nameer Haider	20.00%

The two physician owners, Ajai Nemani, M.D. and Roger Ng, M.D., currently provide pain management services in their individual offices located in Rochester. The Heritage Ambulatory Surgery Center Alliance (HASCA) provides administrative and consulting services to ambulatory surgery centers.

**OPCHSM Recommendation**

Contingent Approval with an expiration of the operating certificate five (5) years from the date of its issuance.

**Need Summary**

The vast majority of procedures to be performed at Pittsford Pain Center, LLC are presently being performed in physicians' private offices. (Fewer than 50 per year are performed elsewhere, mostly in freestanding ASCs.)

The number of projected procedures is 6,001 in Year 1, with Medicaid at 3.5% and charity care at 2.0%.

**Program Summary**

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

**Financial Summary**

Project costs of \$404,698 will be met as follows: Equity of \$44,698 and a bank loan of \$360,000 at an interest rate of 5% for a five year term.

**Budget:**

Revenues	\$6,231,234
Expenses	<u>4,827,355</u>
Net Income	\$1,403,879

## Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Disapproval of 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 a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payer source;
  - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data showing number of emergency transfers to a hospital;
  - e. Data showing percentage of charity care provided; and
  - f. Number of nosocomial infections recorded during the year in question. [RNR]
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 Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed administrative service agreement, acceptable to the Department. [BFA]
8. Submission of an executed building lease, acceptable to the Department. [BFA]
9. Submission of an executed loan commitment, acceptable to the Department. [BFA]
10. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03 (See Attached). [AER]
12. Submission of a photocopy of the executed Operating Agreement of Pittsford Pain Center, LLC, acceptable to the Department. [CSL]
13. Submission of a photocopy of the executed Lease Agreement between N & N Real Estate Holding Rochester LLC and 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. 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 the Department's granting approval for the start of construction (See Attached). [AER]
7. The applicant shall start construction on or before 09/15/2015 and complete construction by 05/15/2016 upon the filing of Final Construction Documents in accordance with 10NYCRR 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

**May 21, 2015 EPRC – No Recommendation**

**June 11, 2015 PHHPC – No Recommendation**

**October 8, 2015**

## Need Analysis

### Project Description

Pittsford Pain Center, LLC, a to-be-formed New York limited liability company, is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty pain management surgery services at 727 Linden Avenue, Pittsford, 14534, in Monroe County.

### Analysis

The primary service area consists of Monroe County. Monroe County has a total of five freestanding multi-specialty ASCs. The table below shows the number of patients utilizing Ambulatory Surgery Centers in Monroe County for 2012 & 2013 (Source: SPARCS).

Specialty Type	Name of Facility	Patients-2012	Patients-2013
Multi	Brighton Surgery Center ,LLC	4,745	6,778
Multi	Lindsay House Surgery Center, LLC	599	674
Multi	Rochester Ambulatory Surgery Center	3,614	4,411
Multi	Unity Linden Oaks Surgery Center	4,923	5,689
Multi	Westfall Surgery Center, LLP	14,224	13,639
<b>Total</b>		<b>28,105</b>	<b>31,191</b>

For Monroe County, the total number of patient visits for ASC's was 28,105 in 2012 and 31,191 in 2013. This represents a 9.9% increase in the number of patients served by Ambulatory Surgery Centers in Monroe County from 2012 to 2013.

The applicant projects 6,001 procedures in Year 1 and 7,260 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Pittsford Pain Center.

Projections	Year 1 Procedures	Year 1 Percentage	Year 3 Procedures	Year 3 Percentage
Commercial Ins	2,064	34.4%	2,498	34.4%
Medicare	2,184	36.4%	2,642	36.4%
Medicaid	212	3.5%	256	3.5%
Private Pay	230	3.8%	278	3.8%
Charity Care	120	2.0%	145	2.0%
Other	1,191	19.8%	1,441	19.8%
<b>Total</b>	<b>6,001</b>	<b>100.0%</b>	<b>7,260</b>	<b>100.0%</b>

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

### Conclusion

Approval of this project will bring office-based pain management surgical procedures into an Article 28 Ambulatory Surgery Center serving the communities of Monroe County.

### Recommendation

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

## Program Analysis

### Project Proposal

Pittsford Pain Center, LLC seeks approval to establish and construct a single specialty ambulatory surgery center at 727 Linden Avenue, Pittsford (Monroe County) which will provide pain management services.

<b>Proposed Operator</b>	Pittsford Pain Center, LLC
<b>Site Address</b>	727 Linden Avenue, Pittsford (Monroe County)
<b>Surgical Specialties</b>	Pain Management
<b>Operating Rooms</b>	4 (Class B)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:30 am to 4:00 pm
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	14.6 FTEs / 17.4 FTEs
<b>Medical Director</b>	Ajai K. Nemani, MD
<b>Emergency, In-Patient &amp; Backup Support Services Agreement and Distance</b>	Expected to be provided by Rochester General Hospital 12 miles / 16 minutes
<b>On-call service</b>	24/7 on-call service to connect patients to the facility's on-call physician during hours when the facility is closed.

### Character and Competence

The members of Pittsford Pain Center, LLC are:

<b>Name</b>	<b>Membership</b>
<b>Individual Physicians</b>	<b>95%</b>
Ajai Nemani, MD (47.50%)	
Roger R. Ng, MD (47.50%)	
<b>Heritage Ambulatory Surgery Center Alliance, LLC</b>	<b>5%</b>
Robert L. Tiso, MD (37.50%)	
Joseph A. Catania, MD (37.50%)	
Eric Tallarico, MD (5.00%)	
Nameer Haider, MD (20.00%)	

The proposed Center's ownership is comprised of two physicians, Drs. Nemani and Ng—both practicing physicians (Board Certified in Anesthesiology and Pain Medicine) who will perform procedures at the Center, and Heritage Ambulatory Surgery Center Alliance, which is comprised of four physicians who will provide administrative and consulting services to 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.

*Drs. Tallarico and Tiso each disclosed one open malpractice case. Dr. Catania disclosed one settled and three (3) open 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.



### Integration with Community Resources

The proposed ASC will establish and maintain a list of physicians in and around the facility's location who are accepting new patients. The list will be available to any patient who does not have a primary care physician. Pain management services will be provided to all who are referred to the physicians credentialed by the ASC, without regard to their ability to pay.

The center intends on utilizing an electronic medical record. Another goal of the ASC is to integrate into a Regional Health Information Organization (RHIO) and/or Health Information Exchange (HIE). Additionally, the applicant is open to becoming a part of an Accountable Care Organization or Medical Home, based on regulatory and market demands.

### Recommendation

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

## Financial Analysis

### Administrative Services Agreement

The applicant has submitted a draft administrative services agreement, which is summarized below:

Facility:	Pittsford Pain Center, LLC
Contractor:	Heritage Ambulatory Surgery Center Alliance, LLC
Term:	Two years with automatic renewal of successive terms of one year.
Services Provided:	The Contractor shall provide the following services: billing and collection services, detailed revenue analysis on monthly and annual collections, manage the EMR /Billing system software and vendor relationship, provide decision support reporting out of the EMR and Billing system, provide facility level financial statements in format consistent with all HASCA facilities, complete and file the NYS ACHF Cost Report required for all Article 28 facilities in NYS, attend member meetings to monitor compliance with Medicare and NYS DOH requirements, provide information systems consulting services as needed to ensure interface of systems is maintained and provide guidance on Center policies related to HIPAA compliance, HITECH Security and a Corporate Compliance Plan.
Fee:	Year One - \$190,000
	Year Two - \$250,000
	Year Three - \$250,000
	Year Four - \$257,500
	Year Five - \$265,225

While HASCA will be providing the above noted services, the applicant retains ultimate control in all of the final decisions associated with the services and has full control over the management of the Center. The applicant shall retain, in its sole discretion, the following powers:

- Direct independent authority over the appointment and/or dismissal of the Center's management level employees and all licensed or certified health care staff;
- The right to adopt and approve the Center's operating and capital budgets;
- Independent control over, and physical possession of, the Center's books and records;
- The right to independently adopt, approve and enforce the Center's operating policies and procedures;
- Authority over the disposition of assets and authority to incur debt;
- The right to approve settlements of administrative proceedings or litigation to which the Center is a party;
- The Center or a person directly employed by and salaried by Center shall manage and personally direct the Center's day to day operations; and

- The individual responsible for the Center's financial oversight shall be employed or contracted directly by Center and shall be independent of HASCA.

#### Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy; which is summarized below:

Premises:	9,594 square feet located at 727 Linden Avenue, Pittsford, New York
Lessor:	N & N Real Estate Holding Rochester, LLC
Lessee:	Pittsford Pain Center, LLC
Term:	10 years
Rental:	Year One - \$316,602 (\$33.00 per sq. ft.) with a 2% annual increase thereafter.
Provisions	The lessor shall be responsible for maintenance, real estate taxes and utilities.

The applicant has submitted an affidavit indicating that the lease agreement will be an arms-length lease agreement. The applicant has submitted letters from two NYS licensed real estate agents attesting to the reasonableness of the per square foot rental.

#### Total Project Cost and Financing

Total project cost of \$404,698, which is for moveable equipment and CON fees, is further broken down as follows:

Moveable Equipment	\$400,495
CON Fee	2,000
Additional Processing Fee	<u>2,203</u>
Total Project Cost	\$404,698

The applicant's financing plan appears as follows:

Equity	\$44,698
Bank Loan (5% interest rate, 5 year term)	\$360,000

Equity will be provided by the proposed members proportionate to their ownership interest. A letter of interest has been provided by M&T Bank attesting to the loan terms noted above for the purchase of moveable equipment.

#### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first and third years; summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$5,149,780	\$6,231,234
Expenses:		
Operating	\$3,628,574	\$4,397,380
Capital	<u>431,585</u>	<u>429,975</u>
Total Expenses	\$4,060,159	\$4,827,355
Net Income	\$1,089,621	\$1,403,879
Utilization (Procedures)	6,000	7,260
Cost Per Procedure	\$676.70	\$664.92

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	3.53%	3.53%
Medicare Fee For Service	10.03%	10.03%
Medicare Managed Care	26.37%	26.37%
Commercial Managed Care	34.40%	34.40%
Private Pay	3.83%	3.83%
Workers Compensation	19.78%	19.78%
Charity Care	2.00%	2.00%
Other	.06%	.06%
Total	100.00%	100.00%

The payor mix reflects the historical experience of the physicians in their private practice. Both physicians participate with Medicaid and Medicaid Managed Care plans in their area. Medicare enrollees (including managed care) constitute 36% of patient visits, commercial/managed care accounts for 34%, and workers compensation for 20% of current patient volume. The FASC intends to contract with all Medicaid managed care plans in its service area as well as develop agreements with Community Health Centers and Federally Qualified Health Centers located nearby, which may lead to a higher percentage of Medicaid enrollees being served.

Utilization assumptions are based on current physician procedure volumes. Expense assumptions are based on historical experience of the physicians. The applicant has submitted physician referral letters in support of utilization projections.

#### Capability and Feasibility

Project costs of \$404,698 will be met as follows: Equity of \$44,698 and a bank loan of \$360,000 at an interest rate of 5% for a five year term. M&T Bank has provided a letter of interest for the loan to finance the project cost.

Working capital requirements are estimated at \$804,560, which is equivalent to two months of third year expenses. The applicant will finance \$360,000 at an interest rate of 5% for a five year term. A letter of interest has been provided by M&T Bank for the working capital financing. The remaining \$444,560 will be provided as equity by the proposed members of Pittsford Pain Center, LLC proportionate to their ownership interest. BFA Attachment A is the personal net worth statements of the proposed members of Pittsford Pain Management, LLC, which indicates the availability of sufficient funds for the equity contribution. BFA Attachment B is the pro forma balance sheet of Pittsford Pain Management, LLC as of the first day of operation, which indicates a positive net asset position of \$485,055.

The submitted budget indicates a net income of \$1,089,621 and \$1,403,879 during the first and third years, respectively. Revenues are based on current reimbursement rates for pain management services. The submitted 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

### Hospital Responses

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.

**Facility:** Strong Memorial Hospital  
601 Elmwood Avenue  
Rochester, New York 14642

Current OR Use (% of capacity)	Surgery Cases <sup>1</sup>		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
53% Main site 62% Off-site	54%	46%	None	None

Strong Memorial Hospital opposes this application based on existing operating room capacity within the Strong system, the low volume of pain procedures provided in an operating room setting and concerns over the quality and management of pain cases that would be treated at the proposed ASC.

In 2012 Strong Memorial had operating expenses of \$1,083,726,520 on revenue of \$1,179,855,300 for a gain of \$96,128,780. In 2013, operating expenses totaled \$1,163,324,922 and revenue was \$1,286,605,893, for a gain of \$123,280,971. Current assets in 2012 were \$538,431,207 and current liabilities were \$231,840,446 for a working capital ratio of 2.3 to 1.0. In 2013, current assets were \$644,356,490, and current liabilities were \$220,328,133, for a working capital ratio of 2.9 to 1.0. In its fiscal year 2013, Strong Memorial incurred bad debt of \$19.3 million and provided charity care in the amount of \$37.5 million. In fiscal year 2014, the hospital incurred \$22.9 million in bad debt and provided \$37.8 million in charity care.

**Facility:** Highland Hospital  
1000 South Avenue  
Rochester, New York 14620

Current OR Use (% of capacity)	Surgery Cases		Ambulatory Surgery Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Ambulatory	Inpatient		
Operating Rms. 63.8%	49.0%	51.0%	Yes <sup>2</sup>	No
Procedure Ctr. 42.1%	78.9%	21.1%		

Highland Hospital opposes the application on the grounds that there is sufficient OR capacity at Highland and elsewhere in the community to obviate the need for an additional ASC, especially in a time of growing consolidation and affiliation among providers. The hospital also states that approval of the proposed ASC

<sup>1</sup> Main site and off-site combined.

<sup>2</sup> Four cases in 2014

could potentially reduce current OR utilization. Highland does not quantify what effect such a reduction would have on its surgical revenues or on its community-oriented services.

In 2012 Highland Hospital had operating expenses of \$280,395,263 on revenue of \$294,378,157 for a gain of \$13,982,894. In 2013, operating expenses totaled \$297,751,531 and revenue was \$312,863,256, for a gain of \$15,111,725. Current assets in 2012 were \$112,366,882, and current liabilities were \$28,059,340 for a working capital ratio of 4.0 to 1.0. In 2013, current assets were \$127,086,005, and current liabilities were \$30,448,992, for a working capital ratio of 4.2 to 1.0. In 2012, Highland Hospital incurred bad debt of \$3.2 million and provided charity care in the amount of \$4.9 million. In 2013, the hospital incurred \$4.1 million in bad debt and provided \$5.7 million in charity care.

**Facility:** Rochester General Hospital -- **No Response**  
1425 Portland Avenue  
Rochester, New York 14621

Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that patients of the proposed facility would receive care from staff focused only on the provision of pain management procedures and that the better organized and more efficient nature of a new state-of-the-art ASC would result in reduced wait times, increased patient satisfaction and an overall better patient experience. Oversight by DOH will also help ensure that quality care is provided.

**Staff Recruitment and Retention:** Staff will be drawn from among the current staff of the office practices of the applicant physicians.

**Office-Based Cases:** The applicant states that virtually all of the projected cases for the proposed ASC are currently performed in the office practices of the applicant physicians. Of those that are not (fewer than 50 per year), most are performed in freestanding ASCs.

DOH Comment

The comments from the responding hospitals do not describe a specific adverse impact of the proposed ASC on the facilities' surgical revenues or community-oriented programs. Nor does any such adverse impact seem likely, given that virtually all the procedures projected for the ASC are currently performed in office-based settings and that the applicant physicians have performed only a negligible number of cases at one of the responding hospitals. The Department concludes that the comments from area hospitals provide no basis for reconsideration of the recommendation for approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

# Finger Lakes HSA Review & Recommendation

## MEMO

**TO:** CON Project File

**RE:** CON Project 151008 – Pain Management ASC

**DATE:** March 20, 2015

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### *Service Location:*

727 Linden Avenue  
Pittsford, NY 14534

### *Description:*

Interventional Pain Management of Rochester, LLC proposes to develop a single-specialty ambulatory surgery center (ASC) to provide pain management services.

### *Projected Changes to Community Capacity:*

#### **Community Capacity**

There are four pain management centers currently operating in Monroe County:

1. Center for Pain Management at RGH
2. University of Rochester Pain Treatment Center at Sawgrass
3. University of Rochester Neuromedicine Pain Management Center at Strong
4. Highland Hospital Pain Management Center

FLHSA has access to a multi-payer claims database consisting of claims data from two major commercial insurers in the region. Because many of the proposed procedures are performed outside of the hospital setting, staff utilized this database as the primary source of information for this review. This database contains commercial, Medicare Advantage, and Managed Medicaid claims for Excellus Blue Cross Blue Shield and MVP for patients living in the twelve counties that make up the Finger Lakes region<sup>3</sup>. In reviewing the proposed services to be provided at the new facility, we reviewed claims data for January 2010- June 2014 for the region and the two physicians proposing to utilize the new facility.

The applicant has provided the top five (5) projected procedures at the new facility by CPT code, those procedures are located in Table 1. These procedures are expected to account for 85% of ASC's total projected procedure volume.

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<sup>3</sup> Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne Wyoming, and Yates Counties

Table 1. Projected Procedures by Volume, Year 1 and Year 3

CPT	Description	Projected Volume Y1	Projected Volume Y3
64483	Injection(s), anesthetic agent and/or steroid transforaminal epidural, with imaging guidance (fluoro or CT); lumbar or sacral, single level	2,449	2,964
62311	Injection(s) of diagnostic or therapeutic substance(s), not including neurolytic substances, including needle or catheter placement, includes contrast for localization when performed, epidural or subarachnoid; lumbar or sacral (caudal)	928	1,123
64493	Injection(s), diagnostic or therapeutic agent, paravertebral facet joint with image guidance, lumbar or sacral; single level	891	1,078
64635	Destruction by neurolytic agent, paravertebral facet joint nerve(s), with imaging guidance; lumbar or sacral, single facet joint	450	544
62310	Injection(s), of diagnostic or therapeutic substance(s) not including neurolytic substances, including needle or catheter placement, includes contrast for localization when performed, epidural or subarachnoid; lumbar or sacral	944	1,142

Even with this source of information, total community capacity is difficult to determine. The procedures being proposed at the new facility are often performed in the office setting and can be performed by physicians of numerous specialties. Claims data indicate that of the top 5 projected procedures at the new facility 35% are performed in the office. 57% of procedures are performed in an outpatient surgery setting while only 4% are performed in an ambulatory surgery center or as inpatient procedures. It is unlikely that additional outpatient surgical capacity would result in a shift from inpatient to outpatient for these procedures.

The proposing physicians are currently performing nearly all of the proposed procedures in the office setting. ½ of 1% of the applicant's top five procedures proposed at the new facility have been performed in an outpatient surgery or ambulatory surgical center setting.

### Community Need

The applicant cites that 195,000 persons in the five county region the ASC proposes to serve will be affected by chronic pain. Staff estimates that there are approximately 117,000 individuals in Monroe County (proposed site's primary service area) over the age of 18 with chronic pain using an estimate of 30.7% of the population.<sup>4</sup> However, this number does not reflect the number of individuals that will seek treatment or that will meet criteria for the interventions to be provided at the proposed center

The applicant indicates that wait times for patients at offices of both physicians proposing to utilize the new facility are between four and six weeks. It is unknown if there are other practices in the region experiencing similar wait times. The issues apparent with determining community capacity are mirrored regarding community need. Our estimation of need will rely on the evidence apparent in the literature and the applicant's estimated wait times.

<sup>4</sup> Johannes, C; Le, T; Zhou X. The Prevalence of Chronic Pain in United States Adults: Results of an Internet-Based Survey. The Journal of Pain. 2010;11(11):1230-1239

There are no national guidelines for wait times for patients with chronic pain. The most current literature found<sup>5</sup> indicates that patient wait times of 6 months or longer are medically unacceptable. This study also found that only one country had any benchmarks for wait times (United Kingdom, 13 weeks). It should be noted that in many countries wait times for cancer patients are dramatically reduced / eliminated. Wait times in the United States are estimated in one study to be three to four weeks with the local example of Strong Memorial Hospital having a policy of trying to keep wait times to less than two weeks<sup>6</sup>.

Although no national guidelines exist, The Centers for Medicare and Medicaid Services has developed local coverage determinations (LCD's) regarding the facet joint (spinal) injections which are proposed to account for 28% of the practice at the new ASC. The LCD which covers our area prescribes very specific timelines and limits for the application of this treatment modality. The LCD does not require that procedures are completed in an outpatient or ambulatory surgery setting, but does require fluoroscopic guidance. Additionally the LCD notes that "... the evidence of clinical efficacy and utility has not been well-established in the medical literature, which is replete with non-comparable and inadequately designed studies. Further, there is a singular dearth of long-term outcomes reports."<sup>7</sup> There is some national concern about the abuse of these procedures.

National data indicate that the wait times at Dr. Ng and Dr. Nemani's practices are typical of pain management practices across the United States. The wait times listed for United States practices are the shortest of the countries surveyed in the previously noted study. There is no definitive evidence that these wait times result in poorer patient outcomes.

### **Need Conclusion**

It is unclear how the conversion to Article 28 status will improve patient wait times, other than by improving patient flow and efficiency, which could be achieved without the costs associated Article 28 status.

It is not apparent that there is community need for a single specialty Ambulatory Surgical Center for the purposes of pain management.

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<sup>5</sup> Lynch, ME; Campbell, F; Clark, A; et al. A systematic review of the effect of waiting for treatment for chronic pain. *Pain*. 2008;136:97-116.

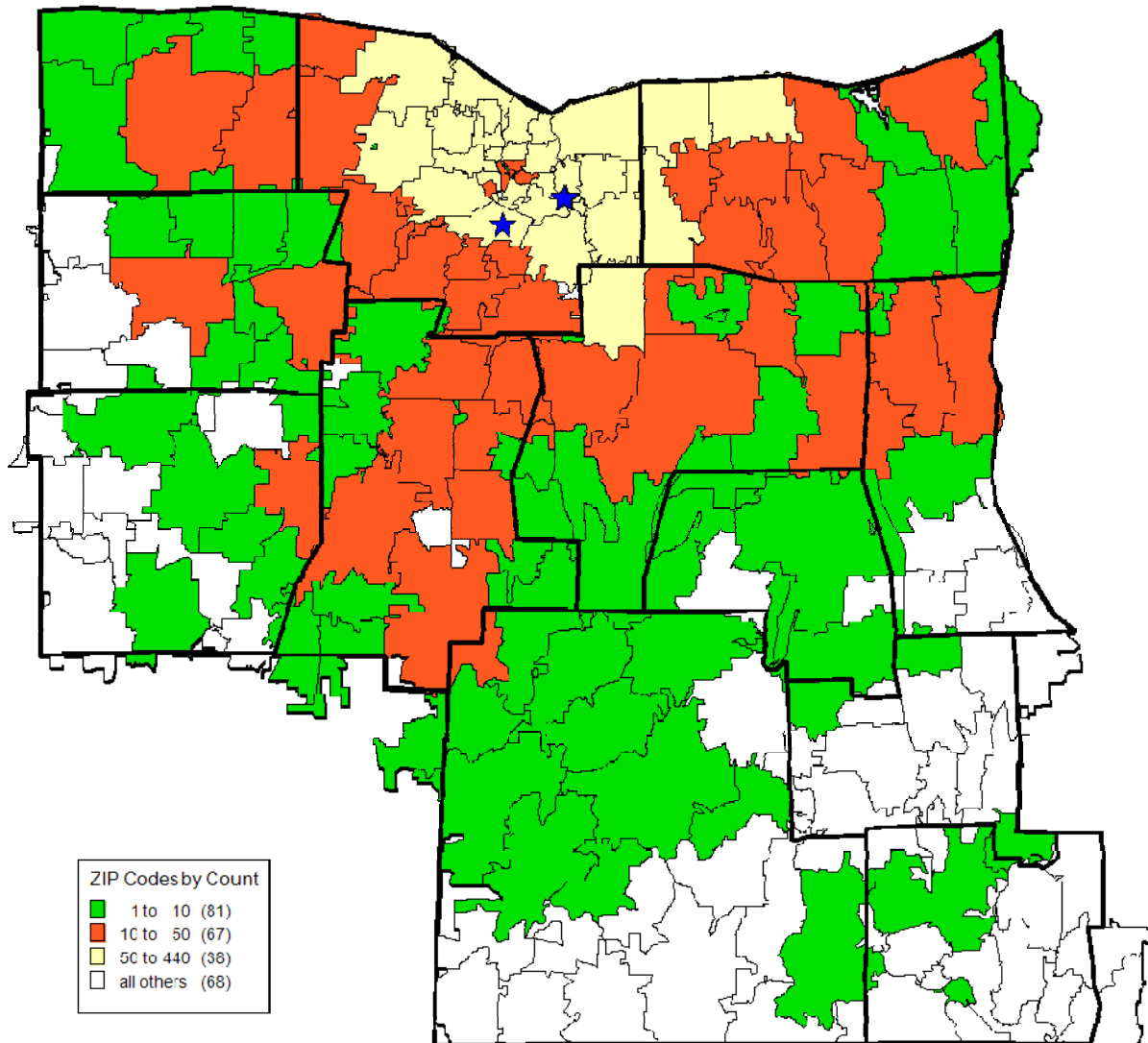
<sup>6</sup> L Lynch, ME; Campbell, F; Clark, A; et al. Waiting for treatment for chronic pain – a survey of existing benchmarks: Toward establishing evidence-based benchmarks for medically acceptable waiting times. *Pain Research and Management*. 2007;112(4):245-248

<sup>7</sup> National Government Services LCD L35336. Facet Joint Injections, Medial Branch Blocks, and Facet Joint Radiofrequency Neurotomy 12/16/2014



### *Projected Changes to Community Access:*

The ASC does not appear to significantly alter geographic access for the practices' respective patient population. The proposed center is 1.2 miles from Dr. Nemani's office and 10.0 miles from Dr. Ng's current office location. Below is a map of the physician's current patient population by ZIP code (from claims data).



The applicant projects 3.5% of patient volume to be from Medicaid Managed care and projects no utilization from Medicaid FFS patients. The relatively low volume of Medicaid patients is concerning in that access may be limited by ability to pay at the new ASC.

**Project Cost & Revenue:**

Pittsford Pain Center, LLC proposes to establish a new 9,594 square foot single-specialty Ambulatory Surgical Center to provide pain management services. The new facility is to contain four operating rooms with eight (8) pre-operative and ten (10) post-operative recovery beds. The floor plan also contains a central supply, consult room, decontamination and separate clean and soiled linen space.

Capital costs are expected to be \$400,495. The entirety of the cost is for moveable equipment, suggesting that other renovation costs are being covered by the building developer and are included in the lease expense. \$175,000 is allotted for two C-Arm imaging devices. \$50,000 will be used to install an EMR system in two rooms. The remainder of the costs are for various surgical and / or office infrastructure.

Incremental operating costs are anticipated to be \$4,827,355 by year three, with an incremental operating revenue of \$6,231,234. Table 2 outlines total project costs. Staffing is anticipated to increase by 17.4 FTE's by year three. New staffing will include 8 RNs 3 LPNs as well as management, technician, clerical and medical assistants. The applicants indicate that it is unlikely that current office staff will be re-allocated or repurposed for the new facility.

*Table 2. Project Costs*

	<b>Current Year</b>	<b>Year 1 Incremental</b>	<b>Year 3 Incremental</b>
Project Capital Cost	\$400,495	N/A	N/A
Operating Cost	\$0	\$4,060,159	\$4,827,355
Operating Revenue	\$0	\$5,149,780	\$6,231,234

Project financing will be accomplished with a \$360,000 bank loan at an interest rate of 5% with a five (5) year term and the remainder paid for in cash (\$44,698). The space for the facility will be rented with a lease term of ten (10) years.

There are significant incremental operating costs associated with this project. Staff have submitted questions to the applicant asking to identify the amount of incremental operating revenue that is expected due to the shift from office to ASC based procedures. While unable to provide this information, the applicant has made laudable efforts to identify the cost increases associated with the shift and has provided Medicare proposed reimbursements and anticipated revenues for the five (5) procedures noted previously. Utilizing this information we are able to estimate that incremental revenue for these procedures is anticipated to be \$2.26M per year.

*Table 3. Medicare Proposed Payments by Setting*  
**2015 Medicare Proposed Total  
 Payment Per Procedure**

CPT Code	Office	ASC
64483	\$222.46	\$485.53
62311	\$225.32	\$461.88
64493	\$175.17	\$464.03
64635	\$424.86	\$1,055.34
62310	\$244.67	\$481.95

Table 4. Estimated Revenue Increase due to Change in Place of Service

CPT Code	Expected Office Reimbursement	Expected ASC Reimbursement	Difference	Proposed Number of Procedures	Estimated Difference in Total Revenue
64483	\$202	\$566	\$364	2,449	\$891,436
62311	\$231	\$728	\$497	928	\$461,216
64493	\$181	\$566	\$385	891	\$343,035
64635	\$399	\$943	\$544	450	\$244,800
62310	\$214	\$561	\$347	944	\$327,568
<b>TOTAL DIFFERENCE IN REVENUE</b>					<b>\$2,268,055</b>

*Comments:*

The applicant had the opportunity to present the same proposal to the Community Technology Assessment Advisory Board (CTAAB). CTAAB consists of employers, consumers, clinicians, health systems and health insurance representatives and has a 20 year history of making recommendations to the payer community regarding issues of health technology and community capacity. This board considered the needs analysis conducted by Finger Lakes Health Systems Agency (FLHSA), the CON application materials, and the applicant’s presentation to the Board.

Based on the information available, CTAAB concluded there is not a need for the proposed capacity and cited the following reasons:

- There is no demonstrated community need for additional Pain Management Capacity
  - Wait times at the physician offices do not appear to be atypical for that specialty
  - While defining total capacity is difficult, there is no evidence that current capacity is not meeting patient needs
- There are significant incremental costs associated with the project and no evidence of improved outcomes for patients
- Increases in efficiency and quality could be achieved without article 28 status.
- There is no demonstrated improvement in access
  - Geographic access is not significantly altered
  - There is limited access projected for the Managed Medicaid population, with no access indicated for the Medicaid FFS population.

This recommendation was communicated to the Rochester payer community.

*Recommendation - Disapproval*

**Contingencies:** N/A

**Conditions:** N/A

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## Attachments

BFA Attachment A    Personal Net Worth Statement  
BFA Attachment B    Pro Forma Balance Sheet



Project # 151019-B

Liberty Endo, LLC d/b/a Liberty Endoscopy Center

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

## Executive Summary

### Description

Liberty Endo, LLC, an existing New York limited liability company, requests approval for the establishment and construction of an Article 28 freestanding ambulatory surgery center (FASC) to be certified as a single-specialty FASC in the discipline of gastroenterology. The applicant will lease 11,960 square feet on the 19th floor in an existing building located at 123 William Street, New York, NY (New York County). The site will include three procedure rooms, a pre-operating area with four pre-op bays, six recovery bays, and two step down bays, along with the requisite support areas. Upon approval, the FASC will be known as Liberty Endoscopy Center.

As proposed, Liberty Endo will have twenty-two members comprised of the following:

- Eighteen individual board-certified gastroenterologist with 84% total membership,
- Frontier Healthcare Associates, LLC (FHA) with 6% membership (owned by: Jordan Fowler 39%; Oleg Gutnik, M.D. 29.25%; Roy Bejarano 29.25%; and Jason Schifman 2.5%), and
- Beth Israel Ambulatory Care Services Corporation (BIACSC) with 10% membership.

The eighteen individual physician members are members of Manhattan Endoscopy Center, LLC, an existing Article 28 FASC located in New York County. They currently perform surgical procedures at Manhattan Endoscopy Center and will be investing members only in Liberty Endo. Liberty Endo's 3,100 projected first year

procedures will be cases transferred from the private office-based practices of seven non-member board-certified gastroenterologists. The practicing physicians are committed to utilizing the FASC to perform procedures currently being done in their private practices which are located in the same community that the applicant will serve. None of the projected procedures will come from any local hospital.

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

Additionally, Jordan Fowler, Oleg Gutnik, M.D., Roy Bejarano, and Jason Schifman, as members of Frontier Healthcare Associates, LLC, have an ownership interest in the following FASCs: Digestive Diseases Diagnostic & Treatment Center; Manhattan Endoscopy Center, LLC; Putnam GI, LLC d/b/a Putnam Endoscopy ASC; Yorkville Endoscopy, LLC d/b/a Yorkville Endoscopy Center; Queens Boulevard ASC, LLC; Flushing Endoscopy Center, LLC; Queens Endoscopy ASC, LLC; Long Island Digestive Endoscopy Center, LLC; Great South Bay Endoscopy Center, LLC; PBGS, LLC d/b/a Downtown Brooklyn Gynecology Center; and West Side GI, LLC.

Concurrently under review, Jordan Fowler, Oleg Gutnik, M.D., Roy Bejarano, and Jason Schifman, as members of Frontier Healthcare Associates, LLC, are seeking to acquire 10% operating interest in NHPE, LLC d/b/a New Hyde Park Endoscopy under CON #142216.

#### OPCHSM Recommendation

Contingent approval with an expiration of the operating certificate five (5) years from the date of its issuance.

#### Need Summary

The procedures to be performed at Liberty Endoscopy Center are presently being performed in physicians' private offices.

The number of projected procedures is 3,100 in Year 1 with Medicaid at 3.0% and charity care at 2.0%.

#### Program Summary

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

#### Financial Summary

Total project costs of \$4,032,626 will be met through members' equity of \$806,525, with the remaining \$3,226,101 balance being financed over five years through JP Morgan Chase Bank at 5% interest.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,266,286	\$3,331,593
Expenses:	<u>\$2,656,509</u>	<u>\$2,674,526</u>
Gain/(Loss)	\$609,777	\$657,067

## 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 loan commitment acceptable to the Department of Health. [BFA]
3. Submission of an executed working capital loan commitment acceptable to the Department of Health. [BFA]
4. Submission of an executed building lease acceptable to the Department of Health. [BFA]
5. Submission of an executed administrative services agreement acceptable to the Department of Health. [BFA]
6. Submission of an executed billing services agreement acceptable to the Department of Health. [BFA]
7. 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]
8. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payer source;
  - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data showing number of emergency transfers to a hospital;
  - e. Data showing percentage of charity care provided; and
  - f. Number of nosocomial infections recorded during the year in question. [RNR]
9. 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]
10. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
11. Submission of an executed Business Associate Agreement, acceptable to the Department. [HSP]
12. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03. The documentation submitted is to also provide supporting materials in clarification or resolve of the following items:
  - a. Per DSG-01 requirements, and comment #2 from 2/6/15 RFI from BAER, provide previously requested existing condition plans, including existing use, life-safety features, protection, etc.
  - b. Per comment #12 from 2/6/15 RFI from BAER, requested resolve of common path of travel and only one exit option from Waiting / Reception and Staff area, including additional directional exit signage.
  - c. Per DSG-01 requirements, and comment #3 from 2/6/15 RFI from BAER, please identify / confirm other mixed occupancies within the proposed building. [AER]

13. Submission of site control that is acceptable to the Department. [CSL]
14. Submission of a fully executed Articles of Organization for the applicant that is acceptable to the Department. [CSL]
15. Submission of a fully executed Operating Agreement for the applicant that is acceptable to the Department. [CSL]
16. Submission of a fully executed Restated Articles of Organization of Frontier Healthcare Associates, LLC that is acceptable to the Department. [CSL]
17. Submission of a fully executed Operating Agreement of Frontier Healthcare Associates, LLC that is acceptable to the Department. [CSL]
18. Submission of a fully executed Administrative Services Agreement that is acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's request for, and the Department's granting approval for the start of construction. [AER]
7. Construction must start on or before December 1, 2015 and construction must be completed by April 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date  
**October 8, 2015**



## Need Analysis

### Project Description

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

### Analysis

The service area consists of New York County. New York County has a total of seven freestanding multi-specialty ASCs and eight freestanding single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in New York County for 2012 & 2013 (Source: SPARCS-2014).

ASC Type	Name	Total Patients 2012	Total Patients 2013
Gastroenterology	Carnegie Hill Endo, LLC	7,357	10,695
Multi-Specialty	Center for Specialty Care	4,585	4,174
Gastroenterology	East Side Endoscopy	8,811	9,183
Multi-Specialty	Fifth Avenue Surgery Center	2,051	1,665
Multi-Specialty	Gramercy Park Digestive Disease	8,577	8,666
Multi-Specialty	Gramercy Surgery Center, Inc.	2,136	2,550
Gastroenterology	Kips Bay Endoscopy Center LLC	9,401	9,241
Gastroenterology	Manhattan Endoscopy Ctr., LLC	9,857	12,014
Ophthalmology	Mid- Manhattan Surgi-Center	3,888	4,312
Multi-Specialty	Midtown Surgery Center, LLC	2,860	3,114
Ophthalmology	Retinal Ambulatory Surgery Ctr.	1,718	1,862
Multi-Specialty	Surgicare of Manhattan, LLC	3,993	3,648
Gastroenterology	West Side GI	3,652	12,516
Multi-Specialty	Roosevelt SC (Opened April 1, 2013)	N/A	900
Gastroenterology	Yorkville Endoscopy Center (Opened Feb 22, 2013)	N/A	9,140
<b>Total</b>		<b>68,886</b>	<b>93,680</b>

For New York County, the total number of patient visits was 68,886 in 2012 and 93,680 in 2013. This represents a 36% year to year increase in the number of patients served by ambulatory surgery centers in New York County.

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

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

Projections	Year 1	Year 1	Year 3	Year 3
Commercial Ins	2728	88.0%	2783	88.0%
Medicare	186	6.0%	190	6.0%
Medicaid	93	3.0%	95	3.0%
Private Pay	31	1.0%	32	1.0%
Charity Care	62	2.0%	63	2.0%
<b>Total</b>	<b>3100</b>	<b>100.0%</b>	<b>3163</b>	<b>100.0%</b>

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

**Conclusion**

Approval of this project will bring additional office-based surgical procedures into an Article 28 ambulatory surgery center serving the communities of New York County. This center will expand access to gastroenterology services delivered in a regulated setting for the communities of New York County.

**Recommendation**

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

**Program Analysis**

**Project Proposal**

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

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

**Character and Competence**

The members of the LLC are:

<b>Name</b>	<b>Percentage</b>
Peter Baiocco, MD	4.491%
Jennifer Bonheur, MD	4.491%
Anthony Borcich, MD	4.491%
Alexander Chun, MD	4.491%
Julia Foont, MD	4.491%
Albert Harary, MD	4.491%
Makoto Iwahara, MD	4.491%
Peter Kim, MD	7.653%
Michael Krumholt, MD	4.491%
Carl McDougall, MD	4.491%
Yasmin Metz, MD	4.491%
Eric Morgenstern, MD	4.491%

Paulo Pacheco, MD	4.491%
David Robbins, MD	4.491%
Mylan Satchi, MD	4.491%
Jonathan Warman, MD	4.491%
Ivan Weisberg, MD	4.491%
Juauf Zlatanic, MD	4.491%
<b>Frontier Healthcare Assoc., LLC</b>	<b>6%</b>
Jordan Fowler (39.00%)	
Oleg Gutnik, MD (29.25%)	
Roy Bejarano (29.25%)	
Jason Schiffman ( 2.50%)	
<b>Beth Israel Ambulatory Care Services Corp. (BIACSC)</b>	<b>10%</b>
Donald Scanlon	
Jeremy Boal, MD	
Adam Henick	

The 18 individual members are each practicing surgeons/board-certified gastroenterologists. Each has a 4.491% interest with the exception of the Medical Director, Dr. Kim, who holds a 7.653% interest. Frontier Healthcare Associates, LLC (FHA) consists of four (4) individual members, each of whom has experience in aspects of ambulatory surgery development. Beth Israel Ambulatory Care Services Corp. is a not-for-profit corporation whose sole passive member is BIMC Holding Corporation. BIMC Holding Corp. is a not-for-profit corporation that has no members but who's Board of Trustees consists of the officers of Mount Sinai Beth Israel.

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

*Drs. Baiocco, Harary, Krumholt and Satchi disclosed one pending malpractice case. Drs. Iwahara and Pacheco disclosed one settled malpractice case. Dr. Warman disclosed two (2) open malpractice cases and one settled malpractice case.*

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

*On September 10, 2015, the Department issued a Stipulation and Order and \$16,000 fine to Yorkville Endoscopy, LLC based on Federal non-compliance identified in a Statement of Deficiencies issued on October 10, 2014 by the Centers for Medicare and Medicaid (CMS) and violations of Article 28 of the Public Health Law and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (10 NYCRR) which the Department discovered during inspections conducted in May 2015. Specifically, deficient practice was identified in the following areas: Organization and Administration (Operator); Medical Record System; Patients' Rights; Surgery Services; and Anesthesia Services. As a result of this enforcement, the facility has been directed to submit semi-annual reports for a one year period (or until the Department determines full compliance has been achieved with every item required). Reporting requirements include (but are not limited to): medical staff rosters and privileges, quality assessment and performance improvement minutes and audits, complaint and incident logs, and patient discharge/transfer data.*

### Integration with Community Resources

The Center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers. The applicant will develop a formal outreach program directed at the local community, to include local physicians and other existing healthcare providers, particularly those who provide care to the underserved residents of the Center's primary service area. In addition, efforts will be made to recruit Chinese-speaking physicians to practice at the Center. The Center may also consider advertising in local Chinese-language newspapers about charitable services available at the Center. Patients will not be excluded based on ability to pay. Charity care will be provided and the Center will utilize a sliding fee scale for those who are uninsured or unable to pay.

The Center plans on utilizing an electronic medical record (EMR) and would consider participating in a Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification. The Center would also consider entering into an integrated system of care, such as the Mount Sinai Health Network, which is comprised of hundreds of clinical and academic relationships throughout the greater New York metropolitan area.

### Recommendation

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

## Financial Analysis

### Lease Rental Agreement

The applicant has submitted a lease term sheet for the proposed site, the terms of which are summarized below:

Premises:	11,960 gross square feet located at 123 Williams Street, New York, NY 10038
Landlord:	EEGO 123 Owner, LLC, an affiliate of East End Capital and GreenOak
Lessee:	Liberty Endo, LLC
Term:	1-5 years at \$538,200 per year (\$45 sq. ft.) and 6-10 years at \$586,040 per year (\$49 sq. ft.) Renewal option (2) with 5-year terms.
Provisions:	Electric and Taxes

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

### Administrative Service Agreement

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

Facility:	Liberty Endo, LLC
Contractor:	Frontier Healthcare Management Services, LLC
Services Provided:	Oversight of the following: staffing/scheduling; accounting including: accounts payable, cashier and banking; purchasing protocols; compliance with policies & procedures, medical staff by-laws/rules, and accreditation; physical plant/materials management purchasing; nursing; and administration; assess business office's policies & procedures; prepare/present quarterly financial reports; conduct annual strategic planning; assist in preparation of annual business plan/budget; prepare reports for and attend Board meetings; familiarize staff with clinical policies and procedures as adopted by the Board; in coordination with the administrator attend the following meetings: clinical, operations, patient care, other advisory committees and report on actions/findings to the Board; monitor/report on clinical benchmarks; in coordination with the administrator/director of nursing, monitor quality of care indicators; educate staff on regulatory and accreditation requirements; monitor: risk

	management program, physician credentialing statistics; facilitate acquisition and implementation if electronic health records and its meaningful use.
Term:	5 years – renewable for one additional one (1) year term
Fee:	Annual Fee \$175,000 (1/12 to be paid monthly = \$14,583.33) Fee will increase by 3% per year after the first year

#### Billing Service Agreement

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

Facility:	Liberty Endo, LLC
Contractor:	Frontier Healthcare Billing Services, LLC
Services Provided:	Claims processing, coding oversight, bill submission and collection services which includes: preparation and data entry, responding to inquiries and providing follow up support on claims, submitting bills directly to payors; bill co-pays, coinsurance and deductible amounts and perform other balance billing in accordance with the applicable laws. Ensure appropriate diagnosis/procedures codes are entered on each bill. Reprocess claims improperly denied or paid. Respond to inquiries from patients and third parties payors. Follow owner's policies for handling accounts deemed uncollectible. Maintain accurate billing/collection records. Provide owners with electronic access to computerized records. Ensure records are safeguarded. Allow audits/reviews to ensure applicable laws and regulations are being followed.
Term:	5 years - renewable for one additional one (1) year term
Fee:	Fee \$25.00 per claim (paid monthly)

#### Development Services Agreement

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

Dated:	November 1, 2014
Facility:	Liberty Endo, LLC
Contractor:	Frontier Healthcare Management Services, LLC
Services Provided:	Pre-development activities including: determining project objectives, long-term viability and initial financial analysis, assist in structuring parameters for members, financing, physical plant, management, timeframe and equipment needs; coordinate with consultants on regulatory issues; develop hospital relationship; prepare business plan; file CON application; provide activities necessary to construct Article 28 facility including: responding to CON contingencies, act as project manager with contractors/architects, and facilitate site-surveys; prepare policy/procedure manuals and materials to ensure compliance with accreditation, licensure, and Medicare certification; prepare governance materials to meet standards, contact with 3rd-party payors; oversee EMR implantation; prepare billing/collection protocols; establish banking relationships; assist with lease negotiations; coordinate center management recruitment; negotiate with vendors; acquire inventory; oversee credentialing of physicians.
Term:	Until date of first procedure performed (Date of Operation)
Fee:	Flat fee of \$150,000 (1/18 to be paid monthly for 18 months = \$8,333.33) Fee beyond 18 months to the Date of Operations will be \$5,000 per month

The administrative services provider, Frontier Healthcare Management Services, LLC, and the billing service provider, Frontier Healthcare Billing Services, LLC, are owned by Frontier Healthcare Holdings, LLC whose members are Oleg Gutnik, M.D. (30%), Jordan Fowler (40%) and Roy Bejarano (30%). Dr. Oleg Gutnik, Jordan Fowler and Roy Bejarano are investors in this CON application through Frontier Healthcare Associates, LLC.

While Frontier Management Healthcare Services, LLC and Frontier Healthcare Billing Services, Inc. will be providing all of the above services, the Facility retains ultimate control in all of the final decisions associated with the services.

#### Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment is estimated at \$4,032,626, broken down as follows:

Renovation & Demolition	\$1,399,320
Design Contingency	214,562
Construction Contingency	214,562
Architect/Engineering Fees	214,562
Construction Manager Fees	156,000
Other Fees	207,482
Movable Equipment	1,501,883
Financing Costs	32,500
Interim Interest Expense	67,708
CON Application Fee	2,000
CON Processing Fee	<u>22,047</u>
Total Project Cost	\$4,032,626

Project costs are based on a start date of December 1, 2015, with a five-month construction period.

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$806,525
Bank Loan (5% interest, 5-year term)	<u>3,226,101</u>
Total	\$4,032,626

A letter of interest has been provided from JP Morgan Chase Bank.

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

#### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,266,286	\$3,331,593
Expenses:		
Operating	\$1,487,613	\$1,565,474
Capital	<u>1,168,896</u>	<u>1,109,052</u>
Total Expenses	\$2,656,509	\$2,674,526
Net Income or (Loss)	\$609,777	\$657,067
	<u>Year One</u>	<u>Year Three</u>
Utilization (procedures)	3,100	3,162
Cost Per Procedure	\$856.94	\$845.83

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

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

Utilization projections are based the experience of the participating providers along with their estimate of the number cases that can be transferred from their private office-based practices. The applicant is committed to developing a formal outreach program directed to members of the local community, including local physicians and other existing healthcare providers, such as the Charles B. Wang Community Health Center and APOCHA Community Health Center, both of which provide care to underserved residents in the Center's primary service area. Medicaid utilization is anticipated to grow to 13% over time and 2% of all visits will be for patients requiring charity care.

Expense assumptions are based upon the experience of the participating providers and members who operate other similar FASCs. The breakeven point is approximately 84% of the projected volume or 2,615 and 2,633 procedures in the first and third years, respectively.

#### Capability and Feasibility

Total project costs of \$4,032,626 will be satisfied as follows: \$806,525 in proposed members' equity, plus a \$3,226,101 loan financed through JP Morgan Chase Bank at the above stated terms.

Working capital requirements are estimated at \$445,754, which appears reasonable based on two months of third year expenses. The applicant has submitted a letter of interest from JP Morgan Chase Bank to finance \$200,000 of the working capital with a one year payback period at an estimated 4% interest rate. The remaining \$245,754 in working capital will be provided from the members financial resources. Review of BFA Attachments B and C, applicant's personal net worth statements and Beth Israel Ambulatory Care Services Corp internal financial statement, shows sufficient liquid resources to meet the total equity requirement. BFA Attachment D is Liberty Endo's pro-forma balance sheet that shows operations will start off with \$1,052,279 in equity. Liberty Endo projects an operating surplus of \$609,777 and \$657,067 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected rates and private payers are based on members experience in the region. The applicant's budgets appear to be reasonable.

BFA Attachment E is the 2014 and 2013 financial summaries for the FASCs in which the members of Frontier Healthcare Associates, LLC have an ownership interest. Data for 2013 data is not available for the following FASCs, as they were newly licensed in 2014: Long Island Digestive Endoscopy Center, LLC (6/5/2014); Great South Bay Endoscopy Center, LLC (8/5/2014); and PBGS, LLC (10/2/2014). Each of the entities had a positive working capital position, positive net asset position and generated operating surpluses in 2013 and 2014, except for Putnam Endoscopy ASC and Queens Boulevard ASC, LLC. Putnam Endoscopy ASC had a negative working capital position in 2013 because the financial statements are reported on an income tax basis which excludes accounts receivable from its current assets. Queens Boulevard ASC, LLC had negative net assets and a negative working capital position in 2013. The facility was in its first year of operations and has added an additional physician and is proposing to add another physician to increase cash flow.

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

#### Recommendation

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

## Supplemental Information

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

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

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

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

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

### Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private office-based practices of the applicant physicians. The applicant also cites data showing a continued growth in New York County in the number of persons 45 years and older, which is the primary service group for colorectal cancer screening. The applicant also refers to the relatively low number of gastroenterologists and of other freestanding ASCs specializing in gastroenterology in New York County, a jurisdiction of 1.9 million people.

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

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

### DOH Comment

The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year, limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.



## Attachments

BPNR Attachment A	Map
BFA Attachment A	Organizational Chart
BFA Attachment B	Personal Net Worth Statements of Proposed Members of Liberty Endo, LLC
BFA Attachment C	Internal Financial Summary for December 31, 2014, Beth Israel Ambulatory Care Services Corp
BFA Attachment D	Pro Forma Balance Sheet of Liberty Endo, LLC
BFA Attachment E	Applicant's Offices/Ownerships Interest of Frontier Health care Associates, LLC

## MEMORANDUM

**To:** Members of the Establishment and Project Review Committee  
Public Health and Health Planning Council

**From:** Christopher Delker, Director  
Division of Planning and Licensure

**Date:** September 15, 2015

**Subject:** CON #151186 Premier Ambulatory Surgery Center

At their meeting of July 23, 2015, Committee members heard statements from Mr. John Galati, CEO of TLC Health Lake Shore Hospital (TLC Lake Shore), concerning cases that would potentially be lost to the proposed Premier ASC, and the associated impact on hospital revenues and operations.

Members voted to defer this application one cycle to enable the Department to obtain data from TLC Lake Shore clarifying the number of cases that could be transferred from the hospital to the ASC by Premier ASC's participating physicians, specifically:

- Whether the applicant ophthalmologist, Dr. Sharma, had ceased performing surgery at TLC Lake Shore earlier in 2015, thus rendering the potential transfer of his cases to the proposed ASC a moot question.
- Whether Premier's gastroenterologist, Dr. Miqdadi, was currently maintaining his traditional caseload at TLC Lake Shore, which would support the applicant's statement that Dr. Miqdadi planned to continue practicing at the hospital and did not intend to transfer any of his TLC Lake Shore caseload to the proposed Premier ASC.

TLC Lake Shore has submitted payment data to the Department showing that Dr. Sharma had 497 ambulatory surgery cases at TLC Lake Shore in 2014 but only 90 cases in the first six months of 2015. The latter figure is consistent with Dr. Sharma's statements that he ceased practicing at TLC Lake Shore earlier in 2015.

The hospital has also submitted payment data to the Department showing that Dr. Miqdadi had 1,129 ambulatory gastroenterology cases at TLC Lake Shore in 2014 and 592 from January 1, 2015 through June 30, 2015. This latter figure seems to indicate that Dr. Miqdadi is maintaining his traditional level of activity at TLC Lake Shore and is consistent with the applicant's statement that Dr. Miqdadi does not intend to transfer any of his TLC Lake Shore cases to the proposed Premier ASC.



**Project # 151186-B**  
**Premier Ambulatory Services Development Company, LLC**  
**d/b/a Premier Ambulatory Surgery Center**

**Program:** Diagnostic and Treatment Center    **County:** Erie  
**Purpose:** Establishment and Construction    **Acknowledged:** April 29, 2015

**Executive Summary**

**Description**  
 Premier Ambulatory Services Development Company, LLC d/b/a Premier Ambulatory Surgery Center (Premier), a recently formed New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a multi-specialty freestanding ambulatory surgery center (ASC) initially specializing in ophthalmology and gastroenterology procedures. Premier will lease 6,925 square feet of space in a multi-tenant building located at 2816 Pleasant Avenue, Hamburg (Erie County). The ASC will include two operating rooms (one class C and one Class B), plus eight pre-op/post-op beds along with the requisite support areas.

The proposed members of Premier Ambulatory Services Development Company, LLC and their ownership percentages are as follows:

Premier Ambulatory Services Development Company, LLC	
<u>Members:</u>	<u>%</u>
Vishal Sharma, M.D.	50%
Nisha Sharma, M.D.	50%

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

**Need Summary**  
 The number of projected procedures is 1,800 in Year 1 with Medicaid at 6.2% and charity care at 2.0%.

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

**Financial Summary**  
 Project cost of \$495,218 will be met as follows: \$60,218 in members' equity and \$435,000 via a five-year term bank loan at 5% interest. A letter of interest has been provided by First Niagara Bank.

**Budget:**

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,341,136	\$1,421,478
Expenses	<u>\$1,186,777</u>	<u>\$1,224,885</u>
Net Income	\$154,359	\$196,593

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
  - 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]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]

**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, is required prior to the applicant's start of construction. [AER]

7. Construction must start on or before November 1, 2015 and construction must be completed by March 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**July 23, 2015 EPRC – Recommended Deferral**

**August 6, 2015 PHHPC - Deferred**

**October 8, 2015**

## Need Analysis

### Analysis

The service area consists of Erie County. Erie County has a total of seven freestanding multi-specialty ASC's and two freestanding single-specialty ASC's. The table below shows the number of patient visits at ambulatory surgery centers in Erie County for 2013 and 2014.

ASC Type	Name of Facility	Total Patients 2013	Total Patients 2014
Multi	Ambulatory Surgery Center of Western New York LLC	13,291	15,102
Multi	Buffalo Ambulatory Surgery Center	10,093	10,273
Multi	Buffalo Surgery Center, LLC	4,822	5,100
Multi	Center for Ambulatory Surgery LLC	10,201	10,026
Multi	Endoscopy Center of Western New York, LLC	10,259	10,892
Single	Eye Health Associates Inc.	4,119	4,221
Multi	Millard Fillmore Surgery Center, LLC	6,049	5,437
Multi	Sterling Surgical Center, LLC	5,472	5,564
Single	WNY Medical Management (opened 4/2013)	401	584
<b>Total</b>		<b>64,707</b>	<b>67,199</b>

Source: SPARCS-2015

For Erie County, the total number of patient visits was 64,707 in 2013 and 67,199 in 2014. This represents an approximately 4% year-to-year increase in the number of patients served by ambulatory surgery centers in Erie County.

The number of projected procedures is 1,800 in Year 1 and 1,908 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Premier Ambulatory Surgery Center for Year 1 and Year 3.

Projections	Year 1 Procedures	Year 1 %	Year 3 Procedures	Year 3 %
Commercial Ins	992	55.1%	1,051	55.1%
Medicare	660	36.7%	700	36.7%
Medicaid	112	6.2%	119	6.2%
Private Pay	0	0.0%	0	0.0%
Charity Care	36	2.0%	38	2.0%
<b>Total</b>	<b>1,800</b>	<b>100.0%</b>	<b>1,908</b>	<b>100.0%</b>

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

### Conclusion

Approval of this project will provide additional access to surgical services in an Article 28 setting for the residents of Erie County and neighboring areas.

### Recommendation

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

## Program Analysis

### Project Proposal

Premier Ambulatory Services Development Company, LLC, d/b/a Premier Ambulatory Surgery Center, seeks approval to establish and construct an Article 28 freestanding multi-specialty ambulatory surgery center procedures to be located at 2816 Pleasant Avenue in Hamburg (Erie County).

<b>Proposed Operator</b>	Premier Ambulatory Services Development Company, LLC
<b>Doing Business As</b>	Premier Ambulatory Surgery Center
<b>Site Address</b>	2816 Pleasant Avenue Hamburg, NY (Erie County)
<b>Surgical Specialties</b>	Multi-Specialty: Ophthalmology Gastroenterology
<b>Operating Rooms</b>	2 (Class B – 1, Class C – 1)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am to 3:00 p.m. Weekend and/or evening surgery will be available, if needed, to accommodate patient scheduling issues.
<b>Staffing (1st Year / 3rd Year)</b>	6.4 FTEs / 6.4 FTEs
<b>Medical Director(s)</b>	Vishal Sharma, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Erie County Medical Center 17 miles / 20 minutes
<b>On-call service</b>	Calls to the surgeon's service will be directed to the surgeon or to another physician of the surgeon's specialty on-call.

### Character and Competence

The members of Premier Ambulatory Services Development Company, LLC are:

<b>Name</b>	<b>Percentage</b>
Nisha Sharma, MD	50%
Vishal Sharma, MD	50%

Drs. Sharma are both practicing physicians with roughly ten years of experience in their respective fields. Dr. Nisha Sharma is board-certified in Family Medicine and Dr. Vishal Sharma is a board-certified ophthalmologist.

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.

### Integration with Community Resources

The medical staff members will require that their patients, whenever possible, have a medical clearance appointment with a primary care physician prior to surgery. If a primary care relationship does not exist, the members will encourage the establishment of one. The facility plans to reach out to primary care physicians and physician groups in its service area to inform them about the facility and its capabilities, including its participation with Medicare and Medicaid. The facility is committed to creating a program that facilitates access to all populations and they will serve all patients needing care regardless of their ability to pay or the source of payment.

The applicant plans on utilizing an Electronic Medical Record (EMR) and would consider becoming part of an Accountable Care Organization or Medical Home if one were to develop in its service area. Additionally, the facility would also consider participating in a Regional Health Information Organization (RHIO) or Health Information Exchange (HIE).

Recommendation

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

<h2>Financial Analysis</h2>
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**Total Project Cost and Financing**

The total project cost for telecommunications, movable equipment, and fees is estimated at \$495,218, broken down as follows:

Other fees	\$20,000
Telecommunications	\$38,000
Movable Equipment	\$432,520
Application Fees	\$2,000
Additional Processing Fees	<u>\$2,698</u>
<b>Total Project Cost</b>	<b>\$495,218</b>

Financing for this project will be as follows:

Members Equity	\$60,218
Bank loan (five-year term at 5% interest)	<u>\$435,000</u>
<b>Total</b>	<b>\$495,218</b>

A letter of interest has been provided by First Niagara Bank.

**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:

Date:	April 7, 2015
Premises:	6925 sq. ft., located at 2816 Pleasant Avenue, Hamburg, NY
Landlord:	Sharma Development, LLC
Lessee:	Premier Ambulatory Services Development Company, LLC
Term:	15 years with two five-year renewal options
Rental:	\$273,537 annually (39.50 per sq. feet), A 2% increase in rent per year beginning the 11th year
Provisions:	Taxes, Utilities, Insurance, Maintenance fee.

The applicant has submitted an affidavit stating the lease agreement is a non-arm's length arrangement.

The applicant has also submitted two letters from NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.



## Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
<u>Revenues:</u>		
Medicaid-MC	\$53,008	\$56,256
Medicare -MC	\$458,160	\$486,022
Commercial-MC	822,768	871,560
Charity	<u>7,200</u>	<u>7,640</u>
Total Revenue	\$1,341,136	\$1,421,478
 <u>Expenses:</u>		
Operating	\$794,580	\$842,825
Capital	<u>392,197</u>	<u>382,060</u>
Total Expense	\$1,186,777	\$1,224,885
 Net Income	 \$154,359	 \$196,593
 Total Visits	 1,800	 1,908
Total Cost Per Visits	659.32	641.97

Utilization by payor source for Years 1 and 3 is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Commerical-MC	992	55.1%	1,051	55.1%
Medicare-MC	660	36.7%	700	36.7%
Medicaid-MC	112	6.2%	119	6.2%
Charity Care	<u>36</u>	<u>2.0%</u>	<u>38</u>	<u>2.0%</u>
Total	1,800	100.0%	1,908	100.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on current payment rates by payor for ambulatory ophthalmology and gastroenterology procedures.
- Utilization assumptions are based the number of outpatient case that Dr. Vishal Sharma, a board-certified ophthalmologist, and Dr. Jihad Miqdadi, a board-certified gastroenterologist, will transfer from other facilities including: Sterling Surgical Center, Buffalo General Hospital, Sister's Hospital, Lake Shore Medical Center and West Seneca Center for Ambulatory Surgery. Both physicians have provided a letters supporting the year one utilization.
- Expense assumptions are based on the historical experience of similar service D&TCs in the proposed FASC's service area, adjusted for operating the facility three days a week. The breakeven point is approximately 88% or 1,592 visits in ear one.

## Capability and Feasibility

The total project cost of \$495,218 will be satisfied from \$60,218 in members' equity with the \$435,000 balance being provided through a loan at the above stated terms. First Niagara Bank has provided a letter of interest.

Working capital requirements are estimated at \$204,147 based on two months of third year expenses. The applicant will provide \$104,147 from the members' equity. The remaining \$100,000 will be satisfied through a five-year loan at 5% interest rate from First Niagara Bank. BFA Attachments A is members' net worth summary which shows the members have sufficient liquid resources to meet both the project's equity and working capital requirements.

BFA Attachment B is the pro-forma balance sheet for Premier Ambulatory Services Development Company, LLC that shows operation will start off with \$169,667 in members' equity.

The submitted budget projects a net income of \$154,359 and \$196,593 during years one and three of operations, respectively. Medicare reimbursement was based on the 2014 Medicare fee schedule. Based upon the physicians' historical experience, commercial reimbursement for ophthalmology and gastroenterology was estimated at 118% and 158% of the of Medicare case rate. Medicaid Manage Care payment was estimated at 90% of Medicare case rate. The budget appears reasonable.

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.**

Supplemental Information
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Surrounding Hospital Responses

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:** TLC Health Network Lake Shore Hospital  
845 Routes 5 & 20  
Irving, New York 14081

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
40%	<u>Inpatient</u> 5% of volume	<u>Ambulatory</u> 95% of volume	1,768	Not indicated

TLC Health Network (TLC) opposes the application, stating that the proposed ASC would result in a loss of a vast majority of the 1,768 cases currently performed at TLC Lake Shore by the two applicant physicians. This would result in a loss of \$2,090,023 in net patient revenues annually, which represents 8.6 percent of TLC's 2014 total net patient revenue. The hospital states that ambulatory surgery represents over 95 percent of total surgical volume at TLC Lake Shore and contends that the proposed ASC would have a "disastrous" effect on the financially fragile TLC system and seriously threaten its ability to continue providing quality health care to the community. The hospital does not describe the community-oriented services that would be affected by the projected loss of revenues to the ASC.

TLC also contends that there is no need for the proposed ASC because of the hospital's current operating room utilization of less than 40 percent, which indicates an abundant capacity for growth. TLC also cites the presence of several other nearby ASCs, in Orchard Park, Amherst and other parts of Erie County, whence 42 percent of TLC's patients come. The TLC Lake Shore hospital itself is located just 20 minutes from the site of the proposed ASC.

TLC filed for Chapter 11 bankruptcy in December, 2013. In 2013, TLC had current assets of \$8.8 million on current liabilities of \$16.6 million, for a ratio of 0.53. In 2014 current assets totaled \$6.0 million while current liabilities came to \$14.4 million, for a ratio of 0.42. (In both 2013 and 2014, current liabilities included liabilities subject to compromise by the United States Bankruptcy Court.) In 2013, TLC had revenues of \$33.2 million on expenses of \$43.5 million, for an operating loss of \$10.3 million. TLC experienced \$1.5 million in bad debt and provided \$1.6 million in charity care. In 2014, TLC had revenues of \$25.1 million on expenses of \$32.6 million for an operating loss of \$7.5 million. In 2014, TLC experienced \$1.2 million in bad debt and provided \$1.3 million in charity care.

**Facility:** Sisters of Charity Hospital -- **No Response**  
2157 Main Street  
Buffalo, NY 14214

**Facility:** Mercy Hospital -- **No Response**  
565 Abbott Road  
Buffalo, NY 14220

**Facility:** Bertrand Chaffee Hospital -- **No Response**  
224 East Main Street  
Springville, NY 14141

#### Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that the proposed ASC will provide ambulatory surgery services to patients of physicians on its medical staff who elect to use the ASC to perform their outpatient surgeries. Surgeries performed at the ASC would otherwise be performed at area hospitals or other ambulatory surgery centers. In addition, the applicant points out that there are no freestanding ASCs in the Town of Hamburg, a fast-growing southern Erie County community, or in Chautauqua County, where many of the applicant ophthalmologist's patients reside. The applicant also expects that patients will prefer to have their surgeries performed at a new, patient-friendly, state-of-the-art ambulatory surgery center. In addition to enhanced patient satisfaction, the applicant expects that there will be a high level of physician satisfaction as a result of the ASC's seeking to accommodate its medical staff's scheduling, equipment selection and staffing preferences.

**Staff Recruitment and Retention:** The applicant states that employees will be recruited from accredited schools and training programs as well as through advertisements in local newspapers and professional publications. The ASC may hire some of its nursing staff from one of the applicant physician's medical practice. The ASC plans to offer competitive salary and benefits and will maintain good human resource and communication systems. In addition, the Center will provide a positive work environment and flexible working hours.

**Office-Based Cases:** The applicant states that none of the cases projected for the proposed ASC are currently performed in office settings. The anticipated 800 ophthalmological procedures are currently performed in a proprietary freestanding ASC, while the expected 1,000 gastroenterological procedures are currently distributed among three hospitals (Buffalo General Medical Center, Sisters of Charity Hospital and TLC Lake Shore Hospital) and the West Seneca Center for Ambulatory Surgery.

#### DOH Comment

TLC Health Network's comments in opposition to the application assume that a vast majority of the 1,768 procedures currently performed at TLC Lake Shore Hospital by the applicant physicians would be lost to the proposed ASC. However, this assumption is at odds with the applicant's statement that the 800 ophthalmological procedures projected for the ASC are currently performed in a freestanding ASC, not at TLC Lake Shore or other hospitals. It is also not consistent with the applicant's statement that the 1,000 remaining (gastroenterological) procedures projected for the ASC are currently performed at two other hospitals in addition to TLC Lake Shore and at a freestanding ASC. TLC's projection of net patient

revenue to be lost to the proposed ASC therefore cannot be assessed with precision and must be discounted. In view of this circumstance and in the absence of comments from other area hospitals, the Department finds insufficient basis for reversal or modification of the recommendation for approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

## Attachments

BPNR Attachment	Map
BFA Attachment A	Net Worth Statement of Proposed Members of Premier Ambulatory Services Development Company, LLC.
BFA Attachment B	Pro-Forma balance sheet of Premier Ambulatory Services Development Company, LLC.



Project # 151200-E  
South Shore Surgery Center

**Program:** Diagnostic and Treatment Center    **County:** Suffolk  
**Purpose:** Establishment    **Acknowledged:** May 1, 2015

**Executive Summary**

**Description**

South Shore Surgery Center, LLC (South Shore), a New York proprietary Article 28 diagnostic and treatment center (D&TC) located at 53 Brentwood Road, Suite F, Bay Shore (Suffolk County), requests approval to extend its limited life for two years and to transfer 50.1% of the overall ownership interest in the facility to North Shore-LIJ Multi-Specialty Ventures, LLC through a membership interest purchase agreement. South Shore is certified as a multi-specialty freestanding ambulatory surgery center (FASC) and provides the following services: ear, nose and throat surgery, pain management, orthopedic surgery, ophthalmology, and general surgery. The facility was approved by the Public Health Council with a five-year limited life under CON #042011 and began operation effective December 17, 2010. The FASC's initial five-year limited life will expire on December 17, 2015. The applicant is not proposing to add or change any services, or to expand or renovate the facility.

Upon approval of this application, there will be three classes of members, defined as follows:

- A. Class A Member – individual physician members (thirteen)
- B. Class B Member – individual Ambulatory Surgical Centers of America members (four)
- C. Class C Member – Institutional members (one)

All members, regardless of class, will have the same economic and voting rights based on their percentage ownership interest in South Shore.

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

<u><b>Class A Members:</b></u>	<u><b>Current %</b></u>	<u><b>Proposed %</b></u>
Eric Bergson, M.D.	3.75%	1.8713%
Joseph Bonafede, M.D.	3.75%	1.8713%
Todd Campbell, M.D.	3.75%	1.8713%
Edward Cussatti, M.D.	3.75%	1.8713%
Robert Gargano, M.D.	3.75%	1.8713%
Thomas O'Donnell, M.D.	3.75%	1.8713%
Steven Litman, M.D.	3.75%	1.8713%
Charles Ruotolo, M.D.	3.75%	1.8713%
Luis Fandos, M.D.	8.00%	3.9920%
Sanford Ratzan, M.D.	8.00%	3.9920%
Craig Shalmi, M.D.	8.00%	3.9920%
James Marzec, M.D.	8.00%	3.9920%
Steven Simonsen, M.D.	8.00%	3.9920%
<u><b>Class B Members:</b></u>		
Tom Bombardier, M.D.	9.00%	4.4910%
Brent B. Lambert, M.D.	9.00%	4.4910%
Luke L. Lambert	3.00%	1.4970%
George Violin, M.D.	9.00%	4.4910%
<u><b>Class C Member:</b></u>		
North Shore-LIJ Multispecialty Ventures, LLC	0.00%	50.1%
<b>Total:</b>	<b>100.00%</b>	<b>100.00%</b>

North Shore-LIJ Multispecialty Ventures, LLC's sole member is North Shore University Hospital, a voluntary not-for-profit, 804-bed tertiary care hospital located at 300 Community Drive, Manhasset, NY. North Shore University Hospital is a member of the North Shore-Long Island Jewish Health System, Inc. (NS-LIJ). NS-LIJ is a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the

community it serves and to achieve economies of scale through consolidation, cooperation and joint planning among its members. The hospital is also a member of the NS-LIJ obligated group, formed to provide its members an enhanced credit position and expanded access to capital markets.

#### OPCHSM Recommendation

Contingent Approval with an expiration of the operating certificate two years from the date of the Public Health and Health Planning Council recommendation letter.

#### Need Summary

Data submission by the applicant, as a contingency of CON 042011, is completed.

Based on CON 042011, South Shore Surgery Center projected Medicaid to be 5.65 percent and charity care at 5.64 percent for Year 3. According to AHCF cost reports, actual charity care in Year 3 (2013) was 0.40 percent and Medicaid was 5.8 percent.

Upon approval of this CON, South Shore projects 6,614 procedures in Year 1, with 11.8 percent Medicaid and 1.5 percent charity care.

There will be no changes in services.

#### Program Summary

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

#### Financial Summary

North Shore-LIJ Multispecialty Ventures, LLC will acquire 50.1% interest in the operations of South Shore Surgery Center, LLC via \$5,261,965 cash equity as provided for in the membership interest purchase agreement. The payment will be made by NS-LIJ from their current operations.

There are no project costs associated with this application.

Budget	Revenues	\$5,768,419
	Expenses	<u>\$4,607,606</u>
	Net	\$1,160,813
	Income/(Loss)	

## 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 two years from the date of the Public Health and Health Planning Council recommendation letter, contingent upon:**

1. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide quarterly reports to the DOH. Said reports should include:
  - a. Data showing actual utilization including procedures
  - b. Data showing breakdown of visits by payor source;
  - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data showing number of emergency transfers to a hospital;
  - e. Data showing percentage of charity care provided, and
  - f. Number of nosocomial infections recorded during the year in question. [RNR]
2. Submission of a photocopy of the applicant's Restated and Amended Articles of Organization, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's filing with the Secretary of State of the Restated and Amended Articles of Organization, acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's Development and Administrative Service Agreement, acceptable to the Department. [CSL]
5. Submission of a photocopy of the applicant's First Amendment to the Amended and Restated Development and Administrative Service Agreement, acceptable to the Department. [CSL]
6. Submission of a photocopy of the applicant's Amended and Restated Operating Agreement acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's Purchase Agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 8, 2015**

## Need Analysis

### Project Description

South Shore Surgery Center, LLC, an Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, is requesting a two-year extension of its five year limited life, set to expire December 17, 2015 (CON 042011). The facility is located at 53 Brentwood Road, Bay Shore, 11706, in Suffolk County. The center provides ear, nose and throat (ENT), orthopedic, pain management, ophthalmologic, and general surgery services. The center has three operating rooms and two procedure rooms. South Shore Surgery Center is also seeking to transfer 50.1% membership interest in the center to North Shore-LIJ Multispecialty Ventures, LLC.

### Analysis

The primary service area is Suffolk County.

The table below provides information on projected and actual procedures for Year 3 of the original CON 042011.

CON 042011	Projected Year 3 (2013)	Actual Year 3 (2013)
	4,950	4,770

The table below provides information on projected and actual utilization by payor for Year 3 of the original CON 042011

CON 042011	Projections Year 3 (2013)	Actual Year 3 (2013)
Medicare FFS/MC	23.59%	7.0%
Medicaid FFS/MC	5.65%	5.8%
Commercial	14.16%	37.9%
Private Pay/Other	50.96%	48.9%
Charity Care	5.65%	0.4%
Total	100%	100%

The table below provides information on utilization for 2014 and projections for Year 1.

CON 151200	2014 Actual	Projections Years 1
Medicare FFS/MC	8.7%	8.7%
Medicaid FFS/MC	12.0%	11.8%
Commercial	32.6%	32.1%
Private Pay/ Other	46.6%	45.9%
Charity Care	0.1%	1.5%
Total:	100%	100%

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people needing traditional charity care. Through February 2015, the number of uninsured individuals in Suffolk County has dropped from 168,000 before passage of the Affordable Care Act to approximately 21,600 after passage (an 87% drop). Approximately 59% of these newly insured people enrolled in Medicaid.

South Shore Surgery Center has engaged in an outreach effort to the Vietnam Veterans and the LI Immigrant Alliance to provide charity care. So far, the center has not received any referrals from these organizations. The center established a Charity Care policy which established guidelines under which the center will provide care for free or at a reduced cost to patients who are unable to pay.



In recognition of the need for the center to improve its charity care, the center has developed a detailed action plan going forward. The center, upon approval of the membership transfer request, will become part of the North Shore-LIJ organization, and will participate in North Shore-LIJ's robust charity program. The center has contacted the Dolan Family Health Center to provide charity care to its patients. The Dolan Family Health Center is part of Huntington Hospital, and it has committed to work diligently to refer underserved and uninsured patients to South Shore for treatment.

With these efforts, the applicant feels it can achieve a charity care level of 1.5% in the next two years. South Shore Surgery Center is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

**Conclusion**

Even though the number of uninsured individuals in New York State and Suffolk County has dropped sharply since the implementation of the ACA and New York State's health insurance exchange, South Shore's charity care level has been unduly modest. However, it is reasonable to expect that under its proposed more detailed action plan for reaching uninsured individuals, and its connection with the North Shore-LIJ organization, South Shore will be able to achieve its newly proposed level of 1.5 percent charity care within the proposed two-year period of limited life extension.

**Recommendation**

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

**Program Analysis**

**Program Proposal**

South Shore Surgery Center, LLC requests approval for a two-year extension following a five-year conditional limited life approval (granted on March 14, 2008 in Project Number 042011). Additionally, the Center requests approval to transfer 50.1% membership interest to North Shore-LIJ Multispecialty Ventures, LLC.

The Center is not proposing to add any services, expand or renovate the facility.

**Character and Competence**

The Center's current membership is comprised of 13 individual physician members (70.00%) and four individuals (30.00%) who are members of Cataract and Laser Center Partners, LLC d/b/a Ambulatory Surgical Centers of America (ASCOA). Upon approval, the Center's membership would be: 13 Class A individual physician members (34.93%); four Class B individual ASCOA members (14.97%); and Class C member North Shore-LIJ Multispecialty Ventures, LLC (50.1%).

The proposed managers of South Shore Surgery Center are:

<b><u>Name</u></b>	<b><u>Affiliation</u></b>
*Luke Lambert	ASCOA
*Sanford Ratzan, MD	Physician Member
*James Marzec, MD	Physician Member, Medical Director
*Joseph Bonafede, MD	Physician Member
*Charles Ruotolo, MD	Physician Member
John McGovern	North Shore-LIJ Multispecialty Ventures, LLC
Dennis Dowling	North Shore-LIJ Multispecialty Ventures, LLC
Laurence A. Kraemer	North Shore-LIJ Multispecialty Ventures, LLC
Robert Power	North Shore-LIJ Multispecialty Ventures, LLC

*\*existing members/managers and not subject to review under this CON*

The sole member of North Shore-LIJ Multispecialty Ventures, LLC is North Shore University Hospital (NSUH), an existing voluntary, not-for-profit tertiary care hospital located in Manhasset (Nassau County). NSUH is a member of the North Shore-Long Island Jewish Health System (NSLIJHS). The Board of Trustees for NSLIJHS is comprised of 131 members, all of whom were subject to Character and Competence review.

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

*Mr. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.*

*Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of \$6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of \$19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of \$74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling \$13,353 were collected.*

*Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.*

*Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.*

*Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.*

*Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children's Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with CMF.*

*Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.*

*Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.*

*Dr. Peress disclosed one open malpractice case pending trial in Putnam County.*

*Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.*

*Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.*

*Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.*

*Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.*

#### Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

*In a Stipulation and Order (S&O) dated October 16, 2006, Southside Hospital was fined \$14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.*

*In an S&O dated December 8, 2006, Forest Hills Hospital was fined \$12,000 after an investigation revealed that surgery was performed on the patient's right side although the patient entered the hospital for hernia repair on the left side.*

*In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.*

*In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.*

*In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.*

*In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.*

*In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.*

*In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.*

*In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.*

*In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.*

*In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH's conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.*

Recommendation

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

**Financial Analysis**

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement for the change of 50.1% membership interest of South Shore Surgery Center, LLC to be effectuated upon Public Health and Health Planning Council approval of this application request. The terms of the agreement are summarized below:

Date:	December 19, 2014
Purpose:	The sale of 50.1% membership interest in South Shore Surgery Center, LLC.
Sellers:	All current South Shore Surgery, LLC members as follows: <ul style="list-style-type: none"> <li>• Selling 1.88% interest: Drs. Bergson, Bonafede, Campbell, Cussatti, Gargano, O'Donnell, Litman and Ruotolo;</li> <li>• Selling 4.01% interest: Drs. Fandos, Ratzan, Shalmi, Marzec and Simonsen;</li> <li>• Selling 4.51% interest: Drs. Bombardier, Lambert and Violin; and</li> <li>• Selling 1.50% interest: Mr. Luke Lambert.</li> </ul>
Purchaser:	North Shore-LIJ Multispecialty Ventures, LLC
Purchase Price:	\$5,261,965 (\$105,029.24 per percent)
Payment of Purchase Price	Due at closing

## Operating Budget

The applicant has submitted operating budgets for the current year of operations (2014) and for Year One (2015 dollars) subsequent to receiving a two-year limited life extension, as shown below:

	<u>Current Year</u>	<u>Year One</u>
Revenues:		
Operating	\$5,762,282	\$5,762,282
Non-Operating	<u>\$6,137</u>	<u>\$6,137</u>
Total Revenues	\$5,768,419	\$5,768,419
Expenses:		
Operating	\$3,440,279	\$3,488,804
Capital	<u>\$1,118,802</u>	<u>\$1,118,802</u>
Total Expenses	\$4,559,081	\$4,607,606
Net Income/(Loss)	<u>\$1,209,338</u>	<u>\$1,160,813</u>
Utilization (procedures)	6,526	6,614
Cost per procedure	\$698.60	\$696.64

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

<u>Payor Source:</u>	<u>Current Year</u>		<u>Year One</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicare FFS	440	6.7%	440	6.7%
Medicare MC	131	2.0%	131	2.0%
Medicaid FFS	6	0.1%	6	0.1%
Medicaid MC	774	11.9%	774	11.7%
Commercial MC	2,126	32.6%	2,126	32.1%
Private Pay/Other	3,039	46.6%	3,039	45.9%
Charity Care	<u>10</u>	<u>0.1%</u>	<u>98</u>	<u>1.5%</u>
Total	6,526	100.0%	6,614	100.0%

Per South Shore's establishment CON, Medicaid and Charity Care utilization were projected to be 5.65% and 5.65%, respectively, of total procedures in the first and third year of operation. As documented in the AHCF cost reports filed with the Department, and supported by their SPARCS data submissions, the facility has experienced difficulty meeting a modest charity care level to date. However, Medicaid utilization was 2.3% (2011), 2.9% (2012), and 5.8% (2013) of their total caseload. The applicant indicated that they achieved 12.0% Medicaid in 2014 and this trend continues through to the present with Medicaid now comprising 12.77% of total cases.

The applicant provided documentation attesting to the declining number of uninsured persons in Suffolk County due to the impact of the Affordable Care Act and ongoing enrollments in insurance products, such as those available to individuals through the New York State of Health exchange marketplace.

To improve their efforts to treat underserved populations, South Shore has implemented an action plan, the main part of which revolves around tapping into NS-LIJ's robust charity care program. Also, to increase charity care referrals, the facility has reached out to the Dolan Family Health Center, which is operated by Huntington Hospital and is part of NS-LIJ, and will reach out to Hudson River Healthcare, a Federally Qualified Health Center that is in the process of acquiring the operations of Suffolk County clinics. South Shore has provided a letter of understanding from the Dolan Center committing to refer appropriate uninsured and underinsured patients to the Center for treatment.

With these efforts and program changes, the applicant feels they can achieve a minimum charity care of 1.5% utilization by the end of Year One.

### Capability and Feasibility

There are no project costs associated with this application.

North Shore-LIJ Multispecialty Ventures, LLC will acquire 50.1% of the operations of South Shore Surgery Center, LLC for \$ 5,261,965 which will be funded via cash equity from North Shore-LIJ. BFA Attachment B is North Shore-LIJ's 2012-2014 certified financial statements, which shows the entity has sufficient liquid assets to cover the purchase price associated with this project.

The submitted budget indicates an excess of revenues over expenses of \$1,160,813 during Year One. Revenues are based on current reimbursement methodologies for FASC services. The budget appears reasonable.

BFA Attachment A is South Shore's financial summary for 2012-2014, which shows the entity had an average negative working capital of \$85,338, an average positive equity position of \$300,184 and an average net income of \$1,386,679 for the period. The negative working capital position is due to standard operations of the facility. The members have an agreement in place whereby they agree to contribute equity as needed to cover any working capital shortfalls.

BFA Attachment B is the 2012-2014 financial summary for North Shore-LIJ, which shows a positive working capital position of \$1,411,464,000, a positive equity position of \$2,750,799,000 and a positive net income of \$234,918,000 for the period.

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	South Shore Surgery Center, LLC 2012-2014 financial statements
BFA Attachment B	North Shore-LIJ 2012-2014 financial statements
BFA Attachment C	Organization Chart



Project # 151201-E

Crystal Run Ambulatory Surgery Center of Middletown

**Program:** Diagnostic and Treatment Center  
**Purpose:** Establishment

**County:** Orange  
**Acknowledged:** May 1, 2015

## Executive Summary

### Description

Crystal Run Ambulatory Surgery Center of Middletown, LLC (the Center), an existing proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 95 Crystal Run Road, Middletown (Orange County), is requesting indefinite life. The D&TC is certified as a multi-specialty freestanding ambulatory surgery center (FASC) and provides services in the following areas: general surgery, gastroenterology, gynecology, orthopedics, otolaryngology, plastic surgery, urology, pain management, and dermatology. The facility was approved by the Public Health Council with a five-year limited life under CON #082080 and began operation effective April 19, 2010. The FASC's limited life expired on April 18, 2015 and the Center notified the Department before their limited life expiration date requesting a stay pending submission of this application.

The Center is not proposing to add or change any services, or to expand or renovate the facility.

Crystal Run Ambulatory Surgery Center of Middletown, LLC consists of the following two members:

- Crystal Run Healthcare LLP (60%), a multi-specialty group practice currently comprised of 122 physician partners, with administrative offices at 155 Crystal Run Road, Middletown; and
- Orange Regional Medical Center (40%), a 383-bed non-profit hospital located at 707 East Main Street, Middletown.

BFA Attachment A provides an Organizational Chart of the FASC and a listing of the current physician partners of Crystal Run Healthcare LLP.

OPCHSM Recommendation  
Contingent Approval

### Need Summary

Based on CON 082080, Crystal Run projected 12,000 procedures in Year 1 (2010) and Year 3 (2012). Medicaid procedures was projected at four (4) percent and charity care was projected at two (2) percent. Based on the Annual Reports submitted by the applicant, the number of total procedures was 8,090 in Year 1 (2010) and 13,048 in Year 3 (2012). Actual charity care in Year 3 (2012) was 0.46 percent.

Upon approval of this project, Crystal Run projects 11,145 visits in Years 1 and 3 with 15.8 percent Medicaid visits and two (2) percent charity care. There will be 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

There are no project costs associated with this application.

Budget:	<u>Year One</u>	<u>Year Three</u>
Revenues	\$13,674,585	\$3,674,585
Expenses	<u>11,631,017</u>	<u>11,655,139</u>
Net Income	\$2,043,568	\$2,019,446



## 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 affidavit, acceptable to the Department, attesting that there have been no changes to the legal documentation as originally approved by 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

**October 8, 2015**

## Need Analysis

### Project Description

Crystal Run Ambulatory Surgery Center of Middletown, LLC, an Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, is requesting permission to convert to indefinite life following a five year limited life with an OpCert dated April 19, 2010 to April 18, 2015 (CON 082080). This ambulatory surgery center provides gastroenterology, gynecology, orthopedic, otolaryngology, plastic surgery, urology, pain management, dermatology and general surgery services. It is located at 95 Crystal Run Road, Middletown, 10941, in Orange County. Crystal Run has five operating rooms and two procedure rooms.

### Analysis

The primary service area is Orange County.

The table below provides information on projections and utilization for Years 1 and 3 based on CON 082080.

<b>CON 082080</b>	<b>Projections- Procedures</b>	<b>Projections- Procedures</b>	<b>Actual- Procedures- Annual Reports</b>	<b>Actual- Procedures- Annual Reports</b>
<b>Crystal Run</b>	Year 1 (2010)	Year 3 (2012)	Year 1 (2010)	Year 3 (2012)
Total	12,000	12,000	8,090	13,048

The table below provides information on projections by payor for CON 082080 and actual for 2012.

<b>CON 082080 Projections</b>	<b>Projections Years 3 (2012)</b>	<b>Actual (2012)</b>
Medicaid FFS/MC	4.0%	12.3%
Medicare FFS/MC	29.0%	16.3%
Commercial FFS/MC	60.0%	70.9%
Charity Care	2.0%	.5%
Private Pay	5.0%	---
All Other	-----	-----
Total	100%	100%

The table below provides information on utilization for 2014 and projections for Years 1 and 3 for this project.

<b>CON 151201 Projections</b>	<b>Actual 2014</b>	<b>Projections Years 1 and 3</b>
Medicaid FFS /MC	15.2%	15.4%
Medicare FFS/MC	18.4%	18.7%
Commercial FFS/MC	33.0%	33.2%
All Other	24.3%	24.4%
Charity Care	2.9%	2.0%
Private Pay	6.2%	6.4%
Total:	100%	100%

The center has made a concerted effort to provide Charity Care and reduced fee care to the residents of Orange County. The center re-evaluated the amount of bad debt and determined that 120 cases in 2013 and 266 cases in 2014 could be labeled charity care. This increased the amount of charity care provided to 1.5% in 2013 and 2.9% in 2014.

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people needing traditional Charity Care. Through February 2015, the number of uninsured in Orange County has dropped from 47,000 before passage of the Affordable Care Act to 15,500 after passage (represents a 67% drop). Approximately 65% of these newly insured people have been enrolled in Medicaid plans.

Early in 2014, it was identified that the center was not providing Charity Care at a level that met projections. The center developed an action plan to improve efforts to provide Charity Care which included the following steps:

- Designated one staff member to focus on Charity Care efforts.
- Initiated a free colonoscopy screening program with Middletown Community Health Center (a FQHC).
- Expanded the free colonoscopy program to include patients of The Greater Hudson Valley Family Health Center (another FQHC).
- Performed community outreach to patients with large outstanding balances to provide information and the criteria for inclusion in the Charity Care Program offered at the center.

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

#### Conclusion

Although Crystal Run's level of charity care has been modest, this has occurred in the midst of a major decline in the number of uninsured in Orange County. The facility's relatively low level of charity care to date is also somewhat ameliorated by its absorption of bad debt that could be considered charity care, and by the ASC's implementation of a strengthened action plan to reach uninsured individuals. Moreover, Crystal Run's volume of services to Medicaid clients has reached over 3.5 times the facility's original projection. These circumstances indicate a reasonable and sustained effort to extend services to the underserved in the Orange County area. Therefore, certification for indefinite life should be granted.

#### Recommendation

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

## Program Analysis

### Program Proposal

Crystal Run Ambulatory Surgery Center of Middletown, LLC, an existing Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center, located at 95 Crystal Run Road in Middletown (Orange County), is requesting permission to convert to indefinite life following a five year conditional, limited life approval (initially approved in CON #082080).

The Center's two members are Orange Regional Medical Center, a 383-bed hospital located in Middletown with a 40% membership interest and Crystal Run Healthcare LLP, a multi-specialty group practice comprised of 123 physician partners, with a 60% membership interest.

The Center is not proposing to add any services, expand or renovate the facility. Stephen Cagliostro, M.D. will continue to serve as the Center's Medical Director.

### Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

### Recommendation

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

## Financial Analysis

### Operating Budget

The applicant has submitted operating budgets, in 2015 dollars, for the current year of operations and for year one and year three subsequent to approval of this application, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
<b>Revenues:</b>			
Medicare Fee For Service	\$1,786,513	\$1,837,137	\$1,837,137
Medicaid Fee For Service	80,085	83,332	83,332
Medicaid Managed Care	1,788,940	1,855,844	1,855,844
Commercial Fee For Service	5,065,592	5,213,417	5,213,417
Private Pay	967,647	1,070,439	1,070,439
Other/Government	<u>3,807,657</u>	<u>3,614,416</u>	<u>3,614,416</u>
<b>Total Revenues</b>	<b>\$13,496,434</b>	<b>\$13,674,585</b>	<b>\$13,674,585</b>
<b>Expenses:</b>			
Operating	\$9,306,225	\$9,803,676	\$9,803,676
Capital	<u>1,821,592</u>	<u>1,827,341</u>	<u>1,851,463</u>
<b>Total Expenses</b>	<b>\$11,127,817</b>	<b>\$11,631,017</b>	<b>\$11,655,139</b>
<b>Net Income</b>	<b>\$2,368,617</b>	<b>\$2,043,568</b>	<b>\$2,019,446</b>
Utilization (Cases)	10,716	11,145	11,145
Cost Per Case	\$1,038.43	\$1,043.61	\$1,045.77

Utilization broken down by payor source for the respective years is as follows:

Payor Source	<u>Current Year</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Cases</u>	<u>%</u>	<u>Cases</u>	<u>%</u>	<u>Cases</u>	<u>%</u>
Commercial Fee For Service	3,623	33.8%	3,705	33.2%	3,705	33.2%
Medicare Fee For Service	2,026	18.9%	2,080	18.7%	2,080	18.7%
Medicaid Fee For Service	74	0.7%	77	0.7%	77	0.7%
Medicaid Managed Care	1,577	14.7%	1,635	14.7%	1,635	14.7%
Private Pay	684	6.4%	708	6.4%	708	6.4%
Charity	60	0.6%	223	2.0%	223	2.0%
Other/Government	<u>2,672</u>	<u>24.9%</u>	<u>2,717</u>	<u>24.4%</u>	<u>2,717</u>	<u>24.4%</u>
	10,716	100.0%	11,145	100.0%	11,145	100.0%

Per the Center's establishment CON, Medicaid and charity care utilization were projected to be 4% and 2%, respectively, of total procedures in the first and third years of operation. As documented in the AHCF cost reports filed with the Department, and supported by their SPARCS data submissions, the facility has experienced difficulty meeting the 2% charity care level to date. However, Medicaid utilization was 11.4% (2011), 12.4% (2012), and 12.9% (2013) of their total caseload, far exceeding their initial projections. The applicant indicated that this trend continues through to the present with Medicaid now comprising 15.4% of total cases.

The applicant provided documentation attesting to the declining number of uninsured persons in Orange County due to the impact of the Affordable Care Act and ongoing enrollments in insurance products, such as those available to individuals through the New York State of Health exchange marketplace. The applicant further indicated that, despite increased insurance coverage, many cases still result in bad debt (defined as an amount higher than \$300 for which no payment is received) due to high deductibles and

co-pays. By working with their collection agency they identified 120 cases in 2013 and 266 cases in 2014 they believe could fairly have been classified as charity care.

To improve charity care service delivery, the applicant created a Charity Care Team in 2014 devoted to enhancing services to the underserved. Highlights of their efforts include the following:

- A full-time Center employee (1.0 FTE) is dedicated specifically to charity care outreach.
- For patients with outstanding balances, outreach letters are sent to advise them of the Center's Charity Care Program if it is determined they meet the Center's charity care criteria. Follow-up contact is made for those that continue to have large balances.
- A process was created for contacting patients prior to the procedure date to explain and offer their Charity Care Program if it is determined they will have a large out-of-pocket amount and/or no insurance coverage.
- In 2012 the FASC initiated a free colonoscopy screening program with Middletown Community Health Center, a FQHC. The Center expanded this program to include another FQHC, Greater Hudson Valley Family Health Center located in Newburgh.

With these efforts and program changes, the applicant feels they can achieve a minimum charity care of 2% utilization by the end of year one.

#### Capability and Feasibility

There are no project costs associated with this application.

The submitted budgets indicate a net income of \$2,043,568 and \$2,019,446 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment B is the 2013 and 2014 certified financial statements of Crystal Run ASC of Middletown, LLC. As shown, the facility had an average positive working capital position and an average positive net asset position for these years. Also, the entity achieved an average net income from operations of \$2,710,314 from 2013 through 2014.

BFA Attachment C provides the internal financial statements of Crystal Run ASC of Middletown, LLC as of June 30, 2015. As shown, the entity had a positive working capital position and a positive net asset position for the period. Also, the entity achieved a net income from operations of \$538,872 through June 30, 2015.

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

#### Recommendation

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

## Attachments

BFA Attachment A	Organizational Chart and Member Listing - Crystal Run ASC of Middletown, LLC
BFA Attachment B	2013 and 2014 certified financial statements of Crystal Run ASC
BFA Attachment C	Crystal Run ASC's internal financial statements as of June 30, 2015



Project # 151226-E  
DHCH, LLC d/b/a Digestive Health Center of Huntington

**Program:** Diagnostic and Treatment Center      **County:** Suffolk  
**Purpose:** Establishment      **Acknowledged:** May 20, 2015

**Executive Summary**

**Description**

DHCH, LLC, an existing NY limited liability company, is requesting to become the new operator of an existing New York proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 195 East Main Street, Suite A, Huntington (Suffolk County). Digestive Health Center of Huntington, Inc. will transfer 100% of the Center's assets and liabilities to DHCH, LLC in exchange for 100% of the membership interest of DHCH, LLC. Simultaneously upon closing, Digestive Health Center of Huntington, Inc. will transfer 51% of its ownership interest in DHCH, LLC, to North Shore-LIJ Endoscopy Ventures, LLC through a Membership Interest Purchase Agreement. The Center's current lease agreement will be assigned to the newly established entity, DHCH, LLC. There will be no change or disruption in services.

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

<u>Current Operator</u>	
Digestive Health Center of Huntington, Inc. d/b/a Digestive Health Center of Huntington	
<u>Members:</u>	<u>%</u>
Paul Bermanski	37.25%
Richard Fried	37.25%
Zvi Alpern	9.90%
David Purow	7.60%
Michael Moseson	4.00%
Mark Dobriner	4.00%

<u>Proposed Operator</u>	
DHCH, LLC d/b/a Digestive Health Center of Huntington	
<u>Members:</u>	
Digestive Health Center of Huntington, Inc.	49%
<u>Members:</u>	
Paul Bermanski	37.25%
Richard Fried	37.25%
Zvi Alpern	9.90%
David Purow	7.60%
Michael Moseson	4.00%
Mark Dobriner	4.00%
North Shore-LIJ Endoscopy Ventures, LLC	51%
<u>Member:</u>	
North Shore University Hospital, Inc.	100%

The sole member of North Shore-LIJ Endoscopy Ventures, LLC is North Shore University Hospital, Inc., a voluntary not-for-profit 804-bed tertiary care hospital located at 300 Community Drive, Manhasset. North Shore University Hospital is a member of the North Shore-Long Island Jewish Health System, Inc. (NS-LIJ). NS-LIJ is a comprehensive integrated delivery system formed to ensure the delivery of a broad range of quality healthcare services to the community it serves and to achieve economies of scale through consolidation, cooperation and joint planning among its members. Also, the hospital is a member of the NS-LIJ obligated group, formed to provide its members an enhanced credit position and expanded access to capital markets.

OPCHSM Recommendation  
Contingent Approval

Need Summary

There will not be any changes in services as a result of the proposed change in ownership.

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

North Shore-LIJ Endoscopy Ventures, LLC will acquire 51% interest in the operations of the Center via \$4,768,500 cash equity as provided for in the membership interest purchase agreement. The payment will be made by NS-LIJ from their current operations.

There are no project costs associated with this application.

Budget:	<u>Year One</u>
Revenues	\$3,615,485
Expenses	<u>2,703,950</u>
Net Income	\$911,535



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
2. Submission of an executed lease assignment agreement, acceptable to the Department of Health. [BFA]
3. Submission of an executed contribution/asset transfer agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed administrative service agreement, acceptable to the Department of Health. [BFA]
5. Submission of the executed Articles of Organization of DHCH, LLC acceptable to the Department. [CSL]
6. Submission of the executed Operating Agreement of DHCH, LLC acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 8, 2015**

## Need Analysis

### Project Description

DHCH, LLC is requesting approval to become the operator of Digestive Health Center of Huntington, Inc., an existing ambulatory surgery center specializing in gastroenterology ambulatory surgery services. The center is located at 195 East Main St, Huntington, 11743, in Suffolk County.

### Background and Analysis

Digestive Health Center of Huntington, Inc. has been providing gastroenterology surgery services to the residents of Suffolk County since 2003. The center performed a total of 3,813 procedures in 2011; 4,443 procedures in 2012; and 4,708 procedures in 2013. (Source: AHCF cost reports) The applicant reports that physicians at the center performed 61 endoscopic procedures at no charge for patients at Huntington Hospital in 2014.

### Conclusion

There will not be any changes in services as a result of the proposed change in ownership.

### Recommendation

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

## Program Analysis

### Program Proposal

DHCH, LLC is requesting approval to become the operator of Digestive Health Center of Huntington, Inc., an existing Article 28 Diagnostic and Treatment Center certified as a single (gastroenterology) specialty ambulatory surgery center, located at 195 East Main Street, Suite A in Huntington (Suffolk County). The current operator will convey assets and certain liabilities to DHCH, LLC in exchange for 100% of the membership interests of DHCH, LLC. Additionally, Digestive Health Center of Huntington, Inc. seeks to transfer 51.0% of its membership interest in DHCH, LLC to North Shore-LIJ Endoscopy Ventures, LLC.

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center (other than its ownership structure) in this application. Paul Bermanski, M.D., an existing founding member of the Center will continue to serve as the Center's Medical Director.

### Character and Competence

Following this transaction, DHCH, LLCs ownership composition will be as follows:

<u>Member Name</u>	<u>Current</u>	<u>Proposed</u>
<b>Digestive Health Center of Huntington, Inc.</b>	<b>100%</b>	<b>49.0%</b>
*Paul Bermanski, MD (37.25%)		
*Richard Fried, MD (37.25%)		
*Zvi Alpern, MD (9.90%)		
*David Purow, MD (7.60%)		
*Michael Moseson, MD (4.00%)		
*Mark Dobriner, MD (4.00%)		
<b>North Shore LIJ Endoscopy Ventures, LLC</b>	<b>-----</b>	<b>51.0%</b>
Managers: Dennis Dowling Laurence A. Kraemer, Esq. John McGovern		

*\*Not subject to a Character and Competence Review for this project.*

The sole member of North Shore-LIJ Endoscopy Ventures, LLC is North Shore University Hospital (NSUH), an existing voluntary, not-for-profit tertiary care hospital located in Manhasset (Nassau County). NSUH is a member of the North Shore-Long Island Jewish Health System (NS-LIJ). The Board of Trustees for NS-LIJ is comprised of 131 members who were subject to Character and Competence review.

The existing, approved stockholders (6 individual physician members) of Digestive Health Center of Huntington, Inc. will not change as a result of this project. The proposed Managing Director of DHCH, LLC will be David Purow, 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.

*Mr. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.*

*Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of \$6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of \$19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of \$74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling \$13,353 were collected.*

*Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.*

*Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.*

*Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.*

*Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children's Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with CMF.*

*Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.*

*Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.*

*Dr. Peress disclosed one open malpractice case pending trial in Putnam County.*

*Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.*

*Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.*

*Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.*

*Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.*

#### Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

*In a Stipulation and Order (S&O) dated October 16, 2006, Southside Hospital was fined \$14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.*

*In an S&O dated December 8, 2006, Forest Hills Hospital was fined \$12,000 after an investigation revealed that surgery was performed on the patient's right side although the patient entered the hospital for hernia repair on the left side.*

*In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.*

*In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.*

*In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.*

*In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.*

*In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.*

*In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.*

*In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.*

*In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.*

*In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH's conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.*

Recommendation

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

<h2>Financial Analysis</h2>
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Lease Assignment Agreement:

The applicant has submitted a draft Lease Assignment Agreement for the site, the terms of which are summarized below:

Premises:	4,856 sq. ft. clinic space, plus 205 sq. ft. of storage, located at 195 East Main Street, Huntington, NY 11743
Landlord:	Chavrusa Realty, LLC
Lessee:	Digestive Center of Huntington, Inc.
Assignor:	Digestive Center of Huntington, Inc.
Assignee:	DHCH, LLC
Term:	Current term expires January 31, 2018. There is one three-year renewal term remaining on the current lease, plus two subsequent five-year term renewal options.
Rental:	\$160,248 per year (\$13,354 per month) with 5% increase in rent per term.
Provisions:	Tenant is responsible for maintenance, utilities, proportionate share of real estate taxes, and insurance.

The applicant has submitted an affidavit stating the lease agreement is a non-arm's length arrangement in that there is a common ownership as Paul Bermanski, M.D. is 50% owner of the landlord entity, Chavrusa Realty, LLC. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental rate.

#### Contribution/Asset Transfer Agreement

The applicant has submitted a draft Contribution/Asset Transfer Agreement for transferring the assets and liabilities of Digestive Health Center of Huntington, Inc. for 100% ownership interest in DHCH, LLC. The terms are summarized below:

Transferor:	Digestive Health Center of Huntington, Inc.
Transferee:	DHCH, LLC
Assets Transferred:	Contributes, conveys, transfers, assign and delivers to its successors all right, title and interest in the assets used or held for use in connection with the ownership and operation of the Center. All cash, cash equivalents and marketable securities, all accounts, notes, refunds, other account receivables, assumed contracts, all rights under the equipment leases, all furniture fixtures & equipment, inventory, all books/records, all patient records, claims, cause of actions, the name of the company, all telephones, faxes, all intellectual properties, software used, all assets, properties, claims, rights and interest of company.
Excluded Assets:	All permits of company, to the extent not transferable; all benefit plans, all contracts other than the assumed contracts; personal items belonging to the owners; all rights and interest of company.

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 transferor to the contrary, to be liable 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 ability and responsibility. Currently, the facility has no outstanding Medicaid audit liabilities or assessments.

#### Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement for the transfer of 51% membership interest in DHCH, LLC to North Shore-LIJ Endoscopy Ventures, LLC to be effectuated upon Public Health and Health Planning Council approval of this application request. The terms of the agreement are summarized below:

Date:	January 21, 2015
Seller:	Digestive Health Center of Huntington, Inc. and DHCH, LLC
Buyer:	North Shore-LIJ Endoscopy Ventures, LLC
Assumption of Assets:	51% membership interest in administrative service agreement, amended lease, license agreement, bank accounts, Managing director agreement, books/records, permits, company assets, intellectual property & software, furniture/fixtures and equipment, real property used in operation of the Center; all water oil, gas, electrical, telecommunications, sewer storm and waste water systems, other utilities services; all contracts, employees, employee benefits plans, insurance; Seller's right, title and interest in all assets and properties owned/used by Seller in the business whether tangible, intangible, real, personal and mixed located on premises including fixed assets and inventories; all supplies, equipment, vehicles, machinery, furniture, fixtures, leasehold improvements and other tangible personal property; all proprietary knowledge, trade secrets, patient, physician and referral lists, technical information, quality control data, processes, methods or rights; customer and vendor lists, assigned contracts; all physical and electronic data relating to the business; all other tangible and intangible property, other than the excluded assets.

Assumption of Liabilities:	51% Interest in all debts, obligations or liabilities of the business, arising and whatever type of nature, accrued or un-accrued, fixed or contingent. All liabilities listed in asset purchase agreement as per membership interest.
Lease Assigned:	Lease associated with premises located at 195 Main Street, Huntington, NY 11743
Purchase Price:	\$4,768,500 (subject to change based on working capital balance prior to closing and long term debt balance at closing).
Hold Back Amount:	\$476,850 in escrow on signing for working capital and long term debt adjustment.
Payment of Purchase Price:	\$50,000 in escrow on signing \$4,718,500 balance minus hold back amount of \$476,850 at the closing.

#### Administrative Services Agreement

The applicant has submitted a draft Administrative Services Agreement with North Shore LIJ Health Care Inc., which is summarized as follows:

Facility/Operator:	DHCH, LLC
Administrator:	North Shore Long Island Jewish Health Care, Inc.
Administrator Fee:	\$18,500 per month
Service Provided:	Administrator will oversee collection of accounts, payments of accounts and indebtedness, accounting and financial records, internal audit, depositories for funds, purchases and leases, insurance, managed care contracting, legal support, IT support service, health care analytics, credentialing services, recruitment and expansion, human resources services, payroll, partner distribution, project development, budgets and financial planning and contracts for services.

While North Shore Long Island Jewish Health care, Inc. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

There is a common ownership between the applicant and the administrative service agreement provider as shown on BFA Attachment B, post-closing organizational chart.

#### Operating Budget

The applicant has submitted the facility's year one operating budget, in 2015 dollars, as shown below:

Revenues:	
Medicaid Managed Care	\$204,798
Medicare Fee For Service	\$417,911
Commercial Managed Care	\$2,760,044
Private Pay	\$5,683
Government/Veterans Affairs	<u>\$227,049</u>
Total Revenue:	\$3,615,485
Expenses:	
Operating	\$2,405,327
Capital	<u>\$298,623</u>
Total Expense:	\$2,703,950
Net Income:	
Utilization (Procedures)	4,708
Cost Per Treatment	\$574.33

Utilization by payor source for the first year after the proposed change is as follows:

<u>Payor:</u>	<u>Visits</u>	<u>%</u>
Medicaid MC	282	5.99%
Medicare FFS	1153	24.49%
Commercial MC	2,971	63.11%
Private Pay	12	0.25%
Charity	95	2.02%
Government/Veterans Affairs	<u>195</u>	<u>4.14%</u>
Total	4,708	100.00%

Revenue, expense and utilization assumptions are based on the applicant's actual 2013 experience operating the Center projected forward. Utilization is expected to remain at the current year level of 4,708 procedures. The breakeven utilization is approximately 75% or 3,521 procedures.

The applicant indicated that the Center's physicians have been performing endoscopic procedures at no charge for patients of Huntington Hospital's Dolan Family Health Center since the Center opened in 2002. These charity care procedures are not included in Center's AHCF cost reports filings with the Department, as they were performed at Huntington Hospital. Effective May 1, 2015, the Center's physicians began providing charity care to Huntington Hospital patients at the FASC. The applicant is projecting to achieve a 2% charity care level by year one and expects to maintain a minimum 2% charity care going forward through year three. Medicaid utilization is anticipated to be approximately 6% annually.

#### Capability and Feasibility

There are no project costs associated with this application.

North Shore-LIJ Endoscopy Ventures, LLC will acquire 51% of the operations of DHCH, LLC d/b/a Digestive Health Center of Huntington for \$4,768,500 which will be satisfied from accumulated funds. BFA Attachment D is the 2013-2014 certified financial statements of North Shore-University Hospital, Inc., which shows the entity has sufficient liquid resources to meet the project's equity requirements.

Working capital requirements are estimated at \$450,658 based on two months of year one expenses. The proposed members will provide the working capital from accumulated funds. BFA Attachments C and D are the members' certified financial statements and summaries, which indicate sufficient liquid resources to meet the equity and working capital requirements.

BFA Attachment E is DHCH, LLC's pro forma balance sheet, which shows operations will start off with \$4,774,000 in members' equity.

The submitted budget indicates an excess of revenues over expenses of \$911,535 during the first year. Revenues are based on the Center's actual reimbursement rates by payor, except for Medicaid which is based on other similar facilities in region. The budget appears reasonable.

BFA Attachment C is the 2011-2014 financial summary for Digestive Health Center of Huntington, Inc., which shows an average working capital position of \$153,092, an average equity position of \$14,608 and an average net income of \$953,182 for the period.

BFA Attachment D is North Shore University Hospital, Inc.'s certified financial summary for 2013 through 2014 which shows an average working capital of \$ 1,494,764,500, an average equity position of \$ 2,911,158,500 and an average net income of \$ 85,735,000 for the period.

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	Pre Closing Organizational Chart
BFA Attachment B	Post Closing Organizational Chart
BFA Attachment C	Digestive Health Center of Huntington, Inc. 2011-2014 Financial Summary and Internal Financial Summary as of May 2015.
BFA Attachment D	North Shore- University Hospital, Inc,2013-2014 Certified Financial Statements
BFA Attachment E	DHCH, LLC's-Pro Forma Balance Sheet



**Project # 151246-B  
Mid-Bronx Endoscopy Center**

**Program:** Diagnostic and Treatment Center    **County:** Bronx  
**Purpose:** Establishment and Construction    **Acknowledged:** June 1, 2015

**Executive Summary**

**Description**

Mid-Bronx Endoscopy Center, LLC (the Center), a recently formed New York limited liability company, requests approval to establish and construct an Article 28 Diagnostic and Treatment Center (D&TC) to be certified as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology. The Center will be located in approximately 7,700 square feet of leased space on the ground floor of an existing building at 57 West Burnside Avenue, Bronx (Bronx County), New York. The FASC will include four gastroenterology procedure rooms and preoperative, recovery and support areas.

The proposed ownership of the Center includes six classes of members as follows:

1. Class A Members (23 Units): four participating independent physicians who are board-certified gastroenterologist practicing in the Bronx area, each of whom will own 5.75 units in the Center;
2. Class B Members (7.6 Units): three non-physician individuals, each of whom will own 2.53 units in the Center;
3. Class C Member (45 Units): Bronx-Lebanon Special Care Center, Inc., a New York not-for-profit corporation that operates a 240-bed nursing home in the Bronx;
4. Class D Member (10 Units): Harrison Circle Development Corp. (HCDC), a New York business corporation whose sole shareholder, Morris Heights Senior Housing Development Fund Company, Inc., is affiliated with the landlord;

5. Class E Members (2.4 Units): Advance Endoscopy Center, LLC, which is owned by fifteen individuals (three of which have ownership interest in the Administrative Service Agreement provider) and MMC Holdings West, Inc. whose sole passive member is Montefiore Medical Center; and
6. Class F Members (12 Units): four participating physician members who are board-certified gastroenterologist affiliated with and employed by Bronx-Lebanon Hospital Center.

Class A and F members are required to be licensed and registered physicians remaining in practice in the Bronx area and able to perform surgical services at the Center. Based on their percentage interest, all of the members generally have the same economic and voting rights. The business and affairs of the Center will be managed by a Board of Managers elected by each membership class, including three representatives elected by Class A members and one representative each from Class B, Class C, Class D and Class F members.

BFA Attachment A provides a list of the proposed members of the Center by class and units of ownership.

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

Need Summary

The number of projected procedures is 5,936 in Year 1, with 50 percent Medicaid and two percent charity care.

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 \$3,918,239 will be met by \$391,824 in members' equity and a \$3,526,415 bank loan at 5.5% interest over a six-year term. A letter of interest has been provided by Wells Fargo.

Budget:

	<u>Year Three</u>
Revenues	\$4,084,744
Expenses	<u>\$2,816,366</u>
Net Income	\$1,268,378

## 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 date of the operating certificate five years from the date of its issuance, contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NSECON. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the construction, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed administrative services agreement, acceptable to the Department of Health. [BFA]
6. Submission of an executed Development and Administrative Services Agreement, acceptable to the Department. [HSP]
7. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
8. 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]
9. 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]
10. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to the DOH beginning in the second year of operation. Said reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payor source;
  - c. Data showing number of patients who need follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data showing number of emergency transfers to a hospital;
  - e. Data showing percentage of charity care provided, and
  - f. Number of nosocomial infections recorded during the year in question. [RNR]
11. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 for Outpatient Facilities. [AER]
12. Submission of the executed Articles of Organization of Mid- Bronx Endoscopy Center 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. Construction must start on or before December 1, 2015 and construction must be completed by May 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Part 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**October 8, 2015**

## Need Analysis

### Project Description

Mid-Bronx Endoscopy Center, LLC, a newly-formed New York limited liability company, is requesting approval to establish and construct an Article 28 Diagnostic and Treatment Center to provide single specialty gastroenterology ambulatory surgery services. The proposed location is 57 West Burnside Avenue, Bronx, 10453, in Bronx County.

### Analysis

The service area includes Bronx County. Bronx County currently has a total of eight freestanding ambulatory surgery centers: five multi-specialty ASCs and three single specialty ASCs. The table below shows the number of patients utilizing Ambulatory Surgery Centers in Bronx County for 2013 & 2014.

Specialty Type	Facility	Total Patients 2013	Total Patients 2014
Single	Eye Surgery Center of New York (opened 3/18/15)	N/A	N/A
Multi	Surgicare Ambulatory Surgery Center of New York	3,147	2,702
Multi	Empire State Ambulatory Surgery Ctr (opened 2/19/15)	N/A	N/A
Multi	Avicenna ASC, Inc. (opened 4/7/15)	N/A	N/A
Multi	East Tremont Medical Center	3,385	3,267
Single	New York GI Center, LLC	7,305	9,608
Multi	Ambulatory Surgery Center of Greater New York	10,083	9,740
Single	Advanced Endoscopy Center	10,248	11,013
Total		34,168	36,330

(Source-SPARCS)

For Bronx County, the total number of patient visits for ASC's was 34,168 in 2013 and 36,330 in 2014. This represents a 6.3% increase in the number of patients served by Ambulatory Surgery Centers in Bronx County from 2013 to 2014.

The population of Bronx County in 2010 was 1,385,108 with 484,998 individuals (34.9%) who are 45 and over, which is the primary population group utilizing Gastroenterology services. Per PAD projection data from the Cornell Program on Applied Demographics, this population group is estimated to grow to 529,060 by 2025, an increase of 6.7% in the population group of individuals 45 and over.

The number of projected procedures is 5,936 in Year 1 and 6,055 in Year 3 with 50 percent Medicaid and two percent charity care. These projections are based on the current case load of the participating physicians.

Projections	Year 1 Procedures	Year 1 Percentage	Year 3 Procedures	Year 3 Percentage
Commercial Ins	1,187	20%	1,211	20%
Medicare	1,662	28%	1,696	28%
Medicaid	2,968	50%	3,027	50%
Charity Care	119	2.0%	121	2.0%
Total	5,936	100.0%	6,055	100.0%

The applicant is committed to serving all persons without regard to their ability to pay or the source of payment.

## Conclusion

The proposed project will improve access to ambulatory surgery services specializing in gastroenterology to the communities of Bronx County, including the Medicaid-eligible populations whom the applicant proposes to serve in significant numbers.

## Recommendation

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

# Program Analysis

## Project Proposal

Mid-Bronx Endoscopy Center, LLC, is requesting approval to establish and construct a single-specialty ambulatory surgery center specializing in gastroenterological procedures at 57 West Burnside Avenue, Bronx (Bronx County), New York 10453.

This project consolidates the participating physicians' separate private practices into a single, regulated Article 28 Center and will allow the operator to provide screening and other outreach programs to the community that were not feasible through the member physicians' private practices.

<b>Proposed Operator</b>	Mid-Bronx Endoscopy Center, LLC
<b>Site Address</b>	57 West Burnside Avenue Bronx, NY (Bronx County)
<b>Surgical Specialties</b>	Single Specialty: Endoscopy
<b>Operating Rooms</b>	0
<b>Procedure Rooms</b>	4
<b>Hours of Operation</b>	Monday through Friday from 7:00 a.m. to 5:00 p.m. (Weekend and/or evening procedures will be available, if needed, to accommodate patient scheduling issues.)
<b>Staffing (1<sup>st</sup> / 3<sup>rd</sup> Year)</b>	11.5 FTEs / 16.5 FTEs
<b>Medical Director(s)</b>	Prosper Remy, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by Bronx-Lebanon Hospital Center 1.3 miles/ 8 minutes
<b>On-call service</b>	24/7 service to refer the patient to the Center's on-call physician

## Character and Competence

The membership of the proposed project is divided into six (6) different classes and consists of 14 total members (i.e., physicians, non-physicians, not-for-profit corporations and an LLC). They proposed members are:

<b>Name</b>	<b>Percentage</b>
<b>Class A Members (Physician Members)</b>	<b>23.00%</b>
Prosper Remy, MD, <i>Manager</i>	5.75%
Carl Guillaume, MD	5.75%
Mohamad Erfani, MD	5.75%
Marie-Nirva Blaise, MD	5.75%
<b>Class B Members (Non-Physician Members)</b>	<b>7.59%</b>
Frank Principati	2.53%
W. Barry Tanner	2.53%
Karen Sablyak	2.53%

<b>Class C Member</b>	
<b>Bronx-Lebanon Special Care Center, Inc.</b>	<b>45.00%</b>
Barbara Lowe, RN, <i>board member</i>	
Miguel Fuentes, <i>board member</i>	
John Colon, <i>board member</i>	
Victor DeMarco, <i>board member</i>	
<b>Class D Member</b>	
<b>Harrison Circle Development Corp. (HCDC)</b>	<b>10.00%</b>
Morris Heights Senior Housing Development Fund Company, Inc.	
Verona Greenland, <i>board member</i>	
Judith Fairweather, <i>board member</i>	
<b>Class E Member</b>	
<b>Advanced Endoscopy Center, LLC</b>	<b>2.40%</b>
Michael Ader, MD (0.11%)	
Amnon Gotian, MD (0.11%)	
Isadore Gutwein, MD (0.11%)	
Jeremy Gutwein, MD (0.11%)	
Ian Harnik, MD (0.11%)	
Neil Herbsman, MD (0.11%)	
Henry Katz, MD (0.11%)	
Albert Kramer, MD (0.11%)	
Daniel Reich, MD (0.11%)	
Robert Sable, MD (0.11%)	
David Stein, MD (0.11%)	
Ira Tepler, MD (0.11%)	
MMC GI Holdings West, Inc. (0.72%)	
Patrick Haughey, <i>board member</i>	
Christopher Panczner, <i>board member</i>	
Karen Sablyak (0.12%)	
W. Barry Tanner (0.12%)	
Frank Principati (0.12%)	
<b>Class F Members</b>	<b>12.00%</b>
Ariyo Ihimoyan, MD	3.00%
Anil Dev, MD	3.00%
Bhavna Balar, MD	3.00%
Myrta Daniel, MD	3.00%

All of the aforementioned proposed members were subject to Character and Competence Review. Each of the proposed Class A physician members are board-certified gastroenterologists. The proposed Class B members are also members of Physicians Endoscopy, LLC, who will provide development and administrative services to the Center. The proposed Class C member, Bronx-Lebanon Special Care Center, Inc., is a New York not-for-profit corporation. The proposed Class D member, Harrison Circle Development Corp., is a New York business corporation. HCDC's sole shareholder is Morris Heights Senior Housing Development Fund Company, Inc., a not-for-profit corporation whose sole, passive member is Morris Heights Health Center, Inc., a not-for-profit corporation and Federally Qualified Health Center (FQHC). The proposed Class E member, Advanced Endoscopy Center, LLC (AEC), is a New York limited liability company that operates an existing Article 28 FASC in Bronx County. The proposed Class F participating physician members are each board-certified gastroenterologists affiliated with Bronx-Lebanon Hospital Center.

Physicians Endoscopy, LLC (PELL), based in Jamison, Pennsylvania, owns, develops, manages and operates single-specialty endoscopic ambulatory surgery centers in partnership with practicing physicians



and hospitals. PELL will provide development and administrative consultation regarding the day-to-day operation 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.

*Dr. Reich disclosed a settled malpractice case. Dr. Herbsman disclosed three (3) settled malpractice cases. Dr. Isadore Gutwein and Dr. Sable each disclosed one (1) open/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.

*In October 2005, the Office of Mental Health (OMH) fined Morris Heights Health Center, Inc. \$40,000 for the establishment and operation of a mental health clinic and 7 satellites at various locations in Bronx County for a 14 year period without OMH's prior approval. Morris Heights Health Center requested an administrative hearing and ultimately entered into settlement negotiations resulting in a Stipulation of Settlement and \$20,000 fine.*

*In a Stipulation and Order dated November 19, 2007, Bronx-Lebanon Special Care Center, Inc. was fined \$2,000 for its breach of the minimum standard requirements related to Quality of Care: Accidents.*

*In a Stipulation and Order dated August 16, 2010, Bronx Lebanon Hospital Center was fined \$16,000 based on an investigation into the care rendered to a juvenile who was admitted for a left side hernia repair. A right repair was agreed to at "time out" but no hernia was found during surgery exposing the error.*

*In August 2011, the Department completed a survey at Bronx-Lebanon Highbridge-Woodcrest Center and issues a statement of deficiencies that the facility was not in substantial compliance with regulations which resulted in a denial of payment for new Medicare and Medicaid admissions during the period from August 26, 2011 through October 30, 2011.*

#### Integration with Community Resources

The Center plans to work closely with its patients to educate them regarding the availability of primary care services offered by local providers. The applicant will develop a formal outreach program directed at the local community, to include local physicians and other existing healthcare providers, particularly those who provide care to the underserved residents of the Center's primary service area. Patients will not be excluded based on ability to pay. Charity care will be provided and the Center will utilize a sliding fee scale for those who are uninsured or unable to pay. The Center plans on utilizing an electronic medical record (EMR) and would consider participating in a Regional Health Information Organization (RHIO) with the capability for clinical referral and event notification.

#### Recommendation

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

## Financial Analysis

### Total Project Cost and Financing

The total project costs for renovation & demolition, moveable equipment, and construction are estimated at \$3,918,239, broken down as follows:

Renovation & Demolition	\$1,921,774
Design Contingency	192,177
Construction Contingency	192,177
Architect/Engineering Fees	131,040
Other Fees	52,000
Moveable Equipment	1,304,521
Financing Costs	36,478
Interim Interest Expense	64,651
Application Fee	2,000
Additional Processing Fee	<u>21,421</u>
Total Project Costs	<u>\$3,918,239</u>

Project costs will be financed as follows:

Members' Equity	\$391,824
Bank Loan (six-year term, 5.5% interest)	<u>3,526,415</u>
Total	<u>\$3,918,239</u>

A letter of interest has been provided by Wells Fargo.

### Lease Rental Agreement

The applicant has submitted a letter of interest lease term sheet for the site to be occupied, the terms of which are summarized below:

Date Signed:	March 12, 2015
Premises:	Approx. 7,800 sq. ft. (architect to confirm measurement prior to lease execution) located at 57 West Burnside Avenue, Bronx, NY 10453
Landlord:	Morris Height Health Center, Inc.
Lessee:	Mid-Bronx Endoscopy Center, LLC
Term:	12 years, two (2) five-year renewal options
Rent:	\$312,000 per year (\$40.00 per square foot) with a 2% increase per year
Provisions:	Utilities and taxes

The applicant submitted an affidavit stating the lease agreement is an arm's length transaction, except as follows: Mid-Bronx Endoscopy Center, LLC and Morris Heights Health Center, Inc. have common ownership. It is noted that Morris Heights Health Center, Inc. is affiliated with HCDC, the proposed Class D member, in that Morris Heights Health Center, Inc. is the sole passive member of HCDC's sole shareholder, Morris Heights Senior Housing Development Fund Company, Inc.

The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the square foot rental rate.

## Development and Administrative Service Agreement

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

Date:	February 13, 2015
Facility:	Mid-Bronx Endoscopy Center, LLC
Contractor:	Physicians Endoscopy, L.L.C.
Development Services Provided:	Coordination and assistance with: legal formation, site selection, facility set up, oversee construction, recommend facility policies, recruit initial support staff plus train subject to company's approval, prepare applications and/or other documents for licenses & contracts, assist in financing and obtaining business insurance. Establish management & fiscal systems subject to company's approval.
Administrative Services Provided:	Oversight of annual budget development & reporting, administration, financial systems & procedures, accounts receivables & billing, purchasing & inventories, manage care services and operational assistances including complying with governmental regulations. Assist in review of non-professional employees and assist in follow-up services reasonably request by the company.
Billing and Collection Services:	Oversight of revenue cycle activities and collection process. Deposits into company lock box, withdrawal only for company third party payables. Schedule patients, registration of patients, daily review, billing/claim submission, payment posting, and accounts receivable follow-up and correspondence.
Development Fee:	\$126,000 in four installments of \$31,500 each (ending with first patient)
Administrative Fee:	\$120,000 (\$12,000 per month, beginning with first patient) fee will increase by 2% per year after the first year
Billing & Collection Fee:	First year at \$17 per procedure and \$34 per procedure after the first year
Administrative Term:	Seven years with automatic renewals, for an additional three years, effective on each anniversary date of the Expiration Date unless cancelled.

While Physicians Endoscopy, L.L.C. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility and control for the operations.

Proposed applicant Class B members Frank Principati, Barry Tanner and Karen Sablyak have common membership with the administrative service agreement provider.

## Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three, as summarized below:

<u>Revenues:</u>	<u>Year One</u>	<u>Year Three</u>
Commercial Fee For Service	\$803,071	\$819,134
Commercial Managed Care	267,691	273,044
Medicare Fee For Service	1,026,147	1,046,670
Medicare Managed Care	123,138	125,600
Medicaid Managed Care	<u>1,784,604</u>	<u>1,820,296</u>
Total Revenues	\$4,004,651	\$4,084,744
 <u>Expenses:</u>		
Operating	\$1,699,166	\$1,910,571
Capital	<u>956,853</u>	<u>905,795</u>
Total Expenses	\$2,656,019	\$2,816,366
Net Income	\$1,348,632	\$1,268,378

Total Visits	5,936	6,055
Total Cost Per Procedure	\$447.44	\$465.13

Utilization by payor source is as follows:

<u>Payor:</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Commercial Fee For Service	890	15%	908	15%
Commercial Managed Care	297	5%	303	5%
Medicare Fee For Service	1,484	25%	1,514	25%
Medicare Managed Care	178	3%	182	3%
Medicaid Managed Care	2,968	50%	3,027	50%
Charity Care	<u>119</u>	<u>2%</u>	<u>121</u>	<u>2%</u>
Total	5,936	100%	6,055	100%

The following is noted with respect to the submitted budget:

- Expenses were projected base on the number and mix of staff as determined by the experience of the participating physicians in providing and administering gastroenterology services. The applicant projects an increase in operating expenses by year three due to anticipated increased purchased services and additional staffing needs related to increased utilization.
- Revenues by payor are based on the experience of participating providers in their private medical practices and the expected collection rate of the FASC. Reimbursement rates are based on current and projected Federal and State government rates, with commercial payers reflecting regional adjustments.
- Utilization is projected based upon the current caseload of the eight participating physicians. All of the physicians have medical practices within the Center's service area and have provided letters of interest documenting the number of surgical procedures they currently perform and a commitment to perform the procedures at the FASC. All of the projected procedures are currently being done at Bronx-Lebanon Hospital Center or in the physicians' private, office-based practices.
- The applicant will implement a formal Charitable Care Program including, but not limited to, patient and community outreach and a partnership with Morris Heights Health Center, Inc., a Federally Qualified Health Center D&TC located in the Bronx.

The budget appears reasonable.

#### Capability and Feasibility

The total project cost of \$3,918,239 will be satisfied from \$391,824 in members' equity with the remaining \$3,526,415 provided through a bank loan at the above stated terms. Wells Fargo has provided a letter of interest.

Working capital requirements are estimated at \$469,394 based on two months of third year expenses. The applicant will provide \$286,338 from members' equity. The remaining will be satisfied through a five-year loan at 5.5% interest from Wells Fargo bank. BFA Attachment B is a summary of the net worth of the individual members, which shows sufficient liquid resources to meet both the project's equity and working capital requirements. BFA Attachments C through F are the member entities' 2014 certified financial statements, which show positive working capital and net assets sufficient to meet their share of the equity requirements.

BFA Attachment G is the pro-forma balance sheet for Mid-Bronx Endoscopy Center, LLC, which shows operations will start with \$678,162 in members' equity.

The submitted budget projects a net income of \$1,348,632 and \$1,268,378 during the first and third years of operations, respectively. Reimbursement rates based on current and projected Federal and State government rates. The budget appears reasonable.

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

Recommendation

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

## Supplemental Information

Below are presented summaries of responses by hospitals to letters from the Department asking for information on the impact of the proposed ambulatory surgery center (ASC) in their service areas. There follows a summary of the applicant's response to DOH's request for information on the proposed facility's volume of surgical cases, the sources of those cases, and on how staff will be recruited and retained by the ASC.

**Facility:** Jacobi Medical Center --- **No Response**  
1400 Pelham Bay Parkway  
South Bronx, New York 10461

**Facility:** Montefiore Medical Center  
Henry and Lucy Moses Division --- **No Response**  
111 East 210<sup>th</sup> Street  
Bronx, NY 10467

**Facility:** Bronx-Lebanon Hospital Center  
Concourse Division  
1650 Grand Concourse  
Bronx, NY 10457

Bronx-Lebanon responded that it had no objections to this project and saw no adverse impact for the hospital or the community it serves.

Supplemental Information from Applicant

**Need and Source of Cases:** The applicant states that all of the projected caseload will come from office-based procedures currently performed in the private office-based practices of the applicant physicians. The applicant also cites data showing a continued growth in Bronx County in the number of persons 45 years and older, which is the primary service group for colorectal cancer screening. The applicant also refers to the relatively low number of gastroenterologists and of other freestanding ASCs specializing in gastroenterology in Bronx County, a jurisdiction of over 1.3 million people. The applicant also plans to develop a formal outreach program directed to members of the local community, including local physicians.

**Staff Recruitment and Retention:** The applicant states that, to the greatest extent possible, the proposed ASC will utilize existing staff currently employed by the member physicians in their office-based practices. Recruitment of any additional staff members will come through accredited schools, newspaper advertisements, training programs, local recruiters and, if needed, job fairs. Competitive salaries and benefits and continuing education opportunities are expected to aid in the recruitment and retention of skilled employees, as are a positive work environment and flexible working hours. Employees will also be rewarded for hard work and efficiency in a manner that recognizes their individual contributions to the effective operation of the ASC.

**Office-Based Cases:** The applicant states that all of the projected surgical procedures for the proposed ASC are currently performed in the private, office-based practices of the applicant physicians, or are not currently being provided (i.e., the patients are unserved).

DOH Comment

The absence of any comments in opposition to this application from hospitals in the proposed service area provides no basis for reversal or modification of the recommendation for five-year, limited life approval of the proposed ASC based on public need, financial feasibility and operator character and competence.

## Attachments

BPN Attachment A	Map
BFA Attachment A	Proposed Members of Mid-Bronx Endoscopy Center, LLC
BFA Attachment B	Net Worth Summary, Proposed Members of Mid-Bronx Endoscopy Center, LLC
BFA Attachment C	Bronx-Lebanon Special Care, Inc. – The Bronx-Lebanon Highbridge Woodycrest Center 2013-2014 consolidated certified financial statement
BFA Attachment D	Morris Heights Health Center, Inc. and Subsidiaries June 2014 consolidated certified financial statement
BFA Attachment E	Advanced Endoscopy Center, LLC 2013-2014 certified financial statement
BFA Attachment F	Montefiore Medical Center Consolidated 2013-2014 certified financial statement
BFA Attachment G	Pro Forma Balance Sheet, Mid-Bronx Endoscopy Center, LLC



Project # 151258-E  
Suffolk Surgery Center, LLC

**Program:** Diagnostic and Treatment Center      **County:** Suffolk  
**Purpose:** Establishment      **Acknowledged:** June 3, 2015

Executive Summary

**Description**

Suffolk Surgery Center, LLC (SSC), an existing Article 28 Diagnostic and Treatment Center (D&TC) located at 1500 William Floyd Parkway, Shirley (Suffolk County), requests approval to add North Shore-LIJ Multispecialty Ventures, LLC as a 70% member. The D&TC is certified as a multi-specialty freestanding ambulatory surgery center (FASC). There will be no change in services as a result of this proposed change in ownership.

The current and proposed ownership interest in SSC are as follows:

<u>Members:</u>	<u>Current</u>	<u>Proposed</u>
*John Passarelli, MD	39.62%	7.0%
*Timothy Groth, MD	17.67%	4.0%
*Brian McGuiness, MD	14.32%	4.0%
*Pamela Weber, MD	13.37%	4.0%
*Dhiren Mehta, MD	6.68%	4.0%
*Masoon Qadeer, MD	3.34%	2.0%
Aaron Avni, MD	2.00%	2.0%
Frank Sconzo, MD	1.00%	1.0%
Paul Choinski, MD	2.00%	2.0%
North Shore-LIJ Multispecialty Ventures, LLC	0.00%	70.0%
<b>Total</b>	<b>100.00%</b>	<b>100.0%</b>

\* Physician members selling membership interest to North Shore-LIJ Multispecialty Ventures, LLC.

The sole member of North Shore-LIJ Multispecialty Ventures, LLC is North Shore

University Hospital, a 764-bed, voluntary not-for-profit, Article 28 hospital located at 300 Community Drive, Manhasset (Nassau County), New York. North Shore University Hospital is a member of, and co-operated by, North Shore-Long Island Jewish Health Care Inc.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no changes in services as a result of the proposed change in ownership.

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application and no budgeted incremental operating expenses or revenues.

North Shore-LIJ Multispecialty Ventures, LLC will purchase 70% ownership for \$7,615,000 via equity payable to the six physician members selling ownership interest based on the proportionate share of membership interest being conveyed.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed Administrative Services Agreement (ASA) acceptable to the Department. [HSP]
2. Submission of an updated and fully completed Schedule 1, acceptable to the Department. [CSL]
3. Submission of an updated and fully completed Schedule 3, acceptable to the Department. [CSL]
4. Submission of a photocopy of the fully executed Certificate of Amendment of the Articles of Organization of Suffolk Surgery Center, LLC, acceptable to the Department. [CSL]
5. Submission of a photocopy of the fully executed Landlord's Consent and Estoppel Certificate, acceptable to the Department. [CSL]
6. Submission of a photocopy of the fully executed Assignment and Assumption of Membership Interest, acceptable to the Department. [CSL]
7. Submission of a legible copy of the Agreement of Lease between AMCare Realty, LLC and Long Island Eye Surgery Center, dated June 19, 1998, acceptable to the Department. [CSL]
8. Submission of a photocopy of the full executed Amended and Restated Operating Agreement of the Suffolk Surgery Center, LLC. [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

**October 8, 2015**



## Need Analysis

### Project Description

Suffolk Surgery Center, LLC, an existing multi-specialty ambulatory surgery center, requests approval for the transfer of 70% membership interest to North-Shore-LIJ Multispecialty Ventures, LLC. The center is located at 1500 William Floyd Parkway, Shirley, 11967, in Suffolk County.

### Background and Analysis

Suffolk Surgery Center, LLC has been providing multi-specialty surgery services to the residents of Suffolk County since 2004. The center provided a total of 17,232 procedures in 2012, 12,902 procedures in 2013. (Source: AHCF cost reports).

### Conclusion

There will be no change in services as a result of the proposed change in ownership.

### Recommendation

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

## Program Analysis

### Program Description

Suffolk Surgery Center, LLC, an existing Article 28 Diagnostic and Treatment Center certified as a multi-specialty ambulatory surgery center located at 1500 William Floyd Parkway in Shirley (Suffolk County) requests approval to add North Shore-LIJ Multispecialty Ventures, LLC as a 70% member of the Center.

The Center is not proposing to add any services, expand or renovate the facility or change anything about the Center (other than its ownership structure). Internist Dhiren C. Mehta, M.D. will serve as the Center's Medical Director.

### Character and Competence

The table below illustrates the current and proposed ownership structure of Suffolk Surgery Center.

<b>Member Name</b>	<b>Current Membership Interest</b>	<b>Membership Interest Proposed</b>
*John Passarelli, MD	39.62%	7.00%
*Timothy Groth, MD	17.67%	4.00%
*Brian McGuinness, MD	14.32%	4.00%
*Pamela Weber, MD	13.37%	4.00%
*Dhiren Mehta, MD	6.68%	4.00%
*Masoom Qadeer, MD	3.34%	2.00%
*Aaron Avni, MD	2.00%	2.00%
*Frank Sconzo, MD	1.00%	1.00%
*Paul Choinski, MD	2.00%	2.00%
North Shore LIJ Multispecialty Ventures, LLC		70.0%
Managers: Dennis Dowling Laurence A. Kraemer, Esq. John McGovern		

*\*Not subject to a Character and Competence Review for this project.*

The sole member of North Shore-LIJ Multispecialty Ventures, LLC, is North Shore University Hospital (NSUH), a voluntary, not-for-profit hospital located at 300 Community Drive in Manhasset (Nassau County). NSUH is the sole member of North Shore-Long Island Jewish Health Care Inc. and a member of North Shore-Long Island Jewish Health System (NSLIJHS).

The Board of Trustees for NSLIJHS is comprised of 131 members, all of whom were subject to Character and Competence review.

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

*Mr. Michael Ashner disclosed two settled civil legal matters involving allegations of breach of fiduciary duty, abuse of control, mismanagement, waste of corporate assets and unjust enrichment on the part of the board.*

*Mr. Alan Chopp disclosed affiliation with several long-term care health facilities, some of which had been subjected to enforcement actions. In Stipulation and Orders (S&Os) dated April 21, 2009 and July 16, 2009, the Department cited Avalon Gardens Rehabilitation and fined the facility a total of \$6,000 for Quality of Care issues. On September 29, 2005, June 13, 2007, and December 16, 2011, S&Os were issued to Bayview Nursing & Rehabilitation Center and the facility was fined a total of \$19,000 for problems with Comprehensive Care Plans, and Quality of Life/Quality of Care issues. Civil money penalties (CMPs) were collected in the amount of \$74,658.64 and a Denial of Payment for new admissions was imposed between November 24, 2004 and January 10, 2005. Four S&Os (dated June 12, 2007, June 1, 2009, December 6, 2010, and May 24, 2011) revealed the Hamptons Center for Rehabilitation and Nursing had been cited several times by the Department for issues related to Quality of Care, Administration and Facility Practices and CMPs totaling \$13,353 were collected.*

*Mr. Epstein disclosed that the Jewish Board of Family and Children's Services with which he is affiliated had recently entered into a settlement with the NY Office of Medicaid Inspector General to reconcile excess payments received relative to Office of Mental Health's reimbursement methodology.*

*Mr. Richard Goldstein disclosed that he had been both a director and shareholder of corporation which filed for bankruptcy protection in 2009 then subsequently sold their assets.*

*Mr. Hiltz disclosed that, as a registered broker dealer, his firm is regulated by NASD and FINRA and is subject to regular examinations. On two occasions, the firm agreed to the imposition of regulatory fines (each under \$5,000) for routine business claims rather than pursue a dispute resolution process.*

*Mr. Richard Horowitz disclosed that he had been named as a defendant (among other Members of the Board of Trustees and employees of the Children's Medical Fund (CMF)) in a pending lawsuit filed by an individual for employment discrimination and sexual harassment. Mr. Horowicz stated he has no personal involvement and is named by virtue of his professional association with CMF.*

*Mr. Seth Horowitz disclosed that, in June 2012, a company he is affiliated with entered into a settlement with the Securities and Exchange Commission (SEC) and agreed to a Consent Judgment to settle the civil action filed by the SEC.*

*Mr. Charles Merinoff disclosed that he had been named in an employment action involving a company that he was affiliated with in 2009. The matter was settled at arbitration in July 2012.*

*Dr. Peress disclosed one open malpractice case pending trial in Putnam County.*

*Mr. Ranieri disclosed that a company with which he was affiliated had entered into a settlement agreement in March 2013 with the SEC for failure to adequately oversee a third party's activities in 2008 related to marketing a particular fund.*

*Mr. Rosenthal disclosed that, in 2005, a shareholder lawsuit involving governance issues was brought against a company with which he was affiliated and all Directors were sued. The matter was subsequently settled.*

*Mr. Sahn disclosed a settled malpractice action that had been initiated in 2012 against a firm in which he was a Senior Partner.*

*Ms. Schlissel disclosed one pending and two settled civil legal matters related to unpaid legal fees involving the law firm in which she is a Managing Attorney.*

#### Compliance with Applicable Codes, Rules and Regulations

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

*In a Stipulation and Order (S&O) dated October 16, 2006, Southside Hospital was fined \$14,000 when a complaint investigation revealed a physician performed a right ovarian cystectomy on a patient who was admitted and signed consent for removal of a large dermoid cyst on her left ovary.*

*In an S&O dated December 8, 2006, Forest Hills Hospital was fined \$12,000 after an investigation revealed that surgery was performed on the patient's right side although the patient entered the hospital for hernia repair on the left side.*

*In an S&O dated February 6, 2007, Staten Island University Hospital was fined \$8,000 based on the investigation of a patient admitted for a left sided mediastinotomy (insertion of a tube into the chest). The procedure was begun on the right side of the chest and an anesthesiologist noticed the error ten minutes into the procedure. In another S&O dated July 23, 2007, the hospital was fined \$12,000 due to an overdose of a controlled substance which caused a patient's death. Nursing administered a drug at a higher rate than was ordered and continued administration even after the medication had been discontinued by a surgical resident.*

*In September 2008, Staten Island University Hospital (SIUH) entered into a settlement with the U.S. Attorney's Office, the Office of the Inspector General of the Department of Health and Human Services, and the Attorney General's Office of the State of New York and agreed to pay a monetary settlement of \$76.4M to the federal government and \$12.4M to the state and enter into a 5-year Corporate Integrity Agreement. The settlement covered payments related to stereotactic radiosurgery treatments; provision of detoxification services above licensed capacity; SIUH's graduate medical education program; and the provision of inpatient psychiatric services above licensed capacity.*

*In an S&O dated December 11, 2008, North Shore University Hospital- Manhasset was fined \$18,000 based on post-operative care rendered to an elderly patient. Following surgery for an aneurysm, the patient developed multiple decubiti, fell out of bed resulting in a dislocated femur and developed renal failure. It was determined that follow-up care was delayed or inadequate.*

*In an S&O dated July 8, 2010, Syosset Hospital was fined \$42,000 based an investigation of the care a child received related to an adenotonsillectomy. The patient was improperly cleared for surgery and, despite multiple comorbidities, was not kept for observation post-operatively. The patient expired after discharge.*

*In September 2010, North Shore-Long Island Jewish Health System settled claims without a finding or admission of fraud, liability or other wrongdoing relative to a qui tam lawsuit filed under the civil False Claims Act by a private whistleblower and investigated by the U.S. Attorney's Office. The \$2.95M settlement covered a 10-year period and primarily related to isolated errors in various cost reports rather than the allegations.*

*In November 2010, Civil Investigative Demands (CIDs) for documents, interviews and other information relating to North Shore University Hospital's clinical documentation improvement program were issued by the US Attorney's Office for the Southern District. The Health System complied, however, to date, there have been no specific demands for repayment or findings of liability in this matter.*

*In December 2010, the Civil Division of The United States Department of Justice (DOJ) requested the Health System execute a one-year tolling agreement to provide the government time to review claims for payment of implantable cardioverter defibrillators (ICDs) and related services for which Medicare does not cover. The Health System has executed eight extensions to the initial tolling agreement. When the government's review is complete, it may seek repayment of any claims that were not proper as determined by its resolution model.*

*In October 2011, the US Attorney's Office for the Western District of New York initiated a review of Southside Hospital's inpatient admissions for atherectomy procedures. And, in June 2012, the US Attorney's Office for the Eastern District of New York subpoenaed documentation relating to services rendered at Staten Island University Hospital's inpatient specialized burn unit. To date, the government has not indicated whether there is any potential liability in either matter.*

*In October 2012, a Program Integrity Contractor acting on behalf of the Centers for Medicare & Medicaid Services (CMS) reviewed 33 inpatient cardiac stent claims for 25 Medicare patients that had been submitted by Lenox Hill Hospital (LHH) between October 2007 and December 2010. The Contractor determined that, for many of the cases reviewed, documentation did not support inpatient admission and/or the medical necessity of the of the cardiac stent procedure and requested that LHH undertake a self-audit and voluntary disclosure. While the Contractor agreed with LHH's conclusions regarding many of the cases submitted, a demand for payment was issued with respect to those disallowed. LHH is appealing those claims through the administrative review process.*

#### Conclusion

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

#### Recommendation

**From a programmatic perspective, contingent 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.

### Membership Interest Purchase Agreement

The applicant has submitted an executed membership interest purchase agreement for the change of 70% membership interest in SSC, the terms of which are summarized below:

Date:	April 9, 2015
Purpose:	The sale of 70% membership interests of Suffolk Surgery Center, LLC
Sellers:	*Six Physician Members of Suffolk Surgery Center, LLC (noted below)
Purchaser:	North Shore-LIJ Multispecialty Ventures, LLC
Purchase Price:	\$7,615,000
Payment of Purchase Price:	\$50,000 deposit paid and held in escrow. \$7,565,000 to be paid at closing.

The proposed new member will purchase membership into SSC with equity, payable to the physician sellers per the conveyance of membership interests and purchase price agreement as follows:

Physician Members:	Current Interest % Owned	Interest % Being Conveyed To Purchaser	Purchase Price
*John Passarelli, M.D.	39.62%	32.62%	\$3,548,590.10
*Timothy Groth, M.D.	17.67%	13.67%	\$1,487,100.71
*Brian McGuiness, M.D.	14.32%	10.32%	\$1,122,668.57
*Pamela Weber, M.D.	13.37%	9.37%	\$1,019,322.14
*Dhiren Mehta, M.D.	6.68%	2.68%	\$291,545.60
*Masoom Qadeer, M.D.	3.34%	1.34%	\$145,772.88
Aaron Avni, M.D.	2.00%	0.00%	\$0.00
Frank Sconzo, M.D.	1.00%	0.00%	\$0.00
Paul Choinski, M.D.	2.00%	0.00%	\$0.00
Total	100.00%	70.00%	\$7,615,000.00

\* Physician members selling membership interest.

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

### Capability and Feasibility

There are no project costs associated with this application.

North Shore-LIJ Multispecialty Ventures, LLC's sole member is North Shore University Hospital. BFA Attachment A presents the 2014 financial statements and financial summary for North Shore University Hospital. As shown, the entity had positive net assets, positive working capital position, and an excess of revenue over operating expenses of \$66,841,000 for 2014, which indicates the availability of sufficient funds.

BFA Attachment B provides the 2013 and 2014 certified financial statements of Suffolk Surgery Center, LLC and a summary of their internal financial statements as of June 30, 2015. As shown, the entity maintained positive working capital and positive members' equity, and achieved an average net income of \$1,771,770 for the 2013 to 2014 audited period.

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

Recommendation

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

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## Attachments

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- BFA Attachment A 2014 Financial Statements & Summary for North Shore University Hospital
- BFA Attachment B 2013 & 2014 Certified and June 30, 2015 Internal Financial Statements & Summary for Suffolk Surgery Center, LLC
- BFA Attachment C Organizational Chart after proposed member change



**Project # 151288-B**  
**Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser  
Center of the Capital Region**

**Program:** Diagnostic and Treatment Center    **County:** Albany  
**Purpose:** Establishment and Construction    **Acknowledged:** June 19, 2015

**Executive Summary**

**Description**

Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region, a New York limited liability company, is requesting to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be certified as a single-specialty, freestanding ambulatory surgery center specializing in ophthalmology. The D&TC will consist of approximately 6,773 square feet located in leased space in a single story building at 207 Troy-Schenectady Road, Latham (Albany County). The center will include seven pre-op/post-op bays, two operating rooms, a nurse's station and support areas.

The proposed members of Colonie ASC, LLC are Edward Wladis, M.D., (33.333%), Andrew Robinson, MD, (33.333%) and Robert Eden, MD (33.334%), all board certified ophthalmologists. All three physicians will maintain their private practices.

**OPCHSM Recommendation**

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

**Need Summary**

Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region

proposes to establish a single specialty ambulatory surgery center specializing in Ophthalmology services.

The number of projected procedures is 2,073 in Year 1, with Medicaid at 4.0% and charity care at 2.0%.

**Program Summary**

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

**Financial Summary**

Project costs are \$666,800 and will be met with \$86,800 from proposed members' equity and a \$580,000 bank loan at 5% interest over a five-year term.

Budget:	Revenues:	\$2,216,463
	Expenses:	<u>1,602,864</u>
	Gain:	\$613,599

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

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

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission by the governing body of the ambulatory surgery center of an Organizational Mission Statement which identifies, at a minimum, the populations and communities to be served by the center, including underserved populations (such as racial and ethnic minorities, women and handicapped persons) and the center's commitment to meet the health care needs of the community, including the provision of services to those in need regardless of ability to pay. The statement shall also include commitment to the development of policies and procedures to assure that charity care is available to those who cannot afford to pay. [RNR]
3. Submission of a signed agreement with an outside independent entity satisfactory to the Department to provide annual reports to DOH beginning in the second year of operation. These reports should include:
  - a. Data showing actual utilization including procedures;
  - b. Data showing breakdown of visits by payer source;
  - c. Data showing number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
  - d. Data showing number of emergency transfers to a hospital;
  - e. Data showing percentage of charity care provided; and
  - f. Number of nosocomial infections recorded during the year in question. [RNR]
4. Submission of a statement, acceptable to the Department, that the applicant will consider creating or entering into an integrated system of care that will reduce the fragmentation of the delivery system, provide coordinated care for patients, and reduce inappropriate utilization of services. The applicant will agree to submit a report to the Department beginning in the second year of operation and each year thereafter detailing these efforts and the results. [RNR]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of an executed bank loan commitment for equipment, acceptable to the Department of Health. [BFA]
7. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
8. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-03, including satisfactory responses to the following comments:
  - a. Please confirm that an infection isolation room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.
  - b. Please confirm that a Protective Environment room is provided in accord with the functional program and an Infection Control Risk Assessment (ICRA) as described in 2010 FGI.
  - c. Please confirm the provision of a refrigerator as part of the Medication Distribution Station, and locate on SHC drawings.
  - d. The Staff Toilets are labeled to indicate the provision of staff showers. Please indicate specific location and features of staff showers on SHC drawings.
  - e. Please confirm the provision of Patient Changing facilities in accord with 2010 FGI.
  - f. Please show specific location of soiled linen receptacles in the Soiled Workroom. [AER]



**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 contacting the Regional Office to complete the project. [AER]

Council Action Date

**October 8, 2015**

## Need Analysis

### Project Description

Colonie ASC, LLC d/b/a Specialty Eye Surgery and Laser Center of the Capital Region is seeking approval to establish and construct a freestanding ambulatory surgery center to provide single specialty Ophthalmology surgery services at 207 Troy-Schenectady Road, Latham, 12210, in Albany County.

### Analysis

The service area consists of the Capital District, which includes the counties of Albany, Rensselaer, Saratoga and Schenectady. The Capital District has a total of two freestanding multi-specialty ASCs and five freestanding single-specialty ASCs. The table below shows the number of patient visits at ambulatory surgery centers in the Capital District for 2013 & 2014 (Source: SPARCS-2015).

ASC Type	Name	County	Total Patients 2013	Total Patients 2014
Single	Albany Regional Eye Surgery Center	Albany	11,456	10,817
Single	Capital Region Ambulatory Surgery Center	Albany	8,983	9,282
Single	Executive Woods Ambulatory Surgery Center LLC	Albany	1,576	4,579
Multi	New England Laser & Cosmetic Surgery Center	Albany	943	900
Single	Saratoga-Schenectady Endoscopy Center, LLC	Saratoga	10,538	10,519
Multi	St. Peter's Surgery And Endoscopy Center	Albany	15,397	15,666
Single	The New York Eye Surgical Center (opened 7/31/13)	Saratoga	131	1,840
Total			49,024	53,603

For the Capital District, the total number of patient visits was 49,024 in 2013 and 53,603 in 2014. This represents a 9.3% year to year increase in the number of patients served by ambulatory surgery centers in the Capital District. For ophthalmology services, the total number of visits was 11,587 in 2013 and 12,657 in 2014. This represents a 9.2% year to year increase in the number of patients served by Ophthalmology ambulatory services in the Capital District.

The population of the four counties included in the Capital District in 2010 was 837,967. Per the Cornell Program on Applied Demographics (PAD) projection data, the population is estimated to grow by approximately 3% to 862,052 by 2020.

The number of projected procedures is 2,073 in Year 1 and 2,197 in Year 3. These projections are based on the current practices of participating surgeons. The table below shows the projected payor source utilization for Specialty Eye Surgery and Laser Center for Years 1 and 3.

Projections	Year 1	Year 1	Year 3	Year 3
Commercial Ins	1,182	57.0%	1,230	56.0%
Medicare	767	37.0%	813	37.0%
Medicaid	83	4.0%	110	5.0%
Charity Care	41	2.0%	44	2.0%
Total	2,073	100.0%	2,197	100.0%

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment.

### Conclusion

Approval of this project will expand the availability of ophthalmological surgery services in a regulated Article 28 setting to residents of the capital region.

### Recommendation

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

# Program Analysis

## Project Proposal

Establish and construct a freestanding single-specialty ambulatory surgery center for ophthalmology to be located at 207 Troy-Schenectady Road, Latham.

<b>Proposed Operator</b>	Colonie ASC, LLC
<b>Doing Business As</b>	Specialty Eye Surgery and Laser Center of the Capital Region
<b>Site Address</b>	207 Troy-Schenectady Road Latham, NY 12110 (Albany County)
<b>Surgical Specialties</b>	Single Specialty Ophthalmology
<b>Operating Rooms</b>	2 (one Class B and one Class C)
<b>Procedure Rooms</b>	0
<b>Hours of Operation</b>	Monday through Friday from 7:00 am to 3:00 pm (Extended as necessary to accommodate patient needs)
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	5.8 FTEs / 5.8 FTEs
<b>Medical Director(s)</b>	Edward Wladis, M.D.
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Albany Medical Center Hospital 9 miles / 17 minutes
<b>On-call service</b>	Patients will be provided with surgeon's service and will be directed to him/her or to another physician of the surgeon's specialty on call.

## Character and Competence

The members of Colonie ASC, LLC are:

<b>Member Name</b>	<b>Membership Interest</b>
Edward Wladis, MD	1/3
Andrew Robinson, MD	1/3
Robert Eden, MD	1/3

The members of the LLC are all practicing physicians with extensive experience in ophthalmology.

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.

## Integration with Community Resources

The Center will require their patients, whenever possible, to have a medical clearance appointment with a primary care physician prior to surgery and will encourage the establishment of a primary care physician relationship if one does not exist. The facility plans to reach out to primary care physicians and physician groups in its service area to facilitate the coordination of care for common patients. The Center will be utilizing electronic medical records. In addition, the Center would consider joining a Regional Health Information Organization or Health Information Exchange as well as becoming a part of any Accountable Care Organization or Medical Homes if one were to develop in its service area.

### 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. The Center intends to review the list acceptable procedures annually and as needed to determine the appropriateness of adding new procedures consistent with individual physician expertise.

### Recommendation

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

<h2>Financial Analysis</h2>
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### Lease Agreement

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

Date:	May 1, 2015
Premises:	6,773 square feet located at 207 Troy-Schenectady Rd., Latham, New York, 12110
Landlord:	Colonie Real Estate Holdings, LLC
Tenant:	Colonie ASC, LLC
Rental:	\$272,840 per year for the first ten years with a 2% increase thereafter.
Term:	15 years with two additional five-year renewals.
Provisions:	Lessee shall be responsible for real estate taxes, maintenance, insurance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between landlord and tenant. Colonie ASC, LLC has submitted letters from two New York real estate brokers attesting to the reasonableness of the rent.

### Total Project Cost and Financing

Total project cost for movable equipment is \$666,800, broken down as follows:

Other Fees (Consultants)	\$ 20,000
Movable Equipment	641,164
CON Application Fee	2,000
CON Processing Fee	<u>3,636</u>
<b>Total Project Cost</b>	<b>\$666,800</b>

Project costs will be financed by \$86,800 through proposed members' equity and the remaining \$580,000 will be provided as a loan from First Niagara Bank over a five-year term at 5.0% interest.

### Operating Budget

	Year One	Visits	Year Three	Visits
Revenues:				
Medicare	\$ 714,077	767	\$ 756,903	813
Medicaid	70,052	83	92,840	110
Commercial	1,304,928	1,182	1,357,920	1,230
Private Pay*	8,200	0	8,800	0
Charity Care	<u>0</u>	41	<u>0</u>	44
<b>Total Patient Revenues</b>	<b>\$2,097,257</b>		<b>\$2,216,463</b>	

Expenses:		
Operating	\$1,110,523	\$1,178,570
Rent	<u>401,073</u>	<u>424,294</u>
Total Expenses	\$1,511,596	\$1,602,864
Net Income	\$585,661	\$613,599
Visits	2,073	2,197
Cost/Visit	<u>\$729.18</u>	<u>\$729.57</u>

\*Private Pay Revenue represents a sliding fee scale based on the patient's eligibility under the financial assistance program and is the difference not covered under other carriers. Visits are represented within other revenue producing line items.

The slight increase in cost per visit in Year Three is due to a 1% increase in Medicaid utilization and a 1% decrease in commercial utilization.

Medicare reimbursement was based on the 2014 Medicare fee schedule which currently reimburses 58% of the Hospital Outpatient Department rate. Based on experience, the applicant estimated commercial reimbursement at around 118% of Medicare for ophthalmology cases, Medicaid Managed Care at around 90% of Medicare, and \$200 per case for charity (sliding/discounted fee schedule) cases.

Utilization by payor source during first and third years is broken down as follows:

	Year One	Year Three
Medicare Fee-For-Service	37.0%	37.0%
Medicaid Fee-For-Service	4.0%	5.0%
Commercial Fee-For-Service	57.0%	56.0%
Charity Care	2.0%	2.0%

Expense and utilization assumptions are based on historical experience of the physicians' private practices.

#### Capability and Feasibility

Project costs are \$666,800 and will be met with \$86,800 from proposed members' equity and a \$580,000 bank loan over five years at 5%. A bank letter of interest has been provided by First Niagara Bank.

Working capital requirements are estimated at \$267,144 based on two months of third year expenses and will be satisfied by a loan of \$130,000 from First Niagara Bank at 5% over a five-year term with the remaining \$137,144 from the proposed members' equity. BFA Attachment A is the net worth of the proposed members, which indicates the availability of sufficient funds for stated levels of equity. BFA Attachment B, the pro forma balance sheet for the applicant, indicates that the facility will initiate operations with net assets of \$223,944.

The submitted budget indicates the facility will generate net income of \$585,611 and \$613,599 in the first and third years, respectively. Revenues are based on prevailing reimbursement methodologies for FASC ophthalmology services.

Based on the preceding, and 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.**

## 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:** Albany Memorial Hospital --- **No Response**  
600 Northern Boulevard  
Albany, NY 12204

**Facility:** Albany Medical Center Hospital --- **No Response**  
43 New Scotland Avenue  
Albany, NY 12208

**Facility:** St. Peter's Health Partners --- **No Response**  
St. Peter's Hospital  
315 South Manning Blvd.  
Albany, NY 12208

**Facility:** St. Peter's Health Partners --- **No Response**  
St. Mary's Hospital  
1300 Massachusetts Avenue  
Troy, NY 12180

**Facility:** St. Peter's Health Partners  
Samaritan Hospital  
2215 Burdett Avenue  
Troy, NY 12180

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Inpatient	Ambulatory		
24% <sup>1</sup>	Inpatient 1,305	Ambulatory 3,928	Yes	Yes

The hospital opposes the application, stating that one of the three applicant surgeons performs approximately 700 procedures per year at the facility, which represents 12 percent of Samaritan's operating room volume and constitutes an annual contribution margin of \$625,000. The hospital states that the potential loss of the 700 cases would have a significant negative impact on Samaritan's financial performance. The hospital does not describe any specific community-oriented services that would be adversely affected by that development.

In 2014, St. Peter's Health Partners had current assets of \$447.9 million on current liabilities of \$176.7 million, for a ratio of 2.50. In 2014, St. Peter's Health Partners had revenues of \$1.185 billion on expenses of \$1.167 billion, for an operating gain of \$18 million. For its fiscal year ending 2015, Samaritan Hospital (combined with St. Mary's) shows and operating loss of \$2.1 million. Samaritan Hospital provided charity care in the amount of \$1,347,902 and \$4,102,485 for its fiscal years 2015 and 2014, respectively.

<sup>1</sup> Includes OR utilization at St. Mary's Hospital, which was merged with Samaritan in 2011.

Samaritan Hospital incurred expenditures for bad debt in the amount of \$9,770,924 and \$11,632,049 for fiscal years 2015 and 2014.

**Facility:** Ellis Hospital  
1101 Nott Street  
Schenectady, NY 12308

Current OR Use (% of capacity)	Surgery Cases		Amb. Surg. Cases by Applicant Physicians	Reserved OR Time for Applicant Physicians
	Inpatient Data not provided	Ambulatory Data not provided		
46% inpatient 55% ambulatory <sup>2</sup>			No	No

Although Ellis Hospital acknowledges that none of the applicant physicians currently operate at its facility, the hospital speculates that the ASC will pull volume from Ellis, resulting in a loss of revenue. The hospital also states that it currently has capacity for more surgical volume.

In 2012, Ellis Hospital had current assets of \$93.9 million on current liabilities of \$62.1 million, for a ratio of 1.5. In 2013, Ellis Hospital had current assets of \$97.7 million on current liabilities of \$60.4 million, for a ratio of 1.6. In 2012, Ellis Hospital had revenues of \$368.1 million on expenses of \$366.0 million, for an operating gain of \$2.1 million. In 2013, Ellis Hospital had revenues of \$380.6 million on expenses of \$378.3 million, for an operating gain of \$2.3 million. In 2013, Ellis incurred \$12.0 million in bad debt expense and \$11.3 million in charity care. In 2014, the hospital incurred \$8.5 million in bad debt expense and \$8.5 million in charity care.

Supplemental Information from Applicant

**Need and source of Cases:** The applicant states that the proposed ASC will provide ambulatory surgery services to patients of ophthalmologists on its medical staff who elect to use the facility to perform their outpatient surgeries; and that surgeries performed at the ASC would otherwise be performed at area hospitals. The applicant also expects that patients will prefer to have their surgeries performed at a new, convenient, patient-friendly, state-of-the-art ambulatory surgery center whose specialty is eye surgery, rather than in a hospital.

**Staff Recruitment and Retention:** The applicant states that employees will be recruited from accredited schools and training programs, as well as through advertisements in local newspapers and professional publications. The ASC plans to offer competitive salary and benefits and will maintain good resource and communication systems. In addition, the ASC will provide a positive work environment and flexible working hours.

**Office-Based Cases:** The applicant states that approximately 170 of the 2,073 procedures projected for the facility are currently performed in an office setting.

DOH Comment

Of the comments received from two area hospitals, Ellis Hospital stated that none of the physicians proposed to operate at the ASC currently practice at that facility. The Department therefore considers Ellis's comments regarding a possible adverse impact of the ASC on Ellis's revenues and operations to be entirely speculative. Although Samaritan Hospital documented a possible loss of revenues to the ASC, Samaritan is part of a larger system, St. Peter's Health Partners, whose revenues exceed \$1 billion and which has other robust financial indicators. Based on these considerations, the Department finds no basis for reversal or modification of the recommendation for limited life approval of the proposed ASC based on public need, financial feasibility and owner/operator character and competence.

<sup>2</sup> Main hospital and off-site facility combined

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## Attachments

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BPNR Attachment A  
BFA Attachment A  
BFA Attachment B

Map  
Net Worth of Proposed Members  
Pro Forma Balance Sheet, Colonie ASC, LLC





Project # 152036-E  
AGCNY East, LLC d/b/a Endoscopy Center of  
Central New York

**Program:** Diagnostic and Treatment Center    **County:** Onondaga  
**Purpose:** Establishment    **Acknowledged:** July 20, 2015

**Executive Summary**

**Description**

AGCNY East, LLC d/b/a Endoscopy Center of Central New York (AGCNY), a New York proprietary Article 28 Diagnostic and Treatment Center (D&TC) located at 4000 Medical Center Drive, Fayetteville (Onondaga County), New York, is requesting indefinite life. The D&TC is certified as a single-specialty freestanding ambulatory surgery center (FASC) specializing in gastroenterology procedures. The facility was approved by the Public Health Council with a five-year limited life under CON #092006 and began operation effective December 14, 2010. The FASC's initial five-year limited life will expire on December 14, 2015.

Upon approval of this project, Endoscopy Center of New York projects 4,946 visits in Year 1 and 5,047 visits in Year 3 with 4.0 % Medicaid visits and 1% percent charity care. There will be 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**

There are no project costs associated with this application.

**OPCHSM Recommendation  
Contingent Approval**

Budget:		Year One
	Revenues	\$2,820,000
	Expenses	<u>\$1,612,000</u>
	Net Income	\$1,208,000

**Need Summary**

Data submission by the applicant, as a contingency of CON 092006, is completed.

Based on CON 092006, Endoscopy Center of Central New York projected 4,052 procedures in Year 1 (2011) and 4,216 procedures in Year 3 (2013). Medicaid procedures were projected at four (4) percent and charity care was projected at two (2) percent. Based on the Annual Reports submitted by the applicant, the total number of procedures was 3,396 in Year 1 (2011) and 4,859 in Year 3 (2013). Actual charity care in Year 3 (2013) was 1.0 percent.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of an executed and completed facility lease agreement between Cedar Bay Properties, LLC and AGCNY East, LLC, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
3. Submission of a photocopy of the membership interest transfers and any additional transfer documents, which are acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed proposed operating agreement, which is acceptable to the Department. [CSL]
5. Submission of a statement from the applicant, acceptable to the Department, that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate. [CSL]
6. Submission of a photocopy of the consulting and administrative services agreement, acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 8, 2015**

## Need Analysis

### Project Description

AGCNY East, LLC d/b/a/ Endoscopy Center of Central New York, an existing Article 28 Diagnostic and Treatment Center certified as a single specialty ambulatory surgery center providing gastroenterology services, is requesting permission to convert to indefinite life following a five year limited life with an Operating Certificate dated December 14, 2010 to December 14, 2015. The facility is located at 4000 Medical Center Drive, Fayetteville, 13066, in Onondaga County.

### Analysis

The ASC's primary service area is Onondaga County. The table below provides information on projections and utilization for Years 1 and 3 based on CON 092006.

<b>CON 092006</b>	Projected Procedures	Projected Procedures	Actual Procedures Annual Reports	Actual Procedures Annual Reports
<b>Endoscopy Center</b>	Year 1 (2011)	Year 3 (2013)	Year 1 (2011)	Year 3 (2013)
Total	4,052	4,216	3,396	4,859

The table below shows projections by payor for CON 092006 and actual utilization for 2013.

<b>CON 092006 Projections</b>	Projected Year 3 (2013)	Actual (2013)
Medicaid FFS/MC	2.0%	3.5%
Medicare FFS/MC	22.1%	25.2%
Commercial FFS/MC	73.9%	70.0%
Charity Care	2.0%	.9%
Total	100%	100%

The table below shows actual utilization for 2014 and projections for Year 3 for this project.

<b>CON 152036 Projections</b>	Actual 2014	Projected 2018
Medicaid FFS/MC	3.8%	4.5%
Medicare FFS/ MC	26.9%	30.7%
Commercial FFS/MC	68.1%	63.9%
Charity Care	.9%	.9%
Total:	100%	100%

Since the passage of the Affordable Care Act, access to healthcare coverage has improved in New York State, which means fewer people in need of traditional Charity Care. Through February 2015, the number of uninsured individuals in Onondaga County has dropped from 41,600 before passage of the Affordable Care Act to approximately 5,000 (an 88% drop). Roughly 71% of these newly insured people have been enrolled in Medicaid plans. The likelihood of obtaining a significant volume of charity care cases has been severely diminished in light of this development.

In its effort to provide charity care, the center has taken the following actions:

- Established contracts with three Medicaid managed care plans.
- One of the center's physician's volunteers one day a month at Assumption Church's Portello Health Center (staffed by volunteers and provides free medical care to the uninsured).
- The center receives Medicaid referrals from Syracuse Community Health Center (an FQHC) and has scheduled meetings to increase GI referrals and to participate in a Medicaid managed care plan associated with this FQHC.

Endoscopy Center of Central New York is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

## Conclusion

Because the number of uninsured individuals has dropped by 88 percent in AGCNY's service area, the facility's attainment of a level of charity care that is still nearly one-half of its original target, together with a level of services to Medicaid clients that has reached nearly twice the ASC's original target for that population, indicate that AGCNY has made a reasonable and sustained effort to extend services to the underserved in the Onondaga County area. Therefore, certification for indefinite life should be granted.

## Recommendation

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

# Program Analysis

## Program Proposal

AGCNY East, LLC, d/b/a/ Endoscopy Center of Central New York, an existing Article 28 Diagnostic and Treatment Center certified as a single specialty (gastroenterology) ambulatory surgery center, located in Suite 308 of the Northeast Medical Building Condominium at 4000 Medical Center Drive in Fayetteville (Onondaga County), is requesting permission to convert to indefinite life following a five year conditional, limited life approval (approved under CON #092006).

The Center is not proposing to add any services, expand or renovate the facility. Staffing is expected to remain at current levels (14.1 FTEs) and Scott Edison, M.D. will serve as the Center's Medical Director.

## Compliance with Applicable Codes, Rules and Regulations

The medical staff will continue to ensure that procedures performed at the facility conform to generally accepted standards of practice and that privileges granted are within the physician's scope of practice and/or expertise. The facility's admissions policy will include anti-discrimination regarding age, race, creed, color, national origin, marital status, sex, sexual orientation, religion, disability, or source of payment. All procedures will be performed in accordance with all applicable federal and state codes, rules and regulations, including standards for credentialing, anesthesiology services, nursing, patient admission and discharge, a medical records system, emergency care, quality assurance and data requirements.

This facility has no outstanding Article 28 surveillance or enforcement actions and, based on the most recent surveillance information, is deemed to be currently operating in substantial compliance with all applicable State and Federal codes, rules and regulations. This determination was made based on a review of the files of the Department of Health, including all pertinent records and reports regarding the facility's enforcement history and the results of routine Article 28 surveys as well as investigations of reported incidents and complaints.

## Recommendation

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

## Financial Analysis

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the current year of operations and for year one subsequent to receiving permanent life, as shown below:

	<u>Current Year</u>	<u>Year One</u>
Revenues:		
Commercial Fee For Service	\$2,204,573	\$2,190,000
Medicare Fee For Service	\$460,800	\$521,000
Medicaid Managed Care	\$101,500	\$109,000
Private Pay	<u>\$7,300</u>	<u>\$0</u>
Total Revenues	\$2,774,173	\$2,820,000
Expenses:		
Operating	\$1,320,895	\$1,375,000
Capital	<u>231,027</u>	<u>237,000</u>
Total Expenses	\$1,551,922	\$1,612,000
Net Income or (Loss):	\$1,222,181	\$1,208,000
Utilization (cases):	4,832	4,946
Cost per case:	\$321.18	\$325.92

Projected utilization, revenues and expenses are based on current operating experience.

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

Payor Source	<u>Current Year</u>		<u>Year One</u>	
	<u>Cases</u>	<u>%</u>	<u>Cases</u>	<u>%</u>
Commercial Fee For Service	3,291	68.11%	3,234	65.39%
Medicare Fee For Service	1,302	26.95%	1,470	29.72%
Medicaid Managed Care	182	3.77%	196	3.96%
Private Pay	12	0.25%	0	0.00%
Charity Care	<u>45</u>	<u>0.93%</u>	<u>46</u>	<u>0.93%</u>
Total	4,832	100%	4,946	100%

Per AGCNY's establishment CON, Medicaid and charity care utilization were projected to be 2% and 2%, respectively, of total procedures in the first and third year of operation. As documented in AGCNY's SPARCS data submissions, the facility has experienced difficulty meeting their charity care projections to date. However, Medicaid utilization was 1.3% (2011), 2.6% (2012), 3.5% (2013) and 3.8% (2014) of their total caseload, exceeding their initial projections in all but 2011.

AGCNY indicated that they have adopted a formal Charity and Financial Assistance Program, inclusive of a sliding fee scale to patients without insurance coverage, and provisions are made for those who cannot afford services. Their current efforts to treat underserved populations include participating with three Medicaid managed care plans and volunteering one day per month at the Poverello Health Center in Syracuse to provide free colon cancer screenings and GI diagnostic services. This Franciscan Northside Ministries clinic offers free medical care to the uninsured and is staffed by volunteers.

Going forward, their strategy includes improved outreach efforts by the physician group practice, Associated Gastroenterologists of Central New York, PC (Associated Gastro) and increasing AGCNY's presence at the Poverello Health Center to obtain referrals. Associated Gastro has scheduled meetings with St Joseph's Hospital Health Center to discuss providing services at the hospital's Westside Clinic, and with Syracuse Community Health Center (SCHC), a Federally Qualified Health Center, to discuss referrals and participating in SCHC's affiliated Total Care Medicaid Managed Care Plan.

With these efforts, the applicant believes they can improve their service delivery to underserved populations and sustain these efforts into the future.

#### Capability and Feasibility

There are no project costs associated with this application.

AGCNY's submitted budget indicates a net income of \$1,208,000 in year one. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is Endoscopy Center of Central New York's 2012-2014 financial summary, which shows the FASC had an average positive working capital, an average positive equity position, and generated an average positive net income for each period.

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 2012-2014 Financial Summary of Endoscopy Center of Central New York



**Project # 151250-B  
LISH, Inc.**

**Program: Diagnostic and Treatment Center    County: Suffolk**  
**Purpose: Establishment and Construction    Acknowledged: June 1, 2015**

**Executive Summary**

**Description**

This CON amends and supersedes CON #142031, which was approved by the PHHPC in October 2014. Subsequent to approval, United Cerebral Palsy of Nassau County, Inc. withdrew from the project. Per this amended application, LISH, Inc. (LISH), a newly formed New York State not-for-profit corporation, requests approval to establish an Article 28 diagnostic and treatment center (D&TC) and five extension clinics in Suffolk County. The main clinic site and five extension clinics will be located at:

- Main Site: 159 Carleton Avenue, Central Islip;
- LISH at the Family Wellness Center: 120 Plant Street, Hauppauge;
- LISH at Smithtown: Landing Meadow Road, Smithtown;
- LISH at Manorville: 221 North Sunrise Highway Service Road, Manorville;
- LISH at Port Jefferson Station: 51-33 Terryville Road, Port Jefferson Station; and
- LISH at Riverhead: 883 E. Main Street, Riverhead.

All of the clinic sites are currently operated as Article 28 facilities by one of the following three human service agencies: Developmental Disabilities Institute, Inc. (DDI), Family Residences and Essential Enterprises, Inc. (FREE), and United Cerebral Palsy of Greater Suffolk, Inc. (UCP Suffolk). The entities provide primary and specialty medical and dental services at their respective clinics, and are joining together to form LISH to ensure the long-term financial sustainability of the health care services they provide to the at-risk populations they serve. The intent is to increase access to

care, achieve efficiencies by placing currently fragmented operations under one comprehensive network, and effectuate positive net financial impact on the three human services organizations. LISH will serve all underserved populations throughout Long Island, with a primary focus on patients with developmental disabilities.

Upon approval of this CON, LISH intends to change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare (HRHCare), a Federally Qualified Health Center (FQHC) that has a network of twenty-two health centers serving ten counties in the Hudson Valley and Long Island regions. HRHCare has provided a letter of interest in support of LISH becoming a FQHC sub-grantee.

**OPCHSM Recommendation  
Contingent Approval**

**Need Summary**

LISH proposes to serve all underserved populations throughout Long Island, but its primary focus will be on serving patients with developmental disabilities (DD).

The number of projected visits for all sites combined is 62,074 in Year 1, of which 38 percent are expected to be primary care visits.

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 \$840,649 will be met via cash through a subvention agreement between LISH and: DDI for \$275,839.33, FREE for \$237,961.33, and UCP Suffolk for \$326,848.34.

Budget:	Revenues	\$13,623,002
	Expenses	<u>\$12,749,849</u>
	Net Income	\$873,153



## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSECON. [PMU]
2. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital for each of the six (6) sites. [HSP]
3. Submission of an executed acquisition agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed subvention agreement/certificate, acceptable to the Department of Health, between LISH, Inc. and Developmental Disabilities Institute, Inc., Family Residences and Essential Enterprises, Inc. and United Cerebral Palsy of Greater Suffolk, Inc. [BFA]
5. Submission of the executed building lease agreements for the Central Islip, Port Jefferson Station, Smithtown, Manorville, Riverhead, and Hauppauge LISH sites, acceptable to the Department of Health. [BFA]
6. Submission of an executed FQHC sub-grantee agreement between Hudson River HealthCare, Inc. and LISH, Inc. [BFA]
7. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and United Cerebral Palsy Association of Greater Suffolk, Inc., acceptable to the Department. [CSL]
8. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Family Residence and Essential Enterprises, Inc., acceptable to the Department. [CSL]
9. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Independent Group Home Living, Inc., acceptable to the Department. [CSL]
10. Submission of a photocopy of an executed, completed and legible facility lease agreement between LISH, Inc. and Mayhaven Center of Hope, Inc., acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed and completed facility sublease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]
12. Submission of a photocopy of an executed and completed facility lease agreement between LISH, Inc. and Developmental Disabilities Institute, Inc., acceptable to the Department. [CSL]
13. Submission of a photocopy of the applicant's executed Restated Certificate of Incorporation of LISH, Inc., acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's executed and completed by-laws, which are acceptable to the Department. [CSL]

**Approval conditional upon:**

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. Submission of documentation of receipt of Health Resources and Services Administration (HRSA) Section 330 Grant funding (as a sub-grantee), acceptable to the Department of Health. [BFA]
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]
7. The applicant is required to submit Final Construction Documents, as described in BAER Drawing Submission Guidelines DSG-05, for record purposes prior to the applicant's start of construction. [AES]
8. Construction must start on or before November 1, 2015 and construction must be completed by November 30, 2015, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AES]

Council Action Date

**October 8, 2015**

## Need Analysis

### Project Description

LISH, Inc. is requesting approval to establish a diagnostic and treatment center (D&TC) and five (5) extension clinics to serve Suffolk County. All sites are currently operated as Article 28 facilities by three different operators - three D&TC's and three extension clinics. The proposed location of the main site D&TC is 159 Carleton Avenue, Central Islip, 11722, in Suffolk County.

### Analysis

LISH will take over the operations of the sites, which are currently operated by three human services organizations, to provide primary and specialty medical care and dental services primarily to patients with developmental disabilities.

The table below identifies the service area for each site.

Proposed Sites	City	Zip Code	Service Area
D&TC Main Site: LISH at Central Islip-159 Carleton Avenue	Central Islip	11722	11722, 11716, 11717, 11752
Extension Clinic: LISH at the Family Wellness Center- 120 Plant Street	Hauppauge	11788	11788, 11725, 11749, 11779
Extension Clinic: LISH at Smithtown-Landing Meadow Road	Smithtown	11787	11787, 11754, 11767, 11780
Extension Clinic: LISH at Manorville-221 North Sunrise Hwy Service Road	Manorville	11941	11941, 11949, 11940, 11977, 11978
Extension Clinic: LISH at Port Jefferson Station-51-33 Terryville Road	Port Jefferson Stn.	11776	11776, 11720, 11733, 11766, 11777, 11784
Extension Clinic: LISH at Riverhead-883 E Main Street	Riverhead	11901	11901, 11792, 11933, 11948

Proposed services at the main site and the five extension clinics are Medical Services-Primary Care, Medical Services-Other Medical Specialties, and Dental Care O/P.

The number of projected visits for all sites combined is 62,074 in Year 1 and 65,217 in Year 3, 38 percent of which are primary care visits, as given below.

Type	Proposed Sites	Year 1		Year 3	
		Total Visits	% Primary Care	Total Visits	% Primary Care
Main Site	Central Islip	12,060	32.7%	12,671	32.7%
Ext. Clinic	Hauppauge-Fam Wellness Ctr	19,904	37.2%	20,912	37.2%
Ext. Clinic	Manorville	1,500	56.2%	1,577	56.2%
Ext. Clinic	Port Jefferson Station	3,430	49.4%	3,604	49.4%
Ext. Clinic	Riverhead	14,597	35.5%	15,335	35.5%
Ext. Clinic	Smithtown	10,583	42.2%	11,118	42.2%
	<b>Total Project</b>	<b>62,074</b>	<b>37.9%</b>	<b>65,217</b>	<b>37.9%</b>

### 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 2013 PQI rates for major condition categories such as acute conditions and respiratory, as well as the overall total. The rates are presented for the zip codes of the six sites combined in Suffolk County and for the entire State. All numbers represent hospital admissions per 100,000 adults. PQI rates are significantly higher for the Suffolk County sites than for the State as a whole.

<b>PQI Rates-2013</b>	<b>Suffolk County Sites<sup>1</sup></b>	<b>NYS</b>
All Acute	588	473
All Respiratory	378	312
Overall Total <sup>2</sup>	1,669	1,408

Source: NYSDOH-Health Data NY- PQI

<sup>1</sup> Suffolk County Sites Zip Codes: Main Site (11722) plus Five Extension Clinic Sites (11788, 11787, 11941, 11776, and 11901) Combined.

<sup>2</sup> Overall Total includes major condition categories such as acute conditions, circulatory, diabetes, and respiratory.

### Conclusion

The proposed project will reorganize these respective Article 28 clinics into a comprehensive network of community health centers, thereby increasing access to primary and specialty medical and dental care services for all underserved populations throughout Long Island. Its primary focus will be serving patients with developmental disabilities (DD).

### Recommendation

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

## Program Analysis

### Project Proposal

LISH, Inc., a newly-formed not-for-profit corporation, is submitting a project amendment seeking approval for the establishment of a diagnostic and treatment center (D&TC) and five extension clinic sites to be located throughout Suffolk County by taking over Article 28 sites operated by the three human services organizations (Developmental Disabilities Institute (DDI), Family Residences and Essential Enterprises, Inc. (FREE) and United Cerebral Palsy of Greater Suffolk, Inc. (UCP Suffolk)). LISH will provide primary and specialty medical and dental services primarily to the developmentally disabled.

LISH previously received contingent approval (under CON 142031) to establish a D&TC and six extension clinics throughout Nassau and Suffolk Counties. As part of that project, LISH was to have taken over four D&TCs and three extension clinics operated by four human service organizations, however, since the contingent approval, one of the agencies, United Cerebral Palsy of Nassau County (UCPN) has decided not to proceed with the three others in forming LISH.

By reorganizing their respective Article 28 clinic services into a comprehensive network of community health centers, the three entities believe they will increase access to primary and specialty medical and dental care, reduce the inefficiencies in fragmented services, achieve efficiencies of scale to ensure the long-term financial sustainability of the health services provided by LISH, and effectuate a positive net financial impact on the human services organizations, thereby preserving essential non-Article 28 developmental disability services (e.g., educational, residential, day habilitation and vocational services).

Construction is proposed for only two sites. The applicant does not anticipate any changes in hours or staffing from the current operators (other than the addition of centralized administrative staff to support the administrative, billing and IT functions of LISH). LISH will add hours and adjust staffing as volume and demand for services increases.

Upon approval, LISH, Inc. will change its name to Long Island Select Healthcare, Inc. and become a sub-grantee of Hudson River HealthCare, a Federally Qualified Health Center (FQHC).

The six sites to be operated by LISH (main D&TC site and five extension clinics) are:

<b>Proposed Name of Site</b>	<b>Address</b>	<b>Current Operator</b>	<b>PFI</b>	<b>County</b>
LISH at Central Islip (Main Site)	159 Carleton Ave. Central Islip NY 11722	United Cerebral Palsy Assoc. of Greater Suffolk, Inc.	914	Suffolk
LISH at Port Jefferson Station (Extension Clinic)	51-33 Terryville Rd. Port Jefferson Station, NY 11776	United Cerebral Palsy Assoc. of Greater Suffolk, Inc.	5718	Suffolk
LISH at the Family Wellness Center (Extension Clinic)	120 Plant St. Hauppauge, NY 11788	Family Residences and Essential Enterprises, Inc.	6240	Suffolk
LISH at Smithtown (Extension Clinic)	Landing Meadow Rd, Smithtown, NY 11787	Developmental Disabilities Institute, Inc.	4940	Suffolk
LISH at Manorville (Extension Clinic)	221 North Sunrise Highway Service Rd, Manorville, NY 11941	Developmental Disabilities Institute, Inc.	4864	Suffolk
LISH at Riverhead (Extension Clinic)	883 East Main St. Riverhead, NY 11901	Developmental Disabilities Institute, Inc.	4862	Suffolk

#### Character and Competence

The proposed board membership is:

<b>Name</b>	<b>Affiliation</b>
Robert Budd	Family Residences and Essential Enterprises, Inc.
John Lessard	Developmental Disabilities Institute, Inc.
Stephen Friedman	United Cerebral Palsy of Greater Suffolk, Inc.

Staff from the Division of Certification & Surveillance previously reviewed (under CON 142031), and verified under this project, the disclosure information of the LISH members, as well as the proposed Medical Director, Dr. James Powell, 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

### Acquisition Agreement

The change in ownership of the operations will be effectuated in accordance with the terms of the draft Acquisition Agreement, as summarized below:

Transferors:	DDI, FREE and UCP Suffolk
Transferee:	LISH, Inc.
Assets Transferred:	Article 28 D&TC operating certificates for DDI, FREE and UCP Suffolk
Assets Excluded:	None
Liabilities Assumed:	None
Purchase Price:	\$0

DDI, FREE and UCP Suffolk will surrender their respective Article 28 operating certificates when LISH receives all required approvals to become the operator of the D&TC clinics currently under their licensure.

### Total Project Cost and Financing

Total project cost for the renovation and demolition and acquisition of movable equipment for the entire project is estimated at \$840,649 broken down as follows:

Renovation & Demolition	\$21,789
Design Contingency	2,179
Construction Contingency	2,179
Movable Equipment	807,915
CON Fees	2,000
Additional Processing Fees	<u>4,587</u>
Total Project Cost	\$840,649

Subproject costs broken down by site are shown on BFA Attachment C.

Financing of the \$840,649 total project cost will be met via cash through a subvention agreement.

### Subvention Agreement

The applicant has provided a draft subvention agreement for the project cost of \$840,649 and the working capital of \$5,000,000 summarized as follows:

Date:	To be determined
Subvention Grantors:	DDI, FREE and UCP Suffolk
Subvention Grantee:	LISH, Inc.
Total Subvention Amounts:	\$840,649 total project cost and \$5,000,000 total working capital
Amount due from DDI	\$275,839.33 project cost and \$1,666,666.67 working capital
Amount due from FREE	\$237,961.33 project cost and \$1,666,666.67 working capital
Amount due from UCP Suffolk	\$326,848.34 project cost and \$1,666,666.66 working capital
Interest Charged:	0%

This agreement has no interest associated with it, and will be paid back to the Grantors only when the financial condition of LISH permits the required payment to be made without impairment of LISH's operations or injury to its creditors.

Lease Rental Agreements

The applicant has submitted draft leases for all of the sites. The terms of each lease are summarized below:

**LISH at Central Islip:**

Premises:	14,225 sq. ft. located at 159 Carleton Avenue, Central Islip, NY
Lessor:	UCP Suffolk
Lessee:	LISH, Inc.
Rental:	\$697,648 for year 1 with a 2.5% annual increase (\$49.04 per sq. ft.)
Term:	10 Years with (1) 10 year renewal term
Provisions:	Triple net, Non-arm's length

**LISH at the Family Wellness Center:**

Premises:	5,236 sq. ft. located at 120 Plant Street, Hauppauge, NY
Lessor:	FREE
Lessee:	LISH, Inc.
Rental:	\$138,764 for year 1 with a 2.5% annual increase (\$26.50 per sq. ft.)
Term:	10 Years with (1) 10 year renewal term
Provisions:	Triple Net, Non-arm's length

**LISH at Smithtown:**

Premises:	4,289 sq. ft. located at Landing Meadow Road, Smithtown, NY.
Lessor:	DDI
Lessee:	LISH, Inc.
Rental:	\$184,399 for year 1 with a 2.5% increase per year thereafter (\$42.99 per sq. ft.)
Term:	10 Years with (1) 10 year renewal term
Provisions:	Triple Net, Non-arm's length

**LISH at Manorville:**

Premises:	800 sq. ft. located at 221 North Sunrise Highway Service Road, Manorville, NY
Lessor:	Independent Group Home Living, Inc.
Lessee:	LISH, Inc.
Rental:	\$10,973 year one with a 2.5% annual increase (\$13.72 per sq. ft.)
Term:	5 year term, with (2) 5 year renewal terms
Provisions:	Triple Net, arm's length

**LISH at Port Jefferson Station:**

Premises:	1,200 sq. ft. located at 51-33 Terryville Road, Port Jefferson Station, NY
Lessor:	Mayhaven Center of Hope, Inc.
Lessee:	LISH, Inc.
Rental:	\$13,024 for year 1, original term of lease ends 12/31/15. Starting 1/1/16 the new annual rent is \$15,900 (\$13.25 per sq.ft.) with a 3.75% annual increase.
Term:	Original Assignment of Lease expires 12/31/15, the applicant provided a draft renewal option for an additional 5 years.
Provisions:	Triple Net, arm's length

**LISH at Riverhead:**

Premises:	8,672 sq. ft. located at 883 E. Main Street, Riverhead, NY
Lessor:	East Riverhead Equities
Lessee/Sublessor:	DDI
Sublessee:	LISH, Inc.
Rental:	\$494,220 for year 1 with a 2.5% annual increase (\$56.99 per sq. ft.)
Term:	Expires with Prime lease on 6/30/23
Provisions:	Triple Net, Non-arm's length

The applicant has provided confirmation that the leases with UCP Suffolk, FREE, and DDI will be pass through rates based on costs.

#### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues*	\$12,379,421	\$13,623,002
Expenses		
Operating	\$10,533,197	\$11,016,554
Capital	<u>\$1,678,354</u>	<u>\$1,733,295</u>
Total Expenses	\$12,211,551	\$12,749,849
 Excess of Revenues over Expenses	 \$167,870	 \$873,153
 Visits	 62,074	 65,217
Cost Per Visit	\$196.73	\$195.50

\*Revenues include: \$75,000 in HRSA Federal 330 Grant Funds (both years); \$176,501 in meaningful use incentives (both years); \$491,653 in 340B net revenue (year three); \$432,500 (year one) and \$454,396 (year three) in Non-Mental Health Therapy MCR/MCD Revenue; and \$404,312 in Other Revenue (both years).

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

	<u>Years One and Three</u>
Medicaid MC	25.80%
Medicare FFS	2.74%
Medicare MC	61.99%
Commercial FFS	2.84%
Private Pay/Other*	6.32%
Charity Care	.32%

\*Other consists of visits classified as Non-Mental Health. Related revenues are included as other operating revenue under the Non-MH Therapy MCR/MCD classification.

Charity care utilization is projected to be less than 2% through Year 3 as the clinics currently focus on the developmentally disabled population, nearly all of whom are covered by Medicaid or Medicare. Once the facility becomes a FQHC sub-grantee, they will expand to provide services to a broader array of patients including the general public. As a FQHC sub-grantee, the facility will see all types of patients regardless of their ability to pay and anticipates an increase in charity care visits.

Revenue, expense and utilization assumptions are based on the historical experience of the six currently operating Article 28 clinics sites, along with the experience of the three human service entities that operate the clinics.

BFA Attachment D provides the respective operating budgets for each of the D&TC locations.

#### Capability and Feasibility

The total project cost and the working capital will be provided by a subvention agreement from DDI, FREE, and UCP Suffolk for \$5,840,649 at the above stated terms. BFA Attachment B is the current certified financial statements for the three entities, which show sufficient resources to meet the project cost and working capital requirements.



Working capital requirements are estimated at \$2,124,975 based on two months of Year 3 expenses, which appear reasonable. The applicant has provided a draft subvention agreement for the working capital in the amount of \$5,000,000 at the above stated terms. The additional working capital provided through the subvention agreement is to minimize any cash flow concerns that may be encountered resulting from a delay in obtaining FQHC Medicaid rates due to the rate-setting process.

The submitted budget indicates a net income of \$167,870 and \$873,153 in Years 1 and 3 respectively, and assumes receipt of stated grant funds. Revenues are based on current reimbursement methodologies for FQHC diagnostic and treatment services. HRHCare has provided a letter of interest for LISH to become a sub-grantee and will submit a change in scope request on or about October 31, 2015, to add the LISH sites to its Federal scope of project. HRSA typically approves such changes in scope requests within approximately 120 days of submission of the request, at which point the LISH sites would be eligible for FQHC Medicaid rates. The D&TC is anticipated to go live on or about April 1, 2016, the same time that the FQHC sub-grantee recipient/change in scope of project approval is expected to be obtained. Hence, approvals will converge and the D&TC will never be operational without the FQHC rates. The budget appears reasonable.

BFA Attachment A is the pro forma balance sheet of LISH, Inc. as of the first day of operations, which indicates that the operations will begin with a breakeven members' equity.

BFA Attachment B is the 2012-2014 certified financial summaries of DDI, FREE and UCP Suffolk, which indicates that DDI and UCP Suffolk experienced an average positive working capital, maintained an average positive member's equity, and generated an average positive net income for the period. FREE experienced an average negative working capital position, maintained an average positive member's equity position and generated an average positive net income for the period. FREE's negative working capital in 2013 is a result of \$3.4 million in deferred revenue and recoveries, primarily due to the following:

- In July 2011, OPWDD issued a draft rate adjustment in FREE's Intermediate Care Facilities (ICF) program that was a reduction of about \$1.2 million per year. They were not able to get final approval on that rate until 2014, and have now begun to recover the overpayments. FREE deferred the revenue on its financial statements.
- In 2013 FREE received retroactive payments via its Medicaid rate to pay for day rehab services for ICF patients. Since New York State had previously paid FREE directly for this service, the rate adjustment was deferred pending recovery by the State. A recoupment of approximately \$1.2 million occurred in January and February 2014.

Subject to the noted contingencies and condition, 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 LISH, Inc.
BFA Attachment B	2012-2014 Certified financials for Developmental Disabilities Institute, Inc. and Affiliate, Family Residences & Essential Enterprises, Inc. and United Cerebral Palsy Association of Greater Suffolk, Inc.
BFA Attachment C	Site specific project costs
BFA Attachment D	Site specific budgets



**Project # 152015-B  
Community Health Initiatives, Inc.**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** July 13, 2015

**Executive Summary**

**Description**

Community Health Initiatives, Inc., a not-for-profit corporation, requests approval for the establishment and construction of an Article 28 diagnostic and treatment center (D&TC) to be located at 2882 West 15th Street, Brooklyn (Kings County). The applicant is currently a Federally Qualified Health Center and Health Resources Services Administration (HRSA) funded New Access Point (NAP) facility seeking to convert from a physician shared practice operation to a not-for-profit Article 28 D&TC. The Center will provide comprehensive primary care services in federally designated Medically Underserved Areas of the Coney Island section of Kings County. The proposed D&TC's service area is also a federally designated Health Professional Shortage Area (HPSA) and the Article 28 D&TC will increase the HPSA's physician capacity from 3.1 FTEs to 4.8 FTEs.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

Community Health Initiative, Inc. proposes to establish an Article 28 Diagnostic and Treatment

Center in Kings County. Proposed services to be provided are: Medical Services - Primary Care and Medical Services - Other Medical Specialties. The number of projected visits is 5,600 for Year 1.

**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 \$278,725 will be met as follows: contributed equipment of \$101,232 and a promissory note of \$177,493 at an interest rate of 10% for a ten-year term.

**Budget:**

Revenues	\$3,694,940
Expenses	<u>\$3,651,711</u>
Excess of Revenues over Expenses	\$43,229

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of the executed Certificate of Incorporation of Community Health Initiatives, Inc. acceptable to the Department. [CSL]
4. Submission of the Lease Agreement between 2882 West 15th Street LLC, ("Landlord"), and Community Health Initiatives Inc., the "tenant", 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 Bureau of Architecture and Engineering Review (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. Construction must start on or before November 1, 2015 and construction must be completed by January 15, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval to any changes to the start and completion dates. [AER]

Council Action Date

**October 8, 2015**

# Need Analysis

## Background and Analysis

The service area includes Coney Island, located in southwestern Kings County.

Areas of Kings County that are designated Health Care Professional Shortage Areas and Medically Underserved Areas/Populations are as follows (Source – HRSA):

Health Care Professional Shortage Areas for Primary Care Services:

- Medicaid Eligible – Coney Island/Gravesend

Medically Underserved Area:

- Kings Service Area

The number of projected visits is 5,600 for Year 1 and 10,500 for Year 3.

## 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 the major condition categories such as acute, circulatory, diabetes, and respiratory for zip code 11224 and for New York State. All of the rates for major categories of these conditions are significantly higher for the service area than those rates for New York State.

PQI Rates: Hospital Admissions per 100,000 Adults	Service Area	New York State
All <sup>1</sup>	2,267	1,408
All Acute	781	473
All Circulatory	812	401
All Diabetes	466	223
All Respiratory	608	312

Source: DOH Health Data, 2015

<sup>1</sup> Due to Rounding, individual conditions may not sum to total

The applicant is committed to serving all persons in need without regard to ability to pay or source of the payment.

## Conclusion

Approval of this project will provide continued access to primary care services and specialty medical services to Coney Island and the surrounding communities of Kings County.

## Recommendation

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

## Program Analysis

### Project Proposal

Community Health Initiatives, Inc. (CHI), a Federally Qualified Health Center (FQHC) and New Access Point entity, seeks to establish and construct a Diagnostic and Treatment Center at 2882 West 15th Street in Brooklyn (Kings County).

Community Health Initiatives, Inc. is converting from a private two-physician shared practice (Drs. Yuri Birbrayer and James Peri) to a non-profit D&TC that will provide comprehensive primary care services in medically underserved areas of Coney Island. Specifically, CHI aims to develop a patient-centered model of integrated care within a culturally and linguistically competent service environment by a primary care focus on acute, chronic, and rehabilitative treatment to address the physical and mental health needs of Coney Island residents.

<b>Proposed Operator</b>	Community Health Initiatives, Inc.
<b>Site Address</b>	2882 West 15th Street, Lower Level Brooklyn, NY 11224 (Kings County)
<b>Services</b>	Medical Services – Primary Care Medical Services – Other Medical Specialties
<b>Hours of Operation</b>	Monday through Friday from 9 am to 7 pm and Saturday from 10 am to 2 pm
<b>Staffing (1st Year / 3rd Year)</b>	34.0 FTEs / 43.0 FTEs
<b>Medical Director(s)</b>	Edouard J. Hazel, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Will be provided by Maimonides Medical Center 6.1 miles / 20 minutes away

### Character and Competence

The proposed Board of Directors for Community Health Initiatives is a consumer-majority Governing Board comprised of the following individuals:

<b><u>Name</u></b>	<b><u>Position</u></b>
Alex Movshovich	Executive Director (Ex-Officio)
Shirley Aikens	Chairperson
Julia Daniely	Treasurer
Joanne Kennedy	Secretary
Diana Felix	Board Member
Vickey Vanet	Board Member
Latasha Sutton	Board Member
Michael Kaplan	Board Member
James Malloy	Board Member
Timeka Garrison	Board Member

Mr. Movshovich holds a degree in business management with a concentration in finance. He is a health care administrator/consultant with over seven years of management experience. Currently he manages eight physicians in the proposed service area. He was involved in the development and subsequent operation of Advance Operations, designing a service model that utilized community resources to promote early medical intervention efforts. Mr. Movshovich is guiding the transformation of Advance Operations from a physician management service model to a Federally Qualified Health Center.

Ms. Aikens is retired and currently serves on the board of the Carey Gardens Resident Association as President. She is also a Community Board 13 member and the Secretary for the Police Council. She feels her relationship with the community will help the center engage the most underserved in Coney Island.

Ms. Daniely serves as the Vice-President on the board of the Carey Gardens Resident Association. She believes her position will facilitate access to and communication with New York City Housing Authority (NYCHA) residents to engage them in primary care.

Ms. Kennedy is retired and anticipates being a patient of the facility. In that role, she feels she can provide valuable feedback from a patient's point of view.

Ms. Felix is a Carrier Assistant for the U.S. Postal Service. She is a long-time resident of Coney Island and also plans to be a patient of the center.

Ms. Vanet has owned and operated a laser hair removal spa since 2009. Prior to that, she was self-employed providing paralegal services. She is a long time resident of Coney Island and feels she can be instrumental when it comes to cultural competency relating to the Russian population in the service area.

Ms. Sutton is a Credentialed Alcoholism and Substance Abuse Counselor Trainee (CASAC-T) pursuing a degree in Chemical Dependency Counseling. She has case management experience and has provided counseling and referral services to individuals in need, specifically to those with substance use disorders. As a Board Member, she feels she will be an asset in advising the center regarding their substance abuse component.

Mr. Kaplan has over 20 years of technical and managerial experience in information technology (IT) and feels his qualifications will allow him to effectively support all IT functions and be instrumental in efforts for full electronic health record (EHR) integration.

Mr. Malloy is a paraprofessional employed by the New York City Department of Education. Although he does not possess healthcare experience, Mr. Sutton is a long-time Coney Island resident and a NYCHA resident.

Ms. Garrison is a Field Representative for the U.S. Census Bureau. She has been an active community member and is committed to making a positive difference in the community by ensuring that the center addresses the population's needs.

Disclosure information was similarly submitted and reviewed for the Medical Director. Edouard J. Hazel, M.D., a board-certified Internist with sub-certification in Infectious Disease. In his over 30 years of experience, Dr. Hazel has gained experience in the provision of medical care as well as hospital administration and public health issues. Currently, he is employed by Henry J. Carter Specialty Hospital overseeing the work of 10 physicians and PAs and four Infection Control nurses.

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.

#### Conclusion

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

#### Recommendation

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

## Financial Analysis

### Lease Rental Agreement

The applicant has submitted a draft lease agreement for the site that they will occupy, which is summarized below:

Premises:	5,111 square feet located at 2882 West 15 <sup>th</sup> Street, Unit C5, Brooklyn, New York.
Lessor:	2582 West 15th Street, LLC
Lessee:	Community Health Initiatives, Inc.
Term:	Ten years
Rental:	Year One - \$86,952 (\$17.01 per square foot) with a 3% increase per year thereafter.
Provisions:	The lessee shall be responsible for maintenance and insurance.

The applicant has submitted an affidavit indicating that the lease will be a non-arm's length lease arrangement. They have submitted letters from two New York Licensed Real Estate Brokers attesting to the reasonableness of the per square foot rental amount.

### Total Project Cost and Financing

Total project cost for renovations and the acquisition of moveable equipment is estimated at \$278,725, broken down as follows:

Renovation and Demolition	\$125,000
Design Contingency	12,500
Construction Contingency	12,500
Architect/Engineering Fees	25,000
Moveable Equipment	101,232
CON Fee	1,250
Additional Processing Fee	<u>1,243</u>
Total Project Cost	\$278,725

Project costs are based on a construction start date of November 1, 2015, and a two-month construction period.

The applicant's financing plan appears as follows:

Contributed Equipment	\$101,232
Promissory Note (10% interest rate for a ten-year term)	<u>177,493</u>
Total	\$278,725

The executed Promissory Note provides for a principal amount of \$180,000 to be credited to an account on the books of the applicant from which the applicant may draw down for use on the above project costs.

### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care/FFS	\$964,591	\$2,040,110
Medicare Fee-For-Service	201,556	426,291
Private Pay	172,763	365,393
Union	100,778	213,146
HRSA NAP Grant	<u>650,000</u>	<u>650,000</u>
Total Revenue	\$2,089,688	\$3,694,940

Expenses:		
Operating	\$1,973,528	\$3,524,592
Capital	<u>103,200</u>	<u>127,119</u>
Total Expenses	\$2,076,728	\$3,651,711
Excess of Revenues over Expenses	\$12,960	\$43,229
Utilization (visits)	10,730	23,550
Cost Per Visit	\$193.54	\$155.06

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	56.95%	56.95%
Medicaid Fee-For-Service	10.05%	10.05%
Medicare Fee-For-Service	14.00%	14.00%
Private	12.00%	12.00%
Union	7.00%	7.00%

The following is noted with respect to the submitted budget:

- Revenues are based on current reimbursement methodologies by payor. Medicaid revenue was assessed based on APG reimbursement which the provider indicated is consistent with their cost for services. Revenue includes HRSA NAP program grant funding. The applicant indicated that they have received the grant funding for three years and can reapply for ongoing HRSA funding for subsequent years (open competition basis).
- Utilization assumptions are based on current historical experience of the physician shared practice.
- Expense assumptions are also based on the current historical experience of the physician shared practice.

The budget appears reasonable.

#### Capability and Feasibility

Project costs of \$278,725 will be met as follows: Contributed Equipment valued at \$101,232 and the balance of \$177,493 via a Promissory Note at an interest rate of 10% for a ten-year term. The applicant has submitted an executed Promissory Note for \$180,000 in regard to the financing, and the related amortization schedule. Interest accrues daily at a rate of 10% per annum on any outstanding principal balance used by the applicant. The Promissory Note indicates that principal and interest will be deferred for the first five years, however the Note may be prepaid, in whole or in part, at any time.

Working capital requirements are estimated at \$608,619, which is equivalent to two months of third year expenses. The applicant will meet the working capital requirement via the HRSA NAP grant award approved at \$650,000 per year for the three-year project period starting June 1, 2015 through May 31, 2018. The applicant has submitted the HRSA Notice of Award dated May 8, 2015, confirming receipt of HRSA NAP funding for this project for Year One, and the recommended future support of \$650,000 per year for Year Two and Year Three. BFA Attachment A is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$709,851.

The submitted budget indicates an excess of revenues over expenses of \$12,960 and \$43,229 during the first and third years, respectively. Revenues are based on current reimbursement rates for diagnostic and treatment centers. The submitted budget appears reasonable.

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

#### Recommendation

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



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## Attachments

BFA Attachment A    Pro Forma Balance Sheet



**Project # 151308-B  
Brooklyn Gardens Dialysis Center**

**Program:** Diagnostic and Treatment Center    **County:** Kings  
**Purpose:** Establishment and Construction    **Acknowledged:** June 23, 2015

**Executive Summary**

**Description**

Brooklyn Gardens Dialysis Center, LLC (Brooklyn Gardens), a newly formed New York limited liability company, requests approval for the establishment and construction of a 15-station Article 28 end stage renal dialysis (ESRD) facility to be located at Brooklyn Gardens Nursing and Rehabilitation Center, a 240-bed, not-for-profit, Article 28 residential health care facility (RHCF) located at 835 Herkimer Street, Brooklyn (Kings County). The proposed dialysis center will be located in 8,005 sq. ft. of designated space on the first (1<sup>st</sup>) floor of the RHCF. Patients who are not residents of the RHCF will have access through a dedicated entrance located near the main entry of the nursing home.

The proposed members of Brooklyn Gardens Dialysis Center, LLC are Michael Melnicke with 75% membership interest and Leopold Freidman with 25%. On August 31, 2015, the members of Brooklyn Gardens entered into a licensing agreement with the operator of the RHCF, Providence Care, Inc. (Providence Care), for site control of the clinic. Under the terms of the licensing agreement, Providence Care will construct and equip the facility, inclusive of all required equipment necessary to operate an Article 28 ESRD facility, and license the space and equipment to Brooklyn Gardens. The applicant has submitted an affidavit attesting to a relationship with Providence Care

in that the members of Brooklyn Gardens are Board Members of the nursing home facility.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

Kings County has a large and diverse population that is 64% non-white, and has a significant unmet need for dialysis stations. Currently there is a need for 164 dialysis stations in the county; this project would reduce the unmet need to 149.

**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 total project cost associated with this project is \$77,413 and will be funded via \$77,413 cash equity from the proposed members of Brooklyn Gardens Dialysis Center, LLC.

**Budget:**

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,579,878	\$4,817,068
Expenses	\$1,789,190	\$3,508,667
Net Income	(\$209,312)	\$1,308,401

## 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 working capital loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed consulting agreement, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed Consultative/Administrative Services Agreement, acceptable to the Department. [HSP]
6. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
7. Submission of a photocopy of the applicant's executed Consulting Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed 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]
2. The staff of the facility must be separate and distinct from staff of other entities. [HSP]
3. The signage must clearly denote the facility is separate and distinct from other adjacent entities. [HSP]
4. The entrance to the facility must not disrupt any other entity's clinical program space. [HSP]
5. The clinical space must be used exclusively for the approved purpose. [HSP]
6. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAEFP Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
7. Construction must start on or before November 1, 2015 and construction must be completed by April 30, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

**October 8, 2015**

# Need Analysis

## Background

The population of Kings County in 2013 was 2,602,373. The population was 64.0% non-white and 12.0% over the age of 65. Those two demographics are the most at-risk for developing end stage renal disease.

	Kings County	New York State
Ages 65 and over:	12.0%	14.4%
Non-white:	64.0%	42.8%

Source: U.S. Census 2013

## Capacity

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

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations may treat fewer patients per year than do free-standing stations. 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 718 free-standing chronic dialysis stations operating in Kings County and 195 in pipeline for a total of 913.
- Based upon DOH methodology, the 718 existing free standing stations in Kings County could treat a total of 3,231 patients annually. Including the additional 195 pipeline stations, the county could treat a total of 4,108 patients annually.

## Need Projections

	2014	2015	2019	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated <sup>1</sup>	Projected Residents Treated <sup>2</sup>
	4,318	4,846	5,006	5,455
Free-standing Stations Needed	960	1,077	1,113	1,213
Existing Stations	718	718	718	718
Pipeline Stations	195	195	195	195
Total stations with Pipeline	913	913	913	913
With Approval of this CON	928	928	928	928
Unmet Need with Approval	32	149	153	253

<sup>1</sup>Patient data is from 2014 and is projected out 5 years, assuming a 3% annual rate of increase.

<sup>2</sup>Resident data is from 2015 and is projected out 4 years, assuming a 3% annual rate of 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 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information

System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. Patient and resident data are from IPRO.

The data presented above illustrates a clear need for dialysis stations in Kings County. More residents of the county receive treatment than patients; this indicates residents are leaving the county for treatment, which puts a burden on dialysis facilities in nearby counties and subjects patients to increased travel times.

**Conclusion**

This project will increase the number of approved dialysis stations in Kings County to 928. Upon approval, there will remain an unmet need for 149 dialysis stations in the County. This project should increase the number of residents of Kings County who receive dialysis treatment within the county; this will lower utilization in neighboring counties, improving access to care for residents of the New York City planning region.

**Recommendation**

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

<b>Program Analysis</b>
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**Project Proposal**

Brooklyn Gardens Dialysis Center, LLC seeks approval to establish and construct a new 15-station End Stage Renal Disease facility. The proposed facility will be located in a designated space at Brooklyn Gardens Nursing and Rehabilitation Center, an existing 240-bed residential health care facility (RHCF) located at 835 Herkimer Street, Brooklyn, (Kings County), 11223.

<b>Proposed Operator</b>	Brooklyn Gardens Dialysis Center, LLC
<b>Doing Business As</b>	Brooklyn Gardens Dialysis Center
<b>Site Address</b>	835 Herkimer Street Brooklyn (Kings County)
<b>Approved Services</b>	Chronic Renal Dialysis (15 Stations)
<b>Shifts/Hours/Schedule</b>	Will operate at least 12 hours per day, 6 days per week, with additional hours as indicated by demand.
<b>Staffing (1st Year / 3rd Year)</b>	11.5 FTEs / 23.6 FTEs
<b>Medical Director(s)</b>	William Shilkoff, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Brooklyn Hospital 3.2 miles / 14 minutes

**Character and Competence**

The members of the LLC are:

<u>Name</u>	<u>Percent</u>
Michael Melnicke, <i>manager</i>	75.0%
Leo Friedman	25.0%

The proposed members have extensive experience operating health related facilities and associated programs, including long-term care services and nursing home based dialysis programs. Mr. Melnicke, a licensed Nursing Home Administrator for the past 34 years, has owned nursing homes for the past 25 years. He is the Department-appointed receiver of three nursing homes (Park Nursing Home, Rockaway Care Center and Caton Park Nursing Home). Mr. Friedman is the Chief Executive Officer of a Nurse Staffing Agency and a part-owner/operator of a licensed home care services agency (LHCSA). Since January 2013, he has been the Receiver/Operator of Peninsula Nursing and Rehabilitation Center.

The applicant has identified William Shilkoff, MD to serve as the Medical Director of the proposed center. Dr. Shilkoff is board-certified in Internal Medicine and Nephrology with over 18 years of experience in the care and treatment of dialysis patients. Since 1997, Dr, Shilkoff has been employed by the Brooklyn Hospital Center. As an Attending Nephrologist, he has responsibility for inpatient and outpatient nephrology consults and follow-up as well as management of chronic and acute dialysis patients. Additionally, Dr. Shilkoff was involved in the development of a hemodialysis center from scratch (the Brooklyn Dialysis Center) which is now fully operational.

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.

*On April 18, 2009, a Stipulation and Order and \$2,000 fine was issued to Regency Extended Care Center for issues related to Quality of Care.*

*On June 8, 2009, a Stipulation and Order and \$6,000 fine was issued to Park Nursing Home for issues related to Quality of Care, Medical Services- Physicians Services, and Pharmacy Services.*

*On December 16, 2011, and again on January 6, 2012, a Stipulation and Order and fines of \$8,000 and \$10,000, respectively, was issued to Hempstead Park Nursing Home for issues related to Mistreatment/Neglect Policy and Procedures; Investigation/Reporting Allegations; Medically Related Social Services; and Administration.*

Recommendation

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

## Financial Analysis

Total Project Cost and Financing

The total project costs are broken down as follows:

Consultant Fees	\$75,000
Application Fees	\$2,000
Additional Processing Fees	<u>\$413</u>
Total Project Cost	\$77,413

The applicant will finance the project via cash equity of \$77,413.

### License Agreement

The applicant has submitted an executed license agreement for the space and moveable equipment of the facility, which is summarized below:

Date:	August 31, 2015
Premises:	8,005 sq. ft. on the 1st floor of Brooklyn Gardens Nursing and Rehabilitation Center located at 835 Herkimer Street, Brooklyn, New York
Movable Equipment:	Dialysis machines and other equipment needed for the operation of a 15-station Article 28 ESRD facility
Licensor:	Providence Care, Inc.
Licensee:	Brooklyn Gardens Dialysis Center, LLC
Term:	10 Years
Licensing Fee: (Rental)	Year 1: \$425,160 (\$35,430/month, \$53.11/sq. ft.) Year 2: \$430,920 (\$35,910/month, \$53.83/sq. ft.) Year 3: \$436,853 (\$36,404/month, \$54.57/sq. ft.) Years 4-10: 3% annual increase on prior year's fee.

The applicant indicated that the license arrangement will be non-arm's length as the applicant members are on the Board of the nursing home facility. The applicant submitted letters from two NYS licensed realtors attesting to the rent reasonableness of the clinic space. As the landlord will provide the leasehold improvements and movable equipment necessary for the operations of the business, the proposed per sq. ft. rental rate is reasonable.

### Consulting Agreement

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

Date:	To Be Determined
Facility:	Brooklyn Gardens Dialysis Center, LLC
Consultant:	Geripro Dialysis Consultants, LLC
Services Provided:	Administrative/Quality Management Services
Term:	two five-year terms with one automatic two-year renewal
Fee:	Annual Fee of \$120,000 (payable at \$10,000 per month)

The applicant has indicated that there is only a business contractual relationship between Geripro Dialysis Consultants, LLC and Brooklyn Gardens Dialysis Center, LLC.

### Operating Budget

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Managed Care	\$137,920	\$413,759
Medicare Managed Care	\$1,310,400	\$4,010,217
Commercial Managed Care	\$163,800	\$491,400
Bad Debt	<u>(\$32,242)</u>	<u>(\$98,308)</u>
Total Revenues	\$1,579,878	\$4,817,068
Expenses:		
Operating	\$1,347,453	\$3,067,613
Capital	<u>\$441,737</u>	<u>\$441,054</u>
Total Expenses	\$1,789,190	\$3,508,667
Net Income/(Loss)	(\$209,312)	\$1,308,401
Utilization (Treatments)	5,616	16,848
Cost Per Treatment	\$318.59	\$208.25

Utilization broken down by payor source during year one and three is as follows:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicaid Managed Care	468	8.33%	1,404	8.33%
Medicare Managed Care	4,680	83.34%	14,040	83.34%
Commercial Managed Care	468	8.33%	1,404	8.33%
Total	5,616	100.0%	16,848	100.0%

The following is noted with respect to the submitted budget:

- Revenues are based upon review of other area ESRD providers and their average reimbursement rate for the various payor sources.
- Expense assumptions are based upon industry standards for operating a dialysis center.
- Utilization assumptions are based on the historical experience of other dialysis facilities in the area. Kings County currently has a significant unmet need for dialysis stations. The center anticipates that it will operate twelve hours per day and six days per week, with additional hours as indicated by demand.

The budget is reasonable.

#### Capability and Feasibility

The total project cost of \$77,413 will be provided by the proposed members' of Brooklyn Gardens Dialysis Center, LLC.

Working capital requirements are estimated at \$584,778, which is equivalent to two months of year three expenses. The applicant will finance \$292,389 at an interest rate of 6.5% for a three-year term. A letter of interest has been provided by Hudson Valley Bank for the working capital financing. The remaining \$292,389 will be provided as equity from the proposed members' of Brooklyn Gardens Dialysis Center, LLC.

BFA Attachment A is the personal net worth statement of the proposed members of Brooklyn Gardens Dialysis Center, LLC, which indicates that the proposed members have sufficient liquid resources to cover the both of the equity requirements.

BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates they will begin with positive members' equity of \$292,389.

The submitted budget indicates a net loss of \$209,312 in year one and a net income of \$1,308,401 in year three. Revenues are based on the current reimbursement methodologies for dialysis services. The submitted budget is reasonable. The first year loss will be covered by the proposed operators via equity.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner and contingent approval is recommended.

#### Recommendation

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

## Attachments

- BFA Attachment A Net Worth Statement for members of Brooklyn Gardens Dialysis Center, LLC
- BFA Attachment B Pro-Forma Balance Sheet of Brooklyn Gardens Dialysis Center, LLC





**Project # 151269-B**  
**Schenectady Partners, LLC d/b/a Rotterdam-Schenectady  
Dialysis Center**

**Program:** Diagnostic and Treatment Center    **County:** Schenectady  
**Purpose:** Establishment and Construction    **Acknowledged:** June 9, 2015

**Executive Summary**

**Description**

Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center (the Center), an existing New York limited liability company, requests approval to establish and construct a 13-station Article 28 chronic renal dialysis center to be located at 1592-1594 State Street, Schenectady (Schenectady County), in 7,100 square feet of leased space. The Center will provide the following services: chronic renal dialysis, home hemodialysis training and support, and home peritoneal dialysis training and support.

The proposed members of the Center are: American Renal Associates, LLC (ARA) with 51% ownership interest, and Dr. Hani L. Shahata, a Board Certified Nephrologist, with 49% ownership interest. 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. Attachment E provides an organizational chart of ARA.

ARA currently co-operates the following New York State (NYS) chronic renal dialysis centers:

- Mohawk Valley Dialysis Center, Inc. (opened 9/19/2012);
- Plattsburgh Associates, LLC d/b/a H.K. Freedman Renal Center (acquired 12/6/2013);
- 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).

Concurrently under review is CON 152025 in which Dr. Hani L. Shahata is seeking to purchase 19% stock ownership in Mohawk Valley Dialysis Center, Inc.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

This project will result in 13 net new chronic dialysis stations in Schenectady County. These stations will be adequate to meet the remaining unmet need in the County. The proposed facility's nutritional services and home dialysis training, as well as the proposed extended hours, will ensure that all residents have access to critical end stage renal disease treatment.

**Program Summary**

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

### Financial Summary

Total project costs of \$1,616,687 will be met with \$150,000 from the members' equity (\$76,500 from ARA and \$73,500 from Dr. Hani L. Shahata), and an intercompany loan from ARA of \$1,466,687 at an interest rate of 5% for a five-year term.

### Budget:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$861,600	\$2,272,745
Expenses	<u>1,070,612</u>	<u>1,666,541</u>
Net Income	\$(209,012)	\$606,204

## 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 intercompany loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed intercompany working capital loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. Submission of an executed Consulting and Administrative Services Agreement, acceptable to the Department. [HSP]
6. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
7. Submission of the executed Articles of Organization of Schenectady Partners, 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, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction for record purposes. [AES]
7. Construction must start on or before January 1, 2016 and construction must be completed by April 1, 2016, presuming approval to start construction is granted prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates.

Council Action Date

**October 8, 2015**

# Need Analysis

## Demographic Information

The population of Schenectady County in 2013 was 155,440. The population was 23.9% non-white and 15.4% over the age of 65. Those two demographics are the most at-risk for developing end stage renal disease.

	Schenectady County	New York State
Ages 65 and over:	15.4%	14.4%
Non-white:	23.9%	42.8%

Source: U.S. Census 2013

## Capacity

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

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 x 6) x 52 weeks] equals 780 treatments per year. Assuming a 90% utilization rate based on the expected number of annual treatments (780), the projected number of annual treatments per free standing station is 702. The estimated average number of dialysis procedures each patient receives from a free standing station per year is 156.
- One hospital based station represents 499 projected treatments per year. This is based on the expectation that the hospital will operate 2.0 patient shifts per day at 6 days per week, which is 12 patients per week, per station [(2 x 6) x 52 weeks] equals 624 treatments per year. Assuming an 80% utilization rate based on the expected number of annual treatments (624), the projected number of annual treatments per hospital station is 499. One hospital based station can treat 3 patients per year.
- Per Department policy, hospital-based stations may treat fewer patients per year than do free-standing stations. 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 36 free-standing chronic dialysis stations operating in Schenectady County and none in pipeline.
- Based upon DOH methodology, the 36 existing free standing stations in Schenectady County could treat a total of 162 patients annually.

## Need Projections

	2014	2015	2019	
	Total Patients Treated	Total Residents Treated	Projected Total Patients Treated <sup>1</sup>	Projected Residents Treated <sup>2</sup>
	203	228	236	257
Free-standing Stations Needed	46	51	53	58
Existing Stations	36	36	36	36
Pipeline Stations	0	0	0	0
Total stations with Pipeline	36	36	36	36
With Approval of this CON	49	49	49	49
Unmet Need with Approval	(3)	2	17	22

<sup>1</sup>Patient data is from 2014 and is projected out 5 years, assuming a 3% annual rate of increase.

<sup>2</sup>Resident data is from 2015 and is projected out 4 years, assuming a 3% annual rate of 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 3 patients annually. The data in the next row, "Existing Stations," comes from the Department's Health Facilities Information System (HFIS). "Unmet Need" comes from subtracting needed stations from existing stations. Patient and resident data are from IPRO.

The data presented above shows that with approval of this project Schenectady County will have excess capacity with regard to total patients treated. However, the chart below demonstrates that three counties contiguous to Schenectady County have a net unmet need for 11 dialysis stations, which will contribute to utilization of the added Schenectady County stations.

County	2014 Residents	Free Standing Stations Needed	Existing Stations	Unmet Need
Albany	421	94	81	13
Fulton	50	12	0	12
Montgomery	75	17	31	(14)
Saratoga	208	47	55	(8)
Schoharie	34	8	0	8
<b>Total</b>	<b>788</b>	<b>178</b>	<b>167</b>	<b>11</b>

#### Conclusion

This project will result in 13 net new chronic dialysis stations in Schenectady County. These stations will be adequate to meet the remaining unmet need in the County. The proposed facility's nutritional services and home dialysis training, as well as the proposed extended hours, will help ensure that all county residents have access to critical end stage renal disease treatment.

#### Recommendation

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

## Program Analysis

#### Project Proposal

Schenectady Partners, LLC d/b/a Rotterdam-Schenectady Dialysis Center seeks approval to establish and construct a thirteen station Article 28 chronic renal dialysis center at 1592-1594 State Street in Schenectady (Schenectady County).

<b>Proposed Operator</b>	Schenectady Partners, LLC
<b>Doing Business As</b>	Rotterdam-Schenectady Dialysis Center
<b>Site Address</b>	1592-1594 State Street Schenectady, NY (Schenectady County)
<b>Approved Services</b>	Chronic Renal Dialysis (13 Stations) and Home Hemodialysis Training & Support Home Peritoneal Dialysis Training & Support
<b>Shifts/Hours/Schedule</b>	Initially, the Center will be open Monday, Wednesday & Friday and, after the census has grown will be open Monday through Saturday 6:00 am to 5:00 pm
<b>Staffing (1<sup>st</sup> Year / 3<sup>rd</sup> Year)</b>	8.0 FTEs increasing by 1.5 FTEs by the third year of operation
<b>Medical Director(s)</b>	Hani L. Shahata, MD
<b>Emergency, In-Patient and Backup Support Services Agreement and Distance</b>	Expected to be provided by Ellis Hospital 3.91 miles / 8 minutes

## Character and Competence

The members of the LLC are:

<u>Name</u>	<u>Percent</u>
American Renal Associates, LLC (ARA) American Renal Holdings, Inc. (100%)	51.0%
Hani L. Shahata, MD	49.0%

American Renal Associates is a subsidiary of American Renal Holdings, Inc. (ARH), a national provider of kidney dialysis services which owns and operates over 150 dialysis clinics treating nearly 9,000 patients in 23 states and the District of Columbia.

ARA currently co-operates the following New York State chronic renal dialysis centers:

- Mohawk Valley Dialysis Center, Inc. (opened 9/19/2012)
- Plattsburgh Associates, LLC d/b/a H.K. Freedman Renal Center (acquired 12/6/2013)
- 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)

Star Ratings of the New York facilities, and all other ARA-associated facilities are provided in HSP Attachment A - Dialysis Compare/STAR Ratings for ARA-affiliated facilities.

The Company's operating model is based on shared ownership of its facilities with nephrologists practicing in the area served by the clinic. Each clinic is maintained as a separate joint venture in which the ARH owns a controlling interest.

Dr. Shahata is a local physician, board-certified in Internal Medicine and Nephrology. He completed a Nephrology Fellowship at the Mount Sinai School of Medicine and is an attending physician at Champlain Valley Physicians Hospital. He has extensive experience in the care and treatment of dialysis patients in high risk communities. (Concurrently under review is CON 152025 in which Dr. Hani Shahata seeks approval to purchase 19% stock ownership in Mohawk Valley Dialysis Center, Inc.)

The Managers for Schenectady Partners, LLC will be:

<u>Name</u>	<u>Title/Position</u>
Joseph A. Carlucci	President/CEO of American Renal Assoc.
John McDonough	Executive VP/COO of American Renal Assoc.
Hani L. Shahata, MD	Physician/ Proposed Medical Director

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.

## 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.

As stated above, the Star Ratings of all ARA-associated facilities are provided in ***HSP Attachment A - Dialysis Compare/STAR Ratings for ARA-affiliated facilities.***

Recommendation

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

<b>Financial Analysis</b>
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Administrative Services Agreement

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

Dated:	May 21, 2015
Facility:	Schenectady Partners, LLC
Contractor:	American Renal Management, LLC
Services Provided:	Ensure proper maintenance/repair of Dialysis Center Facility; Maintain all licenses, permits, certifications and approvals required; provide drafts of all necessary manuals, policies and procedures; Establish and supervise all administrative and accounting functions; Develop training programs for all personnel; recommend/analyze purchases and leases of equipment; Develop/maintain quality control and compliance programs; Prepare all cost reports and other reports for Medicare/Medicaid programs; Develop yearly budget; Prepare monthly and yearly financial statements; Select and administer financial and clinical information systems; Advise and assist in negotiating and maintaining contracts; Procure insurance policies; Develop human resource policy manual and oversight; Provide marketing services; Prepare all tax filings.
Term:	5 years – renewable for one additional 5-year term
Fee:	Annual Fee \$90,000 (\$7,500/month)

### Lease Rental Agreement

The applicant has submitted an executed lease rental agreement for the proposed site they will occupy, as summarized below:

Date:	June 12, 2015
Premises:	1592-1594 State Street, Schenectady, NY 12304-1513
Landlord:	Golden Gate Associates, LLC
Lessee:	Schenectady Partners, LLC
Term:	10 years with renewal option for two additional five-year periods.
Rental:	Years 1-5: \$80,230 annually (\$11.30/sq. ft.) Years 6-10: \$88,253 (\$12.43/sq. ft.)

The applicant has submitted an affidavit indicating that the lease is an arm's length agreement. The applicant has submitted a letter from a NYS licensed realtor who assessed multiple comparable sites and attested to the rent reasonableness of the lease.

### Total Project Cost and Financing

Total project cost, which is for new construction and the acquisition of fixed and movable equipment, is estimated at \$1,616,687, further broken down as follows:

New Construction	\$968,085
Design Contingency	8,627
Construction Contingency	47,925
Fixed Equipment	176,000
Planning Consultant Fees	11,250
Architect/Engineering Fees	67,095
Movable Equipment	326,873
Application Fee	2,000
Processing Fee	<u>8,832</u>
Total Project Cost	\$1,616,687

Project costs are based on a construction start date of January 1, 2016, and a three-month construction period. The applicant's financing plan appears as follows:

Equity	\$150,000
Intercompany loan from ARA (5% interest, five-year term)	<u>\$1,466,687</u>
Total	\$1,616,687

Equity of \$150,000 will be provided from the proposed members as follows: \$76,500 from ARA and \$73,500 from Dr. Hani L Shahata. A letter of interest has been provided by ARA attesting to the intercompany loan terms noted above for the new construction and the acquisition of fixed and movable equipment.

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for years one and three of operations, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicare Fee- For- Service	\$473,880	\$1,022,735
Commercial Fee- For- Service	<u>387,720</u>	<u>1,250,010</u>
Total Revenues:	\$861,600	\$2,272,745
Expenses:		
Operating	\$727,444	\$1,347,044
Capital	<u>343,168</u>	<u>319,497</u>
Total Expenses:	\$1,070,612	\$1,666,541



Net Income:	<u>\$(209,012)</u>	<u>\$606,204</u>
Utilization (Treatments):	2,154	5,682
Cost Per Treatment:	\$497.03	\$293.30

The applicant indicated that the first year loss is anticipated due to startup as the Center will initially be open only three days a week until patient census grows. Once fully operational, the Center will be open six days a week and the applicant anticipates providing 5,682 treatments by year three. Breakeven utilization is 73% or 4,166 treatments in year three.

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicare Fee-For-Service	1934	89.8%	5,102	89.8%
Commercial Fee-For-Service	<u>220</u>	<u>10.2%</u>	<u>580</u>	<u>10.2%</u>
Total	2,154	100.0%	5,682	100.0%

Treatments broken down by category for years one and three are as follows:

<u>Treatment Category:</u>	<u>Year One</u>	<u>Year Three</u>
Chronic Renal Dialysis	1,812	5,033
Home Hemodialysis training and support	138	162
Home Peritoneal training and support	<u>204</u>	<u>487</u>
Total	2,154	5,682

Expense and utilization projections are based on a combination of ARA's historical experiences in operating end stage renal dialysis clinics, both nationally and in New York State, and Dr. Shahata's experience as a practicing physician for Capital Care Medical Group, a Nephrology practice located in Albany, NY, where Dr. Shahata maintains his private practice.

#### Capability and Feasibility

Project costs of \$1,616,687 will be met as follows: Equity of \$150,000 from the members (\$76,500 from American Renal Associates, LLC and \$73,500 from Dr. Shahata) and an intercompany loan for \$1,466,687 at an interest rate of 5% with a five-year term.

Working capital requirements are estimated at \$277,756 which is equivalent to two months of year three expenses. The members will provide \$193,100 via equity equivalent to their ownership percentages. ARA's equity portion is \$98,481 and will come from its existing operations. Dr. Shahata's equity portion is \$94,619 and will come from his personal net worth. The remaining working capital will be provided through an intercompany loan from ARA at an interest rate of 5% with a five-year term. A letter of interest has been provided by ARA for the proposed working capital financing.

BFA Attachment A is the net worth statement of the Dr. Hani L. Shahata, which shows sufficient liquid resources to cover his portion of both equity requirements for this CON.

BFA Attachment B is the certified financial statements of ARH for the years ended December 31, 2014 and 2013. As shown, ARH maintained positive working capital, net income and net assets for the period and has sufficient liquid assets to cover the equity requirements and both intercompany loans associated with this CON.

BFA Attachment C is the pro forma balance sheet of Schenectady Partners, LLC as of the first day of operations, which indicates that operations will begin with a positive members' equity of \$343,100.

The submitted budget projects a net profit (loss) of (\$209,012) and \$216,882 during the first and third years, respectively. Revenues reflect prevailing reimbursement methodologies. The first year loss is due to startup as the Center's patient census grows. ARA will provide additional funding, if necessary, to fund any losses. The budget appears reasonable.

BFA Attachment D is a financial summary of ARA's NYS affiliated dialysis centers as of December 31, 2014, which shows that the entities acquired prior to 2014 generated positive working capital and net asset positions, and had positive net income. The two entities acquired during 2014 show negative work capital attributable to startup costs. The applicant notes that ARA provided the facilities with needed working capital funds. Data is not available for Massena Center, LLC as the facility was newly acquired in 2015.

Subject to the noted contingencies, 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

HSP Attachment A	Dialysis Compare/STAR Ratings for ARA-affiliated facilities
BFA Attachment A	Net Worth Statement of Dr. Hani L. Shahata
BFA Attachment B	Certified Financial Statements of American Renal Holdings Inc. and Subsidiaries for 2013-2014
BFA Attachment C	Pro-Forma Balance Sheet of Schenectady Partners, LLC
BFA Attachment D	2014 Financial Summary of ARA Affiliated NYS Dialysis
BFA Attachment E	Organizational Chart
BPN Attachment A	Map



**Project # 152025-E  
Mohawk Valley Dialysis Center**

**Program:** Diagnostic and Treatment Center    **County:** Montgomery  
**Purpose:** Establishment    **Acknowledged:** July 15, 2015

**Executive Summary**

**Description**

Mohawk Valley Dialysis Center, Inc., an existing proprietary business corporation that operates a 15-station Article 28 chronic renal dialysis center located at 115 Towne Square Drive, Amsterdam (Montgomery County), requests approval for a net transfer of 19% stock ownership from current member, American Renal Associates, to Dr. Hani Shahata, a Board Certified Nephrologist. Membership of the operation before and after the requested change are as follows:

Current:

American Renal Associates, LLC	70%
Amsterdam Nephrology Holdings, LLC	30%

Proposed:

American Renal Associates, LLC	51%
Amsterdam Nephrology Holdings, LLC	30%
Dr. Hani Shahata	19%

There will be no changes to services as a result of this transaction.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**

There will be no Need recommendation for this project.

**Program Summary**

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

**Financial Summary**

There are no project costs associated with this application.

The total purchase price of \$741,000 will be met with equity from Dr. Hani Shahata.

Incremental	Revenues:	\$1,288,953
Budget:	Expenses:	<u>442,342</u>
	Net Income:	\$846,611

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the applicant's Shareholder's Agreement, dated February 22, 2011, amending Article V, Section 5.9, acceptable to the Department. [CSL]
2. Submission of a photocopy of the applicant's by-laws., amending Article II, Section 8, acceptable to the Department. [CSL]
3. Submission of a photocopy of the applicant's Medical Director Agreement, amending Section 11(a), acceptable to the Department. [CSL]
4. Submission of a photocopy of the applicant's executed Shareholder Counterpart Signature page, 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 that the applicant's Stock Purchase Agreement, dated July 2, 2015, was properly executed, acceptable to the Department. [CSL]

Council Action Date

**October 8, 2015**

## Program Analysis

### Project Proposal

Mohawk Valley Dialysis Center, Inc., an existing 15-station chronic renal dialysis center located at 115 Amsterdam Town Square, Route 30 in Amsterdam (Montgomery County), requests approval for the net transfer of 19% of stock ownership from American Renal Associates to Dr. Hani Shahata.

This transfer of membership interest requires three transactions: In the first transaction, 24.5% membership interest will transfer from Amsterdam Nephrology Holdings (ANH) to American Renal Associates (ARA). In Transactions #2 a 5.5% membership interest will transfer back from ARA to ANH. Simultaneously, in Transaction #3, ARA will transfer 19% membership interest to Dr. Hani Shahata.

There are no programmatic changes as a result of this request.

### Character and Competence

Following the transactions noted above, the resulting ownership composition will be as follows:

<b>Member Name</b>	<b>Interest</b>
American Renal Associates, LLC [American Renal Holdings, Inc. -100%]	51.0%
Amsterdam Nephrology Holdings, LLC [Soo Gil Lee, M.D. – 100%]	30.0%
<b>*Hani Shahata, M.D.</b>	19.0%

*\*Subject to Character and Competence Review this project.*

American Renal Holdings, Inc. (ARH) is a national provider of dialysis services that owns and operates over 170 dialysis clinics in more than 20 states. The company's operating model is based on shared ownership of its facilities with nephrologists in the area served by the clinic. Each clinic is maintained with a separate joint venture in which the ARH owns a controlling interest. Amsterdam Nephrology Holdings is wholly owned by Soo Gil Lee, M.D.

The proposed new member, Dr. Shahata, who was subject to review, is a local practicing physician who is board certified in Internal Medicine with sub-certification 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, 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

### Recommendation

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

## Financial Analysis

### Stock Purchase Agreement

An executed stock purchase agreement has been submitted by the applicant summarized below:

Date:	July 2, 2015
Seller:	American Renal Associates, LLC
Buyer:	Dr. Hani Shahata
Assets Purchased:	Certain equipment used to equip and operate a surgical suite free and clear of all liens, security interests, claims and encumbrances.
Purchase Price:	\$741,000 (\$39,000/share) for 19 shares.
Payment:	Cash upon closing.

### Assignment and Assumption of Lease

An executed assignment and assumption of lease has been submitted by the applicant, as summarized below:

Date:	May 22, 2015
Assignor:	Mohawk Valley Property Holdings, LLC
Assignee:	Mohawk Valley Dialysis Center, Inc.
Assignment:	All rights, title, interest in and to the lease and Assignor's rights are transferred to assignee.

### Operating Budgets

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

	<u>Year One</u>	<u>Year Three</u>
Revenues:	\$591,211	\$1,288,953
Expenses:		
Operating	\$215,201	\$512,098
Capital*	(26,667)	(69,757)
Total Expenses:	\$188,534	\$442,342
Net Income:	\$402,677	\$846,611
Utilization(treatments)	792	2,341
Cost per treatment	\$238.05	\$188.95

\*The decrease in capital expenditures is due to the pay down of the Mohawk Valley Dialysis Center's term loan.

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

	<u>Years One &amp; Three</u>
Commercial Fee-for-Service	6.4%
Commercial Managed Care	1.6%
Medicare Fee-for-Service	89.3%
Medicaid Fee-for-Service	2.7%

Expenses and utilization are based on the historical experience of Mohawk Valley Dialysis Center.

### Capability and Feasibility

There are no project costs associated with this application.

The stock purchase price of \$741,000 will be met with equity from Dr. Hani Shahata. BFA Attachment A shows sufficient equity for Dr. Shahata.

The submitted incremental budget indicates net incomes of \$402,677 and \$846,611 for the first and thirds years, respectively. Revenue is based on Mohawk Valley Dialysis's experience in the operation of the dialysis center and on current reimbursement rates. The budget appears reasonable. BFA Attachment E is the pro forma balance sheet of Mohawk Valley Dialysis Center, LLC. As shown, the facility will initiate operation with \$787,768 net equity.

BFA Attachment B, a financial summary of American Renal Holdings, Inc. and its subsidiaries, indicates that the corporation has maintained positive working capital, stockholders' equity and net income of \$29,224,000 and \$32,249,000 for 2014 and as of March 31, 2015, respectively. BFA Attachment C, a financial summary of Mohawk Valley Dialysis Center, indicates the corporation has maintained positive working capital and stockholder's equity and maintained a net income of \$216,113 as of March 31, 2015.

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

Recommendation

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

## Attachments

BFA Attachment A	Financial Summary for Dr. Shahata
BFA Attachment B	Financial Summary- American Renal Holdings Inc. and Subsidiaries, 2014, and March 2015
BFA Attachment C	Financial Summary-Mohawk Valley Dialysis Center, 2014 and March 31, 2015
BFA Attachment D	Organizational Chart- Pre and Post stock transfer
BFA Attachment E	Pro Forma Balance Sheet



**Project # 151131-E**  
**Latta Road Nursing Home West, LLC**

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

**County:** Monroe  
**Acknowledged:** March 30, 2015

**Executive Summary**

**Description**

Latta Road Nursing Home West, LLC, a to-be-formed New York limited liability company, requests approval to be established as the operator of Latta Road Nursing Home, a 40-bed, proprietary, Article 28 residential health care facility (RHCF) located at 2100 Latta Road, Rochester (Monroe County). The applicant will enter into a services agreement with ROHM Services Corporation for the provision of general financial related services. There will be no change in services provided as a result of this application.

On March 19, 2015, Robert W. Hurlbut, on behalf of Latta Road Nursing Home West, LLC, entered into an asset purchase agreement with Morris E. Richardson for the sale and acquisition of the operating interests of Latta Road Nursing Home. On March 20, 2015, Robert W. Hurlbut, on behalf of the to-be formed Latta Road Nursing Home Realty, LLC, also purchased the real estate from M.E. & E.E. Richardson, Inc. Robert W. Hurlbut is the proposed owner and sole member of both the operating entity and the real estate entity.

It is noted that the proposed member of Latta Road Nursing Home West, LLC is seeking to acquire two other nursing facilities, Latta Road Nursing Home A under CON #151133 and Hamilton Manor Nursing Home under CON #151134. These two applications are being reviewed concurrently with this application..

The current and proposed operator are as follows:

Current  
Morris E. Richardson 100%

Proposed  
Latta Road Nursing Home West, LLC  
Robert W. Hurlbut 100%

Robert W. Hurlbut has ownership interest in twelve NYS skilled nursing facilities and one skilled nursing facility in Florida.

OPCHSM Recommendation  
Contingent Approval

**Need Summary**  
Latta Road Nursing Home’s utilization was 97.1% in 2011, and 98.4% in 2012, and 96.3% in 2013. Current utilization, as of March 18, 2015 is 95.0%, with two vacant beds. While current utilization is near the Department’s planning optimum, historic utilization has typically met or exceeded the Department’s planning optimum, and this is expected to continue going forward.

This application will not result in a change to beds or services.

**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. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

#### Financial Summary

The purchase price for the acquisition of the operating interest of Latta Road Nursing Home is \$721,000 and will be paid as follows: Equity of \$180,250 from the proposed member

and a bank loan of \$540,750 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is \$524,500 and will be paid as follows: Equity of \$131,125 from the proposed member and a bank loan of \$393,375 at an interest rate of 4.66% for a twenty-year term.

Budget:	Revenues	\$3,718,714
	Expenses	<u>3,693,730</u>
	Net Income	\$24,984

## Recommendations

Health Systems Agency

The Finger Lakes HSA recommendations Contingent Approval of the project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
2. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
3. Submission of an executed services agreement, acceptable to the Department. [BFA]
4. Submission of an executed building lease, acceptable to the Department. [BFA]
5. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
6. The sponsor signs the State's Medicaid Access Agreement. [HSA]
7. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
8. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
9. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
10. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 8, 2015**

# Need Analysis

## Project Description

Latta Road Nursing Home West, LLC seeks approval to become the established operator of Latta Road Nursing Home, a 40-bed Article 28 residential health care facility (RHCF) located at 2100 Latta Road, Rochester, 14612, in Monroe County.

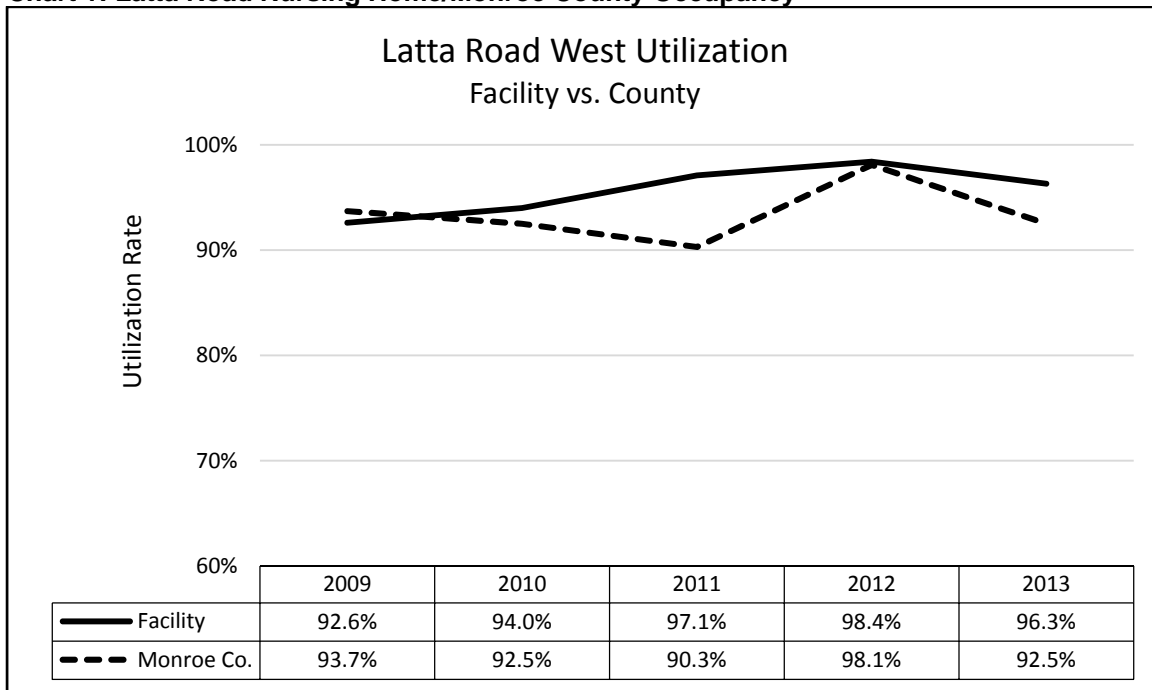
## Analysis

There is currently a surplus of 908 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County is 92.5% for 2013 as indicated in Chart 1.

**Table 1: RHCF Need – Monroe County**

<b>2016 Projected Need</b>	4,167
<b>Current Beds</b>	5,142
<b>Beds Under Construction</b>	-67
<b>Total Resources</b>	5,075
<b>Unmet Need</b>	-908

**Chart 1: Latta Road Nursing Home/Monroe County Occupancy**



## 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.

Latta Road Nursing Home's Medicaid admissions for 2012 was 4.2% and did not exceed Monroe County 75% rate of 13.3%. In 2013, Latta Road Nursing Home's Medicaid admissions for 2013 was 15.6% and exceeded Monroe County 75% rate of 12.8%.

Conclusion

Approval of this application will result in providing a needed resource for the residents it serves.

Recommendation

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

<b>Program Analysis</b>
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Facility Information

	Existing	Proposed
Facility Name	Latta Road Nursing Home	Latta Road Nursing Home West, LLC
Address	2100 Latta Road Rochester, NY 14626	Same
RHCF Capacity	40	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Sole Proprietorship	Proprietary
Operator	Eleanor E. Richardson d/b/a	Latta Nursing Home West, LLC  <u>Member</u> Robert W. Hurlbut      100.00%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	09/2005 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	09/2005 to present
Hornell Gardens, LLC	04/2007 to present
The Hurlbut, LLC	09/2005 to present
Newark Manor Nursing Home, Inc.	09/2015 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center, LLC	09/2005 to present
The Shore Winds, LLC	09/2005 to present
Wedgewood Nursing Home, Inc.	09/2005 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

Individual Background Review

Robert Hurlbut lists his profession as nursing home owner. Mr. Hurlbut discloses the following nursing home ownership interests:

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	02/1997 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	1/1994 to present
Hornell Gardens, LLC	04/2007 to present

The Hurlbut, LLC	01/2003 to present
Newark Manor Nursing Home, Inc.	07/1998 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center	03/2003 to present
The Shore Winds, LLC	03/2003 to present
Wedgewood Nursing Home, Inc.	01/1994 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

#### Character and Competence - Analysis

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

A review of The Brightonian, Inc. for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-11-006 issued March 3, 2011 for surveillance findings on February 12, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of Elm Manor Nursing Home, Inc. for the period identified above reveals the following:

- The facility has been fined \$10,000 pursuant to a pending Stipulation and Order for surveillance findings on July 30, 2012. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care Unnecessary Drugs.

A review of Hornell Gardens, LLC for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to a Stipulation and Order NH-15-015 issued September 1, 2015 for surveillance findings on July 12, 2013. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 415.12(h)(1).

A review of The Shore Winds LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-15-016 issued September 1, 2015 for surveillance findings on February 8, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 10NYCRR 415.12(h)(1) Quality of Care: Accidents.

A review of operations of for the nursing homes identified above for the periods specified results in a conclusion of a consistently high level of care as there were no repeat enforcements.

A review of Avon Nursing Home, LLC, Conesus Lake Nursing Home, Newark Manor Nursing Home, Inc., Penfield Place, LLC, Seneca Nursing & Rehabilitation Center, Wedgewood Nursing Home and Woodside Manor Nursing Home, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

#### Project Review

No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

#### 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

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the sale of the operation, as summarized below:

Date:	March 19, 2015
Seller:	Morris E. Richardson
Purchaser:	Robert W. Hurlbut
Assets Acquired:	Seller's rights under any third party programs, excluding amounts due but not yet paid for services rendered by Seller for periods prior to the Closing Date; all equipment, furniture, appliances, tools, supplies and other personal property owned by Seller; all leases, contracts and other agreements, which Buyer expressly elects to assume; all rights to the telephone and facsimile numbers of the Facility; the name "Latta Road Nursing Home"; any and all policy and procedure manuals, intellectual property and/or software used by the Facility; all residents' funds held in trust and all security deposits held by Seller and all retroactive rate increases and/or lump sum payments from any source for services rendered by the Facility prior to the Closing Date.
Excluded Assets:	Seller's rights to any income tax, sales tax, usage tax, franchise tax, special assessments, revenue assessments required by the New York State Department of Health and any other refunds due to the Seller prior to the Effective Date; any non-transferable or non-assignable governmental or regulatory licenses; Seller's cash on hand; Seller's bank accounts and records, deferred investments, stocks, bonds and any other securities that exist on the date of Closing and Seller's account receivable prior to the Closing Date.
Assumed Liabilities:	Resident funds held in trust.
Purchase Price:	\$721,000
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via proposed member	\$180,250
Bank Loan (4.66% for a twenty-year term)	540,750

A bank letter of interest for the financing has been provided.

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

### Real Estate Agreement

The applicant has submitted an executed real estate purchase agreement for Latta Road Nursing Home and Latta Road Nursing Home A (jointly), which is summarized below:

Date:	March 20, 2015
Premises:	Real property identified as tax map account number 045.12-2-43.1 consisting of approximately 32.5 acres of land and existing improvements located at 2100 Latta Road in the Town of Greece, New York.
Seller:	M.E. & E.E. Richardson, Inc.
Buyer:	Robert W. Hurlbut, on behalf of Latta Road Nursing Home Realty, LLC

Purchase Price:	\$1,049,000 total allocated as follows: <ul style="list-style-type: none"> <li>• \$524,500 for Latta Road Nursing Home</li> <li>• \$524,500 for Latta Road Nursing Home A</li> </ul>
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via proposed member	\$131,125
Bank Loan (4.66% for a twenty-year term)	<u>393,375</u>
	\$524,500

A bank letter of interest for the financing has been provided.

#### Administrative Services Agreement

The applicant has submitted a draft services agreement, which is summarized below:

Provider:	ROHM Services Corporation
Facility:	Latta Road Nursing Home West, LLC
Services:	The provider shall provide the following services: general financial services including preparation of resident statements, invoicing all payors, processing of all payments received, review of invoices and preparation of bank deposits, preparation and negotiation of purchasing bids subject to final approval of Latta Road Nursing Home West, review of audit reports, and debt collection services.
Term:	The agreement shall continue until December 31, 2017. Unless either party gives notice to the other party of its intent not to renew this agreement at least thirty days prior to the end of the term, or any renewal thereof, this agreement will be automatically renewed for additional one year term.
Compensation:	The compensation shall be \$120,000 per year.

While ROHM Services Corporation will provide the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations. This agreement specifically does not delegate to ROHM the following responsibilities: authority to hire or fire the administrator or other key management employees, maintenance and control of the books and records of the Facility, authority over disposition of assets and incurring liabilities on behalf of the Facility, and the adoption and enforcement of policies regarding the operation of Latta Road Nursing Home West.

#### Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy, which is summarized below:

Premises:	The site located at 2100 Latta Road, Rochester, New York
Lessor:	Latta Road Nursing Home Realty, LLC
Lessee:	Latta Road Nursing Home West, LLC
Term:	20 years
Rental:	\$76,500 annually (paid in equal monthly installments of \$6,375)
Provisions:	Lessee shall be responsible for real estate taxes, maintenance and utilities.

The lease agreement will be a non-arm's length lease arrangement. There is common ownership between the landlord and tenant in that the proposed owner is the sole member of both the operating entity and the real estate entity.



## Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$196.49	\$1,886,885
Medicare Fee For Service	506.12	711,610
Private Pay	354.77	955,754
Other	336.33	<u>164,465</u>
Total Revenues		\$3,718,714
Expenses:		
Operating	\$252.59	\$3,584,709
Capital	<u>7.68</u>	<u>109,021</u>
Total Expenses	\$260.27	\$3,693,730
Net Income		\$24,984
Utilization: (patient days)		14,192
Occupancy		97.21%
Breakeven Occupancy		96.58%

Utilization broken down by payor source during the first year after the change in ownership is summarized:

Medicaid Managed Care	67.66%
Medicare Fee For Service	9.91%
Private Pay	18.98%
Other	3.45%

The following is noted with respect to the submitted budget:

- Medicaid and Medicare revenue assumptions are based on the facility's current payment rates for the respective payors. The Medicaid Fee-For-Service rate serves as the benchmark rate for the Medicaid Managed Care payments. For Medicare, the applicant has incorporated a conservative increase in Medicare Part A and Part B based on his ownership experience with the other NYS facilities he operates.
- Private pay rates are anticipated to increase by 10% to remain at market levels.
- Expense and utilization assumptions are based on the facility's 2014 historical experience.
- Breakeven occupancy is projected at 96.58% or 14,100 patient days.

The budget appears reasonable.

## Capability and Feasibility

The purchase price for the acquisition of the operating interest is \$721,000. The purchase price will be met as follows: Equity of \$180,250 via the proposed member and \$540,750 via a bank loan at an interest rate of 4.66% for a twenty-year term. The purchase price for the real estate interest is \$524,500 and will be met as follows: Equity of \$131,125 via the proposed member and \$324,500 via a bank loan at an interest rate of 4.66% for a twenty-year term. The applicant has submitted bank letters of interest in regard to the financing.

Working capital requirements are estimated at \$615,621, which is equivalent to two months of first year expenses. The applicant will finance \$307,810 at an interest rate of 3.25% for a five-year term. The remaining \$307,811 will be met via equity from the proposed member. BFA Attachment A is the personal net worth statement for the proposed member of Latta Road Nursing Home West, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and purchase price equity portion. BFA Attachment B is the pro forma balance sheet for the first day of operation, which indicates a positive net asset position of \$431,435. Assets include \$517,000 in goodwill, which is not a liquid

resource, nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would be a negative \$85,565.

The submitted budget indicates a net income of \$24,984 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Latta Road Nursing Home for the period 2012 through 2014. As shown, the entity had an average positive working capital position, an average positive net asset position, and incurred an average loss of \$351,899 from 2012 through 2104. The applicant has indicated that the reason for the annual historical losses shown was due to the facility having little Part A and Part B residents.

The following is a comparison of the facility's 2014 historical performance to projected revenue and expenses for year one following the change in ownership:

	<u>Annual 2014</u>	<u>Year 1</u>
Revenues	\$3,201,109	\$3,718,714
Expenses	<u>3,529,751</u>	<u>3,693,730</u>
Net Income	(\$328,672)	\$24,984
Incremental Net Income:		<u>\$353,656</u>

To improve operations, the applicant is proposing to implement the following corrective actions when they begin operating the facility:

- Currently facility has little or no Medicare Part A and Part B. The buyer plans to add on staff for PT and OT services and improve the therapy programs.
- Dietary service and food costs are currently double the other comparable facilities benchmarked. The facility also has an employee benefit whereby all employees eat free of charge. The dietary service and food costs will be brought in line to benchmarked facilities, and the employee plan will be modified to require a small charge for one meal per shift.
- All nursing personnel will be employee staff. No contract nurses will be used.
- Nursing supplies are greatly in excess of the other comparable facilities and will be brought in line as well.

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

BFA Attachment D is the 2012 through 2014 financial summary of the NYS facilities the proposed member has ownership interest in. The facilities and summary of operations for the period are as follows:

- Woodside Manor Nursing Home (44 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$384,785.
- Wedgewood Nursing Home (29 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$19,632. The applicant indicated that the loss in 2012 was due to bad debt write-offs in 2012.
- The Shore Winds (229 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$804,990.
- Seneca Nursing & Rehabilitation Center (20 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$746,604.
- Penfield Place (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$358,440.

- Newark Manor Nursing Home (60 beds): The entity had an average negative working capital position, an average negative net asset position, and had an average net loss of \$24,290 for the period. The applicant indicated that the reason for the average negative working capital position is due to past historical losses. The entity had a loss in 2012 due to low occupancy. They worked hard in 2013 and 2014 to strengthen their relationship with Newark Wayne Hospital to better manage their costs.
- The Hurlbut (160 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$638,044.
- Hornell Gardens (114 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$595,542.
- Elm Manor Nursing Home (46 beds): The entity had an average positive working capital position, an average positive net asset position, and had an average net loss of \$202,196 for the period. The entity had a loss in 2012 due to the following: an occupancy decrease from 2011, and a one-time bad debt expense write-off. The entity implemented the following steps to improve operations: improved occupancy in 2013 and 2014.
- Conesus Lake Nursing Home (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$711,230.
- The Brightonian (54 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$761,346.
- Avon Nursing Home (40 beds): The entity had an average positive working capital position, an average negative net asset position, and achieved an average net income of \$257,723. The reason for the average negative net asset position was due to prior year historical losses. The applicant improved operations in 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

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Personal Net Worth Statement of Proposed Member
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	2012 - 2014 Financial Summary - Latta Road Nursing Home
BFA Attachment D	2012 - 2014 Financial Summary - Other Owned Facilities



**Project # 151133-E  
Latta Road Nursing Home East, LLC**

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

**County:** Monroe  
**Acknowledged:** March 30, 2015

**Executive Summary**

**Description**

Latta Road Nursing Home East, LLC, a to-be-formed New York limited liability company, requests approval to be established as the operator of Latta Road Nursing Home A, a 40-bed, proprietary, Article 28 residential healthcare facility (RHCF) located at 2102 Latta Road, Rochester (Monroe County). The applicant will enter into a services agreement with ROHM Services Corporation for the provision of general financial services. There will be no change in services as a result of this application.

On March 19, 2015, Robert W. Hurlbut, on behalf of Latta Road Nursing Home East, LLC, entered into an Asset Purchase Agreement with Morris E. Richardson for the sale and acquisition of the operating interests of Latta Road Nursing Home A. On March 20, 2015, Robert W. Hurlbut, on behalf of the to-be formed Latta Road Nursing Home Realty, LLC, also purchased the real estate from M.E. & E.E. Richardson, Inc. Robert W. Hurlbut is the proposed owner and sole member of both the operating entity and the real estate entity.

It is noted that the proposed member of Latta Road Nursing Home East, LLC is seeking to acquire two other nursing facilities, Latta Road Nursing Home under CON #151131 and Hamilton Manor Nursing Home under CON #151134. These two applications are being reviewed concurrently with this one.

The current and proposed operator of the RHCF are as follows:

Current  
Morris E. Richardson 100%

Proposed  
Latta Road Nursing Home East, LLC  
Robert W. Hurlbut 100%

Robert W. Hurlbut has ownership interest in twelve NYS skilled nursing facilities and one skilled nursing facility in Florida.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
Latta Road Nursing Home A's utilization was 95.7% in 2011, 94.4% in 2012, and 94.9% in 2013. Current utilization, as of March 18, 2015 is 97.5%, with one vacant bed. While historic utilization is near the Department's planning optimum, in 2014 and thus far in 2015 utilization has exceeded the Department's planning optimum.

This application will not result in a change to beds or services.

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 for the acquisition of the operating interests of Latta Road Nursing Home A is \$776,000 and will be paid as follows: Equity of \$194,000 from the proposed member and a bank loan of \$582,000 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is \$524,500 and will be paid as follows: Equity

of \$131,125 from the proposed member and a bank loan of \$393,375 at an interest rate of 4.66% for a twenty-year term.

Budget:	Revenues	\$3,763,243
	Expenses	<u>3,525,757</u>
	Net Income	\$237,486

## Recommendations

Health Systems Agency

The Finger Lakes Health Systems Agency recommends Contingent Approval of 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 of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
6. Submission of an executed services agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease, acceptable to the Department. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
9. The sponsor signs the State's Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [FLA]
10. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 8, 2015**

# Need Analysis

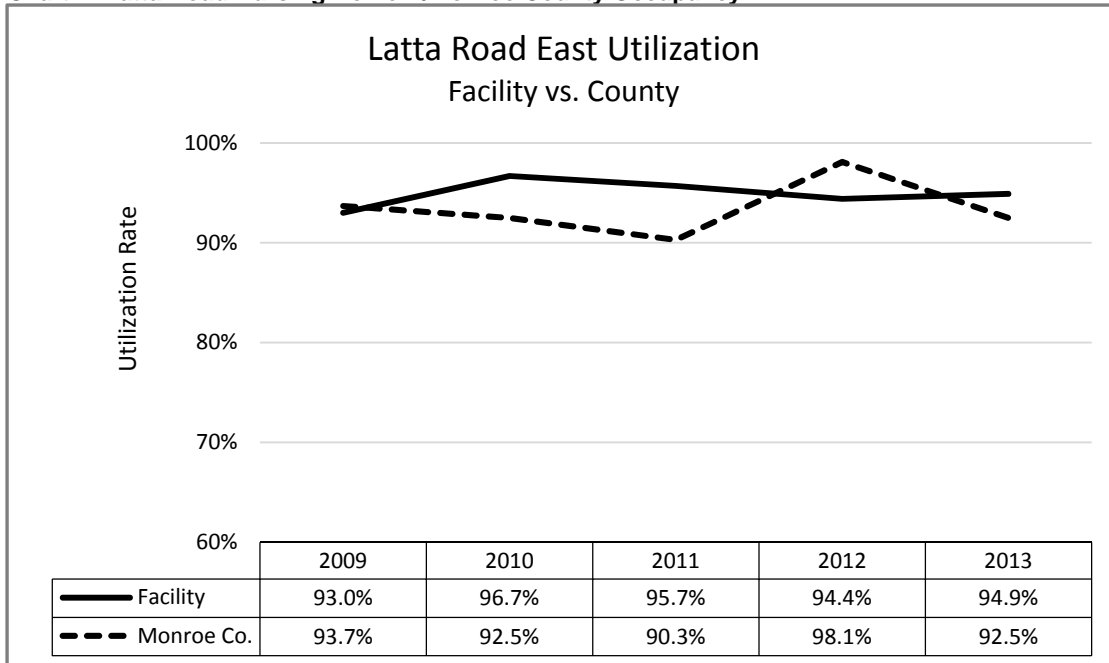
## Analysis

There is currently a surplus of 908 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County was 92.5% in 2013 as indicated in Chart 1.

**Table 1: RHCN Need – Monroe County**

<b>2016 Projected Need</b>	4,167
<b>Current Beds</b>	5,142
<b>Beds Under Construction</b>	-67
<b>Total Resources</b>	5,075
<b>Unmet Need</b>	-908

**Chart 1: Latta Road Nursing Home A/Monroe County Occupancy**



## 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.

Latta Road Nursing Home A's Medicaid admissions for 2012 was 12.1% and exceeded Monroe County 75% rate of 13.3%. In 2013, Latta Road Nursing Home A's Medicaid admissions for 2013 was 10.6% and did not exceed Monroe County 75% rate of 12.8% and will be required to follow the contingency plan as noted.



Conclusion

Approval of this application will result in providing a needed resource for the residents it serves.

Recommendation

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

**Program Analysis**

Program Description

No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with ROHM Services Corporation for financial services.

Facility Information

	Existing	Proposed
Facility Name	Latta Road Nursing Home A	Latta Road Nursing Home East, LLC
Address	2102 Latta Road Rochester, NY 14612	Same
RHCF Capacity	40	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Sole Proprietorship	Proprietary
Operator	Eleanor E. Richardson d/b/a	Latta Nursing Home West, LLC Member: Robert W. Hurlbut 100.00%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	09/2005 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	09/2005 to present
Hornell Gardens, LLC	04/2007 to present
The Hurlbut, LLC	09/2005 to present
Newark Manor Nursing Home, Inc.	09/2015 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center, LLC	09/2005 to present
The Shore Winds, LLC	09/2005 to present
Wedgewood Nursing Home, Inc.	09/2005 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

Individual Background Review

Robert Hurlbut lists his profession as nursing home owner. Mr. Hurlbut discloses the following nursing home ownership interests:

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	02/1997 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	01/1994 to present
Hornell Gardens, LLC	04/2007 to present
The Hurlbut, LLC	01/2003 to present
Newark Manor Nursing Home, Inc.	07/1998 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center	03/2003 to present

The Shore Winds, LLC  
Wedgewood Nursing Home, Inc.  
Woodside Manor Nursing Home, Inc.

03/2003 to present  
01/1994 to present  
04/2007 to present

#### Character and Competence - Analysis

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

A review of The Brightonian, Inc. for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-11-006 issued March 3, 2011 for surveillance findings on February 12, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of Elm Manor Nursing Home, Inc. for the period identified above reveals the following:

- The facility has been fined \$10,000 pursuant to a pending Stipulation and Order for surveillance findings on July 30, 2012. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care Unnecessary Drugs.

A review of Hornell Gardens, LLC for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to a Stipulation and Order NH-15-015 issued September 1, 2015 for surveillance findings on July 12, 2013. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 415.12(h)(1).

A review of The Shore Winds LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-15-016 issued September 1, 2015 for surveillance findings on February 8, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 10NYCRR 415.12(h)(1) Quality of Care: Accidents.

A review of operations of for the nursing homes identified above for the periods specified results in a conclusion of a consistently high level of care as there were no repeat enforcements.

A review of Avon Nursing Home, LLC, Conesus Lake Nursing Home, Newark Manor Nursing Home, Inc., Penfield Place, LLC, Seneca Nursing & Rehabilitation Center, Wedgewood Nursing Home and Woodside Manor Nursing Home, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

#### Recommendation

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

## Financial Analysis

#### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the sale of the operation, as summarized below:

Date:	March 19, 2015
Seller:	Morris E. Richardson
Purchaser:	Robert W. Hurlbut
Assets Acquired:	Seller's rights under any third party programs, excluding amounts due but not yet paid for services rendered by Seller for periods prior to the Closing Date; all equipment, furniture, appliances, tools, supplies and other personal property owned by Seller; all leases, contracts and other agreements, which Buyer expressly elects to assume; all rights to the telephone and facsimile numbers of

	the Facility; the name "Latta Road Nursing Home A"; any and all policy and procedure manuals, intellectual property and/or software used by the Facility; all residents' funds held in trust and all security deposits held by Seller and all retroactive rate increases and/or lump sum payments from any source for services rendered by the Facility prior to the Closing Date.
Excluded Assets:	Seller's rights to any income tax, sales tax, usage tax, franchise tax, special assessments, revenue assessments required by the New York State Department of Health and any other refunds due to the Seller prior to the Effective Date; any non-transferable or non-assignable governmental or regulatory licenses; Seller's cash on hand; Seller's bank accounts and records, deferred investments, stocks, bonds and any other securities that exist on the date of Closing and Seller's account receivable prior to the Closing Date.
Assumed Liabilities:	Resident funds held in trust.
Purchase Price:	\$776,000
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via proposed member	\$194,000
Bank Loan (4.66% for a twenty-year term)	582,000

A bank letter of interest for the financing has been provided.

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.

#### Real Estate Agreement

The applicant has submitted an executed real estate purchase and sale agreement for Latta Nursing Home and Latta Nursing Home A (jointly), which is summarized below:

Date:	March 20, 2015
Premises:	Real property identified as tax map account number 045.12-2-43.1 consisting of approximately 32.5 acres of land and existing improvements located at 2100 Latta Road in the Town of Greece, New York.
Seller:	M.E. & E.E. Richardson, Inc.
Buyer:	Robert W. Hurlbut, on behalf of Latta Road Nursing Home Realty, LLC
Purchase Price:	\$1,049,000 total allocated as follows: <ul style="list-style-type: none"> <li>• \$524,500 for Latta Nursing Home</li> <li>• \$524,500 for Latta Nursing Home A</li> </ul>
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via the proposed member	\$131,125
Bank Loan (4.66% for a twenty-year term)	<u>393,375</u>
	\$524,500

A bank letter of interest for the financing has been provided.

### Administrative Services Agreement

The applicant has submitted a draft services agreement, which is summarized below:

Provider:	ROHM Services Corporation
Facility:	Latta Road Nursing Home East, LLC
Services:	The provider shall perform the following services: general financial services including preparation of resident statements, invoicing all payors, processing of all payments received, review of invoices and preparation of bank deposits, preparation and negotiation of purchasing bids subject to final approval of Latta Road Nursing Home East, review of audit reports, and debt collection services.
Term:	The agreement shall continue until December 31, 2017. Unless either party gives notice to the other party of its intent not to renew this agreement at least thirty days prior to the end of the term, or any renewal thereof, this agreement will be automatically renewed for additional one year term.
Compensation:	The compensation shall be \$120,000 per year.

While ROHM Services Corporation will provide the above services, the Licensed Operator retains ultimate authority, responsibility, and control for the operations. This agreement specifically does not delegate to ROHM the following responsibilities: authority to hire or fire the administrator or other key management employees, maintenance and control of the books and records of the Facility, authority over disposition of assets and incurring liabilities on behalf of the Facility, and the adoption and enforcement of policies regarding the operation of Latta Road Nursing Home East.

### Lease Rental Agreement

The applicant has submitted a draft lease rental agreement for the site that they will occupy, which is summarized below:

Premises:	The site located at 2102 Latta Road, Rochester, New York
Lessor:	Latta Road Nursing Home Realty, LLC
Lessee:	Latta Road Nursing Home East, LLC
Term:	20 years
Rental:	\$76,500 annually (paid in equal monthly installments of \$6,375)
Provisions:	Lessee shall be responsible for real estate taxes, maintenance and utilities.

The lease agreement will be a non-arm's length lease arrangement. There is common ownership between the landlord and tenant in that the proposed owner is the sole member of both the operating entity and the real estate entity.

### Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$183.92	\$1,640,758
Medicare Fee For Service	498.94	780,340
Private Pay	363.14	992,085
Other	350.06	<u>350,060</u>
Total Revenues		\$3,763,243
Expenses:		
Operating	\$240.86	\$3,424,283
Capital	<u>7.14</u>	<u>101,474</u>
Total Expenses	\$248.00	\$3,525,757
Net Income		\$237,486

Utilization (Patient Days)	14,217
Occupancy	97.38%
Breakeven Occupancy	91.55%

Utilization by payor source during the first year after the change in ownership:

Medicaid Managed Care	62.75%
Medicare Fee-For-Service	11.00%
Private Pay	19.22%
Other	7.03%

The following is noted with respect to the submitted budget:

- Medicaid and Medicare revenue assumptions are based on the facility's current payment rates for the respective payors. The Medicaid Fee-For-Service rate serves as the benchmark rate for the Medicaid Managed Care payments. For Medicare, the applicant has incorporated a conservative increase in Medicare Part A and Part B based on his ownership experience with the other NYS facilities he operates.
- Private pay rates are anticipated to increase by 10% to remain at market levels.
- Expense and utilization assumptions are based on the facility's 2014 historical experience.
- Breakeven utilization is projected at 91.55% or 13,366 patient days.

The budget appears reasonable.

#### Capability and Feasibility

The purchase price for the acquisition of the operating interest is \$776,000. The purchase price will be met as follows: Equity of \$194,000 via the proposed member and \$582,000 via a bank loan at an interest rate of 4.66% for a twenty-year term. The purchase price for the real estate interest is \$524,000 and will be met as follows: Equity of \$131,125 via the proposed member and \$393,375 via a bank loan at an interest rate of 4.66% for a twenty-year term. The applicant has submitted bank letters of interests in regard to the financing.

Working capital requirements are estimated at \$587,626, which is equivalent to two months of first year expenses. The applicant will finance \$293,813 at an interest rate of 3.25% for a five-year term. The remaining \$293,813 will be met via equity from the proposed member. BFA Attachment A is the personal net worth statement for the proposed member of Latta Road Nursing Home East, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and the purchase price equity portion. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$471,438. Assets include \$571,000 in goodwill, which is not a liquid resource, nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would be a negative \$99,562.

The submitted budget indicates a net income of \$237,486 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Latta Road Nursing Home A for the period 2012 through 2014. As shown, the entity had an average positive working capital position, an average positive net asset position, and incurred an average loss of \$299,305 from 2012 through 2014. The applicant has indicated that the reason for the annual historical losses shown was due to the facility having little Part A and Part B residents.

The following is a comparison of the facility's 2014 historical performance to projected revenue and expenses for year one following the change in ownership:

	<u>Annual 2014</u>	<u>Year 1</u>
Revenues:	\$ 3,262,440	\$3,763,243
Expenses:	<u>3,685,013</u>	<u>3,525,757</u>
Net Income:	(\$422,573)	\$237,486

Incremental Net Income: \$660,059

To improve operations, the applicant is proposing to implement the following corrective actions when they begin operating the facility:

- Currently facility has little or no Medicare Part A and Part B. The buyer plans to add on staff for PT and OT services and improve the therapy programs.
- Dietary service and food costs are currently double the other comparable facilities benchmarked. The facility also has an employee benefit whereby all employees eat free of charge. The dietary service and food costs will be brought in line to benchmarked facilities, and the employee plan will be modified to require a small charge for one meal per shift.
- All nursing personnel will be employee staff. No contract nurses will be used.
- Nursing supplies are greatly in excess of the other comparable facilities and will be brought in line as well.

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

BFA Attachment D presents the 2012 through 2014 financial summary of the NYS facilities the proposed member has ownership interest in. The facilities and summary of operations for the period are as follows:

- Woodside Manor Nursing Home (44 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$384,785.
- Wedgewood Nursing Home (29 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$19,632. The applicant indicated that the loss in 2012 was due to bad debt write-offs in 2012.
- The Shore Winds (229 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$804,990.
- Seneca Nursing & Rehabilitation Center (20 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$746,604.
- Penfield Place (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$358,440.
- Newark Manor Nursing Home (60 beds): The entity had an average negative working capital position, an average negative net asset position, and had an average net loss of \$24,290 for the period. The applicant indicated that the reason for the average negative working capital position is due to past historical losses. The entity had a loss in 2012 due to low occupancy. They worked hard in 2013 and 2014 to strengthen their relationship with Newark Wayne Hospital to better manage their costs.
- The Hurlbut (160 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$638,044.
- Hornell Gardens (114 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$595,542.
- Elm Manor Nursing Home (46 beds): The entity had an average positive working capital position, an average positive net asset position, and had an average net loss of \$202,196 for the period. The entity had a loss in 2012 due to the following: an occupancy decrease from 2011, and a one-time bad debt expense write-off. The entity implemented the following steps to improve operations: improved occupancy in 2013 and 2014.

- Conesus Lake Nursing Home (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$711,230.
- The Brightonian (54 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$761,346.
- Avon Nursing Home (40 beds): The entity had an average positive working capital position, an average negative net asset position, and achieved an average net income of \$257,723. The reason for the average negative net asset position was due to prior year historical losses. The applicant improved operations in 2013.

Subject to the noted contingencies, 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

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	2012 - 2014 Financial Summary - Latta Road Nursing Home A
BFA Attachment D	2012 - 2014 Financial Summary - Other Owned Facilities.



**Project # 151134-E  
Hamilton Manor Nursing Home, LLC**

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

**County:** Monroe  
**Acknowledged:** March 30, 2015

**Executive Summary**

**Description**

Hamilton Manor Nursing Home, LLC, a to-be-formed New York limited liability company, requests approval to be established as the operator of Hamilton Manor Nursing Home, a 40-bed, sole proprietor, Article 28 residential health care facility (RHCF) located at 1172 Long Pond Road, Rochester (Monroe County). The applicant will enter into a services agreement with ROHM Services Corporation for the provision of general financial services. There will be no change in services provided as a result of this application.

On March 19, 2015, Robert W. Hurlbut, on behalf of Hamilton Manor Nursing Home, LLC, entered into an asset purchase agreement with Morris E. Richardson, executor of the estate of Eleanor E. Richardson, for the sale and acquisition of the operating interest of Hamilton Manor Nursing Home. On March 20, 2015, Robert W. Hurlbut, on behalf of the to-be formed Hamilton Manor Nursing Home Realty, LLC, also purchased the real estate from Eleven Seventy Two Long Pond Road, Inc. and Morris Richardson. Robert Hurlbut is the proposed owner and sole member of both the operating entity and the real estate entity.

The proposed member of Hamilton Manor Nursing Home, LLC is also seeking to acquire two other nursing facilities, Latta Road Nursing Home under CON #151131 and Latta Road Nursing Home A under CON #151133. These two applications are being reviewed concurrent with this application request.

The current and proposed operators are as follows:

Current

Morris E. Richardson, Executor of the Estate of Eleanor E. Richardson 100%

Proposed

Hamilton Manor Nursing Home, LLC  
Robert Hurlbut 100%

Robert W. Hurlbut has ownership interest in twelve NYS skilled nursing facilities and one skilled nursing facility in Florida.

OPCHSM Recommendation  
Contingent Approval

Need Summary

Hamilton Manor Nursing Home's utilization was 95.2% in 2011, 94.9% in 2012, and 95.2% in 2013. Current utilization, as of March 18, 2015 is 92.5%, with 3 vacant beds. In 2014, and overall in 2015, utilization at this facility has increased to 97.6% and 96.1%, respectively, which closely coincide with the Department's planning optimum.

This application will not result in a change to beds or services.

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. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

#### Financial Summary

The purchase price for the acquisition of the operating interest of Hamilton Manor Nursing Home is \$773,000 and will be paid as follows: Equity of \$193,250 from the proposed member and a bank loan of \$579,750 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is \$481,000 and will be paid as follows: Equity of \$120,250 from the proposed member and a bank loan of \$360,750 at an interest rate of 4.66% for a twenty-year term.

Budget:	Revenues	\$3,877,748
	Expenses	<u>3,587,575</u>
	Net Income	\$290,173

## Recommendations

Health Systems Agency

The Finger Lakes HSA recommends Contingent Approval of this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. [RNR]
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
  - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; and
  - c. Identify community resources that serve the low-income and frail elderly population who may eventually use the nursing facility, and inform them about the facility's Medicaid Access policy. [RNR]
3. Submission of a commitment, signed by the applicant, to submit annual reports to the DOH, for at least two years, demonstrating substantial progress with the implementation of the plan. These reports should include, but not be limited to:
  - a. Describing how the applicant reached out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
  - b. Indicating that the applicant communicated with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility;
  - c. Identifying the community resources that serve the low-income and frail elderly population that have used, or may eventually use, the nursing facility, and confirming they were informed about the facility's Medicaid Access policy.
  - d. Documentation pertaining to the number of referrals and the number of Medicaid admissions; and
  - e. Other factors as determined by the applicant to be pertinent.The DOH reserves the right to require continued reporting beyond the two year period. [RNR]
4. Submission of an executed loan commitment for the operating portion, acceptable to the Department. [BFA]
5. Submission of an executed loan commitment for the real estate portion, acceptable to the Department. [BFA]
6. Submission of an executed services agreement, acceptable to the Department. [BFA]
7. Submission of an executed building lease, acceptable to the Department. [BFA]
8. Submission of an executed working capital loan commitment, acceptable to the Department. [BFA]
9. Submission of a photocopy of the applicant's executed proposed Operating Agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed proposed Articles of Organization, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's executed proposed Lease Agreement, which is acceptable to the Department. [CSL]
12. The sponsor signs the State's Medicaid Access Agreement and submits annual performance reports to the NYS Department of Health. [HSA]

**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

**October 8, 2015**

# Need Analysis

## Project Description

Hamilton Manor Nursing Home, LLC, seeks approval to become the established operator of Hamilton Manor Nursing Home, a 40-bed Article 28 residential health care facility (RHCF) located at 1172 Long Pond Road, Rochester, 14626, in Monroe County.

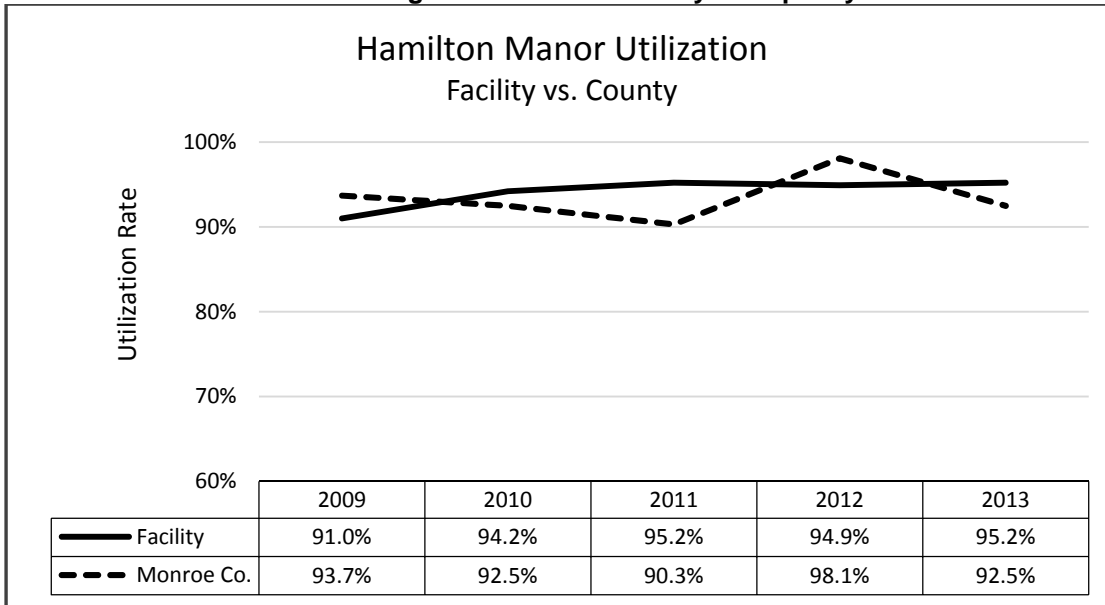
## Analysis

There is currently a surplus of 908 beds in Monroe County as indicated in Table 1 below. The overall occupancy for Monroe County is 92.5% for 2013, as indicated in Chart 1.

**Table 1: RHCF Need – Monroe County**

<b>2016 Projected Need</b>	4,167
<b>Current Beds</b>	5,142
<b>Beds Under Construction</b>	-67
<b>Total Resources</b>	5,075
<b>Unmet Need</b>	-908

**Chart 1: Hamilton Manor Nursing Home/Monroe County Occupancy**



## 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.

Hamilton Manor Nursing Home's Medicaid admissions for both 2012 and 2013 was 0.0% which did not exceed Monroe County 75% rates in 2012 and 2013 of 13.3% and 12.8%, respectively. The new operator will be required to follow the contingency plan as noted on the green sheet.

Conclusion

Approval of this application will result in retaining a needed resource for the residents it serves.

Recommendation

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

<b>Program Analysis</b>
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Facility Information

	Existing	Proposed
Facility Name	Hamilton Manor Nursing Home	Hamilton Manor Nursing Home, LLC
Address	1172 Long Pond Road Rochester, NY 14626	Same
RHCF Capacity	40	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Limited Liability Company
Class of Operator	Sole Proprietorship	Proprietary
Operator	Eleanor E. Richardson d/b/a	Hamilton Manor Nursing Home, LLC  Member Robert W. Hurlbut      100.00%

Character and Competence - Background

Facilities Reviewed

Nursing Homes

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	09/2005 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	09/2005 to present
Hornell Gardens, LLC	04/2007 to present
The Hurlbut, LLC	09/2005 to present
Newark Manor Nursing Home, Inc.	09/2015 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center, LLC	09/2005 to present
The Shore Winds, LLC	09/2005 to present
Wedgewood Nursing Home, Inc.	09/2005 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

Individual Background Review

Robert Hurlbut lists his profession as nursing home owner. Mr. Hurlbut discloses the following nursing home ownership interests:

Avon Nursing Home, LLC	04/2007 to present
The Brightonian, Inc.	02/1997 to present
Conesus Lake Nursing Home, LLC	04/2007 to present
Elm Manor Nursing Home, Inc.	01/1994 to present
Hornell Gardens, LLC	04/2007 to present

The Hurlbut, LLC	01/2003 to present
Newark Manor Nursing Home, Inc.	07/1998 to present
Penfield Place, LLC	04/2007 to present
Seneca Nursing & Rehabilitation Center	03/2003 to present
The Shore Winds, LLC	03/2003 to present
Wedgewood Nursing Home, Inc.	01/1994 to present
Woodside Manor Nursing Home, Inc.	04/2007 to present

#### Character and Competence - Analysis

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

A review of The Brightonian, Inc. for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-11-006 issued March 3, 2011 for surveillance findings on February 12, 2010. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practicable Potential.

A review of Elm Manor Nursing Home, Inc. for the period identified above reveals the following:

- The facility has been fined \$10,000 pursuant to a pending Stipulation and Order for surveillance findings on July 30, 2012. Deficiencies were found under 10 NYCRR 415.12(l)(1) Quality of Care Unnecessary Drugs.

A review of Hornell Gardens, LLC for the period identified above reveals the following:

- The facility was fined \$8,000 pursuant to a Stipulation and Order NH-15-015 issued September 1, 2015 for surveillance findings on July 12, 2013. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 415.12(h)(1).

A review of The Shore Winds LLC for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-15-016 issued September 1, 2015 for surveillance findings on February 8, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(1) Quality of Care: Pressure Sore Prevention and 10NYCRR 415.12(h)(1) Quality of Care: Accidents.

A review of operations of for the nursing homes identified above for the periods specified results in a conclusion of consistent high level of care since there were no repeat enforcements.

A review of Avon Nursing Home, LLC, Conesus Lake Nursing Home, Newark Manor Nursing Home, Inc., Penfield Place, LLC, Seneca Nursing & Rehabilitation Center, Wedgewood Nursing Home and Woodside Manor Nursing Home, Inc. for the periods identified above results in a conclusion of substantially consistent high level of care since there were no enforcements.

#### Project Review

No changes in the program or physical environment are proposed in this application. The applicant will enter into a consulting and administrative services agreement with Rohm Services Corporation for financial services.

#### 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

### Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the sale of the operation, as summarized below:

Date:	March 19,,2015
Seller:	Morris E. Richardson, as Executor of the Estate of Eleanor E. Richardson
Purchaser:	Robert W. Hurlbut
Assets Acquired:	Seller's rights under any third party payor programs, excluding amounts due but not yet paid for services rendered by Seller for periods prior to the Closing Date; all equipment, furniture, appliances, tools, supplies and other personnel property owned by Seller; all leases, contracts and other agreements which Buyer expressly elects to assume; all rights to the telephone and facsimile numbers of the Facility; the name "Hamilton Manor Nursing Home"; any and all policy and procedure manuals, intellectual property and/or software used by the Facility; all resident funds held in trust and all security deposits held by Seller and all retroactive rate increases and/or lump sum payments from any source for services rendered by the Facility prior to the Closing Date.
Excluded Assets:	Seller's rights to any income tax, sales tax, usage tax, franchise tax, special assessment, revenue assessments required by the New York State Department of Health and any other refunds due to Seller prior to the Closing Date; any non-transferable or non-assignable governmental or regulatory licenses; Seller's cash on hand; Seller's bank accounts and records, deferred income taxes, stocks, bonds on the date of Closing and Seller's accounts receivable prior to the Closing Date.
Assumed Liabilities:	Resident funds held in trust
Purchase Price:	\$773,000
Payment of Purchase Price:	Cash at Closing

The applicant's financing plan appears as follows:

Equity via the proposed member	\$193,250
Bank Loan (4.66% interest rate for a twenty-year term)	579,750

A bank letter of interest for the financing has been provided.

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

### Real Estate Agreement

The applicant has submitted an executed real estate purchase agreement for the real estate associated with Hamilton Manor Nursing Home, which is summarized below:

Date:	March 20, 2015
Premises:	1172 Long Pond Road in the Town of Greece, New York
Seller:	Eleven Seventy Two Long Pond Road, Inc. and Morris E. Richardson
Buyer:	Robert W. Hurlbut
Purchase Price	\$481,000
Payment of Purchase Price	Cash at Closing

The applicant's financing plan appears as follows:

Equity via the proposed member	\$120,250
Bank Loan (4.66% interest rate for a twenty-year term)	360,750

A bank letter of interest for the financing has been provided.

### Administrative Services Agreement

The applicant has submitted a draft services agreement, which is summarized below:

Provider:	ROHM Services Corporation
Facility:	Hamilton Manor Nursing Home, LLC
Services Provided:	The provider shall provide the following services: general financial services including preparation of resident statements, invoicing all payors, processing of all payments received, review of invoices and preparation of bank deposits, preparation and negotiation of purchasing bids subject to final approval of Hamilton Manor Nursing Home and review of audit reports and debt collection services.
Term:	The agreement shall continue until December 31, 2017. Unless either party gives notice to the other party of its intent not to renew this agreement at least thirty days prior to the end of the term, or any renewal thereof, this agreement will be automatically renewed for additional one year term.
Compensation:	The compensation shall be \$120,000 per year.

While ROHM Services Corporation will provide the above services, the licensed operator retains ultimate authority, responsibility, and control for the operations. This agreement specifically does not delegate to ROHM the following responsibilities: authority to hire or fire the administrator or other key management employees, maintenance and control of the books and records of the facility, authority over disposition of assets and incurring liabilities on behalf of the facility, and the adoption and enforcement of policies regarding the operation of Hamilton Manor Nursing Home.

### Lease Rental Agreement

The applicant has submitted a draft lease rental agreement, which is summarized below:

Premises:	The site located at 1172 Long Pond Road, Rochester, New York
Lessor:	Hamilton Manor Nursing Home Realty, LLC
Lessee:	Hamilton Manor Nursing Home, LLC
Term:	20 years
Rental:	\$75,000 annually
Provisions:	The lessee shall be responsible for insurance, utilities, maintenance and real estate taxes.

The lease arrangement will be a non-arm's length lease arrangement. There is common ownership between the landlord and tenant in that the proposed owner is the sole member of both the operating entity and the real estate entity.



## Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in ownership, summarized below:

	<u>Per Diem</u>	<u>Total</u>
Revenues:		
Medicaid Managed Care	\$180.08	\$1,469,772
Medicare Fee For Service	505.13	720,310
Private Pay	357.06	1,411,462
Other	386.84	<u>276,204</u>
Total Revenues		\$3,877,748
Expenses:		
Operating	\$246.36	\$3,511,806
Capital	<u>5.32</u>	<u>75,769</u>
Total Expenses	\$251.68	\$3,587,575
Net Income		\$290,173
Utilization (Patient Days)		14,255
Occupancy		97.64%
Breakeven Occupancy		90.30%

Utilization broken down by payor source during the first year after the change in ownership is summarized below:

Medicaid Managed Care	57.0%
Medicare Fee For Service	10.0%
Private Pay	28.0%
Other	5.0%

The following is noted with respect to the submitted budget:

- Medicaid and Medicare revenue assumptions are based on the facility's current payment rates for the respective payors. The Medicaid Fee-For-Service rate serves as the benchmark rate for the Medicaid Managed Care payments. For Medicare, the applicant has incorporated a conservative increase in Medicare Part A and Part B based on his ownership experience with the other NYS facilities he operates.
- Private pay rates are anticipated to increase by 10% to remain at market levels.
- Expense and utilization assumptions are based on the facility's 2014 historical experience.
- Breakeven utilization is projected at 90.30% or 13,183 patient days.

The budget appears reasonable.

## Capability and Feasibility

The purchase price for the acquisition of the operating interest of Hamilton Manor Nursing Home is \$773,000 and will be paid as follows: Equity of \$193,250 from the proposed member and a bank loan of \$579,750 at an interest rate of 4.66% for a twenty-year term. The purchase price for the acquisition of the real estate interest is \$481,000 and will be paid as follows: Equity of \$120,250 from the proposed member and a bank loan of \$360,750 at an interest rate of 4.66% for a twenty-year term. The applicant has submitted bank letters of interests in regard to the financing.

Working capital requirements are estimated at \$597,930, which is equivalent to two months of first year expenses. The applicant will finance \$298,965 at an interest rate of 3.25% for a five-year term. The remaining \$298,965 will be met via equity from the proposed member. BFA Attachment A is the personal net worth statement for the proposed member of Hamilton Manor Nursing Home, LLC, which indicates the availability of sufficient funds to meet the working capital requirement and the purchase price equity portion. BFA Attachment B is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$348,215. Assets include \$629,000 in goodwill, which is not a liquid

resource, nor is it recognized for Medicaid reimbursement. If goodwill is eliminated from the equation, the total net assets would be a negative \$280,785.

The submitted budget indicates a net income of \$290,173 during the first year after the change in operator. The submitted budget appears reasonable.

BFA Attachment C is the financial summary of Hamilton Manor Nursing Home for the period 2012 through 2014. As shown, the entity had an average positive working capital position and an average positive net asset position from 2012 through 2014. Also, the entity achieved an average operating net income of \$40,847 from 2012 through 2014. The entity incurred a loss in 2012 due to food costs that were double comparable market costs. The entity improved operations through 2014 due to improved occupancy.

The following is a comparison of the facility's 2014 historical performance to projected revenue and expenses for year one following the change in ownership:

	<u>Annual 2014</u>	<u>Year 1</u>
Revenues	\$3,426,118	\$3,877,748
Expenses	<u>3,399,198</u>	<u>3,587,575</u>
Net Income	\$26,920	\$290,173
 Incremental Net Income:		 <u>\$263,253</u>

To further improve operations, the applicant is proposing to implement the following corrective actions when they begin operating the facility:

- Currently facility has little or no Medicare Part A and Part B. The buyer plans to add on staff for PT and OT services and improve the therapy programs.
- Dietary service and food costs are currently double the other comparable facilities benchmarked. The facility also has an employee benefit whereby all employees eat free of charge. The dietary service and food costs will be brought in line to benchmarked facilities, and the employee plan will be modified to require a small charge for one meal per shift.
- All nursing personnel will be employee staff. No contract nurses will be used.
- Nursing supplies are greatly in excess of the other comparable facilities and will be brought in line as well.

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

BFA Attachment D is the 2012 through 2014 financial summary of the NYS facilities the proposed member has ownership interest in. The facilities and summary of operations for the period are as follows:

- Woodside Manor Nursing Home (44 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$384,785.
- Wedgewood Nursing Home (29 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$19,632. The applicant indicated that the loss in 2012 was due to bad debt write-offs in 2012.
- The Shore Winds (229 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$804,990.
- Seneca Nursing & Rehabilitation Center (20 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$746,604.
- Penfield Place (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$358,440.

- Newark Manor Nursing Home (60 beds): The entity had an average negative working capital position, an average negative net asset position, and had an average net loss of \$24,290 for the period. The applicant indicated that the reason for the average negative working capital position is due to past historical losses. The entity had a loss in 2012 due to low occupancy. They worked hard in 2013 and 2014 to strengthen their relationship with Newark Wayne Hospital to better manage their costs.
- The Hurlbut (160 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$638,044.
- Hornell Gardens (114 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$595,542.
- Elm Manor Nursing Home (46 beds): The entity had an average positive working capital position, an average positive net asset position, and had an average net loss of \$202,196 for the period. The entity had a loss in 2012 due to the following: an occupancy decrease from 2011, and a one-time bad debt expense write-off. The entity implemented the following steps to improve operations: improved occupancy in 2013 and 2014.
- Conesus Lake Nursing Home (48 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$711,230.
- The Brightonian (54 beds): The entity had an average positive working capital position, an average positive net asset position, and achieved an average net income of \$761,346.
- Avon Nursing Home (40 beds): The entity had an average positive working capital position, an average negative net asset position, and achieved an average net income of \$257,723. The reason for the average negative net asset position was due to prior year historical losses. The applicant improved operations 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

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Personal Net Worth Statement
BFA Attachment B	Pro Forma Balance Sheet
BFA Attachment C	2012 - 2014 Financial Summary - Hamilton Manor Nursing Home
BFA Attachment D	2012 - 2014 Financial Summary - Other Owned Nursing Facilities



Project # 151196-E  
Daleview Care Center

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

**County:** Nassau  
**Acknowledged:** May 5, 2015

**Executive Summary**

**Description**

MMR Care Corp. d/b/a Daleview Care Center, a 142-bed Article 28 residential health care facility (RHCF) located at 574 Fulton Street, Farmingdale (Nassau County), requests approval for a change in ownership of 9% of the facility. The majority owner, Mr. Robert Ostreicher, proposes to sell 9% of his shares in three equal amounts of 3% to the three other members of Daleview Care Center, all of whom currently have 8% ownership interest. This transfer will bring the acquiring owners to a total of 11% of shares each, requiring approval by the Public Health and Health Planning Council (PHHPC). There will be no change in services provided, nor any change in management. BFA Attachment A presents the organizational chart of the RHCF, which will remain unchanged after the sale of the additional shares to the three acquiring shareholders.

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

MMR Care Corp. d/b/a Daleview Care Center		
	Current	Proposed
Robert Ostreicher	76%	67%
David Ostreicher	8%	11%
Jennifer Ostreicher Mittel	8%	11%
Michael Ostreicher	<u>8%</u>	<u>11%</u>
Total Shares	100%	100%

Each of the acquiring shareholders have ownership interest in the following three RHCFs:

- Daleview Care Center (approval of this CON will increase shares for three existing shareholders);

- Central Island Healthcare, a 202-bed RHCF located in Plainview, NY; and
- Riverhead Care Center, a 181-bed RHCF located in Riverhead, NY.

OPCHSM Recommendation  
Contingent Approval

Need Summary  
There will be no Need review of this project.

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

Financial Summary  
The purchase price for each transferred interest is \$88,636. Each purchaser will acquire these shares with equity and a Promissory Note of \$68,636 that will accrue interest at the current mid-term Applicable Federal Rate (AFR) in effect on the date of the note. The Maturity Date will be eight years from the executed date of the note at closing.

Budget :	Revenues:	\$17,370,200
	Expenses:	<u>\$16,304,026</u>
	Gain:	\$ 1,066,174

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of an executed promissory note for each member acquiring shares, acceptable to the Department of Health. [BFA]
2. Submission of a resolution of members authorizing the project that is acceptable to the Department. [CSL]
3. Submission of site control that is acceptable to the Department. [CSL]
4. Submission of stockholder affidavits from each stockholder that is acceptable to the Department. [CSL]
5. Submission of a sample stock certificate that is acceptable to the Department. [CSL]
6. Submission of an executed amended Certificate of Incorporation that is acceptable to the Department. [CSL]
7. Submission of Bylaws that are acceptable to the Department. [CSL]
8. Submission of an executed Medicaid Affidavit that is acceptable to the Department. [CSL]

**Approval conditional upon:**

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

Council Action Date

**October 8, 2015**

# Program Analysis

## Program Description

This application is proposing to redistribute 9% of MMR Care Corp from an existing member to the three other existing members. The 9% will be distributed equally between the other members. No negative information has been received concerning the character and competence of the proposed applicants. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

## Facility Information

	Existing	Proposed
Facility Name	Daleview Care Center	Same
Address	574 Fulton Street	
Farmingdale, NY. 11735	Same	
RHCF Capacity	142	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	MMR Care Corp	MMR Care Corp
	Robert Ostreicher            76%	Robert Ostreicher        67%
	David Ostreicher            8%	David Ostreicher        11%
	Jennifer Ostreicher Mittel    8%	Jennifer Mittel            11%
	Michael Ostreicher           8%	Michael Ostreicher       11%

## Character and Competence - Background

### Facilities Reviewed

#### Nursing Homes

Central Island Healthcare	09/2009 to present
Riverhead Care Center	03/2013 to present
Daleview Care Center	07/2013 to present

### Individual Background Review

David Ostreicher is a New York State licensed attorney, considered to be in good standing. He lists his employment as the owner of Brooklyn Real Estate Group, LLC, a real estate company located in Uniondale, New York. Prior to starting his own business in June, 2013, Mr. Ostreicher was employed as an attorney at Westerman Ball, LLP. David Ostreicher discloses the following ownership interests in health facilities:

Central Island Healthcare	09/2009 to present
Riverhead Care Center	03/2013 to present
Daleview Care Center	07/2013 to present

Jennifer (Ostreicher) Mittel holds an expired New York State public school teacher certification, but was considered to be in good standing. She is currently unemployed and is the primary caregiver at her home. In 2010, she was briefly employed at Bright Smile Center, a contract agency for special education teachers located in Brooklyn, New York. Jennifer Mittel discloses the following ownership interests in health facilities:

Central Island Healthcare	09/2009 to present
Riverhead Care Center	03/2013 to present
Daleview Care Center	07/2013 to present

Michael Ostreicher is a New York State licensed nursing home administrator and is considered to be in good standing. He lists his employment for the last ten years as the owner of Central Island Healthcare, a skilled nursing facility located in Plainview, New York. Michael Ostreicher discloses the following ownership interests in health facilities:

Central Island Healthcare	09/2009 to present
Riverhead Care Center	03/2013 to present
Daleview Care Center	07/2013 to present

#### Character and Competence - Analysis

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

The review of Riverhead Care Center reveals the following:

- The facility was fined \$4000 pursuant to a Stipulation and Order dated September 1, 2015 issued for surveillance findings on July 26, 2013. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: Medication Errors and 415.26 Administration: Effective Administration.

A review of operations for Riverhead Care Center 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 Central Island Healthcare, and Daleview Care Center for the periods identified above, results in a conclusion of substantially consistent high level of care since there were no enforcements.

#### Recommendation

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

## Financial Analysis

#### Share Acquisition Agreement

The purchase price of each Transferred Interest (TI) is \$88,636 to be paid by the purchaser to the seller as follows: \$5,000 down payment on execution of SAA, \$15,000 at closing, and a \$68,636 Promissory Note at closing. The total purchase price for all shares is \$265,908.

The applicant has submitted an executed SAA for the transfer of 9% ownership interest from Robert Ostreicher to the three other members of Daleview Care Center, to be effectuated upon PHHPC approval, summarized as follows:

Date:	January 8, 2014
Purpose:	The sale of 9% ownership of the RHCF (18 shares of the corporation)
Seller:	Robert Ostreicher, 67-42 180th Street, Flushing NY 11365
Purchasers:	David Ostreicher (3%) Michael Ostreicher (3%) Jennifer Ostreicher Mittel (3%),
Purchase Price:	\$88,636 per each TI of 3%
Payment of Purchase Price:	<ul style="list-style-type: none"> <li>• \$5,000 deposit</li> <li>• \$15,000 due at closing</li> <li>• Promissory Note of \$68,636 issued at closing, 8-year maturity date, interest determined at closing at current mid-term AFR rate in effect on that day.</li> </ul>

## Operating Budget

The applicant has provided an operating budget, in 2015 dollars, for the first year summarized as follows:

	<u>Per Diem</u>	<u>Year One</u>
Revenues:		
Medicare	\$658.38	\$7,763,600
Medicaid	\$268.94	\$8,172,400
Private Pay/Other	\$400.09	<u>\$1,434,200</u>
Total Revenues		\$17,370,200
Expenses:		
Operating	\$348.31	\$15,797,500
Capital	\$ 11.17	<u>\$506,526</u>
Total Expenses		\$16,304,026
Net Income		<u>\$1,066,174</u>
Utilization (patient days)		45,355
Occupancy		87.51%

The following is noted with respect to the submitted budget:

- The Medicaid rate is projected based on the facility's current 2015 Medicaid Fee-for-Service rate.
- The Medicare rate is projected based on the full federal rates for the Medicare Prospective Payment System in effect for 2013 and are increased by 2.5% per annum for inflation to reflect 2015 dollars.
- Private Pay and Other rates are projected based on similar facilities in the same geographical area increased by 2.5% per annum for inflation to reflect 2015 dollars.
- Expense and utilization assumptions are based on the current experience of the facility.
- Utilization by payor source for the first year is anticipated as follows:

Medicare	26.0%
Medicaid	67.0%
Private Pay/Other	7.0%

The projected budget appears reasonable.

## Capability and Feasibility

There are no project costs associated with this application.

The total purchase price for all shares is \$265,908. The TI total for each purchasing member is \$88,636. The TI purchase price will be funded with \$20,000 in equity and a Promissory Note of \$68,636 issued at closing, with an 8-year maturity date and interest determined at closing at the current mid-term AFR rate in effect on that day. BFA Attachment B is the summary net worth statement for the members, which shows sufficient resources to cover the equity funding of the purchase price.

BFA Attachment C is the pro forma balance sheet of the RHCF after the change in ownership interest for the existing members, which indicates a positive members' equity of \$1,463,000.

The submitted budget indicated an excess of revenues over expenses of \$1,066,174 during the first year of the change in ownership. The budget appears reasonable.

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



benchmark FFS rate remains a viable basis for assessing Medicaid NH revenues through the transition period.

BFA Attachment D is a 2012 through 2014 financial summary of the combined operations of the members' affiliated RHCs which shows the following:

- Central Island Healthcare had average positive working capital of \$3,249,300, average net assets of \$8,805,365, and generated an average net income of \$1,848,539 during the period.
- Riverhead Care Center, LLC had average positive working capital of \$4,135,780, average net assets of \$5,559,871, and generated an average net income of \$21,101 during the period. The 2014 financials are internal only, as the requested 2014 audited financials have not been received to date.
- Daleview Care Center had average working capital of \$2,619,233, average net assets of \$6,502,616, and generated an average net income during the period 2012 through 2014 of \$85,974. The applicant indicated that the operating net loss of \$790,193 in 2013 was due to a management fee.

Based on the preceding, 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

BNHLC Attachment A	Quality Measures and Inspection Report
BFA Attachment A	Organizational Chart
BFA Attachment B	Net Worth Statement of the Members Purchasing Shares
BFA Attachment C	Pro Forma for Daleview Care Center
BFA Attachment D	Financial Summary - Affiliated Residential Health Care Facilities



**Project # 151099-E  
HCR**

**Program:** Certified Home Health Agency  
**Purpose:** Establishment

**County:** Monroe  
**Acknowledged:** March 11, 2015

**Executive Summary**

**Description**

L. Woerner, Inc. d/b/a HCR is an existing Article 36 certified home health agency (CHHA) whose main office is located in Rochester (Monroe County). In 2006, HCR established an Employee Stock Ownership Plan (ESOP) and Trust applicable to all facilities operated at the time, as well as all subsequent facility/program acquisitions. Per this application, HCR requests Public Health and Health Planning Council approval to add Mr. Duane Tolander as an Independent Trustee. BFA Attachment A is the organizational chart of HCR before and after the addition of the new trustee.

**Trustees of the ESOP have the authority to:**

- Establish fair market value of the trust fund, to include use of qualified independent appraisers;
- Subject to any required regulatory approvals, purchase and sell stock or other plan assets and otherwise manage and invest trust assets.
- Hold the trust assets and render accounts or their administration of the trust;
- Vote the trust's shares of the company if and as provided in the plan and consistent with ERISA;

- Determine the amount of the trust's income or loss;
- Appoint and delegate investment duties to an investment manager;
- Determine the trust's investment policy in light of the plan's funding policy and method; and
- Employ advisors, agents and counsel to fulfill these duties.

**OPCHSM Recommendation  
Contingent Approval**

**Program Summary**

A review of the personal qualifying information indicates there is nothing in the background of the stockholders, trustees, board members, and officers to adversely affect their positions with L. Woerner, Inc. d/b/a HCR / HCR Home Care. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

**Financial Summary**

There are no total project costs or operating budgets associated with this application.

## Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

**Approval contingent upon:**

1. Submission of a photocopy of the executed Written Consent of Directors and Shareholders to the Amendment to the Certificate of Incorporation. [CSL]
2. Submission of a photocopy of the executed Amendment to the Certificate of Incorporation. [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. Proper notice must be given to all employees participating in the employee stock ownership plan (ESOP) of the potential for an audit risk due to the lack of a legal separation between the CHHA and the LHCSA as it relates to payment structures. [CHA]
3. No employee or any other individual or entity may own/control 10% or more of the corporation's stock without first obtaining Department of Health and/or Public Health and Health Planning Council approval, as required. [CHA]

Council Action Date

**October 8, 2015**

## Program Analysis

### Review Summary

L. Woerner, Inc. d/b/a HCR / HCR Home Care currently operates seven Article 36 CHHAs and five Article 36 LTHHCPs in New York State as follows:

1. HCR / HCR Home Care in Canastota – CHHA serving Madison, Cayuga, Jefferson, Onondaga, and Oswego Counties, and LTHHCP serving Madison County only.
2. HCR / HCR Home Care in Cobleskill – CHHA serving Schoharie and Otsego Counties.
3. HCR / HCR Home Care in Delhi – CHHA and LTHHCP serving Delaware County only.
4. HCR / HCR Home Care in Homer – CHHA serving Cortland County only.
5. HCR / HCR Home Care in Hudson Falls – CHHA and LTHHCP serving Washington County only.
6. HCR / HCR Home Care in Plattsburgh – CHHA serving Clinton, Essex, Franklin, Hamilton, St. Lawrence, and Warren Counties, and LTHHCP serving Clinton County only.
7. HCR / HCR Home Care in Rochester (with an additional branch office practice location in Batavia) – CHHA serving Monroe, Genesee, Orleans, Livingston, Ontario, and Wayne Counties, and LTHHCP serving Genesee County only.

L. Woerner, Inc. d/b/a HCR / HCR Home Care also currently operates two Article 36 LHCSAs in New York State as follows:

1. HCR / HCR Home Care in Rochester – serving Livingston, Monroe, Ontario, Orleans, and Wayne Counties.
2. HCR / HCR Home Care in Batavia – serving Genesee, Monroe, Orleans, and Wyoming Counties.

This CHHA/LTHHCP CON application applies only to the seven L. Woerner, Inc. d/b/a HCR / HCR Home Care CHHAs and the five L. Woerner, Inc. d/b/a HCR / HCR Home Care LTHHCPs, which are each identified above. A separate LHCSA application (# 2606-L) has been submitted for the two L. Woerner, Inc. d/b/a HCR / HCR Home Care LHCSAs, identified above. Both the CHHA/LTHHCP CON application # 151099-E, and the LHCSA application # 2606-L, are being presented at this PHHPC meeting.

The current proposal seeks approval for L. Woerner, Inc. d/b/a HCR / HCR Home Care to add Duane Tolander as a new trustee for their Employee Stock Ownership Plan Trust, and to update the current status of the corporation's stockholders, officers, board members, and trustees. Mr. Tolander would be an independent trustee, in that he will not also be a stockholder, director, officer, or employee of L. Woerner, Inc., thereby removing any possible conflicts of interest with respect to his management and investment decisions for the funds held in the Employee Stock Ownership Plan Trust. Mr. Tolander is also currently a trustee of the Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust, as approved by PHHPC in 2011. The current proposal also updates the current assumed name (d/b/a) of the corporation, by adding a new additional assumed name (d/b/a) HCR Home Care, to the existing assumed name (d/b/a) HCR.

In 2006, L. Woerner, Inc. d/b/a HCR / HCR Home Care (CON project # 061088-E) received both State Hospital Review and Planning Council and Public Health Council approval to convert 90% of the shares of corporate stock (which up to that time were owned 90.5% by Louise Woerner and 9.5% by Mark Maxim), to an Employee Stock Ownership Plan (ESOP) and establish a trust to control and manage the assets, including the stock, held by the ESOP. At that point in time, Ms. Woerner retained 7% of the shares, and Mr. Maxim retained 3% of the shares, and Ms. Woerner and Mr. Maxim were named the sole trustees of the ESOP trust.

At the current time, L. Woerner, Inc. d/b/a HCR / HCR Home Care is reporting instead (as disclosed in detail below) that the ESOP now owns 71.00%, Lawrence Peckham owns 10.07%, Don H. Kollmorgen owns 9.49%, Louise Woerner owns 9.34%, and Clayton Osborne owns 0.10% of the corporation's issued stock, with Ms. Woerner the sole trustee of the ESOP trust, and Duane Tolander being added as a new additional trustee of the ESOP trust. Mr. Maxim has left the organization and no longer has any role as stockholder, trustee, director, officer, or employee. As previously stated, Mr. Tolander would be an independent trustee, in that he will not also be a stockholder, director, officer, or employee of L. Woerner,

Inc., thereby removing any possible conflicts of interest with respect to his management and investment decisions for the funds held in the Employee Stock Ownership Plan Trust.

Each employee participating in the L. Woerner, Inc. d/b/a HCR / HCR Home Care Employee Stock Ownership Plan (ESOP) does not actually take ownership of the stock itself, but instead has a separate stock account in the trust to hold his/her allocation of stock. Employees participating in the ESOP may not sell, transfer, assign, pledge, or encumber the shares of stock allocated to their stock account. Dividends will be allocated among, and credited to, each participant's stock accounts on the basis of the number of shares held by the participant's account. The duties and powers of the ESOP Trustee (or Trustees) are outlined in the HCR / HCR Home Care Employee Stock Ownership Trust Agreement under the HCR / HCR Home Care Employee Stock Ownership Plan. The Trustee (or Trustees) has/have the power to: manage and control the assets, including the stock, held in the trust; sell, exchange, transfer, or grant options for any property held in the trust; and vote all allocated and unallocated shares of stock. Employees participating in the ESOP instruct the Trustee(s) in the manner to vote the shares of stock allocated to their stock account only in the event of corporate merger, consolidation, recapitalization, reclassification, liquidation, dissolution, or sale of substantially all assets of the company or similar transaction, which must be approved by the shareholders of L. Woerner, Inc. d/b/a HCR / HCR Home Care, pursuant to applicable New York State law. The HCR / HCR Home Care Employee Stock Ownership Trust Agreement permits a Trustee to be removed by the Board of Directors, or to resign his/her position as Trustee, at any time. Any Successor Trustee(s) must receive prior approval of the New York State Department of Health and/or Public Health and Health Planning Council. Upon appointment, any and all Successor Trustees will be granted the same power, rights, and duties as the previous Trustee. Additional Trustees may be appointed in the future (upon prior approval of the New York State Department of Health and/or Public Health and Health Planning Council), and will have the same rights, powers, and duties of the Trustee as granted by the HCR / HCR Home Care Employee Stock Ownership Trust Agreement. The applicant had confirmed, and has restated such confirmation for this current project proposal, that no stockholder shall control 10% or more of the stock, of L. Woerner, Inc., without first obtaining New York State Department of Health and/or Public Health and Health Planning Council approval, as appropriate.

CON project # 061088-E also noted that L. Woerner, Inc. d/b/a HCR / HCR Home Care operates both a CHHA and LHCSA out of a single corporation. The Department has discouraged this type of arrangement because of the different regulatory requirements and payment structures applicable to CHHAs and LHCSAs. L. Woerner, Inc. d/b/a HCR / HCR Home Care wished to retain its current corporate arrangement, thus placing the agency at potential risk for future audit liabilities due to there being two different payment structures for the same service within a single corporation. Therefore, the Department required the agency to provide written notification, approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure. The applicant had confirmed, and has restated such confirmation for this current project proposal, that the agency continues to provide such written notification, as previously approved by the Department, to all participants in the ESOP of the possible loss in dividends resulting from the audit risk posed by the corporate structure.

L. Woerner, Inc. d/b/a HCR / HCR Home Care is currently authorized 4,000,000 shares of stock, with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust	1,749,604 shares	71.00%
Louise Woerner	230,180 shares	9.34%
Don H. Kollmorgen	233,824 shares	9.49%
Lawrence Peckham	248,236 shares	10.07%
Clayton Osborne	2500 shares	0.10%

All of the above listed stockholders are disclosed in detail below.

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

<p><b>Louise Woerner</b>                  Chief Executive Officer, L. Woerner, Inc. d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA)                  Affiliations: HealthNow New York, Inc., Buffalo (Managed Care Plan) – 4/1/02 to 4/10/08</p>	<p><b>Duane E. Tolander, CPA (Iowa)</b>                  Partner / Managing Director, HDH Advisors, LLC, West Des Moines, Iowa (Financial Advisory Services / Professional Consulting / Corporate and Business Valuations / Litigation Support);                  Trustee, Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust</p>
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The members of Board of Directors of L. Woerner, Inc. d/b/a HCR / HCR Home Care, are as follows:

<p><b>Louise Woerner</b>, Chairperson, Secretary, Treasurer (9.34% stockholder)                  Disclosed above</p>	<p><b>Don H. Kollmorgen (9.49% stockholder)</b>                  Retired</p>
<p><b>Lawrence L. Peckham (10.07% stockholder)</b>                  Retired</p>	<p><b>Joseph J. Castiglia, CPA</b>                  Retired</p>
<p><b>Clayton H. Osborne, MSW, LCSW (0.10% stockholder)</b>                  Retired Vice President of Human Resources and Talent Management, Bausch and Lomb (Vision Products Manufacturer)</p>	

An additional officer of L. Woerner, Inc. d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:

**Mary Elizabeth Zicari, RN**

President / Administrator, L. Woerner, Inc. d/b/a HCR / HCR Home Care (CHHA, LTHHCP, and LHCSA)  
 Affiliation: DePaul Adult Care Communities, Inc., Rochester (licensed ACFs/ALPs, in New York State, North Carolina, and South Carolina) – April 2009 to present

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne. The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander. In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc. d/b/a HCR / HCR Home Care for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc. d/b/a HCR / HCR Home Care for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present. The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present. It has been determined that the L. Woerner, Inc. d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc. LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc. (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc. are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc. were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc. has had no enforcement actions imposed within the previous twelve months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one of the twelve licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc. has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc. have had no enforcement actions imposed since April 2009.

A review of the personal qualifying information indicates there is nothing in the background of the stockholders, trustees, board members, and officers to adversely affect their positions with L. Woerner, Inc. d/b/a HCR / HCR Home Care. The applicant has the appropriate character and competence under Article 36 of the Public Health Law.

Recommendation

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

<h2>Financial Analysis</h2>
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Agreement to Provide Trustee Services

The applicant has submitted an executed Agreement to Provide Trustee Services, which is summarized below:

Date:	May 1, 2014
By:	Louise Woerner – Chairwoman & CEO, L. Woerner, Inc.
With:	Duane Tolander – Proposed Individual Trustee
Terms:	Effective from May 1, 2014, and renewable annually
Service/Duties Provisions:	Professional services as Independent Fiduciary under the Trust, Plan and ERISA including: approve Trust's independent financial advisor to assist in evaluation of proposed transactions, stock agreements, and to perform the annual valuation and other valuations required; prepare/maintain adequate records of the Trustee's actions/decisions, preserve such records, and make them available as reasonably requested; retain the Trustee's own independent legal counsel of his choosing in connection with any proposed transaction.
Excluded Duties:	Daily administrative and ministerial functions under the Plan. The parties agree that such duties shall be the responsibility of the Plan Administrator and shall not be delegated to Mr. Tolander.
Compensation:	\$15,000 annually, plus \$325/hour for necessary special work outside of normal responsibilities covered by this agreement.

Capability and Feasibility

There are no project costs or operating budgets associated with this application.

BFA Attachment B is the 2012 and 2013 certified financial statements of L. Woerner, Inc. As shown, 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 ESOP contributions. Also, the applicant incurred an average net loss of \$1,906,718 from 2012 through 2013. The applicant has indicated that the reasons for the loss are as follows: ESOP 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 preliminary 2014 certified financial statements of L. Woerner, Inc. As shown, the entity had a negative working capital position and a negative shareholders position through December 31, 2014. The applicant has indicated that the reasons for the negative working capital position and the negative shareholders position are prior year historical losses and ESOP contributions. Also, the facility incurred a net loss of \$2,003,482 through December 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 significantly improved the revenue and operating margins of the CHHA segment of their business and are now profitable in 2015.

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

Recommendation

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

## Attachments

BFA Attachment A	Organizational Chart before and after the addition of the new trustee.
BFA Attachment B	2012 and 2013 certified financial statements of HCR
BFA Attachment C	Preliminary 2014 certified financial statements of HCR

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: MedPro Homecare Agency, Inc.  
Address: Kew Gardens  
County: Queens  
Structure: Proprietary Corporation  
Application Number: 1909L

Description of Project:

MedPro Homecare Agency, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

MedPro Homecare Agency, Inc. has authorized 200 shares of stock. The shareholders comprise the following individuals:

Natalya Chornaya, RN – 10 shares                      Marina Rabinovich, Esq. - 190 shares

The Board of Directors of MedPro Homecare Agency, Inc. is comprised of the following individuals:

Natalya Chornaya, RN, President  
RN, Mount Sinai Beth Israel

Affiliations:  
NC Homecare Agency of NY, Inc. (8/11/12 – present)  
Unihelp Homecare, Inc. (2008-2009)

Marina Rabinovich, Esq. Vice President  
Attorney, Law Office of Marina Rabinovich, Esq.

Affiliation:  
MR Homecare Agency of NY, Inc. (5/25/12 – 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 the attorney.

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 119-40 Metropolitan Avenue, Unit CU2 – Suite 151, Kew Gardens, New York 11415

Queens	Kings	Bronx
New York	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
Medical Supplies, Equipment and Appliances		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

MR Homecare Agency of NY, Inc. (May 2012 – present)  
NC Homecare Agency of NY, Inc. (August 2012 – present)  
Unihelp Homecare, Inc. (2008-2009)

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: August 24, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Touch of Love Homecare Agency Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2042-L

Description of Project:

Touch of Love Homecare Agency Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Touch of Love Homecare Agency Inc. has authorized 200 shares of stock, which are owned solely by Lev Paukman.

The Board of Directors of Touch of Love Homecare Agency Inc. comprises the following individual:

Lev Paukman, MD, President/Director  
Private Practice, Lev J. Paukman, MD

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 and the New York State Department of Health Office of Professional Medical Conduct 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 396-400 Avenue X, Brooklyn, New York 11223:

Bronx	Kings	Queens
Richmond	New York	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
Medical Equipment, Supplies and Appliances		

The applicant has confirmed that the proposed financial/referral structure has been assessed in light of anti-kickback and self-referral laws, with the consultation of legal counsel, and it is concluded that proceeding with the proposal is appropriate.

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: July 20, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Victory Home Care Services, Inc.  
Address: Central Islip  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 2059-L

Description of Project:

Victory Home Care Services, Inc., a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Victory Home Care Services, Inc. has authorized 200 shares of stock. The shareholders will consist of Beverly Dean, Cynthia Exhem Williams and Paul St. Juste with each shareholder owning 10 shares. The remaining 170 shares will be unissued.

The Board of Directors of Victory Home Care Services, Inc. comprises the following individuals:

Paul St. Juste, President President, General Island Taxi, Inc. Pastor, Victory Gospel Assembly Church	Beverly Dean, DNP., Vice President/Vice Chairperson Adjunct Professor, Pace University Adjunct Professor, Medford Multicare Nurse Educator
Cynthia Exhem Williams, PA, Treasurer President/Physician Assistant, House Calls Plus, Inc.	

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 professionals associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 917 W. Suffolk Avenue, Brentwood, NY 11717:

Suffolk                      Nassau

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: August 20, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Theresa Home Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For Profit Corporation  
Application Number: 2133-L

Description of Project:

Theresa 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.

Theresa Home Care, Inc. has authorized 200 shares of stock which are owned solely by Vashti Ramlogan.

The members of the Board of Directors of Theresa Home Care, Inc. comprise the following individual:

Vashti Ramlogan, Nursing Assistant  
Unemployed

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 522 Chauncey Street, Brooklyn, New York 11233:

New York	Bronx	Richmond
Kings	Queens	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	Medical Supplies, Equipment & Appliances	

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: July 24, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Kirenaga Home Care Brooklyn, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2184-L

Description of Project:

Kirenaga Home Care Brooklyn, 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 solely owned by Kirenaga Home Care, LLC.

The Board of Directors of Kirenaga Home Care Brooklyn, Inc. comprises the following individual:

David Muson, President  
FINRA, Series 7, 63, 79  
Operator, SonicLiebs d/b/a Synergy HomeCare

Affiliations:

SonicLiebs d/b/a Synergy HomeCare (2013 – Present)  
Synergy HomeCare of Hudson County (2011 – 2014)

The membership of Kirenaga Home Care, LLC comprises the following:

Kirenaga Partners, LLC – 99%	David Muson – 1%
	Disclosed Above

The membership of Kirenaga Partners, LLC comprises the following:

Kirenaga Management, LLC – 30%	Solely Economic Investors – 70%
	Non-Voting/Non-Operating members

The membership of Kirenaga Management, LLC comprises the following:

Kirenaga, Inc. – 33.33%	David Muson, Inc. – 33.33%
	Disclosed Above

Berland Investments Incorporated – 33.33%

Kirenaga, Inc. has authorized 1,500 shares of stock which are solely owned by David Scalzo.

The Board of Directors of Kirenaga, Inc. comprises the following individual:

David Scalzo, MBA  
Founder/President, Kirenaga Partners, LLC

David Muson, Inc. has authorized 200 shares of stock, which are solely owned by David Muson.

The Board of Directors of David Muson, Inc. comprises the following individual:

David Muson  
Disclosed Above

Berland Investments Incorporated has authorized 1,000 shares of stock, which are solely owned by Terrance Berland.

The Board of Directors of Berland Investments Incorporated comprises the following individual:

Terrance Berland, MBA  
Former Senior Management Associate, Bridgewater Associates, LP

Affiliations:

Stamford Health System (2003 – 2009, 2014 – 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 575 Lexington Avenue, New York, New York 10022:

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	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

SonicLiebs d/b/a Synergy HomeCare (2013 – Present)  
Synergy HomeCare of Hudson County (2011 – 2014, New Jersey)  
Stamford Health System (2008 – 2009, 2014 – Present, Connecticut)

The information provided by the Division of Home and Community Based Services has indicated that home care agency 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 New Jersey Office of the Attorney General, Division of Consumer Affairs Office of Consumer Protection has indicated that Synergy HomeCare of Hudson County 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 State of Connecticut Department of Public Health, Division of Health Systems Regulation indicated that there were not any enforcement actions and the Stamford Health System 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: September 8, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Kirenaga Home Care Queens, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2186-L

Description of Project:

Kirenaga Home Care Queens, 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 solely owned by Kirenaga Home Care, LLC.

The Board of Directors of Kirenaga Home Care Queens, Inc. comprises the following individual:

David Muson, President  
FINRA, Series 7, 63, 79  
Operator, SonicLiebs d/b/a Synergy HomeCare

Affiliations:

SonicLiebs d/b/a Synergy HomeCare (2013 – Present)  
Synergy HomeCare of Hudson County (2011 – 2014)

The membership of Kirenaga Home Care, LLC comprises the following:

Kirenaga Partners, LLC – 99%	David Muson – 1% Disclosed Above
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The membership of Kirenaga Partners, LLC comprises the following:

Kirenaga Management, LLC – 30%	Solely Economic Investors – 70% Non-Voting/Non-Operating members
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The membership of Kirenaga Management, LLC comprises the following:

Kirenaga, Inc. – 33.33%	David Muson, Inc. – 33.33% Disclosed Above
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Berland Investments Incorporated – 33.33%

Kirenaga, Inc. has authorized 1,500 shares of stock which are solely owned by David Scalzo.

The Board of Directors of Kirenaga, Inc. comprises the following individual:

David Scalzo, MBA  
Founder/President, Kirenaga Partners, LLC

David Muson, Inc. has authorized 200 shares of stock, which are solely owned by David Muson.

The Board of Directors of David Muson, Inc. comprises the following individual:

David Muson  
Disclosed Above

Berland Investments Incorporated has authorized 1,000 shares of stock, which are solely owned by Terrance Berland.

The Board of Directors of Berland Investments Incorporated comprises the following individual:

Terrance Berland, MBA  
Former Senior Management Associate, Bridgewater Associates, LP

Affiliations:

Stamford Health System (2003 – 2009, 2014 – 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 575 Lexington Avenue, New York, New York 10022:

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	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

SonicLiebs d/b/a Synergy HomeCare (2013 – Present)  
Synergy HomeCare of Hudson County (2011 – 2014, New Jersey)  
Stamford Health System (2008 – 2009, 2014 – Present, Connecticut)

The information provided by the Division of Home and Community Based Services has indicated that home care agency 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 New Jersey Office of the Attorney General, Division of Consumer Affairs Office of Consumer Protection has indicated that Synergy HomeCare of Hudson County 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 State of Connecticut Department of Public Health, Division of Health Systems Regulation indicated that there were not any enforcement actions and the Stamford Health System 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: September 8, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Imo's Nursing Agency, Inc.  
Address: Hollis  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2193-L

Description of Project:

Imo's Nursing 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 as follows: Vivette Griffiths owns 5 shares and Joan Duncan owns 5 shares. The remaining 190 are unissued.

The Board of Directors of Imo's Nursing Agency, Inc. comprises the following individuals:

Vivette Griffiths, RN, NP, President/CEO  
RN, Emergency Medicine, Winthrop University Hospital  
Clinical Instructor, Critical Care, Malloy College

Joan Duncan, RN, FNP, Vice President  
Assistant Nurse Manager, Neonatal ICU, New York Hospital Queens

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 205-04 109<sup>th</sup> Avenue, Hollis, New York 11412:

Queens	Kings	Bronx
New York	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Respiratory Therapy
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: August 24, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: CDS Monarch, Inc.  
Address: Webster  
County: Monroe  
Structure: Not-For-Profit Corporation  
Application Number: 2280-L

Description of Project:

CDS Monarch, Inc., a not-for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The Board of Directors of CDS Monarch, Inc. comprises the following individuals:

Mark S. Peterson, MBA, CFRE, Board Chair/Executive Committee Chair  
President/CEO, Greater Rochester Enterprise

Joseph J. Gabriel, Vice Chair/Facilities Committee Chair  
Associate Administrator/Director of IT, University of Rochester Medical Center – The Flaum Eye Institute

William Woodard, Treasurer/Finance Committee Chair  
CFO, Fibertech Networks

Gregory Gribben, JD, Secretary  
Attorney/Partner, Woods, Oviatt, Gilman LLP

Jennifer Carlson, MPA, Program Assessment Committee Chair  
Director of Quality Assurance, Finger Lakes Addiction Counseling & Referral Agency

Richard T. Yarmel, JD, Guardianship and Executive Committees  
Partner, Harter, Secrest & Emery, LLP

Jerry McCullough, Wolf Foundation Board Chair  
General Manager, Ryan Plumbing, Heating, Air Conditioning and Fire Protection, LLC

Dennis Buchan, Member  
Retired

Richard H. Ferrari, MBA, Member  
Senior Vice President, Relationship Management and Commercial Lending, Wells Fargo Bank N.A.

Claire Kaler, Member  
Owner, K2 Communications

Dennis B. Olbrich, MBA, Member  
President, Paper & Output Systems Business, Kodak Alaris, Inc.

Daniel Skinner, Member  
Assembly Positions, CDS Monarch Vocational Services

Susan Travis, Member  
Judicial Assistant, United States Federal Courts, Western District of New York



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Loyal Home Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2293-L

Description of Project:

Loyal 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: Tsilistina Ryabicheva owns 100 shares and Tsisnami Gogilashvili owns 100 shares.

The Board of Directors of Loyal Home Care, Inc. is comprised of the following individuals:

Tsilistina Ryabicheva, RN - President  
Outreach Community Liaison RN, Four Seasons CHHA

Tsisnami Gogilashvili – Vice-President  
Provider Relations, Home Care Services of NY

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 3730 Cypress Avenue, Brooklyn, New York 11224:

Kings	Bronx	Queens	Richmond	New York
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Homemaker	Medical Social Services
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: August 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: HT&T Corporation d/b/a HT&T Home Care  
Address: Flushing  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2362-L

Description of Project:

HT&T Corporation d/b/a HT&T Home Care, 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: Yin Nog Tang owns 184 shares and Tao Huang owns 16 shares.

The Board of Directors of HT&T Corporation d/b/a HT&T Home Care comprises the following individuals:

Yin Nog Tang, RN, Chairman  
Community Health Nurse, Centerlight Health System

Tao Huang, MBA, Vice Chairman/Secretary  
Student

Jessica Yu, Treasury  
Enrolled Agent, Department of Treasury  
President/Manager, HT Tax Professionals, Inc.

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 31-30 138<sup>th</sup> Street, Apartment 3C, Flushing, New York 11354:

Queens	Brooklyn	New York
Kings	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: July 24, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Sundance Home Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2381-L

Description of Project:

Sundance 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.

Sundance Home Care, Inc. has authorized 200 shares of stock which are owned as follows: Lex Consulting of NJ, LLC owns 90 shares and Denning Corporation owns 90 shares. The remaining 20 shares are unissued.

The Board of Directors of Sundance Home Care, Inc. is comprised of the following individual:

Steven Metelsky, RN – President, Vice-President, Secretary, Treasurer  
Executive Director, Sundance SADC, Inc.

The members of Lex Consulting of NJ, LLC comprise the following individuals:

Steven Metelsky, RN – 50%  
(Disclosed above)

Tatiana Volovnik – 50%  
Unemployed

Affiliation  
Sundance SADC, Inc. (2012-present)

Denning Corporation has authorized 200 shares of stock which are owned solely by Pavel Soltanov.

The Board of Directors of Denning Corporation is comprised of the following individual:

Pavel Soltanov, President  
Assistant Executive Director, Sundance SADC, Inc.

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 1460 Flatbush Avenue, Brooklyn, New York, 11210:

Kings                      Queens                      New York                      Bronx                      Richmond                      Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	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: August 24, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Queens Home Care, Inc.d/b/a Home Instead Senior Care Franchise #765  
Address: Forest Hills  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2405-L

Description of Project:

Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

Queens Home Care, Inc. has proposed to operate as a franchisee of Home Instead, Inc.

The applicant has authorized 200 shares of stock which are owned as follows: Beverly Silver owns 104 shares and Ilan David owns 96 shares.

The Board of Directors of Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 comprises the following individuals:

Ilan David, President  
Operations Coordinator, Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 (Companion Care, 2011 – Present)  
International Sales Manager, New Yorker Electronics

Beverly Silver, Esq., Secretary  
Owner/Director, Queens Home Care, Inc. d/b/a Home Instead Senior Care Franchise #765 (Companion Care, 2011 – Present)  
Owner/Attorney, The Law Offices of Beverly Silver, Esq.

A Certificate of Good Standing has been received for the attorney associated with this application.

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 102-40A 67<sup>th</sup> Drive, Suite C2, Forest Hills, New York 11375:

Queens	Bronx	Kings
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 18, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Artful Home Care, Inc.  
Address: Southampton  
County: Suffolk  
Structure: For-Profit Corporation  
Application Number: 2437-L

Description of Project:

Artful 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: Beth McNeill-Muhs owns 100 shares. The remaining 100 shares are unissued.

The Board of Directors of Artful Home Care, Inc. comprises the following individual:

Beth McNeill-Muhs, PCA, President  
Principal, McNeill Art Group, Inc.

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 certification of the Personal Care Aide associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 565 Montauk Highway, Southampton, NY 11968:

Suffolk                      Nassau

The applicant proposes to provide the following health care services:

Nursing                      Home Health Aide              Personal Care              Nutrition

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: August 18, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Companion Angels Home Care Solutions, LLC  
Address: Bronx  
County: Bronx  
Structure: Limited Liability Company  
Application Number: 2452-L

Description of Project:

Companion Angels Home Care Solutions, 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 Companion Angels Home Care Solutions, LLC is the following individual:

Rama Akanni, RN – 100%  
Owner/Operator, Companion Angels Home Care Solutions, LLC (Companion Care)  
Registered Nurse Recovery Room/Operating Room, Manhattan Eye, Ear and Throat Hospital

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 healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office located at 2117A Williams Bridge Road, Bronx, New York 10461:

New York	Bronx	Kings
Queens	Richmond	

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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: August 10, 2015







Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: 1st Home Care of NY Corp.  
Address: Jackson Heights  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2467-L

Description of Project:

1st Home Care of NY Corp., 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 solely owned by Dilya Khalitova.

The Board of Directors of 1st Home Care of NY Corp. comprises the following individual:

Dilya Khalitova, President/CEO  
Marketing Consultant, Maaser Social 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 34-40 78<sup>th</sup> Street, Apartment 2C, Jackson Heights, New York 11372:

Queens	Bronx	Kings
New York	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: August 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Zenith Home Care of NY, LLC  
Address: New Rochelle  
County: Westchester  
Structure: Limited Liability Company  
Application Number: 2469-L

Description of Project:

Zenith Home Care of NY, 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 membership of Zenith Home Care of NY, LLC comprises the following individuals:

Alwell Nwankwoala, PhD – 51%  
Senior Research Scientist, Sandoz Pharmaceutical, Inc.

Uchechi Nwankwoala, RN, BSN – 49%  
RN, Connecticut/New York  
Charge Nurse, Surgical and Step Down Unit, Montefiore 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 healthcare professional associated with this application.

The State of Connecticut Department of Public Health 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 201 Coligni Avenue, New Rochelle, New York 10801:

Westchester	Putnam	Bronx
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The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Physical Therapy
Occupational Therapy	Speech-Language Pathology	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: August 25, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Acute Care Experts of New York, Inc.  
Address: Nassau  
County: Nassau  
Structure: For-Profit Corporation  
Application Number: 2474-L

Description of Project:

Acute Care Experts of New York, 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 Frederick Lucich.

The Board of Directors of Acute Care Experts of New York, Inc. is comprised of the following individual:

Frederick Lucich, RN – President/Owner  
Owner/President, Acute Care Experts, Inc. (NJ)

Affiliations:

Acute Care Experts, Inc. (NJ)  
Acute Care Experts, Inc. (NY; 12/31/12-present)

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 healthcare professional associated with this application.

The applicant proposes to serve the residents of the following counties from an office to be located in Nassau County:

Nassau	Suffolk	Dutchess	Orange	Putnam
Rockland	Sullivan	Ulster	Westchester	

The applicant proposes to provide the following health care service:

Nursing

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Acute Care Experts, Inc. (NJ)  
Acute Care Experts, Inc. (NY; 12/31/12-present)

The information provided by the New Jersey regulatory agency indicated that the Acute Care Experts, Inc. has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the home care services agency 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: August 31, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: SR Miracle Care Agency, Inc.  
Address: Bronx  
County: Bronx  
Structure: For-Profit Corporation  
Application Number: 2475-L

Description of Project:

SR Miracle 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.

The applicant has authorized 200 shares of stock which are owned solely by Sophia Perkins.

The Board of Directors of SR Miracle Care Agency, Inc. is comprised of the following individuals:

Sophie Perkins – President  
Executive Director, SR Miracle Care Agency, Inc. (Companion Care)

Rory Perkins – Vice-President/Treasurer  
Administrator, SR Miracle Care Agency, Inc. (Companion Care)

Zatanya Cooke - Secretary  
Secretary, SR Miracle Care Agency, Inc. (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 760 Burke Avenue, Bronx, New York 10467:

Bronx	New York	Kings
Queens	Richmond	Westchester

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: August 26, 2015





Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Trivium of New York, LLC  
Address: Forest Hills  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2492-L

Description of Project:

Trivium of New York, 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 membership of Trivium of New York, LLC comprises the following individuals:

Nigel Douglas – 51%  
Operations Consultant, Better Care Nursing Services, LLC

Adaku Nwachuku, MBA, DO – 49%  
Attending Physician, Advanced Spine and Pain

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 New York State Education Department indicates no issues with the license of the healthcare professional associated with this application.

The State of New Jersey, Department of Law & Public Safety, Division of Consumer Affairs indicates no issues with the license of the healthcare professional associated with this application.

The State of Maryland Board of Physicians indicates no issues with the license of the healthcare professional associated with this application.

The State of Pennsylvania, Department of State indicates that the license of the healthcare professional associated with this application is currently expired. There were no issues with the license during the time of registration (July 2011 – November 2014).

The applicant proposes to serve the residents of the following counties from an office located at 118-35 Queens Boulevard, Suite 400, Forest Hills, New York 11375:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 26, 2015





Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: L. Woerner, Inc. d/b/a HCR/HCR Home Care  
Address: Cobleskill  
County: Schoharie  
Structure: For-Profit Corporation  
Application Number: 2503-L

Description of Project:

L. Woerner, Inc. d/b/a HCR/HCR Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 4,000,000 shares of stock with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-issued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)  
Louise Woerner – 230,180 shares (9.34%)  
Don H. Kollmorgen – 233,824 shares (9.49%)  
Lawrence Peckham – 248,236 shares (10.07%)  
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner  
Chief Executive Officer, L. Woerner, Inc., d/b/a  
HCR / HCR Home Care (CHHA, LTHHCP, and  
LHCSA)  
Affiliations: HealthNow New York, Inc., Buffalo  
(Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)  
Partner / Managing Director, HDH Advisors, LLC,  
West Des Moines, Iowa (Financial Advisory  
Services / Professional Consulting / Corporate and  
Business Valuations / Litigation Support); Trustee,  
Bestcare, Inc. (LHCSA) Employee Stock  
Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer  
(9.34% stockholder)  
Disclosed above

Don H. Kollmorgen (9.49% stockholder)  
Retired

Lawrence L. Peckham (10.07% stockholder)  
Retired

Joseph J. Castiglia, CPA  
Retired

Clayton H. Osborne, MSW, LCSW (0.10%  
stockholder)  
Retired Vice President of Human Resources and  
Talent Management, Bausch and Lomb (Vision  
Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN  
President / Administrator, L. Woerner, Inc., d/b/a  
HCR / HCR Home Care (CHHA, LTHHCP, and  
LHCSA)  
Affiliation: DePaul Adult Care Communities, Inc.,  
Rochester (licensed ACFs/ALPs, in New York  
State, North Carolina, and South Carolina) – April  
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 795 East Main Street, Suite 10, Cobleskill, New York 12043:

Schoharie	Otsego	Delaware
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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
Medical Social Services	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):

L. Woerner, Inc., d/b/a HCR / HCR Home Care  
Bestcare, Inc. (2011 – Present)  
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)  
DePaul Adult Care Communities, Inc. (2009 – Present)  
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been

in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP

located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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: August 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: L. Woerner, Inc. d/b/a HCR/HCR Home Care  
Address: Plattsburgh  
County: Clinton  
Structure: For-Profit Corporation  
Application Number: 2504-L

Description of Project:

L. Woerner, Inc. d/b/a HCR/HCR Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 4,000,000 shares of stock with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)  
Louise Woerner – 230,180 shares (9.34%)  
Don H. Kollmorgen – 233,824 shares (9.49%)  
Lawrence Peckham – 248,236 shares (10.07%)  
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner  
Chief Executive Officer, L. Woerner, Inc., d/b/a  
HCR / HCR Home Care (CHHA, LTHHCP, and  
LHCSA)  
Affiliations: HealthNow New York, Inc., Buffalo  
(Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)  
Partner / Managing Director, HDH Advisors, LLC,  
West Des Moines, Iowa (Financial Advisory  
Services / Professional Consulting / Corporate and  
Business Valuations / Litigation Support); Trustee,  
Bestcare, Inc. (LHCSA) Employee Stock  
Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer  
(9.34% stockholder)  
Disclosed above

Don H. Kollmorgen (9.49% stockholder)  
Retired

Lawrence L. Peckham (10.07% stockholder)  
Retired

Joseph J. Castiglia, CPA  
Retired

Clayton H. Osborne, MSW, LCSW (0.10%  
stockholder)  
Retired Vice President of Human Resources and  
Talent Management, Bausch and Lomb (Vision  
Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN  
President / Administrator, L. Woerner, Inc., d/b/a  
HCR / HCR Home Care (CHHA, LTHHCP, and  
LHCSA)  
Affiliation: DePaul Adult Care Communities, Inc.,  
Rochester (licensed ACFs/ALPs, in New York  
State, North Carolina, and South Carolina) – April  
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 176 US Oval, Suite 3, Plattsburgh, New York 12903:

Clinton	Franklin	Essex
Hamilton	Warren	Washington
St. Lawrence		

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	Medical Social Services	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):

L. Woerner, Inc., d/b/a HCR / HCR Home Care  
Bestcare, Inc. (2011 – Present)  
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)  
DePaul Adult Care Communities, Inc. (2009 – Present)  
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised

sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul



Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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: August 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: L. Woerner, Inc. d/b/a HCR/HCR Home Care  
Address: Canastota  
County: Madison  
Structure: For-Profit Corporation  
Application Number: 2505-L

Description of Project:

L. Woerner, Inc. d/b/a HCR/HCR Home Care, a for-profit corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

The applicant has authorized 4,000,000 shares of stock with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)  
Louise Woerner – 230,180 shares (9.34%)  
Don H. Kollmorgen – 233,824 shares (9.49%)  
Lawrence Peckham – 248,236 shares (10.07%)  
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner  
Chief Executive Officer, L. Woerner, Inc., d/b/a  
HCR / HCR Home Care (CHHA, LTHHCP, and  
LHCSA)  
Affiliations: HealthNow New York, Inc., Buffalo  
(Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)  
Partner / Managing Director, HDH Advisors, LLC,  
West Des Moines, Iowa (Financial Advisory  
Services / Professional Consulting / Corporate and  
Business Valuations / Litigation Support); Trustee,  
Bestcare, Inc. (LHCSA) Employee Stock  
Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer  
(9.34% stockholder)  
Disclosed above

Don H. Kollmorgen (9.49% stockholder)  
Retired

Lawrence L. Peckham (10.07% stockholder)  
Retired

Joseph J. Castiglia, CPA  
Retired

Clayton H. Osborne, MSW, LCSW (0.10%  
stockholder)  
Retired Vice President of Human Resources and  
Talent Management, Bausch and Lomb (Vision  
Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN  
President / Administrator, L. Woerner, Inc., d/b/a  
HCR / HCR Home Care (CHHA, LTHHCP, and  
LHCSA)  
Affiliation: DePaul Adult Care Communities, Inc.,  
Rochester (licensed ACFs/ALPs, in New York  
State, North Carolina, and South Carolina) – April  
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers, employers, and health care affiliations revealed no matches on either the New York State Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at 7080 Commercial Drive, Canastota, New York 13032:

Madison	Onondaga	Cayuga
Oswego	Jefferson	Cortland

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Housekeeper

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

L. Woerner, Inc., d/b/a HCR / HCR Home Care  
Bestcare, Inc. (2011 – Present)  
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)  
DePaul Adult Care Communities, Inc. (2009 – Present)  
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been

in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP

located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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: August 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: GM Family Resources, Inc.  
Address: Staten Island  
County: Richmond  
Structure: For-Profit Corporation  
Application Number: 2521-L

Description of Project:

GM Family Resources, 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: Yue Mei Meng owns 51 shares and Guo Ping Liu owns 49 shares. The remaining 100 shares are unissued.

The Board of Directors of GM Family Resources, Inc. comprises the following individuals:

Yue Mei Meng, HHA/PCA, President/Treasurer  
New York State License in Nail Specialty  
Owner/Manager, Garden Rose Nails, Inc.  
HHA, LH Wellbeing Care, Inc.

Guo Ping Liu, HHA/PCA, Vice President/Secretary  
Manager of Facility/Billing Director, LH Wellbeing Care, Inc.

A search of the individuals 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 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 1057 Olympia Boulevard, Staten Island, New York 10306:

Richmond	Kings	Queens
New York	Bronx	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: July 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Edira Family Home Care LLC  
Address: Jamaica  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2546-L

Description of Project:

Edira Family Home Care 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 membership of Edira Family Home Care LLC comprises the following individuals:

Irina Korneyeva – 50%  
Patient Service Coordinator, Geriatric Resource

Larisa Shusterman, RN – 50%  
Director of Patient Services, Geriatric Resource

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 82-08 135<sup>th</sup> Street, #3M, Jamaica, New York 11435:

Queens	Kings	New York
Bronx	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: August 26, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Exceptional Home Care Services Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2573-L

Description of Project:

Exceptional Home Care Services 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 common stock which are owned as follows:

Esmira Yusufova, RN – 200 Shares

The following individual is the sole member of Board of Directors of Exceptional Home Care Services Inc.:

Esmira Yusufova, RN – President  
Nurse Educator and Utilization Management Review Nurse, Village Care

Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

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 1825 Coney Island Avenue, 2<sup>nd</sup> FL FR Brooklyn, New York 11230:

Bronx	Kings	New York	Queens
Richmond			

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
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Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval  
Date: July 30, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Albemarle Terrace, Inc. d/b/a Terrace Home Care  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2300-L

Description of Project:

Albemarle Terrace, Inc. d/b/a Terrace Home Care, a business corporation, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program to be operated by Albemarle Terrace, Inc. d/b/a Albemarle Terrace Assisted Living.

The applicant has authorized 200 shares of stock, which are owned as follows:

Moses J. Scharf – 200 shares

The Board of Directors of Albemarle Terrace, Inc. d/b/a Terrace Home Care is comprised by the following individuals:

Moses J. Scharf – President/Board Member  
Owner/Operator, Ateret Avoth, LLC

Elisa H. Stern, LCSW – Board Member  
Director of Supportive Serviced Project for  
Holocaust Survivors, Bikur Cholim Chesed  
Organization

Joel E. Shafran – Secretary/Treasurer/Board Member  
President/JM Management of N.Y. Corp.

Allen Spielman – Board Member  
Administrator/Director of Operations, New  
Century Home Care

Temi Fink – Board Member  
Director of Community Outreach, New Century Home  
Care

Eliyahu Scharf – Board Member  
Manager, Ateret Avoth, LLC

The Office of the Professions of the State Education Department indicates no issues with the licensure of the health professional associated with this application.

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 385 McDonald Avenue, Brooklyn, New York 11219.

Bronx	Kings	New York	Richmond
Queens			

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Occupational Therapy
Respiratory Therapy	Physical Therapy	Audiology	Medical Social Services
Nutrition	Homemaker	Housekeeper	Speech Language Pathology

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: July 27, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Samuel Konig d/b/a Park Inn Home Care  
Address: Rockaway Park  
County: Queens  
Structure: Sole Proprietorship  
Application Number: 2605-L

Description of Project:

Samuel Konig d/b/a Park Inn Home Care, a sole proprietorship, requests approval to obtain licensure as a home care services agency under Article 36 of the Public Health Law.

This LHCSA will be associated with the Assisted Living Program to be operated by Samuel Konig d/b/a Park Inn Assisted Living.

The sole proprietor of Samuel Konig d/b/a Park Inn Home Care is the following individual:

Samuel Konig  
Owner/Operator, Park Inn Home (Adult Home, 1978 – Present)

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 115-02 Ocean Promenade, Rockaway Park, New York 11694:

Queens	Bronx	Kings
New York	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

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

Park Inn Home

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance 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: July 17, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Azor Care at Home, Inc. d/b/a Azor Home Care  
 Address: New Rochelle  
 County: Westchester  
 Structure: Not-for-Profit  
 Application Number: 2158-L

Description of Project:

Azor Care at Home, Inc. d/b/a Azor Home Care, a not-for-profit corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Azor Home Care, Inc., a business corporation, was previously approved as a home care services agency by the Public Health Council at its March 20, 1998 meeting and subsequently licensed as 0587L001 on June 18, 1999. Approval is sought for the conveyance of the interests in Azor Home Care, Inc. including the operations of the Licensed Home Care Services Agency to Azor Care at Home, Inc. All other aspects of the operations will remain the same.

Azor Care at Home, Inc. previously received approval by the Public Health Council for the change of ownership from the Azor Home Care, Inc. to Azor Care at Home, Inc. at the May 8, 2009 Public Health Council meeting under application number 1699L. The applicant did not finalize the approval with the regional office and that application was withdrawn from consideration.

The proposed Board of Directors of Azor Care at Home, Inc. d/b/a Azor Home Care is comprised of the following individuals:

<p>Rita C. Mabli, LNHA, President President/CEO, United Hebrew Geriatric Center</p> <p><u>Affiliations:</u> United Hebrew Geriatric Center (2007 – Present)</p>	<p>Michael R. Rozen, Chairman Retired</p> <p><u>Affiliations:</u> United Hebrew Geriatric Center (2002 – Present)</p>
<p>Malcolm H. Lazarus, Vice Chairman Chairman, Polished Metals Ltd, Inc.</p> <p><u>Affiliations:</u> United Hebrew Geriatric Center (1981 – Present)</p>	<p>Donald Duberstein, Secretary President, The Duberstein Organization, Ltd.</p> <p><u>Affiliations:</u> United Hebrew Geriatric Center (1978 – Present)</p>
<p>Linda Forman, Treasurer Senior Advisor to the President, United Hebrew Geriatric Center</p>	

The Bureau of Professional Credentialing has indicated that the Licensed Nursing Home Administrator associated with this application holds a Nursing Home Administrator license in good standing and the Board of Examiners of Nursing Home Administrators has never taken disciplinary action against this individual or their license.

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 continue to serve the residents of the following counties from an office located at 391 Pelham Road, New Rochelle, New York 10805:

New York  
Bronx

Kings  
Richmond

Queens  
Westchester

The applicant proposes to continue to provide the following health care services:

Nursing  
Physical Therapy

Home Health Aide  
Occupational Therapy

Personal Care  
Speech-Language Pathology

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

United Hebrew Geriatric Center

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: August 24, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Marquis Home Care, LLC  
Address: Bardonia  
County: Rockland  
Structure: Limited Liability Company  
Application Number: 2188L

Description of Project:

Marquis Home Care, 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.

All Pro Home & Health Care Services, Inc. was previously approved as a home care services agency by the Public Health Council at its July 21, 2005 meeting and subsequently licensed as 9655L001 and 9655L002. Subsequently, All Pro Home & Health Care Services, Inc submitted LHCSA application number 1842L for a change in stock ownership which was contingently approved by the Public Health and Health Planning Council at the June 16, 2011 meeting, but the applicant never finalized the approval process for this change of ownership.

Marquis Home Care, LLC entered into a management agreement with All Pro Home & Health Care Services, Inc. which has been approved by the Department of Health.

The members of Marquis Home Care, LLC are:

Eric Newhouse, Esq. – 75%  
CEO, MedWiz Solutions

Neil Zelman – 25%  
Chief of Operations, Adult Care Management, LLC

Affiliations:  
The Eliot at Erie Station ALP (2007-present)  
The Eliot at Catskill (8/2010- present)

Affiliations:  
The Eliot at Erie Station ALP (2011-present)  
The Eliot at Catskill (8/2010- 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 Eric Newhouse, Esq.

The applicant proposes to serve the residents of the counties indicated below from offices located at the addresses specified.

230 North Main St., Spring Valley, NY 10977

Rockland	Orange	Nassau	Suffolk
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440 Beach 21st St., Far Rockaway, NY 11691

Queens Bronx	Kings Richmond	New York Westchester
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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	Nutrition	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

The Eliot at Erie Station ALP  
The Eliot at Catskill (8/2010 to present)

The Eliot at Erie Station was fined ten thousand dollars (\$10,000) pursuant to a stipulation and order dated July 6, 2010 for inspection findings of September 29, 2009 for violations of Article 7 of the Social Services Law and 18 NYCRR 487 Standards for Adult Homes.

The information provided by the Division of Adult Care Facilities and Assisted Living Surveillance unit 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: August 25, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Paramount Homecare Agency, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2436-L

Description of Project:

Paramount Homecare Agency, Inc. a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Paramount Homecare Agency, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 8, 2011 meeting and subsequently licensed 1952L001. At that time it was owned as follows: Michael Pinter – 100 Shares and Reuben Grabel – 100 Shares.

Through a Stock Purchase Agreement, Roman Offengeym will become the sole stock holder of Paramount Homecare Agency, Inc.

The applicant has authorized 200 shares of stock, which will be owned as follows:

Roman Offengeym, LPN – 200 Shares

The following individual will be the sole member of Board of Directors of Paramount Homecare Agency, Inc.:

Roman Offengeym, LPN – President/Secretary  
Administrator, Paramount Home Care Agency, Inc.

The Office of the Professions of the State Education Department indicate no issues with the licensure of the health professional associated with this application.

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 continue to serve the residents of the following counties from an office located at 1711 Kings Highway, Suite 2, Brooklyn, New York 11229.

Kings	Queens	Bronx
New York	Richmond	Nassau

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Homemaker	Housekeeper	Speech-Language Pathology
Physical Therapy	Nutrition		

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: July 17, 2015



Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Kirenaga Home Care Manhattan, Inc. d/b/a Synergy HomeCare  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2441-L

Description of Project:

Kirenaga Home Care Manhattan, Inc. d/b/a Synergy HomeCare, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

SonicLeibs, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its February 7, 2013 meeting and subsequently licensed as 1979L001. At that time SonicLeibs, Inc. d/b/a Synergy HomeCare was solely owned by David S. Muson.

The applicant has authorized 200 shares of stock which are solely owned by Kirenaga Home Care, LLC.

The Board of Directors of Kirenaga Home Care Manhattan, Inc. comprises the following individual:

David Muson, President  
FINRA, Series 7, 63, 79  
Operator, SonicLeibs d/b/a Synergy HomeCare

Affiliations:

SonicLeibs d/b/a Synergy HomeCare (2013 – Present)  
Synergy HomeCare of Hudson County (2011 – 2014)

The membership of Kirenaga Home Care, LLC comprises the following:

Kirenaga Partners, LLC – 99%	David Muson – 1%
	Disclosed Above

The membership of Kirenaga Partners, LLC comprises the following:

Kirenaga Management, LLC – 30%	Solely Economic Investors – 70%
	Non-Voting/Non-Operating members

The membership of Kirenaga Management, LLC comprises the following:

Kirenaga, Inc. – 33.33%	David Muson, Inc. – 33.33%
	Disclosed Above

Berland Investments Incorporated – 33.33%

Kirenaga, Inc. has authorized 1,500 shares of stock which are solely owned by David Scalzo.

The Board of Directors of Kirenaga, Inc. comprises the following individual:

David Scalzo, MBA  
Founder/President, Kirenaga Partners, LLC

David Muson, Inc. has authorized 200 shares of stock, which are solely owned by David Muson.

The Board of Directors of David Muson, Inc. comprises the following individual:

David Muson  
Disclosed Above

Berland Investments Incorporated has authorized 1,000 shares of stock, which are solely owned by Terrance Berland.

The Board of Directors of Berland Investments Incorporated comprises the following individual:

Terrance Berland, MBA  
Former Senior Management Associate, Bridgewater Associates, LP

Affiliations:

Stamford Health System (2003 – 2009, 2014 – 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 575 Lexington Avenue, New York, New York 10022:

New York	Bronx	Queens
Kings	Richmond	Westchester

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care
Physical Therapy	Occupational Therapy	Speech-Language Pathology
Medical Social Services	Nutrition	Homemaker
Housekeeper		

A seven (7) year review of the operations of the following facilities/ agencies was performed as part of this review (unless otherwise noted):

SonicLiefs d/b/a Synergy HomeCare (2013 – Present)  
Synergy HomeCare of Hudson County (2011 – 2014, New Jersey)  
Stamford Health System (2008 – 2009, 2014 – Present, Connecticut)

The information provided by the Division of Home and Community Based Services has indicated that home care agency 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 New Jersey Office of the Attorney General, Division of Consumer Affairs Office of Consumer Protection has indicated that Synergy HomeCare of Hudson County 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 State of Connecticut Department of Public Health, Division of Health Systems Regulation indicated that there were not any enforcement actions and the Stamford Health System 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: September 8, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: CareGuardian, Inc. d/b/a Hometeam  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2501-L

Description of Project:

CareGuardian, Inc. d/b/a Hometeam, a Delaware business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

New Universal Home Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its October 6, 2011 meeting and subsequently licensed 1764L001. At that time it was owned as follows: Felix Salinas – 200 Shares.

CareGuardian, Inc. d/b/a Hometeam has obtained a Certificate of Authority to Do Business in New York State from the New York State Department of State.

The applicant has authorized 2,930,052 shares of stock of which 1,500,000 shares are Common Stock. 1,072,909 shares are Preferred Stock and 357,143 Employee Incentive Stock Options which are owned as follows:

Josh M. Bruno – 1,200,000 Shares Common Stock	Akash A. Shah – 300,000 Shares Common Stock
Lux Capital LP – 515,855 Shares Preferred Stock	IA Ventures Strategies Fund II LP – 533,509 Shares Preferred Stock

In addition, the applicant has authorized 357,143 shares of Employee Incentive Stock Options with 91,124 issued with the remaining 266,019 shares unissued. No individuals owns 10% or more of the issued shares.

The Managing Partner of IA Ventures Strategies Fund II LP is:

Bradford W. Gillespie

The Principal of Lux Capital LP is:

Adam L. Goulburn, Ph.D.

The proposed Board of Directors of CareGuardian, Inc. d/b/a Hometeam comprises the following individuals:

Josh M. Bruno – President Co-Founder and CEO, CareGuardian, Inc. Operations Consultant, Home Care Agency Consultant	Akash A. Shah Co-Founder and COO, CareGuardian, Inc. Operations & IT Consultant, Healthcare Services Consultant
Bradford W. Gillespie – Board Member Managing Partner, IA Ventures Strategies Fund II, LP	Adam L. Goulburn, Ph.D. – Board Member Principal, Lux Capital LP

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

The response received from the New Jersey Office of the Attorney General, Division of Consumer Affairs, Office of Consumer Protection Responses indicated that CareGuardian, Inc. is currently active and that they have exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients.

The applicant disclosed that they have recently been granted a home care agency license in the State of Pennsylvania in preparation to begin operations in 2015.

The applicant proposes to continue to serve the residents of the following counties from an office located at 740 Broadway #1203, New York, New York 10003.

New York                      Kings                      Queens                      Bronx                      Richmond

The applicant proposes to provide the following health care services:

Nursing                      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:                      August 18, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Better Choice Home Care, Inc.  
Address: Brooklyn  
County: Kings  
Structure: For-Profit Corporation  
Application Number: 2542-L

Description of Project:

Better Choice Home Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Reliable Choice Home Health Care, Inc. was previously approved as a home care services agency by the Public Health and Health Planning Council at its August 4, 2011 meeting and was subsequently licensed as 1737L001.

The applicant has authorized 200 Shares of stock which are owned as follows:

David Li – 200 Shares

The Board of Directors of Better Choice Home Care, Inc. is comprised of the following individual:

David Li, CEO/President/Director  
Licensed Acupuncturist, D.L. Acupuncture

A search for David Li 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 licensure of the health professional associated with this application.

The applicant proposes to continue to serve the residents of the following counties from an office located at 7104 18<sup>th</sup> Avenue, Brooklyn, New York 11204:

Bronx	Kings	New York	Queens
Richmond	Nassau		

The applicant proposes to continue 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: August 18, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: All Boro Home Care, Inc.  
Address: Flushing  
County: Queens  
Structure: For-Profit Corporation  
Application Number: 2547-L

Description of Project:

All Boro Home Care, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

YWCA of Queens, Inc. d/b/a Y Evergreen Care, a not-for-profit corporation, was previously approved as a home care services agency by the Public Health Council at its March 2, 2007 meeting and subsequently licensed 1467L001.

Through a Purchase and Sale Agreement the applicant proposes to purchase the Licensed Home Care Services Agency currently operated by YWCA of Queens, Inc. d/b/a Y Evergreen Care

The applicant has authorized 200 Shares of stock which are owned as follows:

Yong Ho Lee – 10 Shares

190 shares remain unissued.

The Board of Directors of All Boro Home Care, Inc. is comprised of the following individual:

Yong Ho Lee – Director  
President, X-Treme Care, LLC

Affiliations:

- X-Treme Care, LLC (LHCSA)
- Agewell New York, Inc. (MLTCP)
- Cassena at Norwalk (CT – Nursing and Rehab Facility: 2010 - Present)

A search for Yong Ho Lee 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 facilities was performed as part of this review (unless otherwise noted):

- X-Treme Care, LLC (LHCSA)
- Agewell New York, Inc. (MLTCP)
- Cassena at Norwalk (CT – Nursing and Rehab Facility: 2010 - Present)

The information provided by the Office of Managed Care has indicated that the MLTC plan has provided sufficient supervision to prevent harm to the health, safety and welfare of patients and to prevent recurrent code violations.

The information provided by the Division of Home and Community Based Services has indicated that the home care agency 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 State of Connecticut, Department of Public Health, Facility Licensing and Investigation Section has indicated that Cassena at Norwalk holds a current valid license and that all license entities must adhere to a minimum standard dictated by the Public Health Care of the State of Connecticut.

The applicant proposes to serve the residents of the following counties from an office located at 149-06 41<sup>st</sup> Avenue, 2<sup>nd</sup> Floor, Flushing, New York 11355:

Bronx	Kings	New York	Queens
Richmond	Westchester		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Speech-Language Pathology
Occupational Therapy	Physical Therapy	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: August 21, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency  
Address: Rockaway Beach  
County: Queens  
Structure: Limited Liability Company  
Application Number: 2554-L

Description of Project:

Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency, 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.

Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency was previously approved as a home care services agency by the Public Health Council at its May 16, 2003 meeting and subsequently licensed 1150L001. At that time the membership of the LLC consisted of Bert Fried and Tividar Marcovici with both individuals owning a 50% membership interest. Subsequently, the agency submitted a Transfer of Ownership Interest Notice in which 9.9% of membership was transferred to Daniel Lifschutz. Therefore, the current membership of this LLC is Bert Fried – 45.05%, Tividar Marcovici – 45.05% and Daniel Lifschutz – 9.9%. The purpose of the application is transfer the remaining 90.9% ownership interest to Mr. Lifschutz

The proposed sole member of Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency is as follows:

Daniel Lifschutz

Director: Overseeing Operations, Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare home Care Agency

Affiliations:

- Kings Adult Care Center (February 2010 – Present)
- Promenade Rehabilitation and Health Care Center (July 2007 – Present)

A search of the individual named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A seven year review was conducted for the following healthcare facilities:

- Kings Adult Care Center (February 2010 – Present)
- Promenade Rehabilitation and Health Care Center (July 2007 – Present)
- Surfside Manor Home for Adults Licensed Home Care Services Agency, LLC d/b/a ExtraCare Home Care Agency (January 27, 2015 – 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 Information provided by the Bureau of Quality Assurance for Nursing Homes has indicated that the residential health care facilities reviewed have provided sufficient supervision to prevent harm to the health, safety and welfare of residents and to prevent recurrent code violations.



The applicant proposes to continue to serve the residents of the following counties from an office located at 214 Beach 96<sup>th</sup> Street, Rockaway Beach, New York 11693.

Bronx	Nassau	New York	Kings
Queens	Richmond		

The applicant proposes to continue to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Physical Therapy	Nutrition	Speech-Language Pathology

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: August 6, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Hakuna, Inc.  
Address: New York  
County: New York  
Structure: For-Profit Corporation  
Application Number: 2592-L

Description of Project:

Hakuna, Inc., a Delaware business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Finest Home Care Corp. was previously approved as a home care services agency by the Public Health and Health Planning Council at its December 6, 2012 meeting and subsequently licensed as 1663L001.

The applicant has authorized 10,000,000 shares of stock, which are owned as follows: Kevin Liu owns 1,668,000 shares and the remaining 8,332,000 shares are unissued.

The Board of Directors of Hakuna, Inc. comprises the following individual:

Kevin Liu, MBA, Chairman  
Owner/Operator, Hakuna, Inc. (Companion Care Agency, 2014 – Present)

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 550 West 45<sup>th</sup> Street, #243, New York, New York 10036:

New York	Kings	Queens
Bronx	Richmond	Westchester

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: September 3, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: L. Woerner, Inc.d/b/a HCR/HCR Home Care  
Address: Batavia  
County: Genesee  
Structure: For-Profit Corporation  
Application Number: 2606-L

Description of Project:

L. Woerner, Inc. d/b/a HCR/HCR Home Care, a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

L. Woerner, Inc. d/b/a HCR was previously approved as a home care services agency by the Public Health Council at its October 3, 2006 meeting and subsequently licensed as 1477L001 and 1477L002.

L. Woerner, Inc. d/b/a HCR requests approval to add Duane Tolander as a new trustee for their Employee Stock Ownership Plan Trust and to update the current status of the corporation's stockholders, officers, board members and trustees. Mr. Tolander would be an independent trustee, in that he will not also be a stockholder, director, officer, or employee of L. Woerner, Inc., thereby removing any possible conflicts of interest with respect to his management and investment decisions for the funds held in the Employee Stock Ownership Plan Trust. Mr. Tolander is also currently a trustee of the Bestcare, Inc. (LHCSA) Employee Stock Ownership Plan Trust, as approved by PHHPC in 2011. The current proposal also updates the current assumed name (d/b/a) of the corporation, by adding a new additional assumed name (d/b/a) HCR Home Care, to the existing assumed name (d/b/a) HCR.

The corporation L. Woerner, Inc., d/b/a HCR / HCR Home Care, is currently authorized 4,000,000 shares of stock, with 2,464,344 shares of stock currently issued, and the remaining 1,535,656 shares of stock currently held in Treasury as non-unissued shares. Of the 2,464,344 shares of stock currently issued, the stockholders and stock distribution are as follows:

Employee Stock Ownership Plan Trust – 1,749,604 shares (71.00%)  
Louise Woerner – 230,180 shares (9.34%)  
Don H. Kollmorgen – 233,824 shares (9.49%)  
Lawrence Peckham – 248,236 shares (10.07%)  
Clayton Osborne – 2,500 shares (0.10%)

The Trustees of the Employee Stock Ownership Plan Trust (71.00 % stockholder) will be as follows:

Louise Woerner  
Chief Executive Officer, L. Woerner, Inc., d/b/a  
HCR / HCR Home Care (CHHA, LTHHCP, and  
LHCSA)  
Affiliations: HealthNow New York, Inc., Buffalo  
(Managed Care Plan) – 4/1/02 to 4/10/08

Duane E. Tolander, CPA (Iowa)  
Partner / Managing Director, HDH Advisors, LLC,  
West Des Moines, Iowa (Financial Advisory  
Services / Professional Consulting / Corporate and  
Business Valuations / Litigation Support); Trustee,  
Bestcare, Inc. (LHCSA) Employee Stock  
Ownership Plan Trust

The members of Board of Directors of L. Woerner, Inc., d/b/a HCR / HCR Home Care, are as follows:

Louise Woerner, Chairperson, Secretary, Treasurer  
(9.34% stockholder)  
Disclosed above

Don H. Kollmorgen (9.49% stockholder)  
Retired

Lawrence L. Peckham (10.07% stockholder)  
Retired

Joseph J. Castiglia, CPA  
Retired

Clayton H. Osborne, MSW, LCSW (0.10%  
stockholder)  
Retired Vice President of Human Resources and  
Talent Management, Bausch and Lomb (Vision  
Products Manufacturer)

An additional officer of L. Woerner, Inc., d/b/a HCR / HCR Home Care, who is neither a  
stockholder, trustee, nor board member, is as follows:

Mary Elizabeth Zicari, RN  
President / Administrator, L. Woerner, Inc., d/b/a  
HCR / HCR Home Care (CHHA, LTHHCP, and  
LHCSA)  
Affiliation: DePaul Adult Care Communities, Inc.,  
Rochester (licensed ACFs/ALPs, in New York  
State, North Carolina, and South Carolina) – April  
2009 to present

The Office of the Professions of the New York State Education Department indicates no issues  
with the RN license of Mary Elizabeth Zicari, the CPA license of Joseph Castiglia, or the LCSW  
license of Clayton Osborne.

The Professional Licensing Bureau of the State of Iowa indicates no issues with the CPA license  
of Duane Tolander.

In addition, a search of all of the above named stockholders, trustees, board members, officers,  
employers, and health care affiliations revealed no matches on either the New York State  
Medicaid Disqualified Provider List or the federal Office of the Inspector General's Provider  
Exclusion List.

The applicant proposes to serve the residents of the following counties from an office located at  
211 East Main Street, Batavia, New York 14020:

Genesee  
Wyoming

Monroe

Orleans

85 Metro Park, Rochester, New York 14623:

Monroe  
Orleans

Livingston  
Wayne

Ontario

The applicant proposes to provide the following health care services:

Nursing  
Physical Therapy  
Speech-Language Pathology  
Medical Equipment and  
Supplies

Home Health Aide  
Occupational Therapy  
Medical Social Services

Personal Care  
Respiratory Therapy  
Nutrition

A seven (7) year review of the operations of the following facilities/agencies was performed as part of this review (unless otherwise noted):

L. Woerner, Inc., d/b/a HCR / HCR Home Care  
Bestcare, Inc. (2011 – Present)  
HealthNow New York, Inc. (Managed Care Plan, 2002 – 2008)  
DePaul Adult Care Communities, Inc. (2009 – Present)  
DePaul Community Services, Inc. (2009 – Present)

The NYSDOH Division of Home and Community Based Services reviewed the compliance history of the CHHAs and LHCSAs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period 2008 to present, and the LTHHCPs operated by L. Woerner, Inc., d/b/a HCR / HCR Home Care, for the time period May 2010 (establishment of the first HCR / HCR Home Care LTHHCP) to present.

The Division of Home and Community Based Services also reviewed the compliance history of the LHCSAs operated by Bestcare, Inc., for the time period 2011 (when Mr. Tolander began serving as a Trustee of Bestcare's Employee Stock Ownership Plan Trust) to present.

It has been determined that the L. Woerner, Inc., d/b/a HCR / HCR Home Care CHHAs, LTHHCPs, and LHCSAs, plus the affiliated Bestcare, Inc., LHCSAs, have all exercised sufficient supervisory responsibility to protect the health, safety and welfare of patients and to prevent any recurrent code violations. These CHHAs, LTHHCPs, and LHCSAs have all been in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed.

The NYSDOH Division of Adult Care Facilities and Assisted Living Surveillance reviewed the compliance history of the five (5) ACFs and ALPs located in New York State operated by DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

An enforcement action was taken in November, 2012, against Glenwell Adult Home / Assisted Living Program in Cheektowaga, New York, based on a September 2011 inspection citing violations in the area of Endangerment. A \$25,000 civil penalty was imposed.

An enforcement action was taken in February, 2015, against Kenwell Adult Home / Assisted Living Program in Kenmore, New York, based on September 2012, January 2013, and August 2013 inspections citing violations in the area of Resident Services. A \$10,000 civil penalty was imposed.

An enforcement action was taken in October, 2011, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a July 2011 inspection citing violations in the area of Endangerment in Supervision. A \$1000 civil penalty was imposed.

A second enforcement action was taken in November, 2012, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on a November 2011 inspection citing violations in the area of Endangerment. A \$4000 civil penalty was imposed.

A third enforcement action was taken in August, 2013, against Woodcrest Commons Adult Home / Assisted Living Program in Henrietta, New York, based on August 2011, and December 2011 inspections citing violations in the areas of Resident Services and Food Services. An \$1800 civil penalty was imposed.

The two (2) remaining New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., (Horizons Adult Home / Assisted Living Program, and Westwood Adult Home) do not have any enforcement history to report. It has been determined that the five (5) New York State ACFs and ALPs operated by DePaul Adult Care Communities, Inc., are

now in substantial compliance with all applicable codes, rules, and regulations, with no additional enforcement or administrative actions imposed.

The NYSDOH Office of Health Insurance Program's Bureau of Managed Care Certification and Surveillance reviewed the compliance history of the affiliated HealthNow New York, Inc., for the time period April 1, 2002 to April 10, 2008. It has been determined that this affiliated managed care plan was in substantial compliance with all applicable codes, rules, and regulations, with no enforcement or administrative action imposed, during that time period.

The New York State Office of Mental Health's Bureau of Inspection and Certification reviewed the compliance history of each of the affiliated mental health providers and residences located in New York State operated within the corporate structure of DePaul Community Services, Inc., an affiliate of DePaul Adult Care Communities, Inc., for the time period April 2009 to present. It has been determined that the mental health providers and residences in New York State affiliated with DePaul Community Services, Inc., were all in substantial compliance with all applicable codes, rules, and regulations, with no enforcement sanctions or administrative action imposed, during that time period.

Out of state compliance requests were sent to North Carolina for each of the twelve (12) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present. An out of state compliance request was also sent to South Carolina for the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., for the time period April 2009 to present.

South Carolina has reported that the one (1) licensed ACF/ALP located in South Carolina that is operated by the affiliated DePaul Adult Care Communities, Inc., has had no enforcement actions imposed within the previous twelve (12) months (the only reporting period South Carolina provides) and is considered to be in good standing with the South Carolina Department of Health and Environmental Control.

North Carolina has reported that only one (1) of the twelve (12) licensed ACFs/ALPs in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., has had an enforcement action since April 2009.

An enforcement action was taken in February, 2010, against Greenbrier Adult Home / Assisted Living Program located in Fairmont, North Carolina, based on a January 2009 survey citing violations in the area of Medication Administration. A \$2,000 civil penalty was imposed.

The North Carolina Department of Health and Human Services reports that the remaining eleven (11) licensed ACFs/ALPs located in North Carolina that are operated by the affiliated DePaul Adult Care Communities, Inc., have had no enforcement actions imposed since April 2009.

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: August 10, 2015

Licensed Home Care Services Agency  
Character and Competence Staff Review

Name of Agency: Allcare Family Services, Inc.  
Address: Buffalo  
County: Erie  
Structure: For-Profit Corporation  
Application Number: 151264-E

Description of Project:

Allcare Family Services, Inc., a business corporation, requests approval for a change in ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Allcare Family Services, Inc. was previously approved as a home care services agency by the Public Health Council at its May 23, 1986 meeting and subsequently licensed 0067L001. At that time Joseph LoTempio and Joseph Mosey Jr. each owned 25 shares of stock.

Joseph LoTempio died April 25, 2013 and left his shares of stock to Laura Macy in his Last Will and Testament. Joseph Mosey, Jr. died October 10, 2014 and his shares went to his estate per his Last Will and Testament. The executor of the Estate of Joseph Mosey Jr. advised that they are not interested in staying in the home health care business and proposed that Laura Macy purchase the stock.

The applicant has authorized 200 shares of stock which will be owned as follows:

Laura A. Macy – 50 Shares  
Administrator, Officer – Allcare Family Services, Inc.

150 shares of stock remain unissued.

The following individual is the sole member of Board of Directors of Allcare Family Services, Inc.,

Laura A. Macy – President/Secretary/Treasurer  
(Previously Disclosed)

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 continue to serve the residents of Erie County from an office located at 625 Delaware Avenue Suite 150, Buffalo, New York 14202.

The applicant proposes to continue to provide the following health care services:

Nursing                      Home Health Aide                      Personal Care                      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: August 31, 2015



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**M E M O R A N D U M**

**TO:** Public Health and Health Planning Council

**FROM:** Richard Zahnleuter, General Counsel

**DATE:** September 11, 2015

**SUBJECT:** Proposed Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc.

---

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. This not-for-profit corporation seeks approval to change its name to "Housing Works Community Healthcare, Inc." The corporation also seeks approval to include additional purposes. Public Health and Health Planning Council approval for the certificate of amendment is therefore required by Not-for-Profit Corporation Law § 804 (a) and 10 NYCRR § 600.11 (a) (2).

The Department has no objection to the proposed name change, and the proposed Certificate of Amendment is in legally acceptable form.

Attachments





**DELANEY CORPORATE SERVICES, LTD.**

99 Washington Ave., Ste. 805A, Albany, NY 12210  
800-717-2810 • 518-465-9242 • 518-465-7883 (fax)  
nick@delaneycorporate.com

An Affiliate of National Registered Agents, Inc.

*"For service as good as gold"*

July 8, 2015

**STATE OF NEW YORK DEPARTMENT OF HEALTH**  
Public Health and Health Planning Council  
Corning Tower, 24th Fl.  
The Governor Nelson A. Rockefeller Empire State Plaza  
Albany, New York 12237  
518-473-3233

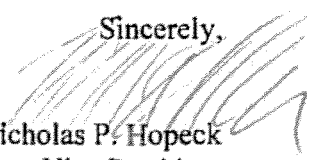
**RE: HOUSING WORKS HEALTH SERVICES III, INC.**

To whom this may concern:

I hereby respectfully request your consent to the filing of the attached certificate of amendment for the above reference NYS Not-for-Profit Corporation. A copy of all charter documents are attached from the New York Secretary of State.

If you have any questions or require further information, please do not hesitate to contact me. Otherwise, please issue your consent to the undersigned at your earliest convenience.

Sincerely,

  
Nicholas P. Hopeck  
Vice President

**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**HOUSING WORKS HEALTH SERVICES III, INC.**

---

(Under Section 805 of the Not-for-Profit Corporation Law)

The undersigned, being the Secretary of Housing Works Health Services III, Inc., in accordance with Section 805 of the New York Not-for-Profit Corporation Law, does hereby certify:

1. The name of the corporation is Housing Works Health Services III, Inc.
2. The Certificate of Incorporation of Housing Works Health Services III, Inc. was filed by the Department of State on the 4<sup>th</sup> day of April, 1995.
3. The Certificate of Incorporation as now in full force and effect is hereby amended to effect the following amendments:

Article **FIRST** of the Certificate of Incorporation, setting forth the name of the corporation, is hereby amended to read, in its entirety, as follows

**FIRST:** The name of the corporation is Housing Works Community Healthcare, Inc. (hereinafter referred to as the "Corporation").

Article **FOURTH** of the Certificate of Incorporation, setting forth the purposes of the corporation, is hereby amended to read, in its entirety, as follows:

**FOURTH:** The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any

low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases and sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with applicable law;

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(f) operating outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation understands that it may not establish any facility or program without first obtaining such operating certificate.

Article **FIFTH**, subsection (a) of the Certificate of Incorporation, setting forth the powers and authorities of the corporation in furtherance of its corporate purposes, is hereby amended to read as follows:

#### **FIFTH**

...(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal or mixed, by private or public appeal, by advertisement or by any other lawful means for any corporate purpose;

Article **SEVENTH**, subsection (d) of the Certificate of Incorporation, regarding Internal Revenue Code requirements, is hereby amended to read as follows:

#### **SEVENTH**

...(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

Article **EIGHTH**, setting forth the principal office of the corporation, is hereby amended to read as follows:

**EIGHTH**: The principal office of the Corporation is to be located in Kings County, State of New York.

Article **TENTH**, setting forth the initial Board of Directors, is hereby deleted, and the Certificate of Incorporation is hereby renumbered to reflect such deletion.

Article **ELEVENTH**, setting forth the address of the corporation, is hereby renumbered and amended to read as follows:

**TENTH**: The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Community Healthcare, Inc.  
57 Willoughby St.  
Brooklyn, NY 11201

6. The text of the Certificate of Incorporation is hereby restated to set forth its entire text, as amended, as follows:

**FIRST**: The name of the corporation is Housing Works Community Healthcare, Inc. (hereinafter referred to as the "**Corporation**").

**SECOND**: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law having the purposes set forth in Article Fourth below.

**THIRD**: Pursuant to Section 601 of the Not-for-Profit Corporation Law, the Corporation shall have one class of members, the sole member of which shall be Housing Works, Inc. (hereinafter referred to as "**Housing Works**"), a New York corporation organized under the Not-for-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "**Code**"; all references

herein to Sections of the Code shall be to Sections thereof, as amended from time to time, and to corresponding provisions of subsequent United States Internal Revenue laws).

**FOURTH:** The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases and sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with applicable law;

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public; and

(f) operating outpatient programs for the mentally disabled pursuant to Article 31 of the Mental Hygiene Law, subject to the issuance of an operating certificate by the Office of Mental Health. The Corporation understands that it may not establish any facility or program without first obtaining such operating certificate.

**FIFTH:** In furtherance, but not in limitation, of the purposes set forth in Article Fourth above, the Corporation shall have the power and authority to do the following:

(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal or mixed, by private or public appeal, by advertisement or by any other lawful means for any corporate purpose;

(b) receive, own, repair, administer and maintain, as applicable, money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, received by grant, contribution, donation, gift, deed, bequest, devise or loan from any source, private, public or governmental, and otherwise to acquire money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, and to own, hold, repair, invest, lease, loan, expend, contribute, use, sell, transfer, pledge, hypothecate, encumber, mortgage, grant a security interest in or otherwise dispose of or deal with, as applicable, any and all such money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights or services so acquired for any corporate purpose;

(c) aid, support and assist by gifts, contributions or otherwise, other domestic or foreign corporations, community chests, funds and foundations that are organized and operated exclusively for charitable, educational, religious, scientific, literary or cultural purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(h) of the Code), and which do not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(d) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

**SIXTH:** (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would require the approval or consent of the State of New York or any

official, department, agency or instrumentality thereof as required by Section 404 of the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder.

(b) Nothing in this Certificate of Incorporation shall authorize the Corporation to engage in any activity which is not in furtherance of the purposes set forth in Article Fourth above.

(c) Notwithstanding anything in this Certificate of Incorporation to the contrary, whenever the Corporation proposes to lease premises in which the operation of the Center is to be conducted, it shall do so in accordance with the provisions of Article 28 of the Public Health Law and the relevant regulations in effect from time to time thereunder, and in particular, insofar as required by any such regulations, any such lease agreement shall include the following language:

“The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in Article 28 of the Public Health Law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossession proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before the expiration of the lease.

Upon receipt of notice from landlord of his intent to exercise his right of reentry or upon the service of process in dispossession proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, of the receipt of such notice or service of such process or that the lease is about to expire.”

or other such language, if any, as may be required by applicable law to be contained in any such lease agreement.

(d) The Corporation has been organized exclusively to serve a public purpose and it shall be and remain subject to the supervision of the Commissioner to the extent required by provisions of Article 28-B of the Public Health Law and the relevant regulations in effect from time to time thereunder.

**SEVENTH:** (a) Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable, scientific and educational purposes as specified in Section 501(c)(3) of the Code and the Corporation shall not carry on any activity not permitted to be carried on (i) by a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code or (ii) by a corporation the contributions, transfers, or gifts to which are deductible under Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Code.

(b) The Corporation is not formed for pecuniary profit or for financial gain and no part of its assets, income or profit shall be distributed to or inure to the benefit of any private individual, except to the extent permitted by the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets of the Corporation upon dissolution of the Corporation.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene (including the publishing or distributing of statements) in, any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941 of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943 of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945 of the Code.

**EIGHTH:** The principal office of the Corporation is to be located in Kings County, State of New York.

**NINTH:** The number of Directors shall be as specified in the by-laws of the Corporation, but in no event shall there be fewer than three Directors.

**TENTH:** The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Community Healthcare, Inc.  
57 Willoughby St.  
Brooklyn, NY 11201



**ELEVENTH**: In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed, subject to the approval of a Justice of the Supreme Court of the State of New York, but only to one or more organizations as shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Code.

**TWELFTH**: The Corporation's existence shall be perpetual.

7. The changes included in this Restated Certificate of Incorporation and the restatement of this Certificate of Incorporation were authorized by the sole member of the Corporation.

**[The remainder of this page has been intentionally left blank.]**

IN WITNESS WHEREOF, this restated certificate of incorporation has been signed, and the statements made herein are affirmed as true, under the penalties of perjury, this 24<sup>th</sup> day of June , 2015.



**Daronne Hudson**  
**Secretary**

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 8, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

F 950404000599

CERTIFICATE OF INCORPORATION

OF

HOUSING WORKS HEALTH SERVICES III, INC.

Under Section 402 of the Not-for-Profit Corporation Law  
of the State of New York

I, the undersigned, a natural person eighteen years of age or older, desiring to form a corporation pursuant to the provisions of the Not-for-Profit Corporation Law of the State of New York, as amended (hereinafter referred to as the "Not-for-Profit Corporation Law"), do hereby certify as follows:

FIRST: The name of the corporation is Housing Works Health Services III, Inc. (hereinafter referred to as the "Corporation").

SECOND: The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law and shall be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law having the purposes set forth in Article Fourth below.

THIRD: Pursuant to Section 601 of the Not-for-Profit Corporation Law, the Corporation shall have one class of members, the sole member of which shall be Housing Works, Inc. (hereinafter referred to as "Housing Works"), a New York corporation organized under the Not-for-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 509(a)(1) of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code");

all references herein to Sections of the Code shall be to Sections thereof, as amended from time to time, and to corresponding provisions of subsequent United States Internal Revenue laws).

FOURTH: The Corporation is organized exclusively for charitable, scientific and educational purposes, within the meaning of Section 501(c)(3) of the Code, which purposes shall include, but are not limited to, the following:

(a) planning, developing, constructing, erecting, building, acquiring, altering, reconstructing, rehabilitating, owning, leasing, maintaining and operating one or more adult day diagnostic and treatment centers (hereinafter referred to as the "Centers") to be located in the City of New York, State of New York, which Centers will serve persons living with AIDS or HIV illness;

(b) applying for and maintaining all necessary certificates and permits under Article 28 of the Public Health Law of the State of New York, as amended (hereinafter referred to as the "Public Health Law") and the regulations in effect from time to time thereunder to operate the Centers;

(c) operating each such Center to provide a broad range of health services to persons living with AIDS or HIV illness, including patients who may be residents of any low income housing facility owned or operated by Housing Works or any affiliate thereof and other clients of Housing Works, by providing and/or arranging a comprehensive range of multi-

disciplinary health and social services, including, without limitation, medical services, case management services, food and nutrition services, social services as indicated by the patients' medically related social and emotional needs, assistance and/or supervision, when required, with activities of daily living, rehabilitation therapy services, activities programs, nursing services, religious and pastoral counselling and HIV risk reduction counselling for patients requesting such counselling, pharmaceutical services, substance abuse treatment, if appropriate, and dental services;

(d) promoting and carrying on scientific research related to the care of the sick, injured and disabled, and related to the causes, origins, treatment and prevention of diseases, sickness, injuries and disabilities; provided, however, that the Corporation shall not promote or carry on scientific research involving human subjects, unless such scientific research is conducted in accordance with; and

(e) engaging in educational activities related to providing care to the sick, injured and disabled, and related to promoting the health of the public.

FIFTH: In furtherance, but not in limitation, of the purposes set forth in Article Fourth above, the Corporation shall have the power and authority to do the following:

(a) solicit grants, contributions and donations of money, goods, merchandise and other property of all kinds, whether real, personal and mixed, by private or public appeal, by

advertisement or by any other lawful means for any corporate purpose;

(b) receive, own, repair, administer and maintain, as applicable, money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description, received by grant, contribution, donation, gift, deed, bequest, devise or loan from any source, private, public or governmental, and otherwise to acquire money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights and services of every kind and description; and to own, hold, repair, invest, lease, loan, expend, contribute, use, sell, transfer, pledge, hypothecate, encumber, mortgage, grant a security interest in or otherwise dispose of or deal with, as applicable, any and all such money, goods, merchandise, securities, negotiable instruments and other property of all kinds, whether real, personal or mixed, and all other rights or services so acquired for any corporate purpose;

(c) aid, support and assist by gifts, contributions or otherwise, other domestic or foreign corporations, community chests, funds and foundations that are organized and operated exclusively for charitable, educational, religious, scientific, literary or cultural purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is

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carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(b) of the Code), and which do not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(d) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would



carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in Section 501(b) of the Code), and which do not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(d) enter into such contracts, agreements or other arrangements and do all such acts as are necessary or convenient to accomplish the objects and purposes herein set forth, to the extent not forbidden by law, this Certificate of Incorporation or the by-laws of the Corporation, including the execution of a Regulatory Agreement with New York State Medical Care Facilities Financing Agency, acting by and through the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"), and of such other instruments and undertakings as may be necessary to enable the Corporation to secure the benefits of Article 28-B of the Public Health Law; and

(e) have and exercise all general powers enumerated in Section 202 of the Not-for-Profit Corporation Law and all other powers set forth herein, in the by-laws of the Corporation and elsewhere in the Not-for-Profit Corporation Law and those powers granted to it by the Public Health Law and the relevant regulations in effect from time to time thereunder.

SIXTH: (a) Except to the extent such approvals or consents have been obtained, nothing contained herein shall authorize the Corporation to engage in any activities which would

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require the approval or consent of the State of New York or any official, department, agency or instrumentality thereof as required by Section 404 of the Not-for-Profit Corporation Law and the Public Health Law and the relevant regulations in effect from time to time thereunder.

(b) Nothing in this Certificate of Incorporation shall authorize the Corporation to engage in any activity which is not in furtherance of the purposes set forth in Article Fourth above.

(c) Notwithstanding anything in this Certificate of Incorporation to the contrary, whenever the Corporation proposes to lease premises in which the operation of the Center is to be conducted, it shall do so in accordance with the provisions of Article 28 of the Public Health Law and the relevant regulations in effect from time to time thereunder, and in particular, insofar as required by any such regulations, any such lease agreement shall include the following language:

"The landlord acknowledges that his rights of reentry into the premises set forth in this lease do not confer on him the authority to operate a hospital as defined in Article 28 of the Public Health Law on the premises and agrees that he will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of his intent to reenter the premises or to initiate dispossession proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before the expiration of the lease.

Upon receipt of notice from landlord of his intent to exercise his right of reentry or upon the service of process in dispossession proceedings and 60 days prior to the expiration of the lease, the tenant shall immediately notify by certified

i  
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mail the New York State Department of Health,  
Tower Building, Empire State Plaza, Albany, NY  
12237, of the receipt of such notice or service of  
such process or that the lease is about to  
expire."

or such other language, if any, as may be required by applicable  
law to be contained in any such lease agreement.

(d) The Corporation has been organized exclusively to  
serve a public purpose and it shall be and remain subject to the  
supervision of the Commissioner to the extent required by the  
provisions of Article 28-B of the Public Health Law and the  
relevant regulations in effect from time to time thereunder.

SEVENTH: (a) Notwithstanding any other provision of  
this Certificate of Incorporation, the Corporation is organized  
exclusively for charitable, scientific and educational purposes  
as specified in Section 501(c)(3) of the Code and the Corporation  
shall not carry on any activity not permitted to be carried on  
(i) by a corporation exempt from Federal income taxation under  
Section 501(c)(3) of the Code or (ii) by a corporation the  
contributions, transfers, or gifts to which are deductible under  
Sections 170(c)(2), 2055(a)(2) and 2522(a)(2) of the Code.

(b) The Corporation is not formed for pecuniary profit  
or for financial gain and no part of its assets, income or profit  
shall be distributed to or inure to the benefit of any private  
individual, except to the extent permitted by the Not-for-Profit  
Corporation Law and the Public Health Law and the relevant  
regulations in effect from time to time thereunder. Reasonable  
compensation, however, may be paid for services rendered to or

for the Corporation in furtherance of one or more of its purposes. No director or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets of the Corporation upon dissolution of the Corporation.

(c) No substantial part of the activities of the Corporation shall be carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in Section 501(h) of the Code), and the Corporation shall not participate in, or intervene (including the publishing or distributing of statements) in, any political campaign on behalf of (or in opposition to) any candidate for public office.

(d) For those periods (if any) during which the Corporation is a private foundation as described in Section 509(a) of the Code, and as provided by Section 406 of the Not-for-Profit Corporation Law:

(i) the Corporation shall distribute its income for said period at such time and manner as not to subject it to tax under Section 4942 of the Code;

(ii) the Corporation shall not engage in any act of self-dealing which is subject to tax under Section 4941(d) of the Code;

(iii) the Corporation shall not retain any excess business holdings which are subject to tax under Section 4943(c) of the Code;

(iv) the Corporation shall not make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; and

(v) the Corporation shall not make any taxable expenditures which are subject to tax under Section 4945(d) of the Code.

EIGHTH: The principal office of the Corporation is to be located in the County and State of New York.

NINTH: The number of Directors shall be as specified in the by-laws of the Corporation, but in no event shall there be fewer than three Directors.

TENTH: The names and addresses of the persons constituting the initial Board of Directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Mindy Fullilove, M.D.	715 Park Avenue Hoboken, New Jersey 07030
Dennis de León, Esq.	337 West 14th St. #51 New York, New York 10014
Valerie Jiménez	262 East 2d St. Apt. 1B New York, New York 10009
Teri Hagan	239 East 2d St. Apt. #2 New York, New York 10009

ELEVENTH: The Corporation hereby designates the Secretary of State as its agent upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation

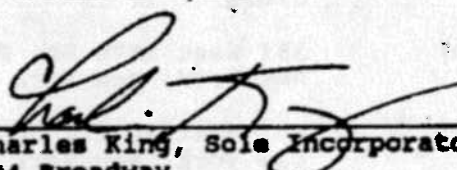
served upon him is:

Housing Works Health Services III, Inc.  
594 Broadway  
7th Floor, Suite 700  
New York, New York 10012  
Attn: Charles King

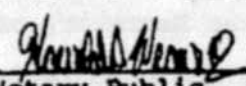
TWELFTH: In the event of the dissolution of the Corporation, all of the assets of the Corporation remaining after the payment or satisfaction of its liabilities shall be distributed, subject to the approval of a Justice of the Supreme Court of the State of New York, but only to one or more organizations as shall at the time qualify as an exempt organization(s) under Section 501(c)(3) of the Code.

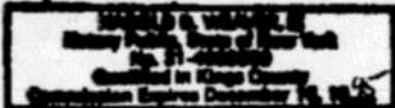
THIRTEENTH: The Corporation's existence shall terminate on January 20, 1998.

IN WITNESS WHEREOF, I, CHARLES KING, as sole incorporator, hereby subscribe and affirm, under penalties of perjury, this Certificate of Incorporation as true this 15<sup>th</sup> day of February, 1995.

  
Charles King, Sole Incorporator  
594 Broadway  
7th Floor, Suite 700  
New York, NY 10012

Subscribed and Sworn to this  
15<sup>th</sup> day of February, 1995

  
Notary Public







STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

March 23, 1995

Mr. Charles King  
Co-Executive Director  
Housing Works, Inc.  
594 Broadway, Suite 700  
New York, NY 10012

Re: Application No. 941006 - Housing Works Health Services III,  
Inc. d/b/a Housing Works East New York HIV/AIDS Adult Day  
Health Care Program (Kings Co.)

Dear Mr. King:

I HEREBY CERTIFY THAT AFTER INQUIRY and investigation, the application of Housing Works Health Services III, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of January 20, 1995.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

To complete the requirements for certification approval, please contact the New York City Area Office of the New York State Office of Health Systems Management, 5 Penn Plaza, 5th Floor, 8th Avenue between West 33rd and West 34th Streets, New York, NY 10001, or (212) 613-4258 within 30 days of receipt of this letter.

Sincerely,

Karen S. Westervelt  
Executive Secretary



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
COWING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

March 23, 1995

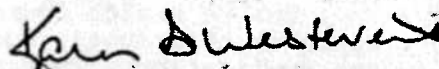
Mr. Charles King  
Co-Executive Director  
Housing Works, Inc.  
594 Broadway, Suite 700  
New York, NY 10012

Re: Certificate of Incorporation of Housing Works Health  
Services III, Inc.

Dear Mr. King:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of January, 1995, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of Housing Works Health Services III, Inc., dated February 15, 1995, for a limited life duration expiring on January 20, 1998.

Sincerely,

  
Karen S. Westervelt  
Executive Secretary

12



F 950404000 519

CERTIFICATE OF INCORPORATION

OF

HOUSING WORKS HEALTH SERVICES III, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION  
LAW OF THE STATE OF NEW YORK

APR 4 5 12 PM '95

FILED

**BILLED**  
**NCR-26**

FILED BY:  
HOUSING WORKS, INC.  
594 BROADWAY  
NEW YORK, N.Y. 10012

1-00  
STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED APR 04 1995  
TAX \$ 0  
BY: JW  
NEW YORK

APR 3 12 09 PM '95

13

950404000639

***STATE OF NEW YORK***  
***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the  
Department of State, at the City of Albany,  
on July 8, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

PH-32

PH-32

CERTIFICATE OF AMENDMENT

OF THE CERTIFICATE OF INCORPORATION

OF

Housing Works Health Services III, Inc.

F 950 80 4000 462

Under Section 803 of the  
Not-For-Profit Corporation Law

We, the undersigned, Charles King and Craig Stier, being respectively the Vice-President and Secretary of Housing Works Health Services III, Inc. (hereinafter referred to as the "Corporation"), hereby certify:

1. The name of the Corporation under which it was originally incorporated is Housing Works Health Services III, Inc.

2. The Certificate of Incorporation of the Corporation was filed by the Department of State on the 4th day of April, 1995 and the law under which it was formed is Section 402 of 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 and is a Type B corporation under Section 201 of the New York Not-For-Profit Corporation Law. Pursuant to Section 601 of the Not-For-Profit Corporation Law, the Corporation has one class of member, the sole member of which is Housing Works, Inc., a New York corporation organized under the Not-For-Profit Corporation Law and recognized as a tax-exempt, publicly-supported organization under Sections 501(c)(3) and 501(a) (1) of the Internal Revenue Code of 1986, as amended.

4. (a) Article THIRTEENTH of the Corporation's Certificate of Incorporation is amended to extend the existence of the Corporation from terminating on January 20, 1998 to perpetual existence.

(b) To effect the foregoing, Article THIRTEENTH of the Corporation's Certificate of Incorporation is amended to read in its entirety as follows:

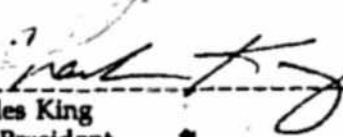
**THIRTEENTH:** The Corporation's existence shall be perpetual.

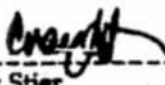
(c) this amendment was authorized by the unanimous vote of the Board of Directors of the Corporation present at a duly convened meeting of the Board of Directors of the Corporation held on July 26, 1995 at which all of the members of the Board of Directors of the Corporation were present.

5. The Secretary of State is designated as agent of the Corporation upon whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

Housing Works Health Services III, Inc.  
594 Broadway  
7th Floor, Suite 7000  
New York, New York 10012  
Attn: Charles King

INN WITNESS WHEREOF, the undersigned have executed this  
Certificate of Amendment on the 27th day of July, 1995 and affirm the statements  
contained herein as true under penalties of perjury.

  
-----  
Charles King  
Vice-President

  
-----  
Craig Stier  
Secretary

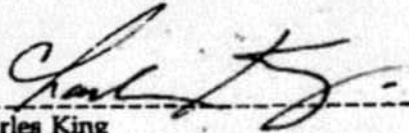
3

VERIFICATION

STATE OF NEW YORK )

COUNTY OF NEW YORK )

Charles King, being duly sworn, deposes and says that he is the Vice-President of Housing Works Health Services III, Inc., and that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. and knows the contents thereof, and that the contents thereof are, of his own personal knowledge, true and correct, except as to statements based upon information and belief, and as to those matters, he believes them to be true.

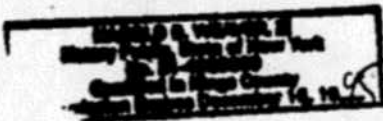


Charles King  
Vice-President

Sworn to before me this  
27th day of July, 1995



Notary Public

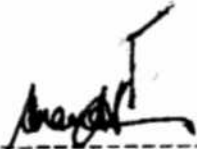


VERIFICATION

STATE OF NEW YORK )

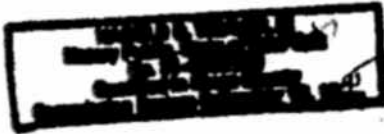
COUNTY OF NEW YORK )

Craig Stier, being duly sworn, deposes and says that he is the Secretary of Housing Works Health Services III, Inc., and that he has read the foregoing Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc. and knows the contents thereof, and that the contents thereof are, of his own personal knowledge, true and correct, except as to statements based upon information and belief, and as to those matters, he believes them to be true.

  
-----  
Craig Stier  
Secretary

Sworn to before me this  
27th day of July, 1995

  
-----  
Notary Public





STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

August 4, 1995

Mr. Charles King  
Co-Executive Director  
Housing Works, Inc.  
594 Broadway, Suite 700  
New York, NY 10012

Re: Certificate of Amendment of the Certificate of Incorporation of Housing Works Health Services III, Inc.

Dear Mr. King:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of January, 1995, I hereby certify that the Public Health Council consents to the filing of the Certificate of Amendment to the Certificate of Incorporation of Housing Works Health Services III, Inc., dated July 27, 1995.

Sincerely,

Karen S. Westervelt  
Executive Secretary



**PH-32**

GERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

**F 950 80 40 00 462**

HOUSING WORKS HEALTH SERVICES III, INC.

Under Section 803 of the  
Not-For-Profit Corporation Law

*ICC*

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED AUG 04 1995

TAX S \_\_\_\_\_  
BY: *SAC*  
*New York*

Aug 4 1 50 PM '95  
Aug 4 1 52 PM '95

Craig S. Stier, Esq.  
Housing Works, Inc.  
594 Broadway - suite 700  
New York, NY 10012  
(212)966-0466

**BILLED**

**(7)**

**950 80 40 00 487**

**STATE OF NEW YORK**  
**DEPARTMENT OF STATE**

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on July 8, 2015.

*Anthony Giardina*

Anthony Giardina  
Executive Deputy Secretary of State

f030506000/78

New York State  
Department of State  
Division of Corporations, State Records  
and Uniform Commercial Code  
41 State Street  
Albany, NY 12231

CERTIFICATE OF CHANGE

Housing Works Health <sup>OF</sup> Services III, Inc.  
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for Profit Corporation Law

FIRST: The name of the corporation is: Housing Works Health Services III, Inc.

If the name of the corporation has been changed, the name under which it was formed is: \_\_\_\_\_

SECOND: The certificate of incorporation was filed by the Department of State on: 4/4/95

THIRD: The change(s) effected hereby are: (Check appropriate box(es))

The county location, within this state, in which the office of the corporation is located, is changed to: \_\_\_\_\_

The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to: 320 West 134th Street 4th Floor  
new York, NY 10014

The corporation hereby: (Check one) (N/A)  
 Designates \_\_\_\_\_ as its registered agent upon whom process against the corporation may be served.  
The street address of the registered agent is: \_\_\_\_\_

Changes the designation of its registered agent to: \_\_\_\_\_  
The street address of the registered agent is: \_\_\_\_\_

Changes the address of its registered agent to: \_\_\_\_\_

Revokes the authority of its registered agent.

f 030506000/75.

FOURTH: The change was authorized by the board of directors.

[Signature]  
(Signature)

Keith Cylan - Co-President / CEO  
(Name and Capacity of Signer)

CERTIFICATE OF CHANGE

OF

Housing Works Health Services III, Inc.  
(Insert Name of Domestic Corporation)

Under Section 803-A of the Not-for-Profit Corporation Law

Filer's Name Kris Cavanaugh  
Address 320 West 13<sup>th</sup> Street 4<sup>th</sup> Floor  
City, State and Zip Code NY, NY 10014

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$20 filing fee.

STATE OF NEW YORK  
DEPARTMENT OF STATE

For Office Use Only

MAY 06 2003

FILED  
TAXS  
BY: [Signature]


NEWY

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**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council  
**FROM:** Richard J. Zahnleuter,  Acting General Counsel  
**DATE:** September 10, 2015  
**SUBJECT:** Proposed Name Change of Samaritan Village, Inc.

---

Samaritan Village, Inc. requests Public Health and Health Planning Council approval of its proposed name change to Samaritan Daytop Village, Inc. in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law.

Attached are the following with regard to this matter:

1. Letter dated August 13, 2015, from the applicant's counsel, requesting Public Health and Health Planning Council approval of the proposed name change.
2. Proposed Certificate of Amendment of the applicant's Certificate of Incorporation setting forth the proposed name change.
3. Existing Certificate of Incorporation and amendments thereto.

The proposed Certificate of Amendment is in legally acceptable form.



Tricia A. Asaro  
518-689-1400  
asarot@gtlaw.com

August 13, 2015

VIA E-MAIL

Colleen Leonard  
NYS Department of Health  
Corning Tower, Room 1805  
Albany, New York 12237  
colleen.leonard@health.ny.gov

Re: Proposed Name Change of Samaritan Village, Inc.

Dear Ms. Leonard:

I am writing to follow up on my August 12, 2015 telephone conversation with Michael Stone, Barbara Del Cogliano, Keith Servis, and Mark Furnish of the Department of Health ("DOH"), and Mark Boss of the Office of Alcoholism and Substance Abuse Services ("OASAS"), during which the topic of Samaritan Village, Inc.'s proposed name change to Samaritan Daytop Village, Inc. was discussed.

During the course of the conversation, the participants came to the conclusion that Samaritan Village's proposed name change requires approval of the Public Health and Health Planning Council ("PHHPC") pursuant to Sections 404 and 804 of the New York Not-for-Profit Corporation Law. Accordingly, I have attached hereto as Exhibit A, for the PHHPC's consideration and approval, a proposed certificate of amendment to Samaritan Village's Certificate of Incorporation to change the corporation's name to "Samaritan Daytop Village, Inc." I have also attached Samaritan Village's existing Certificate of Incorporation, with all prior amendments, as Exhibit B.

Due to the time sensitivity of this request, we respectfully request that the amendment be presented for consideration at the September 24, 2015 PHHPC Committee meeting and the October 8, 2015 full Council meeting. Please let me know as soon as possible if there is anything further that you need in order for the Department or PHHPC to consider and approve this name change amendment within that timeframe.

Very truly yours,

GREENBERG TRAUIG, LLP



Tricia A. Asaro

ALBANY  
AMSTERDAM  
ATLANTA  
AUSTIN  
BOCA RATON  
BOSTON  
CHICAGO  
DALLAS  
DELAWARE  
DENVER  
FORT LAUDERDALE  
HOUSTON  
LAS VEGAS  
LONDON\*  
LOS ANGELES  
MEXICO CITY\*  
MIAMI  
MILAN\*  
NEW JERSEY  
NEW YORK  
NORTHERN VIRGINIA  
ORANGE COUNTY  
ORLANDO  
PHILADELPHIA  
PHOENIX  
ROME\*  
SACRAMENTO  
SAN FRANCISCO  
SEOUL\*  
SHANGHAI  
SILICON VALLEY  
TALLAHASSEE  
TAMPA  
TEL AVIV\*  
WARSAW  
WASHINGTON, D.C.  
WESTCHESTER COUNTY  
WEST PALM BEACH  
\*OPERATES AS GREENBERG TRAUIG MAHER LLP  
\*OPERATES AS GREENBERG TRAUIG, S.C.  
STRATEGIC ALLIANCE  
\*OPERATES AS GREENBERG TRAUIG LLP FOREIGN LEGAL CONSULTANT OFFICE  
\*A BRANCH OF GREENBERG TRAUIG, P.A. FLORIDA, USA  
\*OPERATES AS GREENBERG TRAUIG GRZESIAK SPC

Colleen Leonard  
August 13, 2015

BMF/TAA/map  
Attachments

cc: Mr. Mark Furnish (via email)  
Mr. Mark Boss (via email)  
Ms. Barbara Del Cogliano (via email)  
Mr. Keith Servis (via email)



New York State  
Department of State  
Division of Corporations, State Records and Uniform Commercial Code  
One Commerce Plaza, 99 Washington Avenue  
Albany, NY 12231  
www.dos.ny.gov

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF**

**Samaritan Village, Inc.**

*(Name of Domestic Corporation)*

Under Section 803 of the Not-for-Profit Corporation Law

**FIRST:** The name of the corporation is

**Samaritan Village, Inc.**

If the name of the corporation has been changed, the name under which it was formed is

**SECOND:** The certificate of incorporation was filed by the Department of State on  
December 29, 1981.

**THIRD:** The law the corporation was formed under is

Section 402 of the Not-for-Profit Corporation Law of the State of New York.

**FOURTH:** The corporation is a corporation as defined in subparagraph (5) of paragraph (a) of  
Section 102 of the Not-for-Profit Corporation Law.



FIFTH: The certificate of incorporation is amended as follows:

Paragraph FIRST of the Certificate of Incorporation regarding  
the name of the Corporation

---

is hereby [check the appropriate box]  added  amended to read in its entirety as follows:

"FIRST: The name of the Corporation is Samaritan Daytop Village, Inc."

**SIXTH:** The Secretary of State is designated as agent of the corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is

Samaritan Daytop Village, Inc.  
138-02 Queens Boulevard  
Briarwood, New York, 11435

---

**SEVENTH:** The certificate of amendment was authorized by *(Check the appropriate box)*

- a vote of a majority of the members at a meeting.
- the unanimous written consent of the members entitled to vote thereon.
- a vote of a majority of the entire board of directors. The corporation has no members.



*(Signature)*

Chief Operating Officer

*(Capacity of Signer)*

Doug Apple

*(Print or Type Signer's Name)*



CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF

Samaritan Village, Inc.

*(Name of Domestic Corporation)*

Under Section 803 of the Not-for-Profit Corporation Law

Filer's Name Benjamin M. Friedman, Esq.

Address 54 State Street, 6th Floor

City, State and Zip Code Albany, New York 12207

**NOTE:** The certificate must be submitted with a \$30 filing fee. This form was prepared by the New York State Department of State. It does not contain all optional provisions under the law. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. Please be sure to review Section 804 and Section 404 of the Not-for-Profit Corporation Law to determine if any consents or approvals are required to be attached to this certificate of amendment.

*For Office Use Only*





# The University of the State of New York

STATE OF NEW YORK:

: ss.:

COUNTY OF ALBANY :

Pursuant to the provisions of section 216 of the Education Law and section 404, subdivision (d) of the Not-for-Profit Corporation Law, consent is hereby given to the filing of the annexed certificate of incorporation of SAMARITAN VILLAGE, INC.

as a not-for-profit corporation.

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

This consent to filing is granted with the understandings and upon the conditions set forth on the reverse side of this form.

IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 6th day of November, 1951.

Gordon M. Ambeca  
Commissioner of Education

Robert D. Stone  
Counsel and Deputy Commissioner  
for Legal Affairs





This consent to filing is granted with the understanding that nothing contained in the annexed certificate of incorporation shall be construed as authorizing the corporation to engage in the practice of law, except as provided by subdivision 7 of section 495 of the Judiciary Law, or of any of the professions designated in Title VIII of the Education Law, or to use any title restricted by such law, or to conduct a school for any such profession, or to hold itself out to the public as offering professional services.

This consent to filing is granted with the further understanding that nothing contained in the certificate of incorporation shall be construed as authorizing the corporation to operate a nursery school, kindergarten, elementary school, secondary school, institution of higher education, cable television facility, educational television station pursuant to section 236 of the Education Law, library, museum, or historical society, or to maintain an historic site.

This consent to filing shall not be deemed to be or to take the place of registration for the operation of a private business school in accordance with the provisions of section 5002 of the Education Law, nor shall it be deemed to be, or to take the place of, a license granted by the Board of Regents pursuant to the provisions of section 5001 of the Education Law, a license granted by the Commissioner of Motor Vehicles pursuant to the provisions of section 394 of the Vehicle and Traffic Law, a license as an employment agency granted pursuant to section 172 of the General Business Law, or any other license, certificate, registration, or approval required by law.



CERTIFICATE OF INCORPORATION OF

SAMARITAN VILLAGE, INC.

Under Section 402 of the Not-For-Profit  
Corporation Law

The undersigned hereby certify:

FIRST: The name of the Corporation is SAMARITAN VILLAGE, INC.

SECOND: The Corporation is a Corporation as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation is distributable to, or inures to the benefit of its members, directors or officers or any private person except to the extent permissible under the Not-For-Profit Corporation Law.

THIRD: The purposes for which the Corporation is formed are:

To establish, maintain, and operate programs and facilities for the care, education and treatment of persons who because of drug dependency or other mental, physical or emotional conditions cannot be cared for, educated or treated in regular public or private programs, including, but not limited to, the operation of "drug-free" residential facilities, residential facilities offering a methadone to abstinence rehabilitation program, and ambulatory and day care programs for the treatment of drug addicts, drug abusers and others;



To operate a diagnostic and treatment center, a methadone clinic, under the medical supervision of a physician for the care, treatment and rehabilitation of heroin addicts and to render such other services pursuant to Articles 28 and 33 of the Public Health Law necessary to carry out such care, treatment and rehabilitation;

To operate a substance abuse program, providing substance abuse services within the meaning of Article 19 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall in accordance therewith include, but not be limited to, the power to provide intervention, prevention, diagnostic testing, detoxification, chemotherapy, counseling, vocational remediation, educational remediation, referral and other necessary services. Such services may be provided in either residential or non-residential setting;

To provide information as to narcotics addiction and abuse;

To stimulate research and community concern about drug dependency, emotional and mental illness;

To provide counseling service to all within its bounds who are in need of help, guidance or some form of care;

To provide a place or places where such persons may receive opportunities for personal counseling, social and recreational activities;

To solicit and administer funds, grants-in-aid and



donations of real and personal property and apply the principal and income to corporate purposes;

To finance and plan to do all acts incidental to the execution of therapeutic programs for narcotic addicts;

In furtherance of the above-mentioned purposes, the Corporation, in addition to the powers granted under the laws of the State of New York, shall have the following powers:

a) To solicit donations of property, and administer gifts, legacies, bequests, devises, whether real or personal, of any sort or nature without limitation as to amount or value, and to use, apply, employ, expend, disburse and/or donate the income and/or principal thereof.

b) To receive and maintain a fund or funds, to have, control and manage such fund or funds, change the investments thereof, to invest and reinvest the same and the proceeds thereof and to collect and receive the income and profits thereof and therefrom.

c) To voluntarily aid and/or assist institutions, organizations, and governmental bodies, the activities of which shall be such as to further, accomplish, foster or attain any of the purposes for which the Corporation is organized, including, without limiting the foregoing, the acquisition of property and the making of such property and any improvements thereto available to any such institution, organization or governmental body with or without charge.

d) To acquire, purchase, sell, hold title, lease, improve, maintain, manager, operate, conduct, control,



supervise, direct, fit out, license the use of and generally deal in any manner in and with any and all real and personal property.

e) To borrow money, and, from time to time, to make, accept, endorse, execute and issue bonds, debentures, promissory notes, bills of exchange or other obligations.

f) To make and adopt by-laws, and rules and regulations for the admission, suspension and expulsion of the members of the Corporation, and for their government, and for the establishment of one or more classes of membership, for the collection of fees and dues, for the election and appointment of the directors and officers of the Corporation, and the definition of their duties, and for the safekeeping and protection of the property and funds of the Corporation, and in general to regulate, manage and preserve the property and interests of the Corporation, and from time to time to alter, repeal, rescind or vary such by-laws, rules and regulations, or any of them.

g) Either directly to worthy or needy individuals or indirectly alone or in conjunction or cooperation with other whether such others be persons or organizations of any sort or nature, such as firms, associations, trusts, syndicates, institutions, agencies, corporations or government bureaus, departments or agencies to do any and all lawful acts and things, including the making and carrying out of any contract, and to engage in any and all lawful activities which may be necessary, useful, suitable,



desirable and proper to the fostering or attainment of any or all of the foregoing purposes and powers.

Nothing herein contained shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law Section 404(b-t).

FOURTH: No part of the activities of the Corporation shall consist of carrying on propaganda or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

FIFTH: In the event of dissolution, all of the remaining assets and property of the corporation shall after necessary expenses thereof be distributed to another organization exempt under Section 501(c)(3) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent Federal tax laws, or to the Federal government, or state or local government for a public purpose.

SIXTH: Any person who shall be made a party to any action, suit or proceeding by reason of the facts that he or she, his or her testator or testatrix or intestate is or was a director, officer, or employee of the Corporation or of any corporation which he served as such at the request of the Corporation, shall be indemnified by the Corporation against the reasonable expenses, including attorneys fees, actually



and necessarily incurred by him or her in connection with the defense of such action; suit or proceeding, or in connection with any appeal in such action, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such officer, director or employee is liable for negligence or misconduct in the performance of the duties as director. Indemnification shall not be deemed exclusive of any other rights to which such director, officer or employee may be entitled apart from this provision.

SEVENTH: The Corporation is a Type B corporation under Section 20d of the Not-For-Profit Corporation Law.

EIGHTH: The principal office of the Corporation is to be located in the City and State of New York, County of Queens.

NINTH: The territory in which the operations of the Corporation are principally to be conducted is the United States of America.

TENTH: The number of directors shall not be less than three and not more than twenty-five.

ELEVENTH: The names and places of residence of the persons to be directors until its first annual meeting are as follows:

<u>NAME</u>	<u>PLACE OF RESIDENCE</u>
MALLACE E. LEINBEARDT	105 Wheatley Road Brooklyn, New York 11545
GARRY LISCHIN	123-60 83 Avenue Kew Gardens, New York 11415
AUDREY BROOKNER	84-51 Beverly Road Kew Gardens, New York 11415



TWELFTH: All of the subscribers of this Certificate are of full age; at least two-thirds are citizens of the United States; at least one is a resident of the State of New York, and of the persons named as directors at least one is a citizen of the United States and resident of the State of New York.

THIRTEENTH: The Secretary of State of the State of New York is hereby designated the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is c/o WALLACE L. LEINHEARDT, Suite 1907, 125-10 Queens Boulevard, Kew Gardens, New York 11415.

FOURTEENTH: Prior to the delivery of this Certificate of Incorporation to the Department of State for filing, all approvals or consents required by the Not-For-Profit Corporation Law or by any other statute of the State of New York will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, the undersigned incorporators each affirm that the statements made herein are true under the penalties of perjury.

Dated: Kew Gardens, New York  
September 21, 1961

  
WALLACE L. LEINHEARDT  
105 Wheatley Road  
Brookville, N.Y. 11545

  
GARY LISCHNY  
125-60 53rd Avenue  
Kew Gardens, N.Y. 11415

  
AUDREY BROOKNER  
84-51 Haverly Road  
Kew Gardens, N.Y. 11415





STATE OF NEW YORK  
DIVISION OF SUBSTANCE ABUSE SERVICES  
Office of Alcoholism and Substance Abuse  
EXECUTIVE PARK SOUTH  
ALBANY, NEW YORK 12203

JULIDA MARTINEZ  
Director

ROBERT A. BOSMAN  
Chief Counsel  
(518) 487-1758

October 22, 1981

Garry Lischin, Esq.  
Wallace L. Reinhardt, P.C.  
125-10 Queens Boulevard  
New Gardens, New York 11415-1586

Re: Samaritan Village, Inc.  
Your File No. 1-211-826

Dear Mr. Lischin:

This is to acknowledge receipt of your letter dated October 5, 1981, which was received in this office on October 16th, enclosing a copy of proposed Certificate of Incorporation of Samaritan Village, Inc. to be formed under Section 402 of the Not-For-Profit Corporation Law.

Please be advised that the approval of this Agency is not required under Not-For-Profit Corporation Law, Sections 404 or 804 for purposes of filing certificates of incorporation or certificates of amendment thereto. However, our approval must be obtained under Mental Hygiene Law, Section 23.01 before a program can provide substance abuse services.

This letter should accompany the original of the proposed Certificate of Incorporation when submitting same to the Attorney General for purposes of waiver of statutory notice of approval by a Justice of the Supreme Court of the Eleventh Judicial District.

Very truly yours,

A. Thomas Storaco  
Assistant Counsel



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4827307

SURFACE MAIL  
GENERAL DELIVERY  
SPECIAL PERMIT

NOV 21 PM 12 19

RECEIVED

CERTIFICATE OF INCORPORATION  
OF

SAMARITAN VILLAGE, INC.

Under Section 402 of the  
Not-for-Profit Corporation  
Law.

12/8  
B

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED DEC 29 1981

AMT. OF CHECK \$ 50  
FILING FEE \$ 50  
TAX \$ \_\_\_\_\_  
COUNTY FEE \$ \_\_\_\_\_  
COPY \$ \_\_\_\_\_  
CERT \$ \_\_\_\_\_  
REFUND \$ \_\_\_\_\_  
SPEC HANDLE \$ \_\_\_\_\_

BY: [Signature]

Type B  
Checks

704570

Law Offices  
WALLACE L. LEINHEARDT, P.C.  
125 10 SUZANA BOULEVARD  
NEW GARDENS, NEW YORK 11518  
516-544-5727

*[Handwritten signatures and scribbles]*





# The University of the State of New York

STATE OF NEW YORK

COUNTY OF ALBANY

6170704

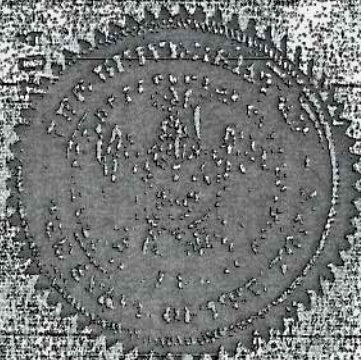
In accordance with the provisions of section 804 of the Not-for-Profit Corporation Law, consent is hereby given to the change of purposes of SAMARITAN VILLAGES, INC. contained in the annexed certificate of amendment to the Certificate of Incorporation.

This consent to filing, however, shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such corporation, nor shall it be construed as giving the officers or agents of such corporation the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.

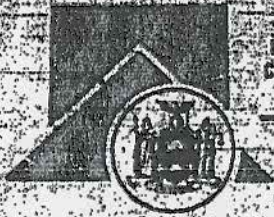
IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed this 31st day of January, 1984.

Gordon W. Ambach  
Commissioner of Education

Robert D. Stone  
Counsel and Deputy Commissioner  
for Legal Affairs







STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

January 5, 1984

## KNOW ALL MEN BY THESE PRESENTS

I hereby certify that after inquiry and investigation, the application of Samaritan Village, Inc. to operate Samaritan Village, Inc. is APPROVED, the contingencies having now been fulfilled satisfactorily. The Public Health Council had considered this application and imposed the contingencies at its meeting of September 16, 1983.

The Certificate of Amendment to Certificate of Incorporation of Samaritan Village, Inc. is also APPROVED.

Public Health Council approval is not to be construed as approval of property costs or the lease submitted in support of the application. Such approval is not to be construed as an assurance or recommendation that property costs or lease amounts as specified in the application will be reimbursable under third party payor reimbursement guidelines.

Public Health Council approval 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 this application) of responsibility and liability for any Medicaid (Medical Assistance Program - Title XIX of the Social Security Act) or 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. The State shall continue to hold any such transferor responsible and liable for any such overpayments.

*Nancy A. Massaroni*

NANCY A. MASSARONI  
Acting Secretary

Sent to: Ms. Elizabeth Barton  
Vice President for Administration  
Samaritan Village, Inc.  
118-21 Queens Boulevard  
Forest Hills, New York 11375

cc: Wallace L. Leinhardt, Esq.  
125-10 Queens Boulevard  
Kew Gardens, New York 11415

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8 112 8393



AMENDMENT TO CERTIFICATE OF INCORPORATION

OF

SAMARITAN VILLAGE, INC.

Under Section 802 of the  
Not-For-Profit Corporation Law

We, the undersigned, being the President and Secretary of  
SAMARITAN VILLAGE, INC., do hereby certify:

1. The name of the Corporation is SAMARITAN  
VILLAGE, INC.
2. The Certificate of Incorporation was filed with  
the Department of State on December 29, 1981.
3. The Corporation was formed under Section 402 of  
the Not-For-Profit Corporation Law of the State of New York.
4. By Order dated August 11, 1983 of the Supreme  
Court of the State of New York, County of Queens, it was  
ordered that a Plan of Assignment dated March 23, 1983 between  
SAMARITAN HALFWAY SOCIETY, INC., a religious Corporation, and  
SAMARITAN VILLAGE, INC. be approved effective July 1, 1983.
5. The Corporation is a Corporation as defined in  
subparagraph (a) (5) of Section 101 (definitions) and the  
Corporation is a type B Corporation under Section 201 (purposes  
of the Not-For-Profit Corporation Law).
6. The Certificate of Incorporation dated  
September 21, 1981, is to be amended by adding the following:  
A) Paragraph "SECOND" is to be deleted and amended  
to read as follows:

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B 102 0394



"SECOND: The Corporation is a Corporation as defined in subparagraph (a)(3) of Section 102 of the Not-For-Profit Corporation Law in that it is not formed for pecuniary profit or financial gain, and no part of the assets, income or profit of the Corporation is distributable to, or inures to the benefit of its members, directors or officers or any private person."

B) Paragraph "THIRD" is to be deleted and amended to read as follows:

"THIRD: The purposes for which the Corporation is formed are:

To establish, maintain and operate community based programs and facilities for the care, education and treatment of persons who because of drug abuse or dependency or other mental, physical or emotional conditions cannot be cared for, educated or treated in regular public or private programs, including, but not limited to, the operation of "drug-free" substance abuse programs, chemotherapy programs utilizing methadone, and ambulatory and day care prevention and other specialized services programs for substance abusers, specialized groups or the general public;

To operate a substance abuse program, providing substance abuse services within the meaning of Articles 19 and 23 of the Mental Hygiene Law and the rules and regulations adopted pursuant thereto, as each may be amended from time to time, which shall in accordance therewith include, but not be limited to, the power to provide intervention, prevention,



diagnostic testing, detoxification, chemotherapy, counseling, vocational remediation, educational remediation, referral and other necessary services. Such services may be provided in either residential or non-residential settings.

To operate a methadone-to-abstinence clinic offering a range of treatment procedures and services for the rehabilitation of heroin addicts as defined in Article 23 of the Mental Hygiene Law.

To operate medical facilities such as diagnostic and treatment centers providing health services under Article 28 of the Public Health Law; and

To render such other services pursuant to Articles 28 and 33 of the Public Health Law as may be necessary to carry out such care, treatment and rehabilitation.

To provide information as to narcotics addiction and abuse;

To stimulate research and community concern about drug dependency, emotional and mental illness;

To provide counseling services to all within its bounds who are in need of help, guidance or some form of care;

To provide a place or places where such persons may receive opportunities for personal counseling, social and recreational activities;

To solicit and administer funds, grants-in-aid and donations of real and personal property and apply the principal and income to corporate purposes;

To finance and plan to do all acts incidental to



the execution of therapeutic programs for narcotic addicts.

In furtherance of the above-mentioned purposes, the Corporation, in addition to the powers granted under the laws of the State of New York, shall have the following powers:

a) To solicit donations of property, and administer gifts, legacies, bequests, devises, whether real or personal, of any sort or nature without limitation as to amount or value, and to use, apply, employ, expend, disburse and/or donate the income and/or principal thereof.

b) To receive and maintain a fund or funds, to have, control and manage such fund or funds, change the investments thereof, to invest and reinvest the same and the proceeds thereof and to collect and receive the income and profits thereof and therefrom.

c) To voluntarily aid and/or assist institutions, organizations, and governmental bodies, the activities of which shall be such as to further, accomplish, foster or attain any of the purposes for which the Corporation is organized, including, without limiting the foregoing, the acquisition of property and the making of such property and any improvements thereto available to any such institution, organization or governmental body with or without charge.

d) To acquire, purchase, sell, hold title, lease, improve, maintain, manage, operate, conduct, control, supervise, direct, fit out, license the use of and generally deal in any manner in and with any and all real and personal property.



e) To borrow money, and, from time to time, to make, accept, endorse, execute and issue bonds, debentures, promissory notes, bills of exchange or other obligations.

f) To make and adopt by-laws, and rules and regulations for the admission, suspension and expulsion of the members of the Corporation, and for their government, and for the establishment of one or more classes of membership, for the collection of fees and dues, for the election and appointment of the directors and officers of the Corporation, and the definition of their duties, and for the safekeeping and protection of the property and funds of the Corporation, and in general to regulate, manage and preserve the property and interests of the Corporation, and from time to time to alter, repeal, rescind or vary such by-laws, rules and regulations, or any of them.

g) Either directly to worthy or needy individuals or indirectly alone or in conjunction or cooperation with other whether such others be persons or organizations of any sort or nature, such as firms, associations, trusts, syndicates, institutions, agencies, corporations or government bureaus, departments or agencies to do any and all lawful acts and things, including the making and carrying out of any contract, and to engage in any and all lawful activities which may be necessary, useful, suitable, desirable and proper to the fostering or attainment of any or all of the foregoing purposes and powers.



Nothing herein contained shall authorize this Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Not-For-Profit Corporation Law Section 404 (b through n, p through s).

C) Paragraph "FIFTEENTH" is to be added as follows:

"FIFTEENTH: Notwithstanding any other provision of these articles, the corporation is organized exclusively for one or more of the following purposes: religious, charitable, scientific, and educational purposes, as specified in section 501 (c)(3) of the Internal Revenue Code of 1954, and shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954."

D) Paragraph "SIXTEENTH" is to be added as follows:

"SIXTEENTH: No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, director, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation), and no member, trustee, officer of the corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the corporation."

7. This Amendment was authorized by the vote of a majority of the entire Board.

8



The Secretary of State is hereby designated as agent of the corporation upon whom process against it may be served. The Post Office address to which the Secretary shall mail a copy of any process against the corporation served him is: Wallace L. Leinhardt, P.O., 125-10 Queens Boulevard, Kew Gardens, New York 11415.

IN WITNESS WHEREOF, the undersigned have executed and signed this certificate on November 21, 1963. *Richard Gross* President  
*Wallace L. Leinhardt* Secretary

RICHARD GROSS, President

WALLACE L. LEINHARDT, Secretary

SVI/2  
11/21/63

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The undersigned has no objection to the granting  
of judicial approval of the within Amendment to Certificate of  
Incorporation and waives statutory notice.

Dated: <sup>November</sup> October 4, 1983




ROBERT ABRAMS  
Attorney General of the State  
of New York

By: Robert R. Yellie  
Assistant Attorney General  
of the State of New York

HON. EDWIN KASSOFF  
Justice

of the Supreme Court of the State of New York, Eleventh  
Judicial District, do hereby approve the foregoing Amendment to  
the Certificate of Incorporation of SAMARITAN VILLAGE, INC.,  
and of the filing thereof.

Dated: Jamaica, New York  
December 2, 1983



Justice of the Supreme Court  
of the State of New York  
Eleventh Judicial District

SVL  
10/13/83

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F030814000182

New York State  
Department of State  
Division of Corporations, State Records  
and Uniform Commercial Code  
41 State Street  
Albany, NY 12231

CERTIFICATE OF CHANGE  
OF

SAMARITAN VILLAGE, INC.

*(Insert Name of Domestic Corporation)*

Under Section 805-A of the Business Corporation Law

FIRST: The name of the corporation is: Samaritan Village, Inc.

If the name of the corporation has been changed, the name under which it was formed is: \_\_\_\_\_

SECOND: The certificate of incorporation was filed by the Department of State on: \_\_\_\_\_  
December 29, 1981

THIRD: The change(s) effected hereby are: *(Check appropriate box(es))*

- The county location, within this state, in which the office of the corporation is located, is changed to: \_\_\_\_\_
- The address to which the Secretary of State shall forward copies of process accepted on behalf of the corporation is changed to: Samaritan Village, Inc., 138-02 Queens Boulevard, Briarwood, New York 11435
- The corporation hereby: *(Check one)*
  - Designates \_\_\_\_\_  
as its registered agent upon whom process against the corporation may be served.
  - Changes the designation of its registered agent to: \_\_\_\_\_
  - Changes the address of its registered agent to: \_\_\_\_\_
  - Revokes the authority of its registered agent.

FOURTH: The change was authorized by the board of directors.

F0307 1:000 182

*Wallace L. Leinhardt*  
(Signature)

WALLACE LEINHEARDT, SECRETARY  
(Name and Capacity of Signer)

**CERTIFICATE OF CHANGE  
OF  
SAMARITAN VILLAGE, INC.**

*(Insert Name of Domestic Corporation)*

Under Section 805-A of the Business Corporation Law

Filer's Name Wallace L. Leinhardt, Esq.

Address 300 Garden City Plaza

City, State and Zip Code Garden City, New York 11530

NOTE: This form was prepared by the New York State Department of State. You are not required to use this form. You may draft your own form or use forms available at legal stationery stores. The Department of State recommends that all documents be prepared under the guidance of an attorney. The certificate must be submitted with a \$30 filing fee.

*For Office Use Only*

STATE OF NEW YORK  
DEPARTMENT OF STATE

AUG 14 2003

FILED  
TAXS  
BY: *MR*

*Queens*

*MR*

*2*

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CSC 45  
Drawdown

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CERTIFICATE OF MERGER  
OF  
VERITAS THERAPEUTIC COMMUNITY, INC.  
(a New York not-for-profit corporation)  
INTO  
SAMARITAN VILLAGE, INC.  
(a New York not-for-profit corporation)

Under Section 904 of the  
New York Not-for-Profit Corporation Law

We, the undersigned, Veritas Therapeutic Community, Inc., a New York not-for-profit corporation, and Samaritan Village, Inc., a New York not-for-profit corporation, do hereby certify the following:

I. Names

- A. The names of the constituent corporations are:
1. Veritas Therapeutic Community, Inc. ("Veritas"); and
  2. Samaritan Village, Inc. ("Samaritan").
- B. The surviving corporation will be Samaritan.

II. Members

Neither Veritas nor Samaritan has a membership.

III. Certificates of Incorporation

- A. The certificate of incorporation of Veritas was filed by the Department of State of the State of New York on September 26, 1973.
- B. The certificate of incorporation of Samaritan was filed by the Department of State of the State of New York on December 29, 1981.
- C. The certificate of incorporation of the surviving corporation will be the certificate of incorporation of Samaritan, as amended to add the following at the end of Article Third of the certificate of incorporation:

"Except as authorized by Title VIII of the Education Law or other applicable statute, nothing herein shall authorize the corporation to engage in the practice of any profession in New York, unless authorized to do so under an operating certificate or license by an appropriate State, regional or local agency; and



"Such services will be carried out by individuals authorized to do so pursuant to Title VIII of the Education Law, including New York State licensed psychologists, social workers, mental health counselors, marriage and family therapists, psychoanalysts and creative arts therapists. Such practitioners will provide such services for the corporation only to the extent permitted under section 6503-a of the Education Law."

IV. Manner of Authorization

- A. The Board of Directors of Veritas approved and adopted the Plan of Merger by unanimous written consent of the directors dated as of May 22, 2012. This action has not been rescinded or amended.
- B. The Board of Directors of Samaritan approved and adopted the Plan of Merger by resolution adopted by majority vote of the directors present at a duly convened meeting held on May 9, 2012 at which a quorum was present. One director abstained from voting, and no votes were cast against the resolution. This action has not been rescinded or amended.

V. Capital Certificates and Subvention Certificates

Neither Veritas nor Samaritan has any outstanding capital certificates or subvention certificates.

VI. Effective Date

The effective date of the merger shall be upon the filing of this Certificate of Merger by the Department of State of the State of New York.

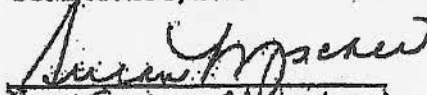
[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the constituent corporations have caused this Certificate of Merger to be duly executed by their respective officers thereunto duly authorized as of this 5<sup>th</sup> day of April, 2013.

VERITAS THERAPEUTIC  
COMMUNITY, INC.

SAMARITAN VILLAGE, INC.

By:

  
Name: Susan Mescher  
Title: Vice Chair

By:

\_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the constituent corporations have caused this Certificate of Merger to be duly executed by their respective officers thereunto duly authorized as of this 5<sup>th</sup> day of April, 2013.

VERITAS THERAPEUTIC  
COMMUNITY, INC.

By: \_\_\_\_\_

Name:  
Title:

SAMARITAN VILLAGE, INC.

By: 

Name: Florentino Hernandez  
Title: President /CEO

STATE OF NEW YORK  
THE STATE EDUCATION DEPARTMENT  
Albany, New York

CONSENT TO FILING WITH THE DEPARTMENT OF STATE  
(Consolidation or Merger)

Consent is hereby given to the filing of the annexed

**MERGER**

[certificate of consolidation or certificate of merger]

of Veritas Therapeutic Community, Inc. and Samaritan Village, Inc.

[name of each constituent entity that is being consolidated or merged]

into Samaritan Village, Inc.

[name of consolidated or merged entity].

pursuant to the applicable provisions of the Education Law, the Not-for-Profit Corporation Law, the Business Corporation Law, the Limited Liability Company Law or any other applicable statute.

This consent is issued solely for purposes of filing the annexed document by the Department of State and shall not be construed as approval by the Board of Regents, the Commissioner of Education or the State Education Department of the purposes or objects of such entity, nor shall it be construed as giving the officers or agents of such entity the right to use the name of the Board of Regents, the Commissioner of Education, the University of the State of New York or the State Education Department in its publications or advertising matter.



IN WITNESS WHEREOF this instrument is executed and the seal of the State Education Department is affixed.

JOHN B. KING, JR.  
Commissioner of Education

By: Kathleen M. Marinelli  
Kathleen Marinelli

Commissioner's authorized designee

Date 4/22/13

THIS DOCUMENT IS NOT VALID WITHOUT THE SIGNATURE OF THE  
COMMISSIONER'S AUTHORIZED DESIGNEE AND THE OFFICIAL SEAL OF THE  
STATE EDUCATION DEPARTMENT.



STATE OF NEW YORK  
OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES  
ALBANY, NEW YORK

KNOWN ALL PERSONS BY THESE PRESENTS:

Pursuant to the provisions of Article 32 of the Mental Hygiene Law, and Section 909 of the Not-For-Profit Corporation Law, approval is hereby given to the filing of the Certificate of Merger of

SAMARITAN VILLAGE, INC.

&

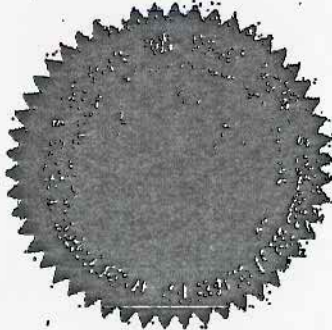
VERTAS THERAPEUTIC COMMUNITY, INC.

This approval shall not be construed as an authorization for the Corporation to engage in any activity for which the provisions of Article 32 of the Mental Hygiene Law require an Operating Certificate to be issued by the Office of Alcoholism and Substance Abuse Services unless said Corporation has been issued such Operating Certificate; nor shall it be construed to eliminate the need for the said Corporation to meet any and all of the requirements and conditions precedent set forth in Article 32 of such law and the regulations promulgated thereunder for issuance of said Operating Certificate.

IN WITNESS WHEREOF, this instrument is Executed and the Seal of the New York State Office of Alcoholism and Substance Abuse Services is affixed this 10<sup>th</sup> day of February, 2013

ROBERT A. KENT  
GENERAL COUNSEL,  
NYS OASAS

By: Janet L. Paloski  
Acting Director  
Bureau of Certification and  
Systems Management



*Janet Paloski*

**NEW YORK**  
state department of  
**HEALTH**

Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

June 5, 2013

William F. Gaske, Esq.  
Patterson Belknap Webb & Tyler, LLP  
1133 Avenue of the Americas  
New York, New York 10036-6710


Re: Proposed Certificate of Merger of Veritas Therapeutic Community, Inc. into Samaritan Village, Inc.

Dear Mr. Gaske:

The above referenced Certificate of Merger, dated April 5, 2013 and signed by Susan Mescher and Florentino Hernandez, does not require the formal approval of the Public Health and Health Planning Council or the Commissioner of Health under either the Public Health Law, Social Services Law or the Not-for-Profit Corporation Law, since the Certificate does not add, change or delete from the Certificate of Incorporation of Samaritan Village, Inc., the surviving corporation, a purpose that requires the consent of the Public Health and Health Planning Council or the Commissioner of Health.

The Department of Health does not object to the Certificate being filed with the Department of State.

Sincerely,

  
Michael M. Stone  
Assistant Counsel  
Bureau of House Counsel

HEALTH.NY.GOV  
facebook.com/NYSDOH  
twitter.com/HealthNYGov





ORDERED, that the corporations be, and they hereby are, authorized to file with the Secretary of State of New York a Certificate of Merger in accordance with Section 904 of the Not-for-Profit Corporation Law; and it is further

ORDERED, that upon filing of the Certificate of Merger together with a certified copy of this order as required by Section 907 of the Not-for-Profit Corporation Law, all of the assets of Veritas Therapeutic Community, Inc. shall thereupon and thereby be transferred and conveyed to Samaritan Foundation, Inc., in accordance with the Plan of Merger, to be held by it subject to the purposes set forth in its certificate of incorporation, as from time to time amended; and it is further

ORDERED, that a signed copy of this Order shall be sent to the New York State Attorney General's Office; and it is further

ORDERED, that a copy of the Certificate of Merger filed with the Secretary of State of New York shall be sent to the New York State Attorney General's Office; and it is further

ORDERED, that the merger of the corporations shall have the effect provided by Section 905 of the Not-for-Profit Corporation Law of the State of New York.

Enter,

  
\_\_\_\_\_  
J.S.C.

THE ATTORNEY GENERAL HEREBY APPEARS HEREIN,  
HAS NO OBJECTION TO THE GRANTING OF  
JUDICIAL APPROVAL HEREON, ACKNOWLEDGES  
RECEIPT OF STATUTORY NOTICE, AND DEMANDS  
SERVICE OF ALL PAPERS SUBMITTED HEREIN  
INCLUDING ALL ORDERS, JUDGMENTS AND  
ENDORSEMENTS OF THE COURT. SAID NO OBJECTION  
IS CONDITIONED ON SUBMISSION OF THE MATTER  
TO THE COURT WITHIN 90 DAYS HEREAFTER.

  
\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL

DATE

Michele L. Adels 6/26/13



CSC 45  
Drawdown

130719000227

FILED

2013 JUL 19 AM 10:45

RECEIVED

2013 JUL 19 AM 9:24

CERTIFICATE OF MERGER  
OF  
VERITAS THERAPEUTIC COMMUNITY, INC.  
(a New York not-for-profit corporation)  
INTO  
SAMARITAN VILLAGE, INC.  
(a New York not-for-profit corporation)  
Under Section 904 of the  
New York Not-for-Profit Corporation Law

Patterson Belknap Webb & Tyler LLP  
1133 Avenue of the Americas  
New York, NY 10036-6710

Cost & F 731254TRT

*Ice*  
STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL 19 2013

TAXS           *8*          

BY:           *Pul*          

*Queens*

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265



**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**M E M O R A N D U M**

**TO:** Public Health and Health Planning Council

**FROM:** Richard J. Zahnleutner,  Acting General Counsel

**DATE:** September 10, 2015

**SUBJECT:** Proposed Certificate of Amendment to the Certificate of Incorporation of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

---

The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI") requests Public Health and Health Planning Council approval of its proposed Certificate of Amendment to its Certificate of Incorporation, in accordance with the requirements of Sections 404 and 804 of the Not-For-Profit Corporation Law, and Sections 2854 and 2855 of the Public Health Law.

Attached are the following with regard to this matter:

1. Letter dated August 21, 2015, from SSI's counsel, requesting Public Health and Health Planning Council approval of the proposed Certificate of Amendment, and setting forth the reasons for the request.
2. Proposed Certificate of Amendment of SSI's Certificate of Incorporation.
3. Existing Certificate of Incorporation and amendments thereto.

The proposed Certificate of Amendment is in legally acceptable form.

The attached letter also discuss a Certificate of Amendment to the Certificate of Incorporation of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc. ("SBSI Fund"). The original Certificate of Incorporation for the SBSI Fund did not require the formal approval of the Department of Health, or of the Public Health Council, since no approval was necessary for the purposes set forth therein. The amendments effected by the Certificate of Amendment do not add any purposes for which approval is required. Therefore, the filing of the Certificate of Amendment does not require the consent or approval of the Department of Health, or of the Public Health and Health Planning Council, and we have provided a letter to SBSI Fund's counsel reciting this.

# SheppardMullin

Sheppard Mullin Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112-0015  
212 653 8700 main  
212 653 8701 main fax  
www.sheppardmullin.com

212.634.3084 direct  
trosenberg@sheppardmullin.com

August 21, 2015

File Number: 43SG-207827

## VIA FEDEX

Mark Furnish  
Senior Attorney  
New York State Department of Health  
Division of Legal Affairs  
Bureau of House Counsel  
Empire State Plaza,  
Corning Tower  
Albany, New York 12237-0031

Re: The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.  
The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc.

Dear Mr. Furnish:

Thank you for your help during our recent telephone conversation and your willingness to review the request below on an expedited basis.

Per our conversation, I am writing on behalf of (1) The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. ("SSI"); and (2) The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation Fund, Inc. ("SBSI Fund"), to request that the New York State Department of Health (the "DOH") issue a letter to each of the foregoing entities stating that the DOH consents to, or that its consent is not required for, the filing of the Certificates of Amendment of SSI and SBSI Fund. Copies of the executed Certificates of Amendment for SSI and SBSI Fund are attached as **Exhibit 1** and **Exhibit 2**, respectively. I have also attached the current Certificate of Incorporation, and all amendments thereto, of both SSI and SBSI Fund, for your reference, as **Exhibit 3** and **Exhibit 4**, respectively.

By way of background, SSI and SBSI Fund are affiliates of The Brookdale Hospital Medical Center, a New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law operating in Brooklyn, New York (the "Hospital"). SSI and SBSI Fund have historically operated as constituents of and for the benefit of the Hospital and its affiliated health system. SSI was incorporated in 1968 under the name "Brookdale Hospital Center Nursing Home Company, Inc." SBSI Fund was incorporated in 1973 to support SSI. (Both entities have since undergone multiple changes in their legal names.)

The Hospital has been experiencing severe financial distress in recent years and has been receiving critical financial support through the DOH in coordination with the Dormitory Authority

# SheppardMullin

Mark Furnish  
August 21, 2015  
Page 2

of the State of New ("DASNY"). In connection with a loan issued by DASNY to the Hospital in February of 2014, DASNY requested that SSI and SBSI Fund pledge and mortgage their real and personal property in favor of DASNY to secure obligations of the Hospital relating to such loan. To enable such pledges and mortgages, the proposed Certificates of Amendment would clarify the purposes of SSI and SBSI Fund to expressly provide for supporting the purposes of the Hospital and the Brookdale health system as a whole.

As we discussed by phone, it took several months to receive a response to our previous request for consent to the filing of the attached Certificates of Amendment, despite several phone calls to check on the status. We ultimately received only one consent letter, for SBSI Fund, and by the time it was received, the changes to the New York State Not-for-Profit Corporation Law made by the Nonprofit Revitalization Act became effective, necessitating modifications to both Certificates of Amendment. We also subsequently learned that the individual at the DOH who worked on our requests no longer works at the DOH. Given this history and the strong desire by DASNY to file the enclosed Certificates of Amendment as promptly as possible, we greatly appreciate your assistance in expediting your review of the Certificates. Please be in touch by phone with any questions.

Thank you very much.

Sincerely,



Tamar R. Rosenberg  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:215578439.1  
Encls.



**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND  
REHABILITATION, INC.**

**Under Section 803 of the  
New York State Not-For-Profit Corporation Law**

The undersigned, Mark E. Toney, hereby certifies that he is the President and Chief Executive Officer of The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., a corporation organized and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify as follows:

1. The name of the corporation is The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc. (the "Corporation").
2. The Certificate of Incorporation of the Corporation was filed with the New York Secretary of State on January 11, 1968 under Section 402 of the NPCL. The name under which the Corporation was formed is Brookdale Hospital Center Nursing Home Company, Inc.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL.
4. Paragraph II of the Corporation's Certificate of Incorporation, which sets forth the Corporation's purposes, including to provide nursing home accommodations and engage in related activities, is hereby amended to explicitly establish and clarify that the purposes of the Corporation include providing nursing home accommodations and engaging in related activities for the purpose of benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System, of which the Corporation has historically been a constituent, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the constituent entities of the Brookdale Health System, which the Corporation has historically served. Accordingly, Paragraph II of the Corporation's Certificate of Incorporation is hereby amended to read in its entirety as follows:

"II. The Company is organized and shall be operated exclusively for the charitable, scientific and educational purposes of promoting, facilitating and

improving the delivery of quality, efficient, effective and economical health care and related services to, and improving and enhancing the general health and well-being of, the communities of Brooklyn, New York served by the "Brookdale Health System," a system of affiliated health care providers and related entities, by:

(i) providing nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of Article 28-A of the New York State Public Health Law; and

(ii) benefitting, promoting, supporting and furthering the charitable, scientific and educational purposes of the constituent entities of the Brookdale Health System that are exempt from federal income tax under Section 501(a) of the Code as organizations described in Section 501(c)(3) of the Code, including, in particular, The Brookdale Hospital Medical Center, a charitable New York not-for-profit corporation licensed as a hospital under Article 28 of the New York State Public Health Law, including through the provision of financial and/or other support to such entities, as shall be determined by the Company's Board of Directors from time to time.

5. This Certificate of Amendment of the Corporation's Certificate of Incorporation was authorized by the unanimous approval of the Corporation's sole member, acting through its Board of Trustees, at a duly constituted meeting of such Board of Trustees, in accordance with Section 802(a)(1) of the NPCL.
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is: The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc., Attn: General Counsel, One Brookdale Plaza, Brooklyn, New York 11212.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

**[SIGNATURE PAGE TO FOLLOW.]**

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Amendment on August 19, 2015.

  
By: Mark E. Toney  
Title: President and Chief Executive Officer

**CERTIFICATE OF AMENDMENT  
OF THE  
CERTIFICATE OF INCORPORATION  
OF  
THE SCHULMAN AND SCHACHNE INSTITUTE FOR NURSING AND  
REHABILITATION, INC.**

**Under Section 803 of the  
New York State Not-For-Profit Corporation Law**

Filed By:

Jay E. Gerzog, Esq.  
Sheppard Mullin Richter & Hampton LLP  
30 Rockefeller Plaza  
New York, NY 10112-0015

RECEIVED

NOV 1 1966

SECRETARY  
N. Y. STATE DEPT. OF  
SOCIAL WELFARE

Certificate of Incorporation

of

The Brookdale Hospital Center Nursing Home Company

Pursuant to the Membership Corporations Law and the Public Health Law,

we, the undersigned, for the purpose of forming a

Nursing Home Company pursuant to the Membership Corporations Law

and the Public Health Law of the State of New York hereby certify:

I

The Name of the proposed corporation is The Brookdale Hospital Center Nursing Home Company, Inc. (hereinafter referred to as the "Company").

II

The purposes for which the company is to be formed are to provide nursing home accommodations for sick, invalid, infirm, disabled or convalescent persons of low income, and to this end to plan, construct, erect, build, acquire, alter, reconstruct, rehabilitate, own, maintain and operate a nursing home project pursuant to the terms and provisions of the Public Health Law.

III

The territory in which the operations of the company will be principally conducted is the State of New York.

IV

The principal office of the company is to be located in the City of New York, Borough of Brooklyn, County of Kings, State of New York.

V

The number of Directors of the company shall be not less than three (3) nor more than fifteen (15). Directors shall be elected by the members of the company. One (1) additional director may be designated by the Commissioner of Health of the State of New York (hereinafter referred to as the "Commissioner"). In the absence of fraud or bad faith said additional director appointed by the commissioner shall not be personally liable for the debts, obligations or liabilities of the company.

VI

The names and residences of the Directors of the company until the first annual meeting are:

<u>Name</u>	<u>Address</u>
Mr. Benne Katz	802 Shore Boulevard, Brooklyn, New York 11235
Mr. Arnold Schwartz	Ritz Towers, 57th Street and Park Avenue, New York, New York 10022
Mr. David Bergner	70 East 10th Street, New York, New York 10003
Mr. Emanuel Kugler	124 Richmond Place, Lawrence, Long Island 11559
Mr. Paul Bluth	770 Empire Boulevard, Brooklyn, New York 11213
Mr. Samuel C. Rubin	10 Plaza Street, Brooklyn, New York 11238
Mr. Harry Rudolph	34 Plaza Street, Brooklyn, New York 11238
Mr. William Marx	12 Hastings Street, Brooklyn, New York 11235
Mr. Harry Koepfel	35 East 75th Street, New York, New York 10021
Mr. Nathan Packer	3600 Bedford Avenue, Brooklyn, New York 11210
Mr. Bernard Gordon	1199 Park Avenue, New York, New York 10028
Mr. Harry Maslow	20 Plaza Street, Brooklyn, New York 11238
Mr. Harold Levin	912 Fifth Avenue, New York, New York 10021

VII

The names and residences of the Subscribers to this Certificate of Incorporate are:

<u>Name</u>	<u>Address</u>
Mr. Benne Katz	802 Shore Boulevard, Brooklyn, New York 11235
Mr. Arnold Schwartz	Ritz Towers, 57th Street and Park Avenue, New York, New York 10022
Mr. David Bergner	70 East 10th Street, New York, New York 10003
Mr. Emanuel Kugler	124 Richmond Place, Lawrence, Long Island 11559
Mr. Paul Bluth	770 Empire Boulevard, Brooklyn, New York 11213
Mr. Samuel C. Rubin	10 Plaza Street, Brooklyn, New York 11238
Mr. Harry Rudolph	34 Plaza Street, Brooklyn, New York 11238

\* 3

Mr. Nathan Packer 3600 Bedford Avenue  
Mr. Bernard Gordon 1139 Park Avenue  
Mr. Harry Maslow 20 Plaza Street  
Mr. Harold Levin 912 Fifth Avenue

VIII

✓ The duration of the company is for a period of ~~ten~~ years  
date of the filing of this Certificate by the Secretary of State.

IX

The real property of the company shall not be sold, transferred, en-  
cumbered or assigned except as permitted by the provisions of the  
Public Health Law.

X

The company has been organized exclusively to serve a public purpose  
and it shall be and remain subject to the supervision and control of the  
commissioner pursuant to the provisions of the Public Health Law.

XI

All income and earnings of the company shall be used exclusively for  
its corporate purposes.

XII

No part of the net income or net earning of the company shall inure to  
the benefit or profit of any private individual, firm or corporation. Noth-  
ing herein contained shall be deemed to include any power, activity or pur-  
pose or to authorize the company to engage in any business or activity  
which would disqualify the company from an exemption under §501 (c) (3) of  
the United States Internal Revenue Code of 1954, as amended. In the event  
of dissolution or other liquidation of the assets of the company, its assets  
shall be distributed to non-profit and charitable corporations or insti-  
tutions as may be designated by directors, subject to the approval of a  
Justice of the Supreme Court.



No part of the net income or net assets of the corporation shall be paid in dividends or otherwise to the benefit or profit of any individual.

XIII

All of the Subscribers to this Certificate of Incorporation are of full age. At least two-thirds of them are citizens of the United States and at least one of them is a resident of the State of New York. At least one of the persons named as a Director of the company is a citizen of the United States and a resident of the State of New York.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this Certificate of Incorporation, in quadruplicate, this 11th day of October, 1966.

*William Marx*

(Mr. William Marx)

*Harry Koepfel*

(Mr. Harry Koepfel)

*Nathan Packer*

(Mr. Nathan Packer)

*Bernard Gordon*

(Mr. Bernard Gordon)

*Harry Maslow*

(Mr. Harry Maslow)

*Harold Levin*

(Mr. Harold Levin)

*Benne Katz*

(Mr. Benne Katz)

*Arnold Schwartz*

(Mr. Arnold Schwartz)

*David Bergner*

(Mr. David Bergner)

*Emanuel Kugler*

(Mr. Emanuel Kugler)

*Paul Bluth*

(Mr. Paul Bluth)

*Samuel C. Rubin*

(Mr. Samuel C. Rubin)

*Harry Rudolph*

(Mr. Harry Rudolph)



STATE OF NEW YORK )

SS.

COUNTY OF KINGS )

On this 11th day of October, 1966, before me personally  
came Mr. Benne Katz, Mr. Arnold Schwartz, Mr. David Bergman,  
Mr. Emanuel Kugler, Mr. Paul Bluth, Mr. Samuel G. Rubin,  
Mr. Harry Rudolph, Mr. William Marx, Mr. Harry Koepfel,  
Mr. Nathan Packer, Mr. Bernard Gordon, Mr. Harry Maslow,  
and Mr. Harold Levin, to me known and known to me to be the  
persons described in and who executed the foregoing Certificate of  
Incorporation of The Brookdale Hospital Center Nursing Company, Inc.  
and they duly acknowledged to me that they executed the same.

*Pauline Cutler*  
Notary Public

PAULINE CUTLER  
NOTARY PUBLIC, State of New York  
No. 24-0837780  
Qualified in Kings County  
Commission Expires March 30, 1968  
1967

Consent to Incorporation By

Commissioner of Health.

I, HOLLIS S. INGRAHAM, M.D., Commissioner of Health of the

State of New York, do this 26 day of December, 1967, pursuant

to Article 28-A of the Public Health Law hereby certify that I consent

to the filing of the foregoing Certificate of Incorporation of The Brookdale

Home Hospital Center Nursing/Company, Inc. with the Secretary of State of

the State of New York.

HOLLIS S. INGRAHAM, M.D.  
Commissioner of Health

By: *Robert P. Whalen*  
Robert P. Whalen, M.D.  
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of the State of  
New York, wherein is located the principal office of The Brookdale

Home Hospital Center Nursing/Company, Inc., hereby approves the within

Certificate of Incorporation of The Brookdale Hospital Center Nursing Home  
Company, Inc. and the filing thereof.

HON. FRANK S. SAMANSKY

Dated: *January 3, 1968*  
*Burdette Key*

*Frank S. Samansky*  
Justice of the Supreme Court  
*2nd Judicial District*

ice of Application Waived  
is is not to be deemed an  
roval on behalf of any  
artment or Agency of the  
to; of New York, nor an  
horisation of activities  
erwise limited by law.)

*January 3, 1968*  
LOUIS J. LEFKOWITZ  
Attorney General

By: *Louis J. Lefkowitz*

CERTIFICATE

OF

INCORPORATION

OF

BROOKDALE HOSPITAL CENTER  
NURSING HOME COMPANY, INC.

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JAN 11 1958

*W. S. C.*

*JK*

*294 King*

BERGNER & BERGNER

ATTORNEYS AT LAW

ELEVEN PARK PLACE

NEW YORK CITY

BARCLAY 7-8280

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State





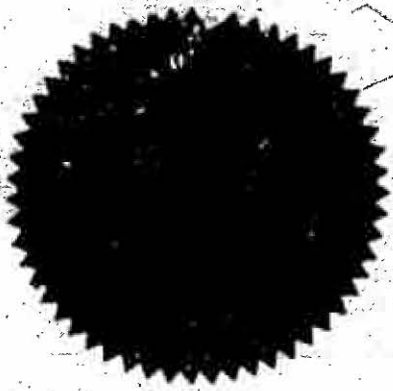
# State Board of Social Welfare

Albany

659362

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the nineteenth day of December, 1967, due inquiry and investigation having been made, the Board approved the application of BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC., No. 6-27, a membership corporation, for approval of the proposed certificate of incorporation pursuant to Section 35 of the Social Services Law and Article 28-A of the Public Health Law, empowering it to establish, maintain and operate a 200 bed nursing home at Brookdale Plaza, Brooklyn, New York.



In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this twentieth day of December, in the year one thousand nine hundred and sixty-seven.

*[Signature]*  
Secretary

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State



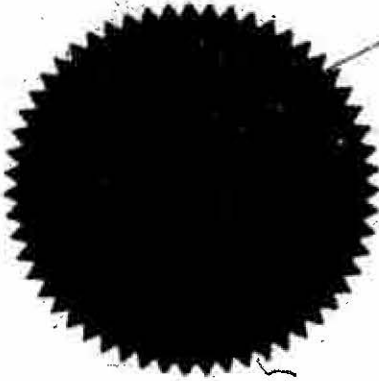
# State Board of Social Welfare

Albany

Know all Men by These Presents:

At a meeting of the State Board of Social Welfare, held on the twentieth day of January, 1970, due inquiry and investigation having been made, the Board approved the proposed certificate of revival of existence of BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. pursuant to Section 49 of the General Corporation Law of the State of New York.

812131



In Witness Whereof, the State Board of Social Welfare has caused these presents to be signed in accordance with the provisions of the statutes and its by-laws, and the official seal of the Board and of the Department to be hereunto affixed, this twenty-first day of January, in the year one thousand nine hundred and seventy.

*[Signature]*  
Secretary

CERTIFICATE OF REVIVAL OF  
EXISTENCE OF

BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

(a Membership corporation)


Pursuant to Section 49 of the General Corporation Law

We, the undersigned, HARRY KOEPEL, President, and MILTON  
COHEN, Secretary of BROOKDALE HOSPITAL CENTER NURSING  
HOME COMPANY, INC. C E R T I F Y:

1. The name of the Corporation is Brookdale Hospital  
Center Nursing Home Company, Inc.
2. The Certificate of Incorporation was filed in the office  
of the Secretary of State on January 11, 1968.
3. The term of existence specified in the original Certificate  
of Incorporation expired on January 11, 1970.
4. The duration of the Corporation shall be extended for a  
period of one year, to wit; January 11, 1971.

IN WITNESS WHEREOF, we have executed this Certificate this

8th day of January, 1970.

  
Harry Koepfel, President

  
Milton Cohen, Secretary

STATE OF NEW YORK     ss.  
COUNTY OF KINGS

On the 8th day of January, 1970, before me  
personally came HARRY KOEPEL and MILTON COHEN, to me known  
and known to me to be the persons described and who executed  
the foregoing Certificate of Revival of Existence and they



thereupon severally duly acknowledged to me that they executed the same.

*Arnold Simon*  
\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
COUNTY OF KINGS ) SS.

HARRY KOEPEL and MILTON COHEN, being severally duly sworn, depose and say, each for himself deposes and says, that he, HARRY KOEPEL, is the President of Brookdale Hospital Center Nursing Home Company, Inc. and he, MILTON COHEN, is the Secretary of said Corporation, that they were duly authorized to execute and file the foregoing Certificate of Revival of Existence of said Corporation by the votes, cast in person or by proxy, of a majority of the members of record of said Corporation, at a meeting of the members called for that purpose upon like notice as that required for the annual meetings of the Corporation, the said meeting having been held at Brooklyn, New York, on January 8, 1970.

*Harry Koepfel*  
\_\_\_\_\_  
Harry Koepfel, President

*Milton Cohen*  
\_\_\_\_\_  
Milton Cohen, Secretary

SWORN to before me this  
8th day of January, 1970

*Arnold Simon*  
\_\_\_\_\_  
Notary Public

ARNOLD SIMON  
Notary Public, State of New York  
No. 3094124  
Qualified in Nassau County  
Commission Expires March 10, 1972

3

CONSENT TO FILING CERTIFICATE OF EXTENSION  
OF EXISTENCE BY COMMISSIONER OF HEALTH

I, Hollis S. Ingraham, M.D., Commissioner of Health of the State of New York, do this 29th day of January 1970, pursuant to Article 28-A of the Public Health Law, hereby certify that I consent to the filing of the foregoing Certificate of Revival of Existence of the Brookdale Hospital Center Nursing Home Company, Inc. with the Secretary of State of the State of New York.

\_\_\_\_\_  
Hollis S. Ingraham, M.D.  
Commissioner of Health

By Donald G. Dickson  
Donald G. Dickson, M.D.  
Deputy Commissioner

812131

CERTIFICATE

of

REVIVAL OF EXISTENCE OF

BROOKDALE HOSPITAL CENTER NURSING  
HOME COMPANY, INC.

(a Membership Corporation)

Pursuant to Section 49 of the  
General Corporation Law

1/11/68 Kings  
duration 2 yrs

B

659362-8

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILES FEB 3 1970  
FILE NO. 30

Secretary of State  
By [Signature]  
24 Kings

BERGNER & BERGNER

ATTORNEYS AT LAW

ELEVEN PARK PLACE

NEW YORK CITY

BARCLAY 7-8280

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

CERTIFICATE OF TYPE OF  
NOT-FOR-PROFIT CORPORATION OF

THE BROOKDALE HOSPITAL CENTER  
NURSING HOME COMPANY, INC.

Under Section 113 of the Not-For-Profit Corporation Law

We the undersigned President and Secretary of  
The Brookdale Hospital Center Nursing Home Company, Inc.,  
certify:

1. The name of the corporation is: The  
Brookdale Hospital Center Nursing Home Company, Inc.
2. The name under which the corporation was  
originally incorporated was The Brookdale Hospital  
Center Nursing Home Company, Inc.
3. The Certificate of Incorporation of the  
Corporation was originally filed by the Department of  
State on January 11, 1968 and the corporation was  
formed pursuant to the Membership Corporations Law  
and the Public Health Law.
4. The post office address within the State  
of New York to which the Secretary of State shall mail a  
copy of any notice required by law is Linden Bouelvard  
and Rockaway Parkway, Brooklyn, New York.
5. Under Section 201 (Purposes) of the Not-  
For-Profit Corporation Law, The Brookdale Hospital Center  
Nursing Home Company, Inc. is a Type D Not-For-Profit  
Corporation as defined in this Chapter.

In Witness Whereof, we have executed this

Certificate this 19th day of October, 1970.

*Harry Koepfel*  
President - Harry Koepfel

*Milton Cohen*  
Secretary - Milton Cohen


STATE OF NEW YORK )

SS.:

COUNTY OF NEW YORK)

HARRY KOEPEL, and MILTON COHEN each being severally duly sworn, severally depose and say, each for himself, that he HARRY KOEPEL, is the President of The Brookdale Hospital Center Nursing Home Company, Inc. and he MILTON COHEN is the Secretary of said Corporation; that they have read the foregoing Certificate of Type of Not-For-Profit Corporation of The Brookdale Hospital Center Nursing Home Company, Inc. under Section 113 of the Not-For-Profit Corporation Law and know the contents thereof; that the same is true to their own knowledge, except as to matters therein stated to be alleged upon information and belief, and that as to those matters they believe it to be true.

  
Harry Koepel, President

  
Milton Cohen, Secretary

Sworn to before me this  
19th day of October, 1970.

  
Notary Public

ARNOLD SIMON  
Notary Public, New York  
No. 110701473  
Qualified in Nassau County  
Commission Expires March 30, 1971

3



M  
CERTIFICATE OF TYPE OF  
NOT-FOR-PROFIT CORPORATION OF

THE BROOKDALE HOSPITAL CENTER  
NURSING HOME COMPANY, INC.

Under Section 13 of the Not-For-  
Profit Corporation Law

BERGNER & BERGNER  
ATTORNEYS AT LAW  
ELEVEN PARK PLACE  
NEW YORK CITY  
BARCLAY 7-8280

*mem*

*1/11/68*

*Ringer*

*659362-8*

*S*

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED OCT 27 1970

TAX \$ *None*  
FILING FEE \$ *10*

*John P. Eminger*  
SECRETARY OF STATE

*2 P Kings*  
*Type B*

*4*

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

Under Section 803 of the Not-  
For-Profit Corporation Law

870653  
The undersigned, being the President and Secretary of The Brookdale Hospital Center Nursing Home Company, Inc. certify:

1. The name of the Corporation is The Brookdale Hospital Center Nursing Home Company, Inc. It was formed under that name and the name has not been changed.

2. The certificate of incorporation of said Corporation was filed in the office of the Department of State on January 11, 1968.

3. The existence of the said Corporation expired on January 11, 1970. By Certificate of Revival of Existence filed in the Office of the Department of State on February 3, 1970, the existence of the Corporation was extended to January 11, 1971.

4. The term of existence of the Corporation is to be amended to make such existence perpetual.

5. The manner in which the Amendment of the Certificate of Incorporation was authorized was by the consent of all members of Board of Directors of the Corporation voting in person at a meeting duly called for that purpose; said meeting was held at the Brookdale Hospital Center, Brooklyn, New York on October 19, 1970. There are no members eligible to vote.

6. The corporate purposes are not enlarged,  
limited or in any way changed, except as above set forth.

IN WITNESS WHEREOF, we have executed this  
certificate the 30<sup>th</sup> day of October, 1970.

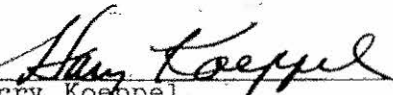
  
Harry Koepfel, President

  
Milton Cohen, Secretary

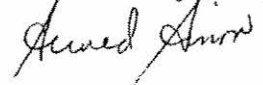
STATE OF NEW YORK )  
                          : ss.:  
COUNTY OF NEW YORK )

HARRY KOEPPEL, being duly sworn, deposes and says:

That deponent is the President of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its President.

  
Harry Koepfel

Subscribed and sworn to before  
me this 5<sup>th</sup> day of October, 1970.



ARNOLD SIMON  
Notary Public, State of New York  
No. 24-3557000  
Qualified in Putnam County  
Commission Expires March 30, 1971

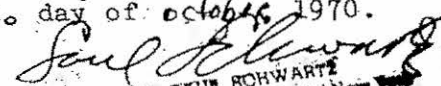
STATE OF NEW YORK )  
                          : ss.:  
COUNTY OF NEW YORK )

MILTON COHEN, being duly sworn, deposes and says:

That deponent is the Secretary of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief, and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its Secretary.

  
Milton Cohen

Subscribed and sworn to before  
me this 3<sup>rd</sup> day of October, 1970.

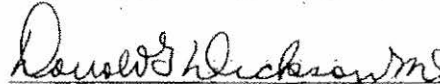
  
SAUL SCHWARTZ  
NOTARY PUBLIC, State of New York  
No. 24-3557000  
Qualified in Kings County  
Commission Expires March 30, 1971

CONSENT TO FILING CERTIFICATE OF AMENDMENT  
RELATING TO THE EXTENSION OF THE DURATION  
OF

THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

I, HOLLIS S. INGRAHAM, Commissioner of Health of the State of New York, do this 18 day of December, 1970, pursuant to Article 28-A of the Public Health Law, hereby certify that I consent to the filing of the foregoing Certificate of Amendment relating to the extension of the duration of The Brookdale Hospital Center Nursing Home Company, Inc. with the Secretary of State of the State of New York.

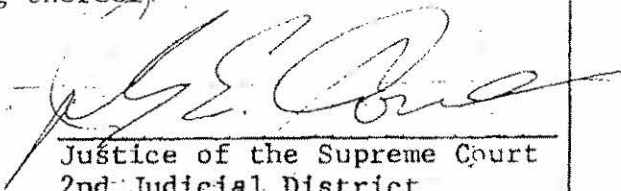
Hollis S. Ingraham, M.D.  
Commissioner of Health

  
By Donald G. Dickson, M.D.  
Deputy Commissioner

The undersigned, a Justice of the Supreme Court of the State of New York, 2nd Judicial District wherein is located the principal office of The Brookdale Hospital Center Nursing Home Company, Inc. hereby approves the within Certificate of Amendment to the Certificate of Incorporation of The Brookdale Hospital Center Nursing Home Company, Inc. and the filing thereof.

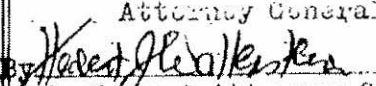
Dated: December 21, 1970  
Brooklyn - New York

Notice of Application Waived  
(This is not to be deemed an approval on behalf of any Department or Agency of the State of New York, nor an authorization of any activities otherwise prohibited by law.)

  
Justice of the Supreme Court  
2nd Judicial District

HON. JOHN E. CONE

Dated: December 18, 1970  
LOUIS J. BERKOWITZ  
Attorney General

  
Assistant Attorney General



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY, NEW YORK

PUBLIC HEALTH COUNCIL

RICHARD H. MATTOX, EXECUTIVE SECRETARY

WHEREAS, the certificate of incorporation of The Brookdale Hospital Center Nursing Home Co., Inc. was heretofore approved by the State Board of Social Welfare and the certificate of incorporation was filed with the Secretary of State on January 11, 1968, and

WHEREAS, the aforementioned certificate limited the duration of the Corporation for the period of two years, and

WHEREAS, on February 3, 1970, the existence of the Corporation was extended to January 11, 1971; and

WHEREAS, the Staff of the New York State Department of Health has recommended, in a report to this Council, that the life of the Corporation be extended so as to make its existence perpetual, and has further recommended the approval of a certificate of amendment relating to the disposition of the assets of the Corporation upon the dissolution of the Corporation in order to conform with the requirements of the Internal Revenue Service, now therefore be it

RESOLVED, that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. extending the existence of the corporation so as to make it perpetual, and that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. relating to the disposition of the assets of the corporation upon the dissolution of the corporation in order to conform with the requirements of the Internal Revenue Service, are hereby approved, provided that properly executed certificates of amendment are presented to the New York State Department of Health in a form acceptable to the Department.

ALBANY, NEW YORK  
DATED : DECEMBER 18, 1970

*Richard H. Mattox*  
SECRETARY



*memo*

*1/11/68 KingCo*

*Rev of Exp to 1/11/71*

*659362-8*

*S*

CERTIFICATE OF AMENDMENT

*876653-6*

OF

CERTIFICATE OF INCORPORATION

OF

THE BROOKDALE HOSPITAL CENTER  
NURSING HOME COMPANY, INC.

Under Section 803 of the Not-  
For-Profit Corporation Law

*P*

STATE OF NEW YORK  
DEPARTMENT OF STATE  
DEC 22 1970  
TAX \$ *none*  
FILING FEE \$ *30*

*John P. Tompkins*  
Secretary of State

*MB*  
*24 Kingo*

*6*

BERGNER & BERGNER  
ATTORNEYS AT LAW  
ELEVEN PARK PLACE  
NEW YORK CITY  
BARCLAY 7-8280

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

Under Section 803 of the Not-  
For-Profit Corporation Law

870054

The undersigned, being the President and Secretary of The Brookdale Hospital Center Nursing Home Company, Inc. certify:

1. The name of the Corporation is The Brookdale Hospital Center Nursing Home Company, Inc. It was formed under that name and the name has not been changed.

2. The certificate of incorporation of said Corporation was filed in the office of the Department of State on January 11, 1968.

3. The existence of the said Corporation expired on January 11, 1970. By Certificate of Revival of Existence filed in the Office of the Department of State on February 3, 1970, the existence of the Corporation was extended to January 11, 1971. The duration of the Corporation was made perpetual by Certificate of Amendment under Section 803 of the Not-For-Profit Law which such certificate is intended to be filed simultaneously with the filing of this certificate.

4. Paragraph XII of the Certificate of Incorporation is to be amended. The present paragraph XII of the Certificate of Incorporation to be eliminated by the execution and filing of this certificate for amendment is as follows:

"No part of the net income or net earning of the company shall inure to the benefit or profit of any private individual, firm or corporation. Nothing herein contained shall be deemed to include any power, activity or purpose or to authorize the company to engage in any business or activity which would disqualify the company from an exemption under §501 (c) (3) of the United States Internal Revenue Code of 1954, as amended. In the event of dissolution or other liquidation of the assets of the company its assets shall be distributed to non-profit and charitable corporations or institutions as may be designated by directors, subject to the approval of a Justice of the Supreme Court."

5. The new paragraph XII of the Certificate of Incorporation to be substituted for the foregoing is as follows:

"12. The Company is organized and shall be operated as a non-profit organization, shall not have power to issue certificates of stock or to declare or pay dividends and shall be operated exclusively for the purposes enumerated in Article 11 hereof, thereby to lessen the burdens of government and promote social welfare. No part of the net income or net earnings of the Company shall inure to the benefit or profit of any private individual, firm or corporation. No officer or employee of the Company shall receive or be lawfully entitled to receive any pecuniary benefits from the operation thereof except as reasonable compensation for services. No member or director of the Company shall receive any salary, other compensation or pecuniary profit of any kind for services as such member or director other than reimbursement of actual and necessary expenses incurred in the performance of his duties."

Upon the dissolution of the Company, the Board of Directors, shall after paying or making provisions for the payment of all of the liabilities of the Company, distribute all of the remaining assets of the Company exclusively for the purposes of the Company or for a similar public use or purpose, to such organization or organizations organized and operating exclusively for charitable purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Internal Revenue Code of 1954 as the same shall then be in force, or the corresponding provision of any future United States Internal Revenue Law, or to the United States of America, the State of New York, or a local government within the State of New York, as the Board of Directors shall determine or in the absence of such determination by the Board of Directors, such assets shall be distributed by the Supreme Court of the State of New York to such other qualified exempt organization or organizations as in the judgment of the Court will best accomplish the general purposes or a similar public use or purpose of this Company. In no event shall the assets of this Company upon dissolution be distributed to a director, officer, employee or member of this Company.

The dissolution of this Company and any distribution

of the assets of this Company incident thereto shall be subject to such law, if any, then in force as may require the approval or consent thereto by any Court or Judge thereof having jurisdiction or by any governmental department or agency or official thereof.

6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by the consent of all members of Board of Directors of the Corporation voting in person at a meeting duly called for that purpose; said meeting was held at the Brookdale Hospital Center, Brooklyn, New York on October 19, 1970. There are no members eligible to vote.

7. The corporate purposes are not enlarged, limited or in any way changed, except as above set forth.

IN WITNESS WHEREOF, we have executed this certificate the 30<sup>th</sup> day of October, 1970.

  
Harry Koeppe, Pres.

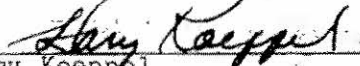
  
Milton Cohen, Secretary



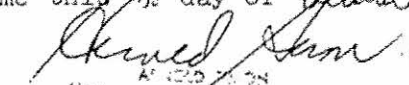
STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

HARRY KOEPPPEL, being duly sworn, deposes and says:

That deponent is the President of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief; and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its President.

  
Harry Koepfel

Subscribed and sworn to before me this 30 day of October, 1970.

  
ATTEST:  
Notary Public, State of New York  
Qualified in Kings County  
Commission Expires March 31, 1971

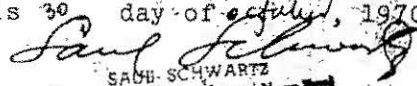
STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

MILTON COHEN, being duly sworn, deposes and says:

That deponent is the Secretary of The Brookdale Hospital Center Nursing Home Company, Inc., the corporation named in the foregoing Certificate of Amendment of Certificate of Incorporation; deponent has read the foregoing Certificate of Amendment of Certificate of Incorporation and knows the contents thereof; that the same is true to deponent's own knowledge except as to matters therein stated to be alleged on information and belief; and as to those matters deponent believes it to be true; this verification is made by deponent because The Brookdale Hospital Center Nursing Home Company, Inc. is a Not-For-Profit corporation; deponent is an officer thereof, to wit: its Secretary.

  
Milton Cohen

Subscribed and sworn to before me this 30 day of October, 1970.

  
SABU SCHWARTZ  
NOTARY PUBLIC, State of New York  
No. 24-557800  
Qualified in Kings County  
Commission Expires March 31, 1971

CONSENT TO FILING CERTIFICATE OF AMENDMENT  
RELATING TO THE DISPOSITION OF ASSETS UPON  
THE DISSOLUTION, AND NON-PROFIT CHARACTER  
OR

THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC.

I, HOLLIS S. INGRAHAM, Commissioner of Health of  
the State of New York, do this 18 day of December, 1970,  
pursuant to Article 28-A of the Public Health Law, hereby  
certify that I consent to the filing of the foregoing  
Certificate of Amendment relating to the Disposition of  
Assets Upon the Dissolution and Non-Profit Character of  
The Brookdale Hospital Center Nursing Home Company, Inc.  
with the Secretary of State of the State of New York.

Hollis S. Ingraham, M.D.  
Commissioner of Health

By Donald G. Dickson, M.D.  
Deputy Commissioner

The undersigned, a Justice of the Supreme Court  
of the State of New York, 2nd Judicial District wherein  
is located the principal office of The Brookdale Hospital  
Center Nursing Home Company, Inc., hereby approves the  
within Certificate of Amendment to the Certificate of  
Incorporation of The Brookdale Hospital Center Nursing Home  
Company, Inc. and the filing thereof.

Dated: December 21, 1970.  
Brooklyn, New York

Notice of Application Waived  
(This is not to be deemed an  
approval on behalf of any  
Department or any of the  
State of New York, or any  
authorities thereof, unless  
otherwise indicated.)

John E. Cone  
Justice of the Supreme Court  
2nd Judicial District

HON. JOHN E. CONE

Dated: Dec 18, 1970

LOUIS J. ...  
Attorney General

By Robert J. Wallenstein  
Assistant Attorney General, 5



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY, NEW YORK

PUBLIC HEALTH COUNCIL

RICHARD H. MATTOX, EXECUTIVE SECRETARY

WHEREAS, the certificate of incorporation of The Brookdale Hospital Center Nursing Home Co., Inc. was heretofore approved by the State Board of Social Welfare and the certificate of incorporation was filed with the Secretary of State on January 11, 1968, and

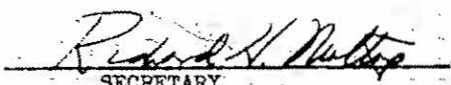
WHEREAS, the aforementioned certificate limited the duration of the Corporation for the period of two years, and

WHEREAS, on February 3, 1970, the existence of the Corporation was extended to January 11, 1971, and

WHEREAS, the Staff of the New York State Department of Health has recommended, in a report to this Council, that the life of the Corporation be extended so as to make its existence perpetual, and has further recommended the approval of a certificate of amendment relating to the disposition of the assets of the Corporation upon the dissolution of the Corporation in order to conform with the requirements of the Internal Revenue Service, now therefore be it

RESOLVED, that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. extending the existence of the corporation so as to make it perpetual, and that a certificate of amendment of Brookdale Hospital Center Nursing Home Co., Inc. relating to the disposition of the assets of the corporation upon the dissolution of the corporation in order to conform with the requirements of the Internal Revenue Service, are hereby approved, provided that properly executed certificates of amendment are presented to the New York State Department of Health in a form acceptable to the Department.

ALBANY, NEW YORK  
DATED : DECEMBER 18, 1970

6  
  
SECRETARY

*memor 1/11/68 Kings Co*

*Rev of Expt to 1/11/71*

876654-7

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

THE BROOKDALE HOSPITAL CENTER  
NURSING HOME COMPANY, INC.

Under Section 803 of the Not-  
For-Profit Corporation Law

*659362-8*

*S*

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED DEC 22 1970  
TAX \$ *None*  
FILING FEE \$ *30*

*John P. Long*  
Secretary of State  
*NA*  
*24 Kings*

*B*

*7*

BERGNER & BERGNER  
ATTORNEYS AT LAW  
ELEVEN PARK PLACE  
NEW YORK CITY  
BARCLAY 7-8250

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

4997188

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
BROOKDALE HOSPITAL CENTER NURSING HOME  
COMPANY, INC.

Under Section 801 of The Not-For-Profit Corporation Law  
and the Public Health Law

WE, the undersigned, hereby certify: -

1. The name of the corporation is BROOKDALE HOSPITAL  
CENTER NURSING HOME COMPANY, INC. It was formed under that name  
and the name has not been changed.

2. The Certificate of Incorporation of said corporation  
was filed by the Department of State of January 11, 1968. The  
corporation was formed under the Not-For-Profit Corporation Law  
and the Public Health Law.

3. The corporation is a corporation as defined in sub-  
paragraph (a)(5) of Section 102 (Definition) of the Not-For-  
Profit Corporation Law, and is a Type D corporation under  
Section 201 (Purposes).

4. The Secretary of State, pursuant to Section 402(a)(7)  
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 him is 555 Rockaway Parkway, Brooklyn, New York 11212.

5. Paragraph 1 of the Certificate of Incorporation relating to the name of the corporation is amended to read as follows:

"1. The name of the Corporation shall be THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION."


6. The manner in which the Amendment of the Certificate of Incorporation was authorized was by consent of a majority of the membership of the corporation voting in person at a special meeting of the membership, duly called for that purpose upon due notice to all members of record given in the manner required for a special meeting of the corporation; said meeting was held at 1060 Ocean Parkway, Brooklyn, New York at 6:15 P.M. on October 18th, 1982; a majority of the members were present; the certificate of Incorporation of the corporation does not require the consent of more than a majority of the members to change the name of the corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

and the following approvals or consents will be endorsed upon  
or annexed to this Certificate of Amendment prior to its de-  
livery to the Department of State:

Commissioner of Health, Public Health Council,  
Justice of the Supreme Court, Waiver of the  
Attorney General

IN WITNESS WHEREOF, we have executed this Certificate  
of Amendment this 31<sup>st</sup> day of January, 1983 and affirmed that the  
statements made herein are true under the penalties of perjury.

Edwin Schülman  
New York, New York

  
EDWIN SCHULMAN - President

David Schlang  
New York, New York

  
DAVID SCHLANG - Secretary

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.

EDWIN SCHULMAN and DAVID SCHLANG, being severally duly sworn, depose and say: -

1. That he EDWIN SCHULMAN is the President of THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate, and was such President at the time of the consent mentioned therein for the change of name of the corporation from BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

2. That he DAVID SCHLANG is the Secretary of THE BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC., mentioned in the foregoing Certificate, and was such Secretary at the time of the consent mentioned therein for the change of name of the corporation from BROOKDALE HOSPITAL CENTER NURSING HOME COMPANY, INC. to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

3. That at a special meeting of the membership duly called at which a quorum was present, the membership duly authorized the execution and filing of the foregoing Certificate of Amendment by action of a majority of the entire membership.

4. Such consent was given by affirmative votes cast in person by a majority of the entire membership at a special meeting of the membership after due notice to the entire membership.



of the corporation given in the manner required for a special meeting of the membership of the corporation.

5. That the Certificate of Incorporation of this corporation does not require a consent of more than a majority of the entire membership to change the name of the corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

*Edwin T. Schulman*  
EDWIN SCHULMAN

*David Schlang*  
DAVID SCHLANG

Sworn to before me this  
31<sup>st</sup> day of January, 1983

*Clark K. Kendall*  
NOTARY PUBLIC

NOTARY PUBLIC  
No. 4  
Term Expires March 30, 1984

CONSENT TO AMENDMENT OF  
CERTIFICATE OF INCORPORATION  
BY  
COMMISSIONER OF HEALTH


I, David Axelrod, M.D., Commissioner of Health of the State of New York, on this 26<sup>th</sup> day of April, 1983, pursuant to Article 28-A of the Public Health Law and Section 804 of the Not-For-Profit Corporation Law, hereby certify that I consent to the filing of the foregoing Certificate of Amendment to change the name of the Corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION", with the Secretary of State of the State of New York.

COMMISSIONER OF HEALTH

BY:





 STATE OF NEW YORK DEPARTMENT OF HEALTH  
OFFICE OF HEALTH SYSTEMS MANAGEMENT

MEMORANDUM

TO: Public Health Council

FROM: Peter J. Millock, General Counsel *PM*

DATE: March 1, 1983

SUBJECT: Certificate of Amendment of Certificate of  
Incorporation of Brookdale Hospital Center  
Nursing Home Company, Inc.

Brookdale Hospital Center Nursing Home Company, Inc., a not-for-profit corporation formed, with State Board of Social Welfare approval, on December 1967, requests Public Health Council approval of the attached certificate of amendment of its certificate of incorporation. The corporation operates a nursing home in Brooklyn, New York.

The sole purpose of the attached amendment is to change the corporate name to "The Samuel Schuiman Institute for Nursing and Rehabilitation," a name deemed by the directors to honor the corporation's deceased former president, as well as to indicate the corporation's scope and purposes.

The attached document has been found to comply with the requirements of the Not-For-Profit Corporation Law.

Attachment

8

0000 0763

WAIVER OF NOTICE OF APPLICATION  
BY ATTORNEY GENERAL

Notice of Application waived: (This is not to be deemed  
an approval on behalf of any Department or Agency of the  
State of New York, nor an authorization of activities  
otherwise limited by law.)

DATED:

1983

ATTORNEY GENERAL OF THE  
STATE OF NEW YORK

BY:

Assistant Attorney General

*see next page*

CONSENT TO AMENDMENT OF  
CERTIFICATE OF INCORPORATION  
BY A RESIDENT SUPREME COURT JUSTICE

The undersigned, a Justice of the Supreme Court of the State of New York, for the Second Judicial District, hereby approves the within Certificate to change the name of the corporation to "THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION".

DATED: BROOKLYN ~~New York~~, N.Y.,  
JUNE 28 1983.

*Gerald Adler*

J. S. C.

Gerald Adler,

JUN 28 1983

SUPREME COURT  
KINGS COUNTY  
SPECIAL TERM  
PART 2

June 9, 1983

THE UNDERSIGNED HAS NO OBJECTION  
TO THE GRANTING OF JUDICIAL  
APPROVAL HEREIN AND WAIVES  
STATUTORY NOTICE.

EDBERT LEHARS, ATTORNEY GEN.  
STATE OF NEW YORK

*Howard Holt*

HOWARD HOLT  
Associate Attorney



**BILLED**

**USC**

STATE OF NEW YORK  
DEPARTMENT OF STATE

FILED JUL - 7 1983

AMT. OF CHECK \$ 47.50  
FILING FEE \$ 30  
TAX \$ \_\_\_\_\_  
COUNTY FEE \$ \_\_\_\_\_  
COPY \$ 7.50  
CERT. \$ \_\_\_\_\_  
H. F. F. \$ \_\_\_\_\_  
SPEC. HANDLE \$ 10

**USC**

BY: Type D  
Kings

CERTIFICATE OF AMENDMENT  
OF  
CERTIFICATE OF INCORPORATION  
OF  
BROOKDALE HOSPITAL CENTER NURSING HOME  
COMPANY, INC.

RECEIVED  
JUL 5 2 1983

Under Section 803 of The Not-For-Profit Corporation Law  
and the Public Health Law

*1/11/68 Kings*

*9362-3*

*(- 8X65V-)*

*W.P. Type 2*

*10/1/68 Kings*

*B. Kings*

*01.15 = 2000 Kings*

*as with Kings*

RECEIVED  
JUL 5 1983

LANAU, BERKOWITZ & NOSTRAND  
Attorneys-at-Law  
60 East 42nd Street - Suite 2501  
New York, New York 10165  
(212) 687 - 2226

*X 7/16*

0000 0766



***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

CERTIFICATE OF AMENDMENT

OF THE

CERTIFICATE OF INCORPORATION

OF

THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION

UNI

Under Section 803  
of the Not-For-Profit Corporation Law

We, the undersigned being the President and Secretary  
of The Samuel Schulman Institute For Nursing and Rehabilitation  
("Corporation") do hereby certify:

(1) The name of the Corporation is The Samuel Schulman  
Institute For Nursing And Rehabilitation. The name under which  
the Corporation was formed is Brookdale Hospital Center Nursing  
Home Company, Inc.

(2) The Certificate of Incorporation was filed by the  
Department of State on the 11th day of January 1968. The said  
Corporation was formed under the Membership Corporation Law and  
the Public Health Law of the State  
of New York.

(3) The Corporation is a corporation as defined in  
subparagraph (a) (5) of section 102 of the Not-For-Profit  
Corporation Law and is a Type D corporation under section 201 of  
said law.

C146100

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(4) Paragraph I of the Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended to read as follows:

"The name of the Corporation is The Samuel and Bertha Schulman Institute For Nursing and Rehabilitation."

(5) This amendment to the Certificate of Incorporation was authorized by the unanimous written consent of the sole member of the Corporation, pursuant to Section 614 of the Not-For-Profit Corporation Law.

(6) The Secretary of State of the State of New York is hereby designated the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation is 555 Rockaway Parkway, Brooklyn, New York 11212, Attention: Office of the President.

IN WITNESS WHEREOF, the undersigned have executed this certificate this 26 day of October, 1989.

It is affirmed that the statements made herein are true under the penalties and perjury.

  
Edwin L. Schulman  
President

*David Schlang*  
David Schlang  
Secretary

STATE OF NEW YORK )  
) ss.:  
COUNTY OF *Queens* )

On this *26* day of *October*, 1989, before me personally came *Edward Schubert* and *David Schlang*, to me known and known to me to be the persons described in and who executed the foregoing Certificate of Amendment of Certificate of Incorporation and they duly acknowledged to me that they severally and independently executed the same.

*Joyce E. Smith*  
Notary Public

JOYCE E. SMITH  
Notary Public, State of New York  
No. 41-4885965  
Qualified in Queens County  
Commission Expires April 30, 1991

9.12.3/BM1

The under signed has no objection to the granting of judicial approval to the attached Certificate of Amendment and waives statutory notice.

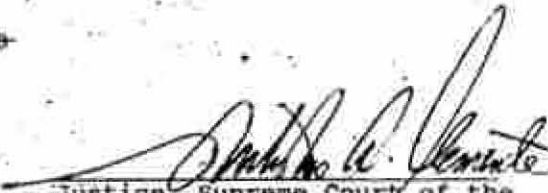
Robert Abrams  
Attorney General  
State of New York

By: \_\_\_\_\_

Dated: \_\_\_\_\_

I, HON. NICHOLAS A. CLEMENTE, a Justice of the Supreme Court of the State of New York, Second Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of The Samuel Schulman Institute For Nursing And Rehabilitation, and consent that the same be filed.

Date: MAY 14 1990  
Brooklyn, New York

  
Justice, Supreme Court of the  
State of New York  
Second Judicial District

THE UNDERSIGNED  
TO THE COUNCIL OF THE  
APPROVAL OF THE  
STATUTORY NOTICE

ROBERT ABRAMS, ATTORNEY GENERAL  
STATE OF NEW YORK

by Laura Werner  
May 9, 1990

ASSISTANT ATTORNEY GENERAL



DAVID AXELROD, M.D.  
COMMISSIONER

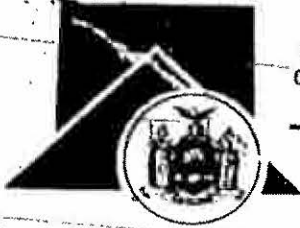
STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
ALBANY

UNI

CONSENT  
TO FILING A CERTIFICATE OF AMENDMENT OF THE  
CERTIFICATE OF INCORPORATION  
BY THE  
COMMISSIONER

I, DAVID AXELROD, M.D., Commissioner of Health of  
the State of New York, do this *22nd* day of *May* 1990,  
consent to the filing with the Secretary of State of the  
Certificate of Amendment of the Certificate of Incorporation  
of Samuel Schulman Institute for Nursing and Rehabilitation,  
as executed on the 26th of October 1989, pursuant to  
Section 2854 of the Public Health Law.

David Axelrod, M.D.  
Commissioner of Health



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

# PUBLIC HEALTH COUNCIL

UNI

April 23, 1990

Ms. Beth Margolis  
Kalkines, Arky, Zall & Bernstein  
885 Third Avenue  
New York, NY 10022-4802

Re: Certificate of Amendment of the Certificate of Incorporation of The  
Samuel Schulman Institute for Nursing and Rehabilitation

Dear Ms. Margolis:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 20th day of April, 1990, I hereby certify that the Certificate of Amendment to the Certificate of Incorporation of The Samuel Schulman Institute for Nursing and Rehabilitation hereafter to be known as The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation dated October 26, 1989 is approved.

Sincerely,

Karen S. Westervelt  
Executive Secretary

b

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RESOLUTION

RESOLVED, that the Public Health Council, on this 20th day of April, 1990, approves the filing of the Certificate of Amendment to the Certificate of Incorporation of The Samuel Schulman Institute for Nursing and Rehabilitation, hereafter to be known as The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation dated October 26, 1989.

AFFIDAVIT OF BERTHA SCHULMAN

BERTHA SCHULMAN, being duly sworn, deposes and says:

1. I have no objection to the addition of my name to the titles of The Samuel Schulman Institute For Nursing And Rehabilitation ("SSI") and The Samuel-Schulman Institute For Nursing And Rehabilitation Fund, Inc. (the "Fund").

2. I am honored by the addition of my name to the titles of SSI and the Fund so that the new titles will be "The Samuel And Bertha Schulman Institute For Nursing And Rehabilitation" and "The Samuel And Bertha Schulman Institute For Nursing And Rehabilitation Fund, Inc."

Bertha Schulman  
BERTHA SCHULMAN

Sworn to before me  
this 24 day of  
January, 1990

Joyce E. Smith  
Notary Public

801-10.321

JOYCE E. SMITH  
Notary Public, State of New York  
No. 41-485925  
Qualified in Queens County  
Commission Expires April 30, 1991

0000 1224

6-9  
C148100

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED MAY 29 1980

AMT. OF DOLLARS  
FIVE HUNDRED  
THIRTY  
CENTS  
RECEIVED  
SECTION 130  
BY: *[Handwritten Signature]*

UNI

CERTIFICATE OF AMENDMENT

OF

CERTIFICATE OF INCORPORATION

OF

THE SAMUEL SCHULMAN INSTITUTE FOR NURSING AND REHABILITATION

Under Section 803 of the Not-For-Profit  
Law of the State of New York:

and 11183

CPR

NPA 47500

*[Handwritten Signature]*

623820

555 Rockaway Parkway Bklyn N.Y.

L-A947188-11

11212

BRONX: BROOKDALE HOSPITAL CENTER NURSING HOME (CO) INC.

1/11/60

Kalkines Arky Zell & Bernstein  
1575 Broadway - 27th Floor  
New York, New York 10019

654362

111-11111111

568

111

***STATE OF NEW YORK***

***DEPARTMENT OF STATE***

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.



WITNESS my hand and official seal of the Department of State, at the City of Albany, on May 4, 2012.

A handwritten signature in black ink, appearing to read "Daniel E. Shapiro".

Daniel E. Shapiro  
First Deputy Secretary of State

F991215000 763

**CERTIFICATE OF MERGER  
OF  
THE DOROTHY AND DAVID I. SCHACHNE INSTITUTE  
FOR NURSING AND REHABILITATION  
AND  
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE  
FOR NURSING AND REHABILITATION  
INTO  
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE  
FOR NURSING AND REHABILITATION**

**Under Section 904 of the New York  
Not-for-profit Corporation Law**

The undersigned, being respectively the President and Secretary of the The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, (hereinafter "DDISI"), and the President and Secretary of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, (hereinafter "SBSI"), hereby certify as follows:

1. (a) The names of the constituent Corporations are DDISI and SBSI. DDISI was formed under the name Linroe Nursing Home, Inc. SBSI was formed under the name The Brookdale Hospital Center Nursing Home Company, Inc.

(b) The Corporations are corporations as defined in subparagraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and are Type D Corporations under Section 201 of said law.

(c) The name of the surviving Corporation is SBSI.

2. Neither of the constituent corporations has issued any certificates evidencing capital contributions or subventions.

3. The sole member of DDISI is Linroe Community Service Corporation, Inc. (hereinafter "LCSC"). The sole member of SBSI is LCSC. The surviving corporation's sole member is LCSC.

4. The Certificate of Incorporation of the surviving corporation is hereby amended to effect the following amendments authorized by the Not-for-Profit Corporation Law:

(a) The original Paragraph 1.0 of the Certificate of Incorporation, which sets forth the name of the Corporation, is hereby amended to read in its entirety as

follows: The name of the Corporation is The Schulman and Schachne Institute for Nursing and Rehabilitation, Inc.

(b) The Paragraph 6 of the Amended Certificate of Incorporation, which designates the Secretary of State as agent of the Corporation upon whom process may be served, is amended to read in its entirety as follows: 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 him or her as agent of the Corporation is:

One Brookdale Plaza  
Brooklyn, New York 11212-3198  
Att: President & Chief Executive Officer  
The Brookdale University Hospital  
and Medical Center

5. The effective date of the Merger shall be the date on which this Certificate of Merger is filed by the Department of State of the State of New York (the "Department of State").

6. (a) The Certificate of Incorporation for the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation was filed by the Department of State on the 17<sup>th</sup> day of December, 1990. The said corporation was formed under the 104 (c) of the not-for-profit corporation law and section 2854 (2) (a) of the Public Health Law.

(b) The Certificate of Incorporation for The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation was filed by the Department of State on the 11<sup>th</sup> day of January, 1968. The said Corporation was formed under the Membership Corporation Law and the Public Health Law of the State of New York.

7. (a) The merger was authorized with respect to the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation in the Following manner: A plan of merger providing for the Merger (the "Plan") was duly adopted by a majority of the members of the Board of Directors of the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, at a meeting on February 17, 1998.

(b) The merger was authorized with respect to the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation in the following manner: A plan of merger providing for the merger (the "Plan") was duly adopted by a majority of the members of the Board of Directors of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, at a meeting held on February 17, 1998.

(c) The Plan has not been abandoned.



IN WITNESS WHEREOF, the undersigned, on behalf of the constituent Corporations, hereby subscribe this certificate and affirm it as true under the penalties of perjury as of the 31<sup>st</sup> day of August, 1998.

---

Martin J. Simon, Chairman  
The Dorothy and David L. Schachne Institute  
for Nursing and Rehabilitation, Inc.

---

Asner L. Mespel, M.D., Secretary  
The Dorothy and David L. Schachne Institute  
for Nursing and Rehabilitation, Inc.

---

Edwin L. Schulman, President  
The Samuel and Bertha Schulman Institute  
for Nursing and Rehabilitation, Inc.

*David Schlang*  
\_\_\_\_\_  
David Schlang, Secretary  
The Samuel and Bertha Schulman Institute  
for Nursing and Rehabilitation, Inc.



IN WITNESS WHEREOF, the undersigned, on behalf of the constituent Corporations, hereby subscribe this certificate and affirm it as true under the penalties of perjury as of the 31<sup>st</sup> day of August, 1998.

---

Martin J. Simon, Chairman  
The Dorothy and David I. Schachne Institute  
for Nursing and Rehabilitation, Inc.

---

*Ascher L. Mestel, M.D.*  
Ascher L. Mestel, M.D., Secretary  
The Dorothy and David I. Schachne Institute  
for Nursing and Rehabilitation, Inc.

---

Edwin L. Schulman, President  
The Samuel and Bertha Schulman Institute  
for Nursing and Rehabilitation, Inc.

---

David Schlang, Secretary  
The Samuel and Bertha Schulman Institute  
for Nursing and Rehabilitation, Inc.





Supreme Court of the State of  
New York, held in and for the  
County of Kings, at the  
Courthouse thereof, located at  
360 Adams Street, Brooklyn,  
New York, on the 27 day of  
Dec, 1999

P R E S E N T:

Hon. \_\_\_\_\_, Justice

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF KINGS

In the Matter of the Application )  
of )

THE SAMUEL AND BERTHA SCHULMAN )  
INSTITUTE FOR NURSING AND REHABILITA- )  
TION, INC. and THE DOROTHY AND DAVID I. )  
SCHACHNE INSTITUTE FOR NURSING AND )  
REHABILITATION, INC. )

ORDER APPROVING  
MERGER

Index No. 48345/99

For an order approving their )  
plan of merger under Section 907 of )  
the Not-for-Profit Corporation Law )  
into THE SAMUEL AND BERTHA SCHULMAN )  
INSTITUTE FOR NURSING AND REHABILITA- )  
TION, INC. and authorizing the filing )  
of the Certificate of Merger )  
under Section 904 of said Law. )

The Samuel and Bertha Schulman Institute for Nursing and  
Rehabilitation, Inc. and The Dorothy and David I. Schachne  
Institute for Nursing and Rehabilitation, Inc., having duly made  
joint application for an order, pursuant to section 907 of the  
Not-for-Profit Corporation Law ("N-PCL"), approving the plan of  
merger of said corporations and authorizing the filing of the



certificate of merger in accordance with N-PCL § 904, and said application having regularly come on to be heard,

Now upon reading the joint affidavit of Edwin L. Schulman, the President of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc. and Martin J. Simon, the Chairman of The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc., sworn to on June 9, 1949, and the plan of merger designated Exhibit A herein, and the certificate of merger of said corporations into The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc., under section 904 of the Not-For-Profit Corporation Law, all in support of the application, and after due deliberation having been held thereon, and it appearing that the interests of the constituent corporations and the public interest will not be adversely affected by the proposed merger,

Now, upon the petition of Edwin L. Schulman, President of The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc. and Martin J. Simon, Chairman of The Dorothy and David Schachne Institute for Nursing and Rehabilitation, Inc., it is

ORDERED, that the plan of merger between The Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc. and The Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc. designated Exhibit A herein, be and the same is hereby approved, and it is further

8

ORDERED, that the aforesaid certificate of merger is authorized to be filed by the Department of State in accordance

*[Handwritten signature]*  
3

with N-PCL § 904, to which certificate a certified copy of this order shall be annexed.

ENTER,

*[Handwritten signature]*  
J. S. C.

THE UNDERSIGNED HAS NO OBJECTION TO THE GRANTING OF JUDICIAL APPROVAL HEREON AND WAIVES STATUTORY NOTICE  
ELIOT SPITZER, ATTORNEY GENERAL OF THE STATE OF NEW YORK

*[Handwritten signature]*  
Clubs

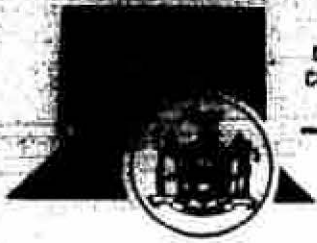
*[Handwritten signature]*  
10-6-99  
No. 067399  
STATE OF NEW YORK  
CLERK OF THE SUPREME COURT  
JULIA A. LEVIN  
110 COURT ST  
ALBANY, NEW YORK 12242  
REC 6 1999  
FEE PAID

007180/DR060/628241 1

1999 SEP -6 AM 9:57E

09/11/99 1:00pm

*[Handwritten signature]*  
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STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
CORNING TOWER BUILDING  
ALBANY, N.Y. 12237

## PUBLIC HEALTH COUNCIL

July 29, 1999

Frank T. Cicero  
Cicero Shapiro Velazquez & Cicero  
701 Westchester Avenue - Suite 210W  
White Plains, New York 10604

Re: Certificate of Merger of the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc., into the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc., and Amendment to the Samuel and Bertha Schulman Institute Certificate of Incorporation

Dear Mr. Cicero:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 30th day of October, 1998, I hereby certify that the Certificate of Merger of Certificate of Merger of the Dorothy and David I. Schachne Institute for Nursing and Rehabilitation, Inc. into the Samuel and Bertha Schulman Institute for Nursing and Rehabilitation, Inc. and Amendment to the Samuel and Bertha Schulman Institute Certificate of Incorporation dated February 17, 1998 is approved.

Sincerely,

*Donna Peterson*  
Karen S. Westervelt *for*  
Executive Secretary

10



991216000763

CERTIFICATE OF MERGER  
OF  
THE DOROTHY AND DAVID L. SCHACHNE INSTITUTE  
FOR NURSING AND REHABILITATION  
AND  
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE  
FOR NURSING AND REHABILITATION  
INTO  
THE SAMUEL AND BERTHA SCHULMAN INSTITUTE  
FOR NURSING AND REHABILITATION

UNDER SECTION 904 OF THE NEW YORK NOT-FOR-PROFIT  
CORPORATION LAW

ICC

**DRAWDOWN  
DELANEY - 30**

STATE OF NEW YORK  
DEPT. OF STATE  
FILED DEC 16 1999  
TAXS  
BY: BC

King

RECEIVED  
DEC 16 2 15 PM '99

FILED BY:  
KALKINES, ARKY, ZALL & BERNSTEIN LLP  
1675 BROADWAY, 27<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10019

991216000795

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**STATE OF NEW YORK - DEPARTMENT OF HEALTH**

**MEMORANDUM**

**TO:** Public Health and Health Planning Council  
**FROM:** Richard Zahnleuter, Deputy General Counsel  
**DATE:** August 28, 2015  
**SUBJECT:** Proposed Dissolution of River Hospital Foundation, Inc.

---

River Hospital Foundation, Inc. ("Foundation") requests Public Health and Health Planning Council approval of its proposed dissolution in accordance with the requirements of Not-For-Profit Corporation Law §1002(c) and §1003, as well as 10 NYCRR Part 650.

The Public Health Council approved Foundation pursuant to Public Health Law §2801-a (6) to solicit contributions for the benefit of River Hospital in Jefferson County in March 2003. River Hospital has determined that expenses would decrease if River Hospital conducted its own development efforts and dissolved Foundation. Pursuant to Foundation's Plan of Dissolution, if approved by the Supreme Court, Foundation's remaining assets will be transferred to River Hospital.

Attached are a copy of the proposed Certificate of Dissolution, a letter from Foundation's attorney explaining the need for the proposed dissolution, a proposed Plan of Dissolution and Distribution of Assets, and a proposed Verified Petition seeking the Supreme Court's approval of St. Foundation's Certificate of Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

Attachments



CENTOLELLA  
LYNN D'ELIA  
& TEMES LLC

100 Madison Street  
Tower I, Suite 190  
Syracuse, New York 13202  
Tel: (315) 476-1011  
Fax: (315) 476-1133  
www.CentolellaLaw.com

January 14, 2015

Sandra Jensen, Acting Director  
Bureau of House Counsel  
NYS Department of Health  
Corning Tower, 24th Floor  
Empire State Plaza  
Albany, New York 12237-0031

**Re: River Hospital Foundation, Inc.**

Dear Ms. Jensen:

We are counsel for River Hospital, Inc. (the "Hospital") and the River Hospital Foundation, Inc. (the "Foundation"), both located in Jefferson County. At the time of its formation, the Foundation was approved by the Public Health Council ("PHC"), a copy of the letter approving the formation of the Foundation is attached. Accordingly, we respectfully request the Public Health and Health Planning Council ("PHHPC") approve of the dissolution of the Foundation.

To that end, I have enclosed the operative documents required under 10 N.Y.C.R.R. 650.1 for the review and approval of the proposed Plan of Dissolution of the Foundation (the "Plan"): (i) the proposed certificate of dissolution, (ii) the proposed plan of dissolution setting forth the distribution of the Foundation's assets, and (iii) the petition proposed to be submitted to the court in support of the application for judicial approval of the proposed Plan and distribution of assets.

The proposed dissolution will not impact the availability of any health services. As more fully detailed in the Plan and the Petition, the Foundation will deliver all assets to the Hospital and the Hospital will assume responsibility for fundraising efforts in the future. The transition is intended to, among other things, efficiently align the Hospital and its needs with its donors and reduce administrative expenses.

Please contact me if you have any questions or concerns.

Thank you for your time and consideration.

Respectfully,

CENTOLELLA LYNN D'ELIA & TEMES LLC

  
David C. Temes



DCT/sas  
Enclosures

cc: Jason J. Centolella, Esq.



CERTIFICATE OF DISSOLUTION

OF

RIVER HOSPITAL FOUNDATION, INC.

Under Section 1003 of the Not-for-Profit Corporation Law

FIRST: The name of the corporation is River Hospital Foundation, Inc.

SECOND: The certificate of incorporation was filed with the Department of State on April 3, 2003.

THIRD: The name and address of each officer and director of the corporation is:

Raymond Smith, Director & Chairman, 41410 Kehoe Tract Road, Clayton, NY 13624

Kathleen Morris-Kortz, 1st Vice Chair, 10 Bolton Avenue, Alexandria Bay, NY 13607

Susan Rapant, Vice Chair, 19627 Collins Landing E., Alexandria Bay, NY 13607

Lynn Brown, Secretary & RH Board Liaison, 27960 County Route 193, Theresa, NY 13691

Kenneth VanHatten, Treasurer, P.O. Box 336, Theresa, NY 13607

Patricia Wagoner, Director, 47052 Dingman Point Rd, Alexandria Bay, NY 13607

Steven Yelle, Director, 36627 Reese Rd., Clayton, NY 13624

Jay Stewart, Director, P.O. Box 266, LeRoy, NY 14482

FOURTH: The corporation is a charitable corporation.

FIFTH: At the time of authorization of the corporation's Plan of Dissolution and Distribution of Assets as provided in Not-for-Profit Corporation Law § 1002, the corporation holds no assets which are legally required to be used for a particular purpose.

SIXTH: The corporation elects to dissolve.

SEVENTH: The dissolution was authorized by unanimous written consent of all of the directors of the corporation. The corporation has no members.

EIGHTH: Prior to the delivery of the Certificate of Dissolution to the Department of State for filing, the Plan of Dissolution and Distribution of Assets was approved by the Attorney General. A copy of the order is attached.

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Jason J. Centolella, Authorized Person

**CERTIFICATE OF DISSOLUTION**

**OF**

**RIVER HOSPITAL FOUNDATION, INC.**

**Under Section 1003 of the Not-for-Profit Corporation Law**

**Filed By: Centolella Lynn D'Elia & Temes LLC  
100 Madison Street, Suite 1905  
Syracuse, NY 13202**

**PLAN OF DISSOLUTION AND DISTRIBUTION OF ASSETS**

**OF**

**RIVER HOSPITAL FOUNDATION, INC.**

The Board of Directors (the "Board") of River Hospital Foundation, Inc. (the "Foundation"), having worked with a consultant hired by its constituent organization, River Hospital, Inc. (the "Hospital"), to review the current fundraising operations and advise the Hospital and the Board on best practices, and the Board having considered the recommendations of the consultant and advisability of voluntarily dissolving the Foundation, and it being the opinion of the Board that dissolution is advisable and in the best interests of the Foundation and its constituent organization, the Hospital, and the Board having adopted, by Unanimous Written Consent, a plan for a voluntary dissolution of the Foundation, does hereby resolve that the Foundation be dissolved in accordance with the following plan:

1. There being no members of the Foundation, no vote of membership is required to approve this dissolution, thus action of the Board is sufficient.
2. Approval of the dissolution of the Foundation shall be obtained from the Public Health Council, and shall be attached as Exhibit "A".
3. The Foundation has assets. Attached hereto as Exhibit "B" are financial statements 2011, 2012, 2013 and September 30, 2014 detailing the assets of the Foundation and their fair market values.
4. The Foundation is required to use its assets in support of the activities of Hospital. The Hospital qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.
5. Accordingly, in connection with this dissolution, the assets held by the Foundation, subject to any unpaid liabilities of the Foundation, shall be distributed solely to the Hospital.
6. The Hospital is exempt from taxation pursuant to federal and state laws, and shall use the funds to continue to support the activities of the Hospital or where such gift was made to the Foundation with a specific donor restriction ("Donor Restriction"), such gift shall be used solely in accordance with such donor restriction.



7. Funds held by the Foundation for the "Friends of River Hospital" volunteer organization (the "Friends"), of approximately \$6,868.53 shall be transferred to the Hospital to be held in a separate account for the benefit of the Friends and subject to any restrictions and purposes the Friends deem proper.

8. Funds held by the Foundation to support scholarships and other programs to pay for educational opportunities shall be transferred to the Hospital to be used solely for the purpose of providing financial support for educational opportunities in the manner the Hospital deems proper, including the creation of an Employee Assistance Program under section 127 of the Internal Revenue Code.

9. The Foundation has donated a total of \$65,364.50 to the Northern New York Community Foundation, Inc. to hold and administer for the benefit of the Hospital. Such funds shall be unaffected by this Plan and shall continue to be held and administered by the Northern New York Community Foundation, Inc. solely for the benefit of the Hospital.

10. All funds transferred pursuant to this Plan and not subject to any Donor Restriction or other specific restriction stated herein shall be held by the Hospital and used to support the Hospital.

11. Upon approval of this Plan by the Court, the Foundation will release the Hospital from any and all claims the Foundation has against the Hospital, including, but not limited to, any obligation under any promissory note.

12. Attached hereto as Exhibit "C" are the Hospital's Certificate of Incorporation and all amendments thereto.

13. Attached hereto as Exhibit "D" are the 2010, 2011 and 2012 Return of Organization Exempt from Income Tax (the "Form 990") filed by the Hospital with the Internal Revenue Service.

14. Attached hereto as Exhibit "E" is the Internal Revenue Service letter of determination that the Hospital is exempt from taxation.

15. Attached hereto as Exhibit "F" is a sworn affidavit from Ben Moore, III, Chief Executive Officer and President of the Hospital, stating the purposes of the Hospital and that it is currently exempt from federal income taxation and verifying that all assets transferred from the Foundation will be used to support the activities of the Hospital or any successor hospital located in Alexandria Bay, New York.

16. Attached hereto as Exhibit "G" is a schedule containing the current liabilities of the Foundation, all which shall be paid prior to dissolution.

17. Attached hereto as Exhibit "H" is a schedule of contracts that the Foundation will assign to Hospital. The Hospital will assume any and all rights and obligations under these contracts and may use funds transferred from the Foundation to pay expenses associated with such contracts.

18. The Foundation estimates it will incur expenses not to exceed \$20,000 in connection with this dissolution process, including any accounting and legal fees. All final distributions will be reflected in the Foundation's final financial report.

19. The Foundation shall carry out this Plan within two hundred seventy (270) days after the date that an Order Approving this Plan of Dissolution and Distribution of Assets is signed by the Court.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF JEFFERSON**

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In the Matter of the Application of

**River Hospital Foundation, Inc.**

For Approval of Plan of Dissolution and  
Distribution of Assets pursuant to  
Section 1002 of the Not-for-Profit  
Corporation Law

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**VERIFIED PETITION**

Index No.: \_\_\_\_\_

RJI No.: \_\_\_\_\_

Petitioner, River Hospital Foundation, Inc. (the "Foundation") by and through Centolella Lynn D'Elia & Temes LLC, its counsel, as and for its Verified Petition herein respectfully alleges:

1. The Foundation, whose principal office is located in the county of Jefferson, was incorporated pursuant to New York's Not-for-Profit Corporation Law on April 3, 2003. A copy of the Certificate of Incorporation and any amendments thereto are attached as Exhibit "A".

**Background**

2. The Foundation was founded to solicit donations and provide financial support to River Hospital, Inc. (the "Hospital") in Alexandria Bay, New York.

3. The Hospital retained a consultant with the Foundation's consent to review the development activities of the Foundation and the Hospital and to advise them on the best practices for its continuing efforts to provide financial support for the operations at the Hospital.

4. The consultant recommended the Hospital assume primary responsibility for fund development and that the Foundation be dissolved and the assets contributed to the Hospital. The consultant advised that this structure will decrease expenses and avoid duplication of development efforts while ensuring the needs of the Hospital are being addressed through the ongoing development and fundraising activities.

5. Upon review and consideration of the consultant's report and recommendations, the Board of Directors (the "Board") of the Foundation, in consultation with the Hospital, determined the Foundation should be dissolved and responsibility for development should rest with the Hospital.

6. In connection with the dissolution of the Foundation, the Foundation will turn over all assets to the Hospital to support operations at the Hospital. The assets will be held by the Hospital subject to donor restrictions and restrictions imposed by the Foundation.

7. The names, titles and addresses of the current directors of the Foundation are as follows:

**Raymond Smith**, Director & Chairman, 41410 Kehoe Tract Road, Clayton, NY 13624

**Kathleen Morris-Kortz**, 1st Vice Chair, 10 Bolton Avenue, Alexandria Bay, NY 13607

**Susan Rapant**, Vice Chair, 19627 Collins Landing E., Alexandria Bay, NY 13607

**Lynn Brown**, Secretary & RH Board Liaison, 27960 County Route 193, Theresa, NY 13691

**Kenneth VanHatten**, Treasurer, P.O. Box 336, Theresa, NY 13607

**Patricia Wagoner**, 47052 Dingman Point Rd, Alexandria Bay, NY 13607

**Steven Yelle**, 36627 Reese Rd., Clayton, NY 13624

**Jay Stewart**, P.O. Box 266, LeRoy, NY 14482



### The Plan of Dissolution

8. A true and accurate copy of the Plan of Dissolution approved by the Board on December 18, 2014 is attached hereto as Exhibit "B" (the "Plan").

9. Approval of the dissolution of the Foundation has been obtained from the Public Health Council and is attached to the Plan as Exhibit "A".

10. The Foundation has assets. Attached to the Plan as Exhibit "B" are financial statements detailing the current assets of the Foundation and their fair market values.

11. The Foundation is required to use its assets in support of the activities of the Hospital. The Hospital qualifies as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1954, as amended.

12. Accordingly, in connection with the dissolution of the Foundation, the assets held by the Foundation, subject to any unpaid liabilities of the Foundation, shall be distributed solely to the Hospital in accordance with the Plan and subject to restriction imposed by donors at the time the gift was given to the Foundation or subject to restrictions imposed by the Foundation in connection with the Plan. The restrictions on funds is discussed more fully below.

13. The Hospital is exempt from taxation pursuant to federal and state laws, and shall use the funds to continue to support the activities of the Hospital or for a specific purpose as required by the relevant gift instrument, if any.

14. Attached to the Plan as Exhibit "C" is the Hospital's Certificate of Incorporation and all amendments thereto.

15. Attached to the Plan as Exhibit "D" are the financial statements prepared by the Hospital for the last three years and interim financial statements detailing the assets as of September 30, 2014.

16. Attached to the Plan as Exhibit "E" is the Internal Revenue Service letter of determination that the Hospital is exempt from taxation.

17. Attached to the Plan as Exhibit "F" is a sworn affidavit from Ben Moore, III, Chief Executive Officer and President of the Hospital, stating the purposes of the Hospital and that it is currently exempt from federal income taxation and verifying that all assets transferred from the Foundation will be used to support the activities of the Hospital or any successor hospital located in Alexandria Bay, New York.

18. Attached to the Plan as Exhibit "G" is a schedule of the current liabilities of the Foundation.

19. Attached to the Plan as Exhibit "H" is a schedule of contracts that the Foundation will assign to the Hospital. The Hospital will assume any and all rights and obligations under these contracts.

#### **The Transfer of Funds**

20. Certain funds were given to the Foundation subject to donor restrictions at the time such funds were given to the Foundation (the "Donor Restricted Funds"). The Donor Restricted Funds are being transferred to the Hospital subject to the restrictions imposed by the donors.

21. The Foundation is also holding funds, in the amount of approximately \$6,868.53, for the benefit of the "Friends of River Hospital" volunteer organization (the "Friends"). Pursuant to the Plan, these funds shall be transferred to the Hospital to be held in a separate account for the benefit of the Friends and subject to any restrictions and purposes the Friends deem proper (the "Friends Funds").

22. The Foundation has historically funded certain educational opportunities for employees of the Hospital. To ensure funds remain available for this purpose, the Foundation will designate an as yet determined amount to be held for the purpose of supporting scholarships and other programs to pay for educational opportunities for employees of the Hospital (the "Scholarship Funds"). The Foundation understands the Hospital intends to use these funds to fund an Education Assistance Plan under section 127 of the Internal Revenue Code.

23. The remaining funds shall be contributed to the Hospital to support operations and may be appropriated and used as the Hospital deems proper.

24. As of the date of the Plan, the Foundation is owed \$107,691 from the Hospital. In connection with the Plan and the transfer of assets, and in furtherance of its mission, the Foundation is forgiving any amounts due to the Foundation from the Hospital.

#### **Assignment of Contracts**

25. The Foundation has certain contracts that it believes should be assigned to and assumed by the Hospital. The Hospital has agreed to assume these obligations. Upon approval of the Plan by the Court, the Foundation will take the steps necessary to assign such contracts to the Hospital.

#### **Consent of Attorney General**

26. The Foundation has reviewed the Plan with the New York Attorney General's (the "AG") office and obtained a letter indicating the AG's office consents to the Plan and the distribution of assets set forth therein. A copy of the AG's letter is attached hereto as Exhibit "C".



**Expenses and Dissolution**

27. The Foundation estimates it will incur expenses not to exceed \$20,000 in connection with this dissolution process, including any accounting and legal fees. All final distributions will be reflected in the Foundation's final financial report.

28. The Foundation shall carry out this Plan within two hundred seventy (270) days after the date that an Order Approving this Plan of Dissolution and Distribution of Assets is signed by this Court.

29. No previous application for approval of the Plan has been made.

WHEREFORE, Petitioner requests that the Court grant an Order Approving the Plan of Dissolution and Distribution of Assets of River Hospital Foundation, Inc., a not-for-profit corporation, pursuant to the Not-for-Profit Corporation Law Section 1002.

Dated: \_\_\_\_\_

CENTOLELLA LYNN D'ELIA & TEMES LLC

\_\_\_\_\_  
David Temes, Esq.  
Jason Centolella, Esq.  
Attorneys for Petitioner  
Office and P.O. Address  
100 Madison Street, Suite 1905  
Syracuse, New York 13202  
Telephone: (315) 766-2119

STATE OF NEW YORK    )  
COUNTY OF JEFFERSON ) ss.:

\_\_\_\_\_, being duly sworn, deposes and says that I am  
the \_\_\_\_\_ of River Hospital Foundation, Inc., petitioner in the above-entitled  
action, have read the foregoing Petition and know the contents thereof, that the same is true to  
the knowledge of deponent, except for the matters therein stated to be alleged upon information  
and belief, and as to those matters, I believe them to be true. This verification is made by  
deponent because the above party is a corporation and he/she is an officer thereof.

\_\_\_\_\_  
Sworn to before me this  
\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public