

STATE OF NEW YORK
PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

AGENDA

April 14, 2016

*Immediately following the Committee on Codes, Regulations and Legislation
(which is scheduled to begin at 10:00 a.m.)*

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

I. INTRODUCTION OF OBSERVERS

Jeffrey Kraut, Chair

II. APPROVAL OF MINUTES

Exhibit #1

February 11, 2016

III. REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

A. Report of the Department of Health

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

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

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

C. Report of the Office of Public Health Activities

Brad Hutton, Deputy Commissioner, Office of Public Health

IV. HEALTH POLICY

Report on the Activities of the Committee on Health Planning

John Rugge, M.D., Chair of the Health Planning Committee

Recommendations for revisions to the Residential Health Care Facility bed need methodology, as follows:

1. Revise the Methodology for Five Years
2. Collect Data and Reevaluate During the Interval
3. Revise the Base Year and Trend Use Data
4. Revise the Planning Areas
5. Revise the Use of Migration Data
6. Revise the Occupancy Rate Threshold

V. REGULATION

Report of the Committee on Codes, Regulations and Legislation

Exhibit #2

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

For Emergency Adoption

15-14 Addition of Part 4 to Title 10 NYCRR (Protection Against Legionella)

For Information

15-14 Addition of Part 4 to Title 10 NYCRR (Protection Against Legionella)

For Adoption

16-02 Addition of Section 405.33 to Title 10 NYCRR
(Extended Mammography Hours for General Hospitals and Hospital Extension Clinics)

15-01 Amendment of Section 700.2 and Parts 717, 793 and 794 of Title 10 NYCRR (Hospice Operational Rules)

14-12 Amendment of Sections 763.7 and 766.4 of Title 10 NYCRR (Home Care Agencies to Obtain Written Medical Orders from Physicians)

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

For Discussion

16-05 Addition of Section 415.41 to Title 10 NYCRR (Specialized Programs for Residents with Neurodegenerative Diseases)

VI. PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Thomas Holt, Member, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

Acute Care Services - Construction

Exhibit #3

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161022 C	St. Josephs Hospital Health Center (Onondaga County)	Contingent Approval

2.	161031 C	Samaritan Medical Center (Jefferson County)	Contingent Approval
3.	161037 C	Southampton Hospital (Suffolk County)	Contingent Approval

Transitional Care Units - Construction

Exhibit #4

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161059 T	Olean General Hospital (Cattaraugus County)	Contingent Approval
2.	161061 T	Helen Hayes Hospital (Rockland County)	Contingent Approval
3.	161068 T	Good Samaritan Hospital Medical Center (Suffolk County)	Contingent Approval
4.	161069 T	Nyack Hospital (Rockland County)	Contingent Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Cardiac Services - Construction

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	152231 C	Niagara Falls Memorial Medical Center (Niagara County) Mr. Kraut - Recusal	Contingent Approval
2.	152232 C	Mercy Hospital of Buffalo (Niagara County) Mr. Kraut – Recusal	Contingent Approval
3.	152234 C	Erie Medical Center (Niagara County) Mr. Kraut - Recusal	Contingent Approval
4.	152245 C	Buffalo General Medical Center (Erie County) Mr. Kraut - Recusal	Contingent Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Ambulatory Surgery Centers – Establish/Construct

Exhibit #6

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	152356 E	Advanced Surgery Center (Rockland County)	Contingent Approval
2.	152289 E	Digestive Disease Center of Central New York, LLC (Onondaga County)	Approval
3.	161009 B	Star Surgical Suites (Nassau County)	Contingent Approval

Diagnostic and Treatment Centers – Establish/Construct**Exhibit #7**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	161001 B	Northern Medical Center, Inc. (Orange County)	Contingent Approval

Dialysis Services – Establish/Construct**Exhibit #8**

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	152263 B	USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis (Erie County)	Contingent Approval
2.	152313 B	Queens Boulevard Extended Care Dialysis Center (Queens County)	Contingent Approval

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

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	142145 E	Ross Acquisition, LLC d/b/a Ross Center for Health and Rehabilitation (Suffolk County)	Contingent Approval
2.	151054 E	River Valley Operating Associates, LLC d/b/a The Grand Rehabilitation and Nursing at River Valley (Dutchess County)	Contingent Approval
3.	151090 E	Guilderland Operator, LLC d/b/a The Grand Rehabilitation and Nursing at Guilderland (Albany County)	Contingent Approval
4.	152227 E	Pine Haven Operating, LLC d/b/a Pine Haven Home (Columbia County)	Contingent Approval
5.	152265 E	Highland Care Center (Queens County)	Contingent Approval
6.	152380 E	Genesee Center Operating, LLC d/b/a Genesee Center for Nursing and Rehabilitation (Genesee County)	Contingent Approval

7.	152381 E	Silver Lake Specialized Rehabilitation and Care Center (Richmond County)	Approval
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HOME HEALTH AGENCY LICENSURES

Exhibit #10

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
2412 L	Sarene Services, Inc. d/b/a Sarene Home Nursing Agency (Nassau and Suffolk Counties)	Contingent Approval
151322 E	Concepts of Health Care, Inc. (Albany, Saratoga, Washington, Fulton, Schenectady, Columbia, Montgomery, Schoharie, Greene, Rensselaer and Warren Counties)	Contingent Approval
152082 E	Marks Homecare Agency Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties)	Contingent Approval
152162 E	Interim Healthcare of Syracuse, Inc. (Onondaga, Jefferson, Oswego, Cayuga, Madison, Tompkins, Cortland and Oneida Counties)	Contingent Approval
152168 E	Interim Healthcare of Binghamton, Inc. (Broome, Cortland, Chemung, Tioga, Chenango and Tompkins Counties)	Contingent Approval

Certificates

Exhibit #11

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>E.P.R.C. Recommendation</u>
New York Hospital Queens Foundation, Inc.	Approval
Forme Rehabilitation, Inc.	Approval

Certificate of Dissolution

Applicant

McAuley Living Services, Inc.

E.P.R.C. Recommendation

Approval

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Residential Health Care Facilities – Establish/Construct

Exhibit #12

	<u>Number</u>	<u>Applicant/Facility</u>	<u>E.P.R.C. Recommendation</u>
1.	151260 E	North Manor Operations Associates LLC d/b/a Nanuet Center for Rehabilitation and Nursing (Rockland County) Mr. Fassler – Recusal	Contingent Approval
2.	152295 E	North River Operations Associates LLC d/b/a Haverstraw Center for Rehabilitation and Nursing (Rockland County) Mr. Fassler - Recusal	Contingent Approval
3.	152296 E	North Met Operations Associates LLC d/b/a Monsey Center for Rehabilitation and Nursing (Rockland County) Mr. Fassler – Recusal	Contingent Approval
4.	161109 E	Abraham Operations Associates LLC d/b/a Allerton Center for Rehabilitation and Nursing (Bronx County) Mr. Fassler – Recusal	Contingent Approval

5. 161110 E Schnur Operations Contingent Approval
Associates LLC
d/b/a Tibbits Center for
Rehabilitation and Nursing
(Westchester County)
Mr. Fassler - Recusal

Certificate of Amendment of the Certificate of Incorporation

Exhibit #13

Applicant

E.P.R.C. Recommendation

North Shore-Long Island Jewish Health System
Laboratories
Mr. Kraut – Recusal

Approval

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

VII. NEXT MEETING

May 19, 2016 – NYC
June 9, 2016 – NYC

VIII. ADJOURNMENT

State of New York
Public Health and Health Planning Council

Minutes
February 11, 2016

The meeting of the Public Health and Health Planning Council was held on Thursday, February 11, 2016 at the New York State Department of Health Offices at 90 Church Street, 4th Floor, Rooms 4A & 4B, NYC. Chairman, Mr. Jeffrey Kraut presided.

COUNCIL MEMBERS PRESENT

Dr. Howard Berliner	Dr. Gary Kalkut
Dr. Jo Ivey Boufford	Mr. Jeffrey Kraut
Dr. Lawrence Brown	Dr. Glenn Martin
Ms. Kathleen Carver-Cheney	Mr. John Palmer
Mr. Michael Fassler	Ms. Ellen Rautenberg
Ms. Kim Fine	Mr. Peter Robinson
Dr. Angel Gutierrez	Dr. Anderson Torres
Ms. Victoria Hines (Rochester via video)	Dr. Patsy Yang
Mr. Thomas Holt	Dr. Howard Zucker

DEPARTMENT OF HEALTH STAFF PRESENT

Mr. Charles Abel	Mr. George Macko (Albany via video)
Mr. Udo Ammon (Albany via video)	Ms. Lisa McMurdo (Albany via video)
Ms. Heather Dacus (Albany via video)	Ms. Alison Muse (Albany via video)
Ms. Barbara DelCogliano (Albany via video)	Mr. Daniel O’Connell (Albany via video)
Ms. Alejandra Diaz (Albany via video)	Ms. Sylvia Pirani (Albany via video)
Mr. Mark Furnish	Ms. Linda Rush (Albany via video)
Ms. Rebecca Gray	Mr. Timothy Shay
Mr. Jason Helgerson (Albany via video)	Mr. Daniel Sheppard (Albany via video)
Mr. James Kirkwood	Ms. Lisa Thomson
Ms. Yvonne Lavoie (Albany via video)	Mr. Richard Zahnleuter
Ms. Colleen Leonard	
Ms. Ruth Leslie (Albany via video)	

INTRODUCTION

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

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

Report of the Office of Health Insurance Programs Activities

Mr. Helgerson presented his report from Albany. He began his report by updating the members on the status of the New York DSRIP program and the delivery system reform incentive payment program. DSRIP is a very important initiative with a \$7.3 billion investment that is. DSRIP is now in the fourth quarter of the first year of the demonstration. The current

status of the initiative is there are 25 performing provider systems all across the state. Their applications that they submitted they committed to implement somewhere between eight and eleven projects, and those projects each every one of them requires them to build relationships, build infrastructure, deploy new technologies to ensure that those projects are implemented within the timeframes that they committed to in their applications. This initiative covers about 90,000 providers are involved in DSRIP. The 25 PPS's covers all parts of the state. The PPS's report to the Department and the Department reports to the public and CMS on a quarterly basis the progress of each and every one of the 25 PPSs. The quarterly reports are available on the Department's website.

Mr. Helgerson explained there are two payments that are made under the initiative. This initiative is paid for performance, in the sense the PPSs have to demonstrate that their implementing their infrastructure and that eventually that they are improving the outcomes of the Medicaid patients that they serve and then when they are able to demonstrate that they will receive payment. There have been two payments made to the initiative so far. The first payment was linked to their successful completion of an application, but the second payment which was made just in January was linked to information dated that was contained in their second quarter of the demonstration year one report which was analyzed by a contractor for the State, the independent assessor and when the independent assessor reviewed those reports they deemed that PPSs qualified for more than 98 percent of the total payment for which they would be eligible for that particular payment.

Mr. Helgerson also highlighted the terms and conditions of that waiver. There is an oversight review panel that has been convened and they play a role in approving the applications submitted by the performing provider systems. He also indicated there are 25 PPSs in two cohorts. One cohort was an upstate cohort, the other cohort was the downstate PPSs, each of PPSs were given time to present and speak about their progress. The oversight review panel then was able to ask the PPS's questions during the two day session. Mr. Helgerson spoke on the topic of value-based payment for New York Medicaid. CMS felt very strongly that in order to sustain the infrastructure that they were investing in DSRIP that we would have to fundamentally change how Medicaid purchase services and much more focused purchasing services based on the value that they provide to the community, to the patients, as opposed to the volume of services that they provide. There was a value-based payment roadmap which was approved by CMS last summer, and 16 workgroups that included 450 stakeholders from all across the state which included various groups such as clinical experts in a variety of different fields, insurance executives, patient advocates, public health experts, local government representatives who came together to address how to implement value-based payment in a successful fashion. An updated version of the roadmap will be about 90 pages and placed onto the website for broader public comment. There will then be efforts to implement the roadmap which mostly requires contractual changes in the contracts that the state has with the Medicaid managed care plans. value-based payment.

Mr. Helgerson concluded his report. To see the members comments and questions, please see pages 2 through 16 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

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

Zika

Dr. Zucker began his report by updating the members on the Zika outbreaks South and Central America which was also declared a public health emergency of international concern by the World's Health Organization. Most cases are the result of mosquito bites and that Zika has become rampant in South and Central America as well as the Caribbean and Mexico. Zika is transmitted primarily by the Aedes Aegypti mosquito and 80 percent of patients who have Zika do not have symptoms. Zika has been linked to microcephaly, a birth defect that can cause brain damage and small heads and there is also the possibility of some relationship with Guyon barre syndrome which is a paralysis, usually a temporary paralysis. The CDC and Department of Health are urging pregnant women to postpone travel plans to the affected countries, pregnant women who have traveled to the regions should be tested for the Zika virus regardless of whether they have symptoms or not. Another complication is that we now have emerging evidence that Zika may be sexually transmitted. In Dallas Texas there is a patient who is found to have Zika after having intimate contact with someone who was already infected with the virus.

Dr. Zucker explained that in New York we have 16 people who have been infected. The cold weather is giving New York some protection, but some regions of the state do have the aedes albopictus species of the mosquito but it may not be as effective as it is transmitting as the aedes aegypti type of mosquito. New York is keeping a close watch on Zika and will be increasing mosquito surveillance. Hospitals and providers must report suspected cases of Zika and all other arboviral diseases to the local health department where the patient resides. Patients who meet the eligibility criteria for testing can go to any of the number of healthcare facilities across the state and they will have specimens collected and they will be shipped to the Department's Wadsworth Lab up in Albany for testing. Wadsworth Center is currently one of the very few labs in the country that can do the Zika test, and the Department will be reporting lab confirmed cases to the Centers for Disease Control and prevention. The Department will continue to keep everyone informed as developed, and so as Zika unfolds.

Governor's Budget and State of the State Address

Dr. Zucker announced that the Governor presented the State of the State Address on January 13th and released the Executive Budget for 2016-2017 as part of his address. The Governor announced a comprehensive renewed focus on fighting breast cancer. Besides skin cancer, breast cancer is the most common cause of cancer in women in New York and we have about 15,000 diagnoses each year. It is also the second largest cause of cancer related death in New York for women responsible for about 2,700 deaths per year. The Governor wants to change that and his new initiatives encourage women to get mammograms. The State will fund community-based peer education programs in the high needs areas throughout the State. It will include funds for a media campaign to raise awareness about the importance of breast cancer screening. The Department will make it more convenient for women in New York to get a

mammogram. Many women are not getting screened for breast cancer because they just cannot get to their appointments and the Department is looking into locations and hours to determine if they may be inconvenient. The Department will award mobile mammography vans to hospitals in areas with a high number of unscreened women. In addition the Department will enable cancer treatment facilities to higher workers specifically trained to reach out to women due to screening, and these workers will provide patients with a one on one attention that they need. The Department is going to challenge private companies to give women four hours of paid leave for mammograms so that women can get screened without worrying about lost wages. With these strategies in place we expect more than 212,000 women in the state will be screened by December 2020. The Governor's plans will no doubt save thousands of lives and the Department looks forward to moving forward with the agenda.

Medical Marijuana Program

Next, Dr. Zucker spoke on the topic of the medical marijuana program. The program officially launched on January 7th. All five registered organizations now have dispensing facilities. There are 378 physicians who have taken the online practitioners course and they are now registered to certify patients for the use of medical marijuana. There are 805 patients who have already been certified. The program will provide medical marijuana to patients suffering from 10 difficult diseases. New diseases may be added later and Dr. Zucker noted that he is looking at the data as it comes out.

Health Exchange Marketplace

Dr. Zucker advised that the Health Exchange Marketplace concluded its enrollment period on January 31st. To date, New York has more than 2.7 million people enrolled in the health insurance through the exchange which includes about 1.9 million in Medicaid. It also includes about 350,000 in the new Essential Plan which is a new and more affordable option for low income New Yorkers. The enrollees in the Essential Plan pay no fees for routine visits and recommended screenings that keep them healthy. The Essential Plan covers inpatient and outpatient care, physician services, diagnostic services, prescription drugs, with no annual deductible and low out of pocket cost. The monthly premium ranges anywhere from zero to \$20 a month. The Essential Plan is partially paid by federal funds. Consumers who did not enroll in a qualified healthplan are unable to do so this year unless they have a qualifying life event and that would include everything from marriage, a loss of an employer coverage, or under new law this year, pregnancy. Enrollment in Medicaid, Child Health Plus, and the Essential Plan is all open all year round.

Flu

Dr. Zucker noted that he had just declared flu as prevalent. There have been about 600 flu related hospitalizations reported and no reported deaths, pediatric deaths from flu. Over the last three seasons there have been 26 pediatric flu deaths in New York and on average about 9,966 flu related hospitalizations each season. The declaration of a prevalent flu season means that healthcare workers must be vaccinated or wear a surgical mask to prevent transmission of flu to patients. 86 percent of healthcare personnel in surveyed facilities were vaccinated in the 2014-2015 flu seasons, which is up one percent from the previous year.

New York State Health Equity Report

Dr. Zucker announced the publication of a 2016 county addition of the New York State Health Equity report. The report was compiled by the Office of Minority Health and Health Disparities Prevention, the Office of Public Health, the Office of Public Health Practice, and the New York State Minority Health Council. It examines 47 health indicators by race and ethnicity including birth outcomes, prenatal care usage, and rate of hospitalizations as well as measures on demographic status. In addition to serving as a tool to raise awareness about the health of racial and ethnic populations, the report helps to strengthen the efforts of our prevention agenda, the DSRIP program, State Health Innovation Plan. All these initiatives aim to reduce or eliminate racial, ethnic, or socio-economic health disparities. Despite our best efforts, ethnic and racial healthcare disparities exist and the key to reducing them is by making critical data available to help communities focus attention on those areas and to put the appropriate interventions in place. Dr. Zucker noted that the good news is New York is getting closer to becoming the healthiest state in the nation. Last December the America's Health rankings released the 2014 Data and it ranked New York as the 13th healthiest state and that was an improvement from the year prior to that one with the 14th healthiest which is a marked improvement over the course of the last 10 years when we were at the 27th.

Dr. Zucker concluded his report. Mr. Kraut thanked Dr. Zucker and took questions from the members. To see the complete report and comments from members, please see pages 16 through 29 of the attached transcript.

RESOLUTION OF APPRECIATION FOR DR. CARLA BOUTIN-FOSTER

Mr. Kraut announced that Dr. Boutin-Foster had resigned from the Council in December 2015 due to her job commitments. He noted for the record that on behalf of the Council, Dr. Boufford and he signed a Resolution of Appreciation for Dr. Boutin-Foster thanking her for service on the Council. Please see page 30 of the transcript.

2016 ANNUAL MEETING

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

ELECTION OF OFFICERS

Election of Vice Chairperson

Mr. Kraut nominated Dr. Jo Ivey Boufford to serve as the Council's Vice Chair. The motion was seconded by Dr. Gutierrez. The motion passed. Please see page 31 of the attached transcript.

DISCHARGE OF THE AD HOC COMMITTEE ON FREESTANDING AMBULATORY SURGERY CENTERS AND CHARITY CARE

Mr. Kraut announced that the Ad Hoc Committee on Freestanding Ambulatory Surgery Centers and Charity Care had completed its mission and thanked Mr. Robinson who chaired the Committee and thanked the members and Mr. Delker for their thorough review and report. Mr. Kraut made a motion to discharge the Ad Hoc Committee. Mr. Robinson seconded the motion. The motion carried. Please see pages 33 and 34 of the transcript.

APPROVAL OF THE MINUTES OF DECEMBER 10, 2015

Mr. Kraut asked for a motion to approve the December 10, 2015 Minutes of the Public Health and Health Planning Council meeting. Ms. Fine motioned for approval which was seconded by Dr. Boufford. The minutes were unanimously adopted. Please refer to page 34 of the attached transcript.

REPORT OF DEPARTMENT OF HEALTH ACTIVITIES

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

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

Mr. Sheppard began his report by updating the members on ambulatory surgery center data. The members were provided 2 spreadsheets containing a summary of data for 47 ambulatory surgery centers that are under limited life; 41 that are in the midst of their original life, and six under extended. The data is in terms of the charity care and Medicaid participation against the approved targets is from the institutional cost reports they submitted as well as SPARCS. There is another data source that we should have are the independent reports, the third party reports that are contingency of their approval. The compliance rates with the third party reporting is quite low, and the Department is sending out delinquent notices requiring that they provide those reports within the next several months and the Department is assessing now just setting up a fixed date for that, and will be issuing statements of deficiencies if they are non-compliance with those report filing notices.

Mr. Sheppard summarized the data explaining there are four ambulatory surgery centers with operating certificates expiring in 2016 and two of four of those are meeting targets on a combined charity care and Medicaid basis. Eight have operating certificates expiring next calendar year in 2017 and four of eight of those are currently meeting targets. Eleven have operating certificates expiring in 2018 and six of those eleven are meeting their targets on a combined basis. Moving forward, the Department is going to report back to the Council in six months with both in terms of compliance with the independent reporting requirement as well as where they are with the targets and then subsequent to that the Department will incorporate this type of update as part of the annual basis.

Mr. Sheppard concluded his report. Mr. Kraut thanked Mr. Sheppard and inquired if members had questions or comments. To see the complete report and comments from members, please see pages 34 through 62 of the attached transcript.

Report of the Office of Public Health Activities

Mr. Kraut introduced Ms. Pirani who was participating from Albany to give an update on the activities of the Office of Public Health.

Ms. Pirani began her report by presenting a power point presentation. She described the monitoring of the Prevention Agenda Implementation, progress at the community level. The Department has a couple of new tools on the Department's website. The local health departments and hospitals are working hard on their prevention agenda efforts. In December they reported to the Department on what they were working on and interventions being implemented especially in the prevention of chronic disease priority where just about every institution is working on. They are also working hard to promote mental health care and promote substance abuse services a priority. Ms. Pirani described the website where you can click on any county and learn more about what is going on in, by the county health departments, by the hospitals that are reporting in those counties.

Ms. Pirani explained the health equity report which will be another important tool as those assessments are being conducted, also for any number of activities including for the PPSs to focus their attention. This is the Department's new source of data to assess disparity. The report has 47 health related indicators with data from 2011 to 2013 from multiple sources. Highlighted are socio-demographic indicators, health indicators, birth-related indicators, etc. The data are displayed by State, by region and by county. The executive summary highlights strengths and challenges for each subpopulation group and comparison between data from this report and the previous report which was issued in 2010. The report was worked on by the Center for Health Equity.

Ms. Pirani described each slide from the power point. She described the last slide containing next steps and how it relates to the Prevention Agenda. The Department is continuing our communication and providing technical assistance on the Prevention Agenda, issues and challenges.

Ms. Pirani concluded her report. Several members had questions and comments. Please see pages 62 through 73 of the attached transcript.

PUBLIC HEALTH SERVICES

Report of the Activities of the Committee on Public Health

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

Dr. Boufford presented for adoption the Report on Prevention of Maternal Mortality in New York State. Maternal mortality, the numbers are quite small in absolute numbers and one of the things that came up in the Committee was they would like to see the absolute numbers in this report. There are very few as a consequence there are very few entities that take this on as an issue relative to the pressures they face for other issues which is why the Committee felt it is important to do it as a statewide effort, and that has been the focus of our work. This was the issue that the Public Health Committee agreed to work on as the move the needle one, and we

have had really great cooperation from the State Health Department. Dr. Boufford complemented the Division of Family Health, Rachel DeLong and her team, Marilyn Casica, and Sylvia Pirani.

Dr. Boufford noted that New York is 47th out of 50 states. This is not a good ranking on maternal mortality. The racial disparities are sort of 5.7 to 7 to one citywide on black to white and statewide around three-ish to one. So there is significant racial disparities in this area. In the review done by the Department we identified there is a considerable amount of work that has been done by HANYS, by Greater New York, New York State ACOG and by the State on inpatient crisis management around issues like hemorrhage, deep vein thrombosis and hypertension. However, relatively little attention to the prehospital opportunities to address, identify high risk women, make sure they are getting to care early on in their pregnancy, and also to be sure that women of reproductive age have the opportunity to decide whether or not they wish to get pregnant, and if they are in a risk category because of preexisting diabetes, hypertension which increasingly sadly is the case for younger and younger women, that they know what their risk factors might be. The Committee decided to focus on the prehospital and the key issue for is that about 40+ percent of all pregnancies in New York State are unplanned and so the goal, this is a major risk factor, if you look at the literature for maternal mortality and so the idea is to bring to women the opportunity to get timely real time if you will contraceptive intervention if they wish, and we heard some very interesting conversations.

Dr. Boufford stated that one of the questions that came up if we are looking at prehospital is what is going on in the state relative to what we consider the really comprehensive primary care practices, what are they doing, and then how might this issue of reproductive health of women and reducing risk fit into state reform initiatives? There were a series of discussions about that as a Committee, and the key clinical practice issue in primary care is what they call the one big question, whenever a woman of reproductive age touches a healthcare facility is to ask them do they plan to get pregnant in the next year. It is also showing up in the national literature increasingly as a very important intervention to reduce unplanned pregnancy. The Committee also had terrific cooperation from the Office of Quality and Patient Safety and the State Health Innovation Plan, and also looking at health homes.

Very few DSRIP and PPSs actually put this on their list, which again is primary because of the small numbers. But they were very helpful, and I think the learnings here is that there is all of these entities consider the issue of reproductive health on their list, but at some time, of course it is there, but if you look at it, it is like number 23 or number 31 or you know, and reproductive health, so part of the issue is just raising the priority for it because of this issue of the increasing risk factor disparity and effort to eliminate maternal mortality. The Office of Quality and Patient Safety raises an opportunity.

Dr. Boufford noted that there is a piece of legislation in New York State calling for a Perinatal Review Committee and has not been activated. The State Health Innovation Plan, the categorizations primary care that are envisioned there now the more advanced primary care category now that there are two instead of three envisions again population health, the visibility role of reproductive health attention in all of those primary care practices and Ms. Plavin was very supportive of that effort.

Dr. Boufford described efforts in health home. 35 percent of health home enrollees are women of reproductive age between 11 and 50 years of age. So these are people with at least two chronic medical conditions and/or chronic and a mental health diagnosis. They are the most expensive patients in the Medicaid program. The most challenging patients, and 35 percent of them are women who could become pregnant and have children, and of that group actually a 9.5 of those enrolled did in fact become pregnant and gave birth during the last two years. We have agreed to look at that data, see if the implications, if there were maternal mortalities in that group, see if they were cost implications around those pregnancies and those deliveries that were higher than one might otherwise expect. Those conversations will go on.

Dr. Boufford stated the report summarizes the data on maternal mortality, the discussions we had and the two panels and what we see really as a continuing opportunity to look at the healthcare reform activities as they emerge to align action there, and then our plan is to continue shine the light to continue to use the Public Health Committee and these forums to bring attention to the issue and the work that people are doing to try to tackle it. There is no one against eliminating maternal disparity. It is an issue of trying to get them to work together a little more closely than they have in the past.

Dr. Boufford expressed she is very excited about the creation of the New York State Partnership for Maternal Health which involved all of these factors who were all very diligently pursuing reducing maternal mortality in different ways and have not all agreed to work together and come up with a shared agenda and I think over the next, by the time we have our next report we will be able to talk about some of the specific plans. They are going to look at the prehospital first, but also aligning their interventions in the inpatient crisis management situation and also with the healthcare reform.

Dr. Boufford concluded her report and motioned for adoption of the Report on Prevention of Maternal Mortality in New York State. Ms. Rautenberg seconded the motion. The motion carried.

To see the complete report and comments from members, please see pages 73 through 85 of the attached transcript.

REGULATION

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

Report of the Committee on Codes, Regulation and Legislation

For Adoption

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

15-13 Addition of Part 300 to Title 10 NYCRR (Statewide Health Information Network for New York (SHIN-NY))

13-26 Amendment of Part 23 of Title 10 NYCRR (Sexually Transmitted Diseases (STDs))

Dr. Gutierrez described for adoption Amendment of Section 415.3(h) of Title 10 NYCCR (Children's Camps) and motioned for approval. Ms. Carver-Cheney seconded the motion. The adoption carried with one member abstaining. Please see pages 87 through 89 of the attached transcript.

Next, Dr. Gutierrez described for adoption Addition of Part 300 to Title 10 NYCRR (Statewide Health Information Network for New York (SHIN-NY)) and motioned for approval. Ms. Fine seconded the motion. The motion to adopt carried with one member abstaining. Please see pages 89 and 90 of the attached transcript.

Next, Dr. Gutierrez called for adoption Amendment of Part 23 of Title 10 NYCRR (Sexually Transmitted Diseases (STDs)) and motioned for adoption. Mr. Fassler seconded the motion. The motion carried. Please see page 90 of the attached transcript.

For Information

16-02 Addition of Section 405.33 to Title 10 NYCRR(Extended Mammography Hours for General Hospitals and Hospital Extension Clinics)

14-12 Amendment of Sections 763.7 and 766.4 of Title 10 NYCRR (Home Care Agencies to Obtain Written Medical Orders from Physicians)

Dr. Gutierrez briefly described For Information the Addition of Section 405.33 to Title 10 NYCRR (Extended Mammography Hours for General Hospitals and Hospital Extension Clinics) and an Amendment of Sections 763.7 and 766.4 of Title 10 NYCRR (Home Care Agencies to Obtain Written Medical Orders from Physicians). Please see pages 91 and 92 of the attached transcript.

Dr. Martin asked to go back to the previous vote on the adoption Amendment of Part 23 of Title 10 NYCRR (Sexually Transmitted Diseases (STDs)). Dr. Martin recalled the first motion to adopt the regulation, Dr. Berliner seconded the motion. The recall was accepted. Mr. Kraut called for a vote on the motion to adopt the proposed regulation. Dr. Torres seconded the motion. The motion carried with Dr. Martin opposing the motion. Please see pages 92 and 93 of the attached transcript.

PROJECT REVIEW RECOMMENDATIONS AND ESTABLISHMENT ACTIONS

Report of the Committee on Establishment and Project Review

Peter Robinson, Chair, Establishment and Project Review Committee

A. APPLICATIONS FOR CONSTRUCTION OF HEALTH CARE FACILITIES

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

NO APPLICATIONS

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services - Construction

Exhibit #5

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	152240 C	Southside Hospital (Suffolk County) Mr. Kraut - Recusal	Contingent Approval

Mr. Robinson called application 152240 and noted for the record that Mr. Kraut has a conflict and has exited the meeting room. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Mr. Kraut's noted recusal. Mr. Kraut returned to the meeting room. Please see pages 93 and 94 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

B. APPLICATIONS FOR ESTABLISHMENT AND CONSTRUCTION OF HEALTH CARE FACILITIES

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

CON Applications

Acute Care Services – Establish/Construct

Exhibit #6

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	152202 E	St. Peter’s Health Partners (Albany County)	Contingent Approval

Dialysis Services – Establish/Construct

Exhibit #7

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151338 B	Doral Dialysis, LLC d/b/a Doral Dialysis Center (Kings County)	Contingent Approval
2.	152110 B	Hempstead Park Operating, LLC d/b/a Hempstead Park Dialysis Center (Nassau County)	Contingent Approval

Mr. Robinson called applications 152202, 151338 and 152110 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 94 and 95 of the transcript.

Residential Health Care Facilities – Establish/Construct

Exhibit #8

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	142144 E	Hudson Pointe Acquisition, LLC d/b/a Hudson Pointe at Riverdale Center for Nursing & Rehabilitation (Bronx County)	Contingent Approval
2.	142146 E	Cold Spring Acquisition, LLC d/b/a Cold Spring Hills Center for Nursing and Rehabilitation (Nassau County)	Contingent Approval
3.	151089 E	Port Chester Operating, LLC d/b/a Port Chester Nursing & Rehab Centre (Westchester County)	Contingent Approval

4.	151307 E	Yertle Operations, LLC d/b/a Fishkill Center for Rehabilitation and Nursing (Dutchess County)	Contingent Approval
5.	151321 E	Sapphire Nursing at Wappingers, LLC (Dutchess County)	Contingent Approval
6.	151327 E	Goshen Operations, LLC d/b/a Sapphire Nursing and Rehab at Goshen (Orange County)	Contingent Approval
7.	152005 E	Newburgh Operations, LLC Sapphire Nursing at Meadow Hill (Orange County)	Contingent Approval

Mr. Robinson introduced applications 142144, 142146, 151089, 151307, 151321, 151327, and 152005 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion to approve carried. Please see pages 95 through 97 of the attached transcript.

HOME HEALTH AGENCY LICENSURES

Exhibit #9

New LHCSA

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
152137 E	County of Orange (Orange County)	Contingent Approval
152298 E	Saratoga County (Saratoga County)	Contingent Approval

Changes in Ownership

2250 L	Weng's Group NY, Inc. d/b/a ADJ Wisdom Home Care (Kings, Bronx, Queens, Richmond, New York, and Nassau Counties)	Contingent Approval
2512 L	Evergreen Homecare Service of NY Inc. (Bronx, Richmond, Kings, Westchester, New York and Queens Counties)	Contingent Approval

2540 L	Aquinas LLC d/b/a Senior Helpers (New York, Queens, Bronx, Richmond, Kings, and Westchester Counties)	Contingent Approval
2628 L	Pediatric Home Nursing Services, Inc. d/b/a PSA Healthcare (Allegany, Monroe, Cattaraugus, Niagara, Chautauqua, Orleans, Erie, Wyoming and Genesee Counties)	Contingent Approval
152019 E	Serenity Health & Wellness, LLC (Bronx, Queens, Kings, Richmond, Nassau and New York Counties)	Contingent Approval
152224 E	Health Acquisition Corp. d/b/a Allen Health Care Services (Dutchess, Nassau, Orange, Queens, Rockland, Suffolk, Sullivan, Ulster and Westchester Counties)	Contingent Approval

Next, Mr. Robinson called applications 152137, 152298, 2250, 2512, 2540, 2628, 152019, and 152224 and motioned for approval. The motion was seconded by Dr. Gutiérrez. The motion carried. Please see pages 97 and 98 of the transcript.

Certificates

Exhibit #10

Restated Certificate of Incorporation

<u>Applicant</u>	<u>Council Action</u>
Gouverneur Nursing Home Company, Inc.	Approval
Jewish Home Lifecare, Receivership Corporation	Approval
W.K. Diagnostic and Treatment Center, Inc.	Approval

Mr. Robinson introduced for consent to file Restated Certificate of Incorporations of Gouverneur Nursing Home Company, Inc., Jewish Home Lifecare, Receivership Corporation and .K. Diagnostic and Treatment Center, Inc. Mr. Robison motions for approval, and Dr. Gutiérrez seconded the motion. The motion carried. Please see page 98 of the attached transcript.

CATEGORY 2: Applications Recommended for Approval with the Following:

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

CON Applications

Acute Care Services – Establish/Construct

Exhibit #11

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	152323 E	Alice Hyde Medical Center (Franklin County) Dr. Ruge – Interest (not present)	Contingent Approval

Mr. Robinson called application 152323 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see pages 98 and 99 of the attached transcript.

Ambulatory Surgery Centers – Establish/Construct

Exhibit #12

	<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1.	151227 E	SurgiCare of Manhattan (New York County) Mr. Kraut - Recusal	Contingent Approval

Mr. Robinson called application 151227 and noted for the record that Mr. Kraut has a conflict and has left the meeting room. Mr. Robinson motioned for approval. Mr. Fassler seconded the motion. The motion to approve carried. Please see pages 99 through 101 of the transcript.

2.	152219 B	Comprehensive Care ASC, LLC (New York County) Mr. Kraut – Recusal	Contingent Approval
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Mr. Robinson noted for the record that Mr. Kraut has a conflict on application 152219 and has remained outside the meeting room. Mr. Robinson motioned for approval for a 5 year limited life and Mr. Fassler seconded the motion. The motion carried. Mr. Kraut returned to the meeting room. Please see pages 101 and 102 of the attached transcript.

3.	151019 B	Liberty Endo, LLC d/b/a Liberty Endoscopy Center (New York County) Dr. Martin - Recusal	Contingent Approval
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Mr. Robinson called application 151019 and noted for the record that Dr. Martin has a conflict and has exited the meeting room. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried. See pages 102 and 103 of the attached transcript.

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
1. 151252 E	185 Old Military Road Operating Company, LLC d/b/a Elderwood of Uihlein at Lake Placid (Essex County) Dr. Rugge – Interest (not present)	Contingent Approval

Mr. Robinson called application 151252 and motioned for approval. Dr. Gutiérrez seconded the motion. The motion carried. Please see page 103 of the attached transcript.

2. 152049 E	Terrace Acquisition II, LLC d/b/a Fordham Nursing & Rehabilitation Center (Bronx County) Mr. Fassler – Recusal	Contingent Approval
3. 152072 E	Dewitt Rehabilitation and Nursing Center Inc. (New York County) Mr. Fassler – Recusal	Contingent Approval
4. 152128 B	Harlem Center for Nursing and Rehabilitation, LLC (New York County) Mr. Fassler – Recusal	Contingent Approval

Mr. Robison called applications 152049, 152072, and 152128 and noted for the record that Mr. Fassler has a conflict has exited the meeting room. Mr. Robinson motioned for approval. Dr. Gutiérrez seconded the motion. Mr. Fassler returned to the meeting room. Please see pages 103 through 105 of the attached transcript.

5. 152167 E	SBNH Acquisition, LLC d/b/a St. Barnabas Rehabilitation & Continuing Care Center (Bronx County) Ms. Carver-Cheney - Recusal	Contingent Approval
7. 152218 E	Sheepshead Nursing & Rehabilitation Center (Kings County) Ms. Carver-Cheney - Recusal	Contingent Approval

Changes of Ownership

<u>Number</u>	<u>Applicant/Facility</u>	<u>Council Action</u>
2375 L	Blue Line Agency, LLC (Kings, New York, Queens, Richmond, Bronx and Westchester Counties) Ms. Carver-Cheney - Recusal	Contingent Approval

Mr. Robinson called application 152167, 152218 and 2375L and noted for the record that Ms. Carver-Cheney has a conflict and has exited the meeting room. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Ms. Carver-Cheney’s recusal. Ms. Carver-Cheney returned to the meeting. Please see pages 105 and 106 of the attached transcript.

6.	152177 E	TCPRNC, LLC d/b/a The Plaza Rehab and Nursing Center (Bronx County) Mr. Fassler - Interest	Contingent Approval
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Mr. Robinson moved to application 152177 and noted for the record that Mr. Fassler has declared an interest and motioned for approval. Dr. Kalkut seconded the motion. The motioned carried. Please see page 106 of the attached transcript.

8.	152363 E	HealthAlliance Senior Living Corp. d/b/a Woodland Pond at New Paltz (Ulster County) Dr. Berliner - Recusal	Contingent Approval
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Next, Mr. Robinson called application 152363 and noted for the record that Dr. Berliner has a conflict and has exited the meeting room. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion. The motion to approve carried with Dr. Berliner’s recusal. Dr. Berliner returned to the meeting room. Please see page 107 of the attached transcript.

Certificates

Exhibit #16

Certificate of Amendment of the Certificate of Incorporation

<u>Applicant</u>	<u>Council Action</u>
Beth Israel Ambulatory Care Services Corp. Dr. Martin – Recusal	Approval
Beth Israel Medical Center Dr. Martin – Recusal	Approval

Restated Certificate of Incorporation

Applicant

Mount Sinai Ambulatory Ventures, Inc.
Dr. Martin - Recusal

Council Action

Approval

Lastly, Mr. Robinson introduced for approval for consent to file certificates for Beth Israel Ambulatory Care Services Corp., Beth Israel Medical Center, and Mount Sinai Ambulatory Ventures, Inc. and noted for the record that Dr. Martin has a conflict and has exited the meeting room. Mr. Robinson motioned for approval, Dr. Gutiérrez seconded the motion. The motion carried with Dr. Martin’s recusals. Mr. Martin returned to the meeting room. Please see pages 107 and 108 of the attached transcript.

CATEGORY 3: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

CATEGORY 4: Applications Recommended for Approval with the Following:

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

NO APPLICATIONS

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

NO APPLICATIONS

CATEGORY 6: Applications for Individual Consideration/Discussion

NO APPLICATIONS

ADJOURNMENT:

Mr. Kraut adjourned the meeting.

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 JO BOUFFORD: Good morning to everybody. My name is Jo
2 Boufford, I'm the vice-chair of the council and I have the
3 privilege of calling us to order this morning and welcoming all
4 of you to the meeting. Jeff Kraut is unable to join us today.
5 and welcome Ms. Dreslin who is joining us and will report a
6 little bit later.

7 So let me go through the webcasting rules of the road here
8 for those who are new or may have forgotten. Want to remind the
9 council members staff and audience, this meeting is subject to
10 the open meetings law, is broadcast over the internet. The
11 webcasts are accessed at the Department of Health's website,
12 NYHealth.gov. The on-demand webcasts will be available no later
13 than seven days after the meeting for up to 30 days and then a
14 copy will be retained in the Department for four months. Some
15 ground rules for participation; this is a synchronized
16 captioning meeting so it's important that people not talk over
17 each other and because it makes it harder for the signer and the
18 people who are being talked over as well. The first time you
19 speak, please state your name, and briefly identify yourself as
20 a council member or a member of the Department staff. This will
21 also help with broadcasting and recording the meeting. All
22 microphones are hot which means they pick up every sound so
23 please avoid rustling of papers and side conversations. And as a
24 reminder for our audience, there is a form that needs to be

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 filled out before you enter the meeting room which records your
2 attendance at the meetings. It's required by the Joint
3 Commission of Public Ethics in accordance with executive law
4 166, section 166 and the form is on the website for the
5 Department under Certificate of Need so in the future you could
6 pull it down and fill it out in advance, and we thank you for
7 your cooperation in fulfilling these duties.

8 And, let's see here - so I will start right away I guess.
9 Do we do the minutes first? Thank you. My order here is - so
10 let me have a motion to approve the minutes from the last
11 meeting? Second. All in - thank you very much. Alright.
12 Minutes stand approved, and now - oh sorry. You have been given
13 the dates for 2016 in your packet in advance. I'd like to ask
14 for a motion to approve those minutes - those dates. Second.
15 Alright. In favor and accepted so please be sure they're on
16 your calendar. Members of the public be aware of them, and now,
17 I'm reading from three different guidance systems here. now, I
18 will, now lets move to the report that all of you have in front
19 of you and we'll start with reports from the Department of
20 Health and welcome Sally Dreslin who is executive deputy
21 commissioner of health.

22

23 SALLY DRESLIN: Thank you very much. The anticipation. So
24 good morning. It's a pleasure to be here today filling in for

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 Dr. Zucker who sends his regrets. As you know, Dr. Zucker was
2 confirmed by the Senate last month to be the State's 16th Health
3 Commissioner. We're delighted to have him at the helm of the
4 Department. He brings with him an impressive resume that
5 includes stints at the White House, health and human services
6 and the World Health Organization. He's a physician with
7 multiple specialties as well as a lawyer and I know he's pleased
8 to be working with all of you in pursuing the State's many
9 public health initiatives. And we look forward to hearing more
10 from him in the coming months.

11 We've had a few events at the Department since this group
12 last met. In late April, Governor Cuomo received the final
13 blueprint for End the Epidemic, which is the Governor's three
14 point plan to move us closer to the end of the AIDS epidemic.
15 The goal of this initiative is to reduce the annual number of
16 new HIV infections to just 750 by 2020. That's a considerable
17 drop from an estimated 3000 cases annually today. In doing so we
18 will likely achieve our first ever decrease in HIV prevalence,
19 that is the number of persons living with HIV infection in New
20 York will start to fall for the first time since the epidemic.
21 The three point plan includes identifying persons with HIV who
22 remain undiagnosed and link them to healthcare, linking and
23 retaining persons diagnosed with HIV in healthcare to maximize
24 viral suppression so they remain healthy and prevent further

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 transmission, and facilitating access to pre-exposure
2 prophylaxis, PREP, for persons who are engaged in high-risk
3 behaviors to keep them HIV negative. To develop a plan to
4 accomplish these three points, the Governor appointed the New
5 York State Ending the Epidemic Taskforce which included PHHPC
6 member and vice-chair Dr. Boufford. The recommendations
7 included in the final blueprint focus on New York State's highly
8 successful existing HIV prevention and care efforts. At the
9 same time the recommendations address stigma and discrimination
10 in an effort to approve health equity. Governor Cuomo received
11 the final blueprint on April 29 in New York City surrounded by
12 many of the taskforce members who had worked so hard toward it's
13 development. The document provides New York State with a
14 concrete set of next steps to decrease new infections and
15 improve the lives of all New Yorkers living with HIV and AIDS.
16 Many of the blueprint recommendations can be implemented without
17 additional resources. Last year in anticipation of this
18 announcement the Governor signed into law several policy
19 initiatives including simplified oral consent for almost all HIV
20 testing and expanded authorization for data sharing to link
21 persons with HIV to care and treatment. In the 2014-15 State
22 budget there was included a 30 percent rent cap for clients of
23 the New York City HIV AIDS services administration, HASA,
24 persons with HIV living in subsidized housing in New York City

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 will pay no more than 30 percent of their income toward rent.
2 This will enable them to stay housed which enables people to
3 stay focused on improving their health. In addition, Medicaid
4 successfully negotiated supplemental rebates for antiretroviral
5 medications with pharmaceutical companies so the State can stay
6 within the Medicaid goal will cap while promoting universal
7 viral suppression among HIV infected persons. In the 2015-16
8 State budget, additional statutory changes were achieved
9 including reducing arrests where condoms and syringes are
10 involved and eliminating the requirement for written consent for
11 HIV testing in correctional facilities. These changes will
12 interrupt the transmission of HIV and assist in identifying
13 persons with HIV so they can be linked with care. The
14 Department of Health also continues to direct resources to
15 activities most likely to end the HIV epidemic. In order to
16 expand access to PREP, pre-exposure prophylaxis, the Department
17 of Health now offers the PREP Assistance Program, or PREP-AP,
18 which provides financial assistance for patient healthcare and
19 laboratory costs. PREP includes regular medical visits,
20 periodic HIV testing, screening for STDs and other laboratory
21 tests, and if a person is uninsured or has health insurance that
22 does not reimburse for some of the PREP services, he or she can
23 use PREP-AP to access the services free of charge. And
24 currently a match between HIV Medicaid data and the HIV AIDS

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 registry is underway, and the results of this will provide
2 information on the number of HIV positive Medicaid members who
3 are not yet virally suppressed. This information can be used to
4 improve linkage and retention and care for these individuals.
5 An additional \$10 million investment in the State budget will
6 allow New York to enhance existing programs and address
7 lingering gaps in prevention and care. To get the word out we
8 launched End the Epidemic marketing campaign in mid-March that's
9 in effect across the State. And the blueprint is available
10 electronically on the DOH website under either Ending the
11 Epidemic or ETE.

12 As some of you know on May 20 the Department held it's
13 first ever cancer prevention summit in New York City with the
14 help of Doctor Margaret Cuomo. The event was well-attended and
15 featured an impressive list of top notch speakers including
16 Doctors Graham Colditz, Walter Willet, and Phillip Landrigan.
17 What inspired the event was this incredible fact that nearly
18 half of all cases of cancer are preventable. Half. And yet
19 this disease still claims the lives of 35,000 New Yorkers a year
20 and remains the second leading cause of death in New York State.
21 At the summit, the Department and our partners agreed that even
22 with all the advances in cancer treatment the time has come to
23 renew our focus on cancer prevention. This means encouraging
24 people to quit smoking, maintain a healthy weight, exercise

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 regularly and use sunscreen. It means urging people when
2 drinking alcohol to do so in moderation, have their adolescents
3 vaccinated for HPV, take steps to protect themselves from
4 sexually transmitted diseases, and get screened for breast,
5 cancer, and cervical cancer. It also means forging partnerships
6 and relationships that will help to create communities that make
7 it easier for people to adopt cancer preventing behaviors. In
8 having this conversation and holding this event, New York State
9 is working to win the national war on cancer that began in 1971
10 under then President Nixon. In the years since, advances in
11 treatment have done wonders to prolong the lives of people
12 diagnosed with cancer, but it's time to get back to an even
13 better strategy to try and prevent the disease from happening in
14 the first place. We look forward to having more conversations
15 about cancer prevention in the Department and beyond in the near
16 future.

17 And now that we're in June, we've officially come to the
18 end of flu season. Ultimately the vaccine that was used to
19 combat the flu season, the flu this season did not match the
20 primary circulating strain. Even so, the season here in New
21 York was of moderate severity and usual duration despite it's
22 statewide impact. But for now, flu season is over. And before
23 I wrap up I just want to remind everyone that the warm weather
24 brings with it tick season and the threat of Lyme Disease. Lyme

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 Disease is a bacterial infection that spreads when an infected
2 deer tick bites a person and remains attached for 36 hours or
3 more. They're typically active when the weather stays above
4 freezing, usually from April to November. Not so much this year
5 but - while this past winter was unusually harsh, the long-
6 lasting snow cover likely provided insulation that allowed the
7 ticks to survive the winter. Since reporting of Lyme Disease to
8 DOH began in 1986, New York State has averaged more than 5500
9 new Lyme Disease cases each year. In the majority of cases an
10 expanding rash resembling a bullseye or solid patch will appear
11 near the site of the bite, and if a person develops an expanding
12 rash with a diameter of more than two inches or flu-like
13 symptoms occur over a 30-day period following the tick bite,
14 they should contact their healthcare provider, and early
15 treatment is your best defense against this serious disease.
16 And that wraps my comments. Thank you, Dr. Boufford.

17

18 JO BOUFFORD: Are there any questions for Ms. Dreslin?
19 No? Thank you. Welcome. Hope we'll see you back again. Sorry
20 you have to leave but, thanks for reporting to us. Give our
21 congratulations to Commissioner Zucker. OK.

22 Let me just review the upcoming events for those of you
23 that are timing yourselves. Ms. Miso will follow shortly. We
24 will not have a report from the Office of Primary Care Health

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 Systems, opposite Health Systems Management today. We will hear
2 from the Office of Health Insurance Programs followed by Dr.
3 Gestin and Ms. (Agard) Office of Quality and Patient Safety
4 Activities on the topic of office-based surgery, and Dr.
5 Birkhead will give an update on the Office of Public Health
6 Activities. Dr. Gutierrez will present regulations for
7 information, then we will go to project review and
8 recommendations and in that context, Mr. Robinson will lead that
9 discussion of the committee of establishment. Ad-hoc committee
10 on freestanding ambulatory surgery and charity care, I think
11 you're on again Mr. Robinson, and then we will go into executive
12 session for consideration of one case.

13

14 JOHN RUGGE: What about the Planning Committee?

15

16 JO BOUFFORD: Oh! I'm sorry John. Well, you see, you're
17 not on this one, but you're on this one. So that's why I'm
18 having a challenge here.

19

20 JOHN RUGGE: Which one is real?

21

22 JO BOUFFORD: Well, this is a really good question. I
23 guess I'll throw this one out and go to this one. So, after
24 Gus, Dr. Rugge, esteemed Dr. Rugge, Chair of the Health Planning

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 Committee will report on the activities of the Committee on
2 Health Planning, followed by Codes, Regulations, Legislation;
3 Dr. Gutierrez and then moving into Project Review. How's that?
4 Sorry about that. Then, Dr. Grant will chair the discussion on
5 the professional case in executive session.

6 So let me remind everyone on the process we're using for
7 looking at the applications on members of the council and most
8 guests who regularly attend are familiar with the reorganization
9 and batching of the topics and categories, but we do batch the
10 certificate of need applications. At this time all of the
11 members are invited to ask if they would like to see a
12 particular item taken out of the batch for individual
13 consideration? Any such request from anyone? OK. So they'll
14 stay, as is. And then we have already adopted the minutes. And
15 we have already heard from Ms. Dreslin. So, I will now throw
16 out the fallible list of things I'm supposed to do and move on
17 the official one.

18 This is, the one thing I do want to do before we move ahead
19 though is to indicate that this is the time for us to
20 acknowledge the wonderful service and leadership of Gus Birkhead
21 who will be retiring from the Department. He says. Sylvia was
22 laughing earlier and said, he's had people chained to his desk,
23 we may want to chain him to his desk to keep him from leaving,
24 but we did want to acknowledge him during this meeting because

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 he has really been such an important leader in bringing the
2 public health realities and aspects into the concerns of this
3 council and obviously has been leading in public health and
4 safety for many years here in New York, and on behalf of the
5 Council, Mr. Kraut and I have signed a very lengthy resolution
6 of appreciation, but I will read it anyway, because I think he
7 deserves it.

8 He served the citizens of the State of New York over the
9 past 27 years beginning his state service in 1988 as a director
10 of the general communicable diseases program. In his tenure he
11 has served as director of the immunization program, director of
12 the AIDS Institute, director of the Center for Community Health,
13 and since 2007 the Deputy Commissioner of the Office of Public
14 Health. In his capacity he has been responsible for over 2000
15 staff, an annual budget of more than \$2 billion and over 100
16 discreet public health area programs. His work in the
17 Department of Health has spanned the administrations of five
18 governors and seven commissioners of health, trained as a
19 preventive medicine physician and as an epidemiologist he has
20 spearheaded many investigations of disease outbreaks including a
21 major measles outbreak that led to a national, *the national*
22 two-dose vaccination policy. At the national level, he's
23 overseen efforts to strengthen vaccine financing and safety of
24 healthcare workers through influenza vaccination. Among his many

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 accomplishments in the AIDS Institute was a major reduction in
2 mother-to-child transmission of HIV. As a champion for public
3 health Dr. Birkhead advocated the use of public health
4 assessment, surveillance, policy development and assurance to
5 achieve public health goals and led efforts to guide this
6 council in it's previous incarnation and the current council now
7 merged with the Health Planning Council to focus attention and
8 take action on important public health issues in addition to
9 it's responsibilities for facilities oversight. He has worked
10 with the Public Health Committee of the Council to investigate
11 and make recommendations to address the immunization of
12 preschool children to improve the State's public health
13 infrastructure, to develop and implement the State's Prevention
14 Agenda, one and two since 2007 and in 2012 very importantly
15 successfully pursuing national accreditation which was achieved
16 in 2014, the first large state to be accredited. As director of
17 the State's public health response to the 2009 H1N1 influenza
18 epidemic and 2014-15 Ebola outbreak he kept this council
19 informed and helped to take action to address these challenges.
20 He came before the Council again to argue for regulatory reform
21 to address a multitude of public health issues including spray
22 parks in 2005, prevention of influenza by healthcare personnel
23 most recently in 2014. Overall his efforts have contributed to
24 significant health improvements as measured by a 10 percent

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 reduction in the premature death rates since 1997, a 43 percent
2 reduction in the number of people newly diagnosed with HIV since
3 2000, a 22 percent reduction in smoking prevalence among adults
4 since 1995. His leadership also helped New York move closer to
5 achieving it's prevention agenda goal of becoming the healthiest
6 state. In America's health rankings New York was ranked 40th in
7 1990 and 14th in 2014. Whereas members of the Public Health and
8 Health Planning Council recognize that during his years with the
9 Department, Dr. Birkhead has demonstrated a strong commitment to
10 the development and implementation of evidence-based programs
11 and policies to improve the lives of all New Yorkers and whereas
12 Dr. Birkhead's expert leadership and advice on a wide range of
13 public health issues has furthered this Council's endeavors to
14 improve the health of the citizens of New York State and whereas
15 Dr. Birkhead's scientific integrity work ethic and
16 professional demeanor under all circumstances has garnered the
17 much deserved respect of the Council and his colleagues. Now,
18 therefore be it resolved that members of the New York State
19 Public Health and Health Planning Council wish to convey their
20 deepest appreciation to Guthrie S. Birkhead for his dedication
21 and selfless service to the citizens of our State and be it
22 further resolved that the members of the New York State Public
23 Health and Health Planning Council feel privileged to have been
24 able to serve the citizens of New York State with Dr. Birkhead

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 whom they hold in high esteem and offer best wishes for his
2 future health, happiness and professional achievement. Thank
3 you Gus.

4 [applause]

5
6 GUS BIRKHEAD: So, now I am a little flustered, but thank
7 you so much. It really means a lot to get this acknowledgement
8 from the Council. I was reflecting that I first came before the
9 Council probably 25 years ago to a Codes Committee meeting to
10 push for regulations that required healthcare workers to have
11 measles vaccination or proof of measles immunity and a lot has
12 happened since that time. But, really, the Council has been a
13 lot of what's driven what's happened in public health in New
14 York and Jo mentioned some of the reports that I was associated
15 with, childhood immunization, public health infrastructure and
16 most recently I think the Prevention Agenda which I think for us
17 the Council and all of us in public health should be a legacy
18 going forward. Of course, nothing that was just mentioned
19 happened by the result of one person's actions, so I've really
20 been privileged to work with a tremendous team at the Health
21 Department and at the broader public health community in New
22 York. We really have a very strong public health system.
23 obviously needs more strengthening, but I think we could not
24 have accomplished what we, has happened over these years without

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 that strong system, and I thank everyone. And again, its been a
2 privilege working with you, and best of luck to you going
3 forward. I'm not going to disappear. I hope to be active in
4 public health to continue going forward. So thank you again.

5

6 JO BOUFFORD: This is great news. I just want to say
7 personally it's been a real honor to work with you and see you
8 in all different manner of situations, handled yourself with
9 everyone, as everyone has said with the highest level of
10 professionalism and responsiveness and the State owes you a
11 great debt.

12

13 GUS BIRKHEAD: Thank you.

14

15 JO BOUFFORD: That's true. Three walls for of
16 proclamations. Why not.

17 So, let's move back to the agenda then and we will hear
18 from Ms. Misa who is participating via video from Albany to give
19 us the report on the activities of the Office of Health
20 Insurance Programs.

21

22 MS. MISA: Thank you and good morning. I'm going to provide
23 a brief update on the recent activities on the Office of Health
24 Insurance Programs. So the Department Continues the

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 implementation of the delivery system reform incentive payment
2 program, also known as DSRIP, and as part of DSRIP
3 implementation, CMS required the State to move toward a value-
4 based payment model over the next five years. The first
5 deliverable is a multi-year roadmap comprehensive payment
6 reform. The Department has put together a (VBP) workgroup which
7 has met several times to provide input on the move to value-
8 based payments. The roadmap was posted earlier this year for
9 public comment. Comments were incorporated and revised version
10 was shared with CMS. This is currently under review by CMS, and
11 CMS will be providing additional feedback to the Department
12 shortly. In addition, the value-based payment workgroup will
13 break into smaller subcommittees to focus on targeted issues to
14 bring back recommendations to the larger group later this year.
15 More information including the roadmap, webinars, whiteboard
16 videos, and other materials are all available on the DSRIP
17 website. In addition, the office continues to move forward with
18 care management for all. As of May 2015, approximately 5
19 million Medicaid members were enrolled in a Medicaid managed
20 care product. We continue to transition benefits and
21 populations into Medicaid managed care. In February the New
22 York City nursing home benefit and population transition to
23 managed care Nassau, Suffolk, and Westchester transitioned in
24 April 2015, and the rest of State is scheduled to transition in

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 July 2015. In addition, we are also in the midst of implementing
2 health homes for children. The Department health home program
3 along with it's state agency partners are currently reviewing 21
4 applications for entities seeking to serve children in health
5 homes. Reviews are expected to be completed and designations
6 announced later this month. And this concludes my report, and I
7 would be happy to take any questions.

8

9 JO BOUFFORD: Any questions from anyone around the table?
10 No, I think your public provision of information is quite
11 extensive, so there might be - any other questions? Anyway,
12 thank you very much.

13 Alright. Our next report, Dr. Gestin and Ms. Agard are
14 also participating from Albany and are going to give us an
15 update on the office-based surgery component of their work.
16 Anything else they'd like to tell us about.

17

18 FOSTER GESTIN: Good morning. First, can you all hear me?
19 Terrific. Well, I guess as a colleague to Gus I want to say how
20 proud I am of all the achievements that you listed off and that
21 how thrilled I am to have worked with Gus for all these years.
22 There are things in that description that even I didn't know
23 that Gus was a part of, so really gratifying to hear.

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 What I wanted to do today was to give a brief update on
2 office-based surgery. The council has been interested in this
3 issue. There have been some interim reports given by myself and
4 Nancy over the past number of months, but as we're getting to
5 the conclusion of our ad-hoc group specifically looking at
6 adverse events, wanted to give some update. We also had some
7 new legislation I want to talk about. Is there, slides going to
8 be projected there?

9 [They are]

10 Terrific. So the first slide on legislative updates, I
11 think the first thing to acknowledge is the work and support of
12 the Council in helping to successfully bring about new
13 legislation we think will tremendously contribute to our ability
14 to both understand adverse events and hopefully have information
15 and data to help prevent those adverse events that are
16 preventable. So the executive budget included the amendments to
17 the OBS law. The final budget, the final conclusion changed the
18 legislation in various ways. It gave the Department the
19 authority to collect additional information from office-based
20 surgery practices, as I mentioned, which we think will be
21 critical to really understanding safety and events, including
22 but not limited to information about the number of procedures
23 collected by practices. Included the addition of
24 observation stays and unplanned ED visits as other reportable

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 OBS adverse events and extended the reporting period for
2 practices from previously practices had a day, 24 hours to
3 report events to three days, which again, we think will help to
4 contribute to more and accurate reporting. There is
5 a new requirement for practices relative to performing quality
6 improvement and quality assurance activities and some
7 confidentiality protections relative to that activity similar to
8 what institutions have, and there's a requirement that
9 accreditation, the accrediting agencies and there are three of
10 them in New York State that accredit practices. Practices
11 requires to be accredited by one of three agencies. There's a
12 requirement that those accreditation agencies carry out and
13 report back on surveys that are performed at the request of the
14 Department of Health based on adverse events or other issues
15 that may be of concern. There's some strengthening on the
16 credentialing criteria for practices as well that the
17 accreditation agencies will be using. Now, that's all of the
18 glass-half-full portion of this. There were some aspects of
19 what we're seeking in legislation that did not happen. There
20 were some provisions that were proposed around coverage of
21 office-based anesthesia, practitioners, and the context of this
22 is that there were some offices that are performing anesthesia
23 without specifically surgical interventions. These could
24 include ECT or other kinds of interventions. And there were

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 some thought that would be useful going forward to provide the
2 same sorts of requirements protections for those practices that
3 was not covered, that was not passed. There were some proposed
4 limits on the amount of time, procedure time and recovery time
5 in an office-based practice that was not passed. There was a
6 proposal to expand the of the provisions to
7 podiatrists and performing certain procedures in chiropractors
8 that was not passed, and there was some clarification of whether
9 neuraxial, regional nerve blocks were included and covered under
10 legislation that we've been informally through FAQs advising
11 practices it is covered. We thought it would make sense to
12 clarify that in legislation but that was not included in the
13 final budget.

14 Next slide, just going backwards a bit, going back to the
15 fall we created an ad-hoc committee, mostly formed of a subset
16 of our larger OBS advisory committee but we added some members
17 including individuals that we thought would be particularly
18 helpful to the issue of looking at adverse events. Dr. Gary
19 Kalkut was added, a nurse as well was added to the membership,
20 and as you can see on the slide, we had a number of meetings and
21 conference calls starting in September, we had two further calls
22 pending, one coming up to talk specifically with a gastro - GI
23 proceduralist as we've talked to other societies and
24 interventionalists. The next slide, in terms of the folks we

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 talked to the committee activities, we had consultations and
2 conversations and presentations from all the three accreditation
3 organizations, the AAAASF, HHHC, and the Joint Commission who
4 presented to us on their quality and safety requirements,
5 accreditation procedures, findings and data that they might have
6 had that might be useful or limited to us. We talked to a
7 number of professional societies you see listed in there, the
8 medical society, the OBS society, Society of Operating Nurses,
9 Association of Radiologic and Imaging nurses, nurse
10 anesthetists, anesthesiologists, the American Society of
11 Diagnostic and Interventional Nephrology, Society of
12 Interventional Radiologists, Society of Vascular Surgery; as I
13 mentioned, we have an upcoming call to talk to
14 gastroenterologists, the GI societies. We also in the interim
15 as you may know performed additional focus analysis of the
16 adverse events. All adverse events put a particular focus on
17 deaths, and we've engaged (iprobe) to provide a second and
18 external review starting with the 2014 deaths and going forward
19 to help assure us that our evaluations are complete and
20 accurate, our determinations look for rate of reliability, and
21 to really provide additional information that may be useful to
22 us in trying to detect patterns or issues that may signal things
23 that are preventable that we could act on. We're also
24 investigating pursuing the use of other data systems, includes

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 using Medicaid data to look for potential reporting in various
2 areas, there's the United States Renal Data System, there's the
3 Anesthesia Quality Institute, and while none of these data
4 sources provide all the answers or all the data that we would
5 optimally want, they may provide some view or some additional
6 insight may help us either put the information we have in
7 context or understand various issues that are of importance to
8 us. So our plan is to develop a report of the conclusions and
9 some of our next steps which I'll talk about in a second.

10 The next slide, in terms of overall observations, think
11 that data limitations which we've talked about I think with this
12 group before, still remain significant for us. Those include
13 just to recap a likely underreporting of adverse events, true
14 for all data collection efforts and we heard this from all the
15 associations and societies about what they see in terms of data
16 that they collect. We did not have the experience of finding
17 any organization that we felt was collect more complete or
18 accurate or specific information than we are of the departmental
19 organizations are collecting information that may be of
20 interest. We remain having challenges of collecting the
21 denominator of data so that limits our ability to look at rates
22 of adverse events which are really critical, both in terms of
23 valuating either providers or office-based surgery in general
24 and being able to compare that for example, to other venues in

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 which care is provided. We think the new legislation will help
2 us get closer to being able to look at denominators and collect
3 information on the number of procedures, and so that I think is
4 positive and good news. And then significant data limitation
5 for us and for the council and for others interested in these
6 issues is the lack of any comparators, so the ability to be able
7 to judge or evaluate what our safety issues or adverse events
8 are any greater or lesser in office-based practices versus other
9 settings or in New York versus other states. Right now, as of
10 right now and despite our conversations with a number of
11 different organizations the collect data are doing
12 some of this work. We lack any clear comparators that help us
13 put that information in context. Some of the other overall
14 findings I think of interest is that while the accreditation
15 requirements between the three organizations, significant amount
16 of alignment, there are some issues around which they have
17 including around adverse events. And so for example, some of the
18 organizations require specific adverse events to be reported,
19 that they, the accreditation organization names. Other
20 organizations as practices to identify for themselves the
21 adverse events that they think are important to track and report
22 on those. So that's a pretty significant variation between the
23 organizations. The other thing is clear to us, and I don't
24 think this is unique to office-based surgery is that there are

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 not identical one to one matches between specialty society
2 standards and accreditation requirements. Very often part of
3 this is accounted for by the fact that often times professional
4 societies will have recommendations that don't quite meet the
5 level of creation of a standard. So those are
6 some of the general observations that we found over the course
7 of many conversations and data exchanges, and meetings that we
8 had both internally as well as talking to other relative
9 associations.

10 The next slide is a little bit of a high level review of I
11 think some of the major questions that we explored.
12 It is not comprehensive but many of them in our four year data
13 analysis cases from 2010 to 2013, so this is
14 four years of data. Our focus was really to look at the deaths
15 that were reported to see if we could identify patterns or
16 issues that were hypotheses generated from the group of things
17 that might've been preventable or consistent causes. One of the
18 first things we looked at was question of whether this might be
19 related to the procedure itself. We had all those four years,
20 33 cases, 13 percent of all deaths were determined likely to be
21 related to the OBS encounter so that still leaves about 2/23
22 that were not. That less of those were events that happened
23 actually on the day of the procedure. So remember that we
24 collect information on deaths reported after 30

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 days post procedure, and we have many instances in which
2 following the procedure interventions or
3 hospitalization or clinical events may happen. About 11, 33
4 percent of related deaths were associated specifically with
5 vascular procedures. Most of those focused on patients with end
6 stage renal disease and as prior to last year the advisory group
7 has been focused in looking on some of the issues that present
8 themselves with respect to vascular procedures done on ESRD
9 patients and try to understand what's going on, what might be
10 preventable, and what sort of patterns may emerge. The other
11 question from the group was whether this was related to the
12 level of sedation, whether we could find evidence from our data
13 that that might be contributory factor. I would just say that
14 majority of these cases received moderate sedation or less. So,
15 less clear what that specifically level of sedation was
16 involved, but that 30 percent of the related deaths were
17 assigned an ASA score of three. Whether this was related to the
18 procedure was another hypothesis that we've been looking at.
19 While the data on the lead is not perfect, the majority of the
20 procedure, 2/3 or so last less than one hour, so again, this is
21 an area that didn't appear to be significant at least based on
22 the data that we saw. And then questions have been raised
23 largely unanswered about the issues about the number or the
24 types of personnel that are present or not present during the

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 procedure in office-based settings, and as of right now, this is
2 one of the pieces of data that we don't feel we can reliably
3 report on or analyze. We don't collect this information the way
4 that allows us to clearly evaluate whether the numbers or types
5 of personnel that are present during the time is contributory or
6 might be

7 So, the next slide are continued focused for all events for
8 all types of events are in some of the things that we see are
9 challenges related to limited documentation. We heard from some
10 practices that some of the documentation may be related to
11 questions or concerns about documenting issues related to
12 quality measurement or quality improvement activities may be
13 discoverable. We again, are optimistic that new legislation may
14 help with some of that, those issues related to documentation.
15 Patient selection clearly is still an issue which we're
16 concerned and focused on. Staffing the credentials to perform
17 various procedures and division of duties and procedure. Issues
18 about patient monitoring come up, specifically the use of end
19 stage title, CO2 or capnography and whether that should or
20 should not be done. Again, this is one of the areas that we see
21 some but not all the societies making recommendations about the
22 use of this, but none of the associations have hard and fast
23 standards relative to this. Issues about use of Propofol which
24 have come up more frequently in GI procedures and potential

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 relationship propofol to adverse events. And then clearly the
2 capacity of practices, office-based practices to respond
3 adequately to emergencies, the ability to rescue remains an
4 issue of under conversation. Specifically for vascular events,
5 there's some additional issues given the complexity of the
6 patients, the number of physicians and specialists that are
7 often involved. Sometimes the urgency, the need procedure is
8 relative to vascular access. So care coordination, hand off
9 communication, always an issue in healthcare related quality and
10 safety, but we think a particular issue related to these
11 patients and then I would say the use of sedation both for
12 vascular and for other patients.

13 The next slide, in terms of our next steps, we see
14 ourselves concluding in the next couple of months, adding
15 deliberations of this ad-hoc time-limited committee focused on
16 these adverse events, and that committee will make some
17 recommendations. Those recommendations will go above to the
18 larger advisory committee. Be happy to bring those
19 recommendations forward to PHHPC as well. We want the larger
20 advisory committee which we're looking at the membership and
21 making sure that's updated appropriate for 2015 and beyond in
22 terms of our task to the new legislation, we want that larger
23 committee to review the recommendations and the findings, both
24 of our detailed analysis of the data as well as our

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 deliberations with the various accreditation organizations and
2 societies, the conclusions that we come to in our findings,
3 identify any recommendations that are actionable in the near and
4 mid-term and then contribute to helping us identify those data
5 elements which we want to collect from practices we think would
6 be helpful in both understanding adverse events and as I
7 mentioned, being able to prevent those events.

8 So I think that's the last slide, and I'm happy to conclude
9 my presentation. Happy to answer questions and would invite - I
10 see Gary's hand up, invite Gary to make any comments he might
11 want on the process or the findings.

12

13 GARY KALKUT: Thank you. I think your report and the
14 level of detail and breadth that we've covered in this group,
15 you were covered in the report, reflects what has happened in
16 this committee, and I think you and Nancy have done a great job
17 in getting broad input and looking at data that is not unlike
18 data we've seen in this council before that raises more
19 questions, rarely answers questions, but we've looked at it in
20 multiple dimensions and had been able to at least have a better
21 understanding of it's limitations, the numerator and denominator
22 you raise is a significant one, and there's also the question of
23 how good the written documentation is. I think there's been a
24 real focus on even without being able to establish rates, there

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 are adverse events including death and what we need to focus on
2 is actionable interventions that can reduce that, even if we
3 can't get to a specific rate. Rates certainly would be helpful.
4 And I think the way that this has been assembled and put
5 together really is been a credit to how it's organized and at
6 least giving us a chance to get to the best conclusions we can
7 currently. So, it's been a pleasure to be on the committee. I
8 look forward to contributing to the report that we send, and the
9 conference calls are so interesting, and again, from the number
10 of disciplines and number of agencies, societies that we've
11 talked to, it's very hard to get work done during those
12 conference calls. So, again, thanks for the report. - yeah,
13 yes. I accept that, thank you. So let's move forward as you've
14 described, and again, thanks for putting such a good process,
15 comprehensive process together.

16

17 DR. GRANT: I just had a quick question; I'm wondering
18 what role infections played in the report?

19

20 JO BOUFFORD: Do you hear that question?

21

22 DR. GRANT: Did you look at that? the role of
23 infections?

24

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 JO BOUFFORD: Foster, the question was the role of
2 infections in terms of the report.

3

4 FOSTER GESTIN: So, infections and iatrogenic infections are
5 one of the adverse events that are reported. I think on that
6 relatively in terms of the specific events, I
7 think that you're asking about it's contributions, specifically,
8 to some deaths and mortality.

9

10 DR. GRANT: Yes. Yes.

11

12 NANCY AGARD: The primary cause of death since the
13 majority of the folks who die are end stage renal disease people
14 who are pretty, a lot of comorbidities, the primary cause of
15 death is cardiovascular related. Our infections that show up in
16 each of the subspecialties when you look at adverse events, not
17 just including deaths, they are also present in the vascular
18 population which the group that dies most
19 frequently. Infection is a very hard thing to track down in
20 that particular population because of the fact that they are
21 entering and exiting the healthcare system with such frequency
22 in such a short period of time. Not unusual for us to be seeing
23 these folks, they go to their dialysis center in the morning,
24 they figure out that their access doesn't work, they're at the

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 upstate surgery practice in the afternoon and they may go back
2 that evening for their dialysis or the following morning. So,
3 yes, infections do show up. They're something that's
4 particularly hard to track down in the vascular population. It
5 is something we are looking at.

6

7 DR. GRANT: Thank you.

8

9 JO BOUFFORD: Dr. Berliner.

10

11 HOWARD BERLINER: Do you have a sense of how
12 comprehensive the reporting is that is both - are you getting
13 reports from all the office-based, the regulated office-based
14 surgery practices, and do you have a sense how much office-based
15 surgery is going on that you know, should be regulated but
16 isn't?

17

18 FOSTER GESTIN: I'll start - Nancy can fill in. I mean, we
19 don't have an impression that there are lots of rogue practices
20 out there that are performing office-based surgery that are not
21 accredited. And that, based on years of not finding, not being
22 reported, the numbers that we have seem to jive with what the
23 accreditation organizations have in terms of members. I mean,
24 it's hard to know what you don't know completely but I wouldn't

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 say never, and impossible but it's not our sense that
2 that's a big issue. Underreporting of adverse events is an
3 issue. Again, the accreditation organizations putting the Joint
4 Commission, were very frank in their sense that there's likely
5 very significant underreporting of adverse events and how much
6 of that is related to the challenge of a practice and
7 performance of procedure today knowing that day 27 what happened
8 to a person and whether they were in the hospital or had
9 mortality and so on, I think that there are some legitimate
10 challenges in being able to track adverse events that are not
11 specifically focused on day of the procedure and there may be
12 educational issues and so on, and then there's I think just the
13 general barriers or unwillingness to report bad things that
14 happened, whether it's an office-based surgery from hospitals or
15 any but, Nancy do you have anything, any
16 other ...

17

18 NANCY AGARD: I absolutely support what Foster said. The
19 office-based surgery are private medical practices and in
20 reality are not regulated by us. We sort of had this quasi-
21 regulation vis-à-vis the accreditations agencies in requiring
22 that they become accredited and the requirement for them to file
23 adverse event reports, but they're not, they're not like the
24 ambulatory surgery centers to the hospitals. The primary

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 licensure oversight vehicle of the individual physician is the
2 OPMC, so because it's a private practice. As far as adverse
3 event reporting, our suspicion, our sense is that there's
4 significant underreporting but what we don't, without
5 denominators we have a hard time really getting a great handle
6 on that. Looks like Gary wants to talk.

7

8 GARY KALKUT: I would just add that I think it is, felt
9 that there is underreporting, or at least that's the sense of
10 the group, but it's not just a quantitative numerical
11 underreporting, it's the nature and the content of what's in
12 those reports. There was an early interview in this process
13 with one of the staff who reviews those reports and there are
14 many where a conclusion just can't be drawn given the data. So
15 there's two aspects to it and both I think have been addressed.

16

17 JO BOUFFORD: Foster, -- this is Jo Boufford - Foster you
18 said that you can't compare across states, but I wondered if in
19 your investigations you did identify any particular state or
20 area that has what you would consider to be a good example of a
21 system regulating an office-based surgery and what are the
22 characteristics relative to what we're doing in New York or is
23 it just unclear.

24

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 FOSTER GESTIN: That's a great question Jo. And I can't say
2 that we systematically looked across the states, but I know, and
3 I'll let Nancy answer this, I know for many years we've looked
4 to see what other states were doing in this space. I would say
5 many of them have nothing specifically around regulation or
6 citing office-based surgery at all, but Nancy, in the years
7 leading up to this is there a state or a system..

8

9 NANCY AGARD: 2013 we looked at the 50 states because we
10 were trying to look at what everybody else was doing in
11 preparation for our own regulatory, statutory amendment
12 initiative, and about half the states don't do anything, and of
13 the states that do something only about 20 percent of them
14 require adverse event reporting. Everybody defines things
15 differently. Some states don't allow anything more than local
16 anesthesia to be given in an office. Other states say the
17 minute you get to above an ASA rescore you can only give
18 moderate sedation, you can't give deep sedation or general
19 anesthesia or that have, they define office-based surgery more
20 like we define ambulatory surgery. So there really isn't a
21 great, if you talk to the accrediting agencies, they think that
22 we have the best system.

23

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 FOSTER GESTIN: We as that the nation societies and
2 associations if there's anything going on nationally that we
3 should learn from or form our process, and unfortunately they
4 didn't point us in any direction.

5

6 JO BOUFFORD: Well, thank you very much. Any other
7 questions or comments? Raises some real challenges in quality
8 improvement. Systematic quality improvement.

9 Colleagues in Albany and let me move on to Dr. Birkhead who
10 will present for the Office of Public Health.

11

12 GUS BIRKHEAD: Thanks very much. I wanted to bring to the
13 Council's attention two new data points that we have in looking
14 at disease prevention broadly in the State. The two leading
15 causes of preventable morbidity and mortality are smoking and
16 physical inactivity and overweight. So earlier this week we
17 announced continued success on the front of reducing smoking in
18 the state. Our smoking rates and the Governor made this
19 announcement drop to 7.3 percent for among high school students
20 and 14.5 percent among adults generally well below the national
21 average and the lowest points that we have seen in New York
22 since we've been measuring tobacco use. So this is really a
23 tremendous success. A tribute to a lot of work in the clinical

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 sphere and also in the public health sphere to prevent youth
2 smoking and to reduce and allow adults to quit smoking.

3 There's another data point which is not so good and that's
4 our rate of adult obesity and after a number of years of fairly
5 level rate of adult overweight and obesity we've in the last
6 year have seen an increase again, mirroring what's been seen in
7 other parts of the country as well. So, that particular public
8 health problem remains a hard nut to crack, and I think we need
9 to redouble our efforts and our thinking around how we approach
10 that from both a clinical point of view and a policy point of
11 view. Remained a pretty intractable problem. I will say though
12 on the pediatric front and we measure this through our WIC
13 program that we have had success in actually bending the curve
14 in very young children up to age five through using the WIC
15 program to encourage use of fresh fruits and vegetables and
16 other sorts of things. So we do have at that end of the age
17 spectrum have had some success but we need to go back and
18 redouble our efforts I think in the adult area.

19 Just the one other thing totally unrelated I wanted to
20 mention people have probably seen in the press reports of Middle
21 Eastern respiratory syndrome cases occurring in Korea. There's
22 an outbreak there in the healthcare system. Nosocomial or
23 healthcare related transmission from a traveler who came back
24 from the Middle East. MERS is a SARS like illness, can be quite

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 severe. I think they've had nine deaths in Korea with over 100
2 cases now reported. In the U.S. we had two imported cases in
3 2014. None to date here, but I think this really causes us to
4 really redouble our efforts in healthcare settings to
5 particularly ask about travel history and that's been
6 highlighted during the Ebola events, but I think that's asking
7 about travel history should be a routine in any acute care
8 setting and not specifically to any part of the world, but we
9 have illnesses now that could be coming from anywhere and having
10 clinicians and staff in acute care settings familiar with what's
11 happening around the world, where diseases are happening and
12 asking have you traveled in the last couple weeks I think is a
13 very key message to get across. We're expecting CDC to come out
14 with an updated alert around MERS in the next few days and we
15 will then be putting out a broad alert to the healthcare system
16 in the State making a number of points, but that being a primary
17 one. So, more to come, or hopefully not more to come on that,
18 but we do need to, at this point in the modern world we're just
19 a plane ride away from almost any disease you can imagine and so
20 getting a travel history is really the entrance point to the
21 healthcare system taking the precautions that are needed to
22 prevent transmission in the hospital and to get the patient
23 quickly diagnosed and on appropriate treatment.

24 So those are the points I wanted to raise today. Thanks.

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

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JO BOUFFORD: Dr. Birkhead.

Alright. Then lets move on to Dr. Rugge, Chair of the Health Planning Committee for his report. I have evidence here I'm going to pass it down to Colleen that my earlier script, and I showed it to him to prove that -

JOHN RUGGE: Thank you so much for this opportunity.

JO BOUFFORD: You're so welcome, always.

JOHN RUGGE: By way of historical recap I'm sure everyone remembers how we, as a planning committee and a council suffered through a comprehensive review of CON and an updating of that process followed over another year and a half by looking at the spectrum of episodic care ranging from full service EDs to off-campus EDs to part-time off campus EDs to urgent care and extending to retail clinics. We, again, made a comprehensive set of recommendations and on the executive side had a perfect score. On the legislative side we have had a no-hitter. But the legislature continues to meet and so there's always ground for hope. During the last 15 months we have taken a well deserved rest, but during that time I think we're seeing a proposed transformation of the health delivery system like never

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 before. One fueled by DSRIP with the major metric being how to
2 reduce avoidable hospitalizations associated ED visits by 25
3 percent over the next five years. In no small part with that in
4 mind are now looking at a dual kind of focus. One being
5 prompted by the fact that by the end of 2016 there's a statutory
6 requirement that we as a council update the bed need methodology
7 for long term care. This itself is a complex issue with
8 multiple type of beds but even more complex by the fact that I
9 think we're seeing integration of, in a dynamic kind of process
10 between bedded services and community services in a way that no
11 one expected migration of people out of nursing homes into
12 community bed settings. But a need for flexibility for
13 accommodation of rehab beds, high acute long term care beds,

14 It may defy prediction through a conventional methodology,
15 and I think that by looking at bed need methodology will be open
16 up the whole arena of how do we protect post-acute care services
17 at a time when we're trying to reduce acute care, and yet face a
18 state with enormous diversity in terms of urban versus rural
19 populations, communities with very different payer mix, and very
20 different expectations. So that this is no small undertaking
21 and one that is both arithmetically complex but also defies any
22 kind of simple arithmetic at all. In addition, there's another
23 focus, we are clearly aware that avoidable hospitalizations is
24 not a problem for everyone. In fact, it's primarily a problem

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 for people with very complex interlocking dual diagnoses. Be
2 they related substance abuse or mental health issues combined
3 with medical issues. And with that in mind are looking at
4 especially through the DSRIP process and the regulatory waivers
5 have been extended for merging and morphing services across
6 sectors and across agencies at, once again, integration. This
7 time integration of behavioral health with primary care and
8 medical issues. Understanding that there are a variety of roots
9 toward integration and merging models that are being allowed
10 through time-limited waivers have been extended by the
11 legislature and the Department to the PPS, 25 PPSs around the
12 State. There will be a need to understand which are working and
13 extend this council into permanent not waivers but permanent
14 adjustments in the regulatory system. I think in awareness on
15 the part of the committee that we cannot look to the regulatory
16 system inspiring or incenting change, but instead must be used
17 to support the kind of initiatives that are being undertaken in
18 the field. With us yesterday we had a committee meeting to open
19 up the issues and were favored by the attendance of Dr. Seterer
20 of OMH as well as by leadership with Dan Sheppard and staff from
21 DOH and I think is a nice example of how we're now extending our
22 reach from one department to indeed all of state government to
23 address issues that are of paramount importance in terms of
24 being able to and succeed in the transformation

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 that are being proposed. So we expect to be back in a year-and-
2 a-half - actually less than that. The schedule is front-loaded
3 so that the principle work and attention over these next few
4 months will be on the side of the long term care issues and the
5 bed need methodology, so no later than January of next year, our
6 policy recommendations are in place so that the Department can
7 proceed with the technical changes based upon those policy
8 insights that we as a committee and a council hope to generate.
9 Concurrently we'll be looking at BHS primary care intervention,
10 especially to my mind looking across the state at those models
11 which seem to be working and taking effect and then go full bore
12 beginning early next year to understanding of how we need to
13 adjust the waiver process. So, fasten your seatbelts and all
14 that. Thank you.

15

16 JO BOUFFORD: Questions for John? I'd like to raise the
17 question maybe having something added to your, at least, agenda
18 that we would be tracking is I think this development of
19 advanced primary care and the stages of advanced primary care
20 and the stages of advanced primary care, again, open up the
21 question of the physician practice which came out
22 very clearly in a lot of the discussions you had in terms of
23 figuring out how to define these various forms that have taken
24 route across the State, and it just seems to me all of that

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 really is part of a piece, and we really have to keep it in our
2 sites, what you've tried to do where it may or may not be moving
3 with the legislature and then how to think about them together
4 conceptually.

5

6 JOHN RUGGE: Absolutely. Excellent point. The
7 integration of behavioral health primary care can really only be
8 done through advance primary care. I mean, there's no way to
9 integrate a conventional or old fashioned primary care practice
10 because that practice is so consumed with the business of doing
11 what's always done. And here we are trying to break the mold
12 and do something very different, so, that is yet another aspect
13 of what it means. I think at the heart of advanced primary care
14 is advancing from conventional medical diagnosis to a look at
15 the whole person and including behavioral and psychological
16 issues in a very comprehensive way.

17

18 JO BOUFFORD: Well, and I think we're also hoping that the
19 population health perspective, looking at other determinants of
20 health for the most advanced stages of primary care will be part
21 of what gets defined, so this whole look at this sort of
22 evolution of more advanced definitions of obligation and
23 responsibility.

24

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 JOHN RUGGE: So you really are trying to sink our boat.

2

3 JO BOUFFORD: No, no, no! As usual we as a Prevention
4 Agenda population health will toil away looking at how to put
5 that in, but seriously I think that to the degree these are all
6 happening, these are developing at the same time and you're
7 going to be taking a look like that I think it'd be helpful in
8 thinking about how to make sure they're aligned with what's
9 emerging from the APC definitional process.

10

11 JOHN RUGGE: I think that's absolutely right. And as you
12 start with any of these key issues that quickly expand and
13 everything else, I mean for one the regulation of these new
14 models is only going to have any meaning if there's also
15 reimbursement of these new models, and so at the same time we're
16 looking at how to categorize and how to promote the behavior. I
17 think we're going to have to look at what is the appropriate
18 financial support necessary to affect them across the State and
19 I would content that validity is better prepared or better
20 situated or better populated than this council, because we do
21 have, indeed, representatives and experts from each of these
22 fields and many of us are living the life and are experiencing
23 it firsthand. And so this is my plea to the Department and to
24 the executive to support the effort and to help us to succeed in

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 getting our arms around some very, very difficult questions that
2 are hard to do, and I think that the PHHPC has an important role
3 that it can play.

4

5 JO BOUFFORD: Mr. Robinson.

6

7 PETER ROBINSON: So, actually Dr. Rugge, I'm going to
8 direct this question as a followup to your comment to whoever in
9 the Department might appropriately answer it, but the
10 recommendations that came out on episodic care that Dr. Rugge
11 referred to earlier. Where does the Department and the
12 executive stand on this? I mean, it's unclear whether there's
13 really been a strong push to move this through the legislature
14 or for reasons that are perhaps beyond the purview of this
15 council it's not something that's a high enough priority at this
16 point to push, but is there a plan to move this forward? Or are
17 we going to live with the status quo for a while longer?

18

19 LISA ULMAN: Hi, it's Lisa Ulman with the Department. I
20 think Dr. Rugge had mentioned those matters which were
21 administrative in nature have or are well underway
22 for those legislative components. I think that they were very
23 much high priority for the Department and for the executive.
24 That's evidenced by the fact that they were in the executive

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 budget. I do think we have to step back and regroup and see
2 where we are at this stage, but we continue to believe that
3 those were very important items, and we do want to step back and
4 take a look at where we are and see where we go next. So, I
5 think we'll have to follow up with you on that, but they are
6 very important items to us.

7

8 JOHN RUGGE: One suggestion Lisa, is members of the
9 council have never themselves been mobilized by the Department
10 to try to explain the rationale and if anything to explain how
11 more relevant or important they may be now than even two years
12 ago or a year and a half ago when we came out, the number of
13 retail clinics, the proliferation of urgent care clinics, the
14 number of out of state providers coming in suggest that we were
15 prescient in terms of considering the issues and before the cat
16 is entirely out of the bag this would be a good time to go back
17 and make a full core press.

18

19 JO BOUFFORD: Mr. Robinson Ms. Hines.

20

21 VICKY HINES: Just to comment on the long term care
22 challenge and the analysis, I agree with you. I
23 think it might defy prediction. But I think one of the things I
24 would just encourage the group to think about are the unique

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 workforce challenges that I think are different from region to
2 region so our ability to continue to move folks out of
3 residential and facility-based settings is really often
4 dependent on whether or not there are sufficient numbers of both
5 paid and unpaid caregivers, and I think in certain parts of the
6 State that is a huge challenge. So I just encourage that that
7 piece be an integral part of your planning.

8

9 JOHN RUGGE: And one more plea, last time around I know
10 the planning committee was successful in no small part because a
11 number of people who were not originally on the committee
12 decided to join in. At this point I think we have some real
13 contributors on the council who have not yet been a part of the
14 committee and I'm hoping that Mr. Kraut would be open to
15 expanding the membership of the committee. We could really use
16 the help and the force of arms we have here. Great.

17

18 JO BOUFFORD: If I could just, the magic word 'workforce'
19 came up, so I just wanted to raise the issue similarly in the
20 area of primary care. I know, I think it's one of the
21 committees that's supposed to be put together, and again, it
22 deserves attention or perhaps we can get an update on the plans
23 for that. Jeff and I have talked a little bit about trying to
24 have sort of regular updates on the many of the moving parts

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 around reform for the members of the council as we do our work
2 along the lines of what John's talked about, but I think this
3 workforce issue is a really important one for long term care as
4 well as for primary care.

5 Did you have another? Did you have any? Any other
6 comments, questions for John? OK. Thank you very much. Thank
7 you colleagues in Albany. And we now move on to Dr. Gutierrez
8 on committee on Codes, Regulations, and Legislation.

9

10 ANGEL GUTIERREZ: Thank you Dr. Boufford. Good morning.
11 My name is Angel Gutierrez, I'm chair of the Codes, Regulations,
12 and Legislation Committee. We met on May 21 to review one
13 proposed regulation which was presented for information. It
14 dealt with computer tomography quality assurance. The proposed
15 regulations will amend part 16 of 10NYCRR ionizing radiation to
16 include requirements with the use of computer tomography CT or
17 CAT on humans within New York State including New York City.
18 The New York City Department of Health and Mental Hygiene
19 regulates the use of ionizing radiation within the five
20 boroughs. This proposed regulation will provide quality
21 assurance and safety standards that directly address CT physical
22 and operational parameters. The proposed regulation would also
23 require accreditation by a nationally recognized accrediting
24 body - come on computer - that is acceptable to the Department

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 which would be consistent with the accrediting bodies at the
2 Center for Medicare and Medicaid Services accepts. At the
3 meeting committee members discussed the utility and practicality
4 of documenting and sharing dosage information with patients and
5 how such a requirement would fit into this proposal or a
6 proposal in the future. The Department indicated that the
7 preference was to move forward with the current regulatory
8 proposal but will consider the issue further during the public
9 comment period as suggested by the committee. This proposal was
10 published in the state register on May 6, 2015 and is currently
11 in the later part of the 45 comment period. Since this was
12 before the committee for information. Mr. Damiani from the
13 Department of Health is available to answer any questions from
14 the council members in Albany.

15

16 JO BOUFFORD: Any questions about this? Alright. Lets
17 move on then. And over to Mr. Robinson and the Committee on
18 Establishment and Project Review.

19

20 PETER ROBINSON: Thank you Dr. Boufford. As Dr.
21 Boufford mentioned, we are going to go through this calendar in
22 batches and committee members if, council members if any of you
23 do want to pull anything out even at the last minute, please
24 signal your interest in doing that and we'll be glad to do it.

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 Broadly the applications will be in one large set of
2 batches, one batch on construction and then a series of
3 categories under establishment and construction. So we'll get
4 right into it and by putting on my glasses so I can see what I'm
5 doing. And, begin by introducing application 142231C, Charles
6 T. Citron Healthcare Center, Inc., in Oneida County. The
7 application is to certify 32 additional RHCf beds to develop a
8 specialty unit for individuals with neurological disorders.
9 Both the Department and the Committee recommend approval with
10 conditions and contingencies, and I so move.

11

12 JO BOUFFORD: All in favor?

13 [Aye]

14

15 PETER ROBINSON: Thank you. We are now done with
16 construction and on to establishment and we'll begin with
17 category one; first with applications for dialysis services.
18 151005E, Vestal Healthcare II, LLC in Broome County which
19 establishes Vestal Healthcare II, LLC as the operator of a renal
20 dialysis diagnostic and treatment center, and two dialysis
21 extension clinics currently operated by Vestal Healthcare LLC.
22 That application was recommended for approval by the Department
23 with conditions and contingencies as well as the Committee. In
24 addition we have an application for residential healthcare

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 facilities to establish 142102E, NHRC Acquisition LLC d/b/a
2 Humbolt House Rehabilitation and Nursing Center in Erie County.
3 And this is to establish NHRC Acquisition LLC as the new
4 operator of the facility located at 64 Hagar Street, Buffalo
5 that is currently operated by Niagara Lutheran Home and
6 Rehabilitation Center. Here again, both the Department and the
7 Committee recommend approval with conditions and contingencies.

8 Application 142221E, Newfane Operations LLC, d/b/a Newfane
9 Rehabilitation and Healthcare Center in Niagara County, and this
10 is to establish Newfane Operations LLC as the new operator of
11 Newfane Rehab and Healthcare Center which is located on 2709
12 Transit Road in Newfane, and that application results in
13 reduction of 10 certified beds. Again, the Department and the
14 Committee recommend approval with conditions and contingencies.
15 Also application 151026E, Katterskill Operating LLC d/b/a Green
16 Meadows Nursing and Rehabilitation Center in Green County, and
17 this established Katterskill Operating LLC as the new operator
18 of the facility which is located at 161 Jefferson Heights in
19 Catskill and that's currently operated at Katterskill Care
20 Skilled Nursing and Rehab. Once again, Department and Committee
21 recommend approval with conditions and contingencies. And the
22 last one in this batch is 151083E, Allure SJA LLC, d/b/a St.
23 Joachim and Anne Nursing in Kings County. And this is to
24 establish Allure SJA LLC as the new operator of the 200 bed

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 facility located at 2720 Surf Avenue in Brooklyn. Once again
2 Department and Committee recommend approval with conditions and
3 contingencies, and I move that batch.

4

5 JO BOUFFORD: Any discussion? Yes, Charles.

6

7 CHARLIE ABEL: Just one note on, this is on 142102, Humbolt
8 House, Jeff Kraut had asked for information on the use sale of
9 proceeds. A letter was sent to PHHPC members related to that
10 and from the Department's perspective it looks appropriate.
11 Just wanted to bring that to everyone's attention.

12

13 JO BOUFFORD: OK, any other questions, concerns, comments?
14 All in favor?

15 [Aye]

16 Opposed? OK. Motion has passed.

17

18 PETER ROBINSON: Thank you. We now have a series of
19 certificates. The first is certificate of incorporation for
20 Cuba Memorial Hospital Foundation Inc., for fundraising. The
21 second a certificate of incorporation for the Osbourne
22 Foundation, also for fundraising. A certificate of
23 incorporation for the Brookdale Health System Foundation also
24 for fundraising. A certificate of amendment of the certificate

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 of incorporation for ECMC Lifeline Foundation, Inc., that is a
2 name change, and a certificate of dissolution for Threshold
3 Center for Alternative Use Services Inc. All of these are
4 recommended for approval both by the Health Department and the
5 Committee.

6

7 JO BOUFFORD: Motion for approval? Second? Any comments?
8 Concerns? All in favor?

9 [Aye]

10 Opposed? Motion is passed.

11

12 PETER ROBINSON: This is the second category in this
13 larger batch and this is an application which is recommended for
14 approval, but with a council member's recusal, in this case Dr.
15 Martin.

16 Dr. Martin has left the room, and this is a restated
17 certificate of incorporation for the Mt. Sinai Medical Center
18 Inc. It amends the corporate purposes to reflect fundraising for
19 four hospitals. We noted Dr. Martin's recusal and his
20 departure, and this has the Department's and the Committee's
21 recommendation for approval, and I so move.

22 [Second]

23

24 JO BOUFFORD: Any discussion? Comments? All in favor?

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 [Aye]

2 Opposed? No, Ok. Approved.

3

4 PETER ROBINSON: Ok. Welcome back. This next batch
5 also involved applications recommended for approval and I will
6 go through this first set of, this is home health agency
7 licensures and I will merely read the numbers of each of the
8 licenses here, and then run through motions. So, be patient.

9 2228L, 2336L, 2400L, 2160L, 2302L. 1724L, 2333L, 2454L,
10 2210L, 2282L, 2418L, 2344L, 2384L, 2361L, 2305L, 2307L, 2396L,
11 2394L. 2450L, 2192L, 2594L, 2388L, 2374L, 2306L, 2434L, 2445L,
12 2203L, 2126L, 2329L, 2399L, 2430L, 2595L, 2597L, 2601L, 2607L,
13 2615L, 2568L, 2552L, 2190L, and 2451L. And this recommendation
14 comes with approval with a contingency from the Department. The
15 committee level, it was approval with a contingency that was
16 recommended similar to the Department's but with one member
17 abstaining. I believe that was Ms. Hines. And I make the
18 motion to approve these applications.

19

20 JO BOUFFORD: Alright. Is there any discussion for this
21 group of applications? OK. All in favor?

22 [Aye]

23 Opposed? No. The groups pass. Ms. Hines abstains.

24

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 PETER ROBINSON: This next category includes two
2 applications but I think I'm going to take them individually
3 because we have an interest in one and a conflict and recusal in
4 the other. So let me first bring up Home Health Licensure
5 2270L, Caring Hearts of Rochest, LLC, doing business in Monroe,
6 and Wayne Counties with an interest declared by Ms. Hines, and I
7 recommend this for approval as does the Department and the
8 Committee.

9

10 JO BOUFFORD: Any discussion of this item? Any comments?
11 All in favor?

12 [Aye]

13 Opposed? Motion carries.

14

15 PETER ROBINSON: So Ms. Carver-Cheney -

16

17 JO BOUFFORD: Ms. Hines is abstaining.

18

19 PETER ROBINSON: Ms. Carver-Cheney is a recusal for this
20 application.

21

22 JO BOUFFORD: Yeah, you leave the room. That's great.

23

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 PETER ROBINSON: You're not alone. It happens to
2 everybody. Only the best. Correct.

3 OK. So this is application 2177L, NYC Home Healthcare LLC,
4 doing business in Kings, Queens, New York, Bronx, and Richmond
5 Counties. We know the conflict and recusal by Ms. Carver-
6 Cheney. The Department recommends approval with contingency and
7 the committee does as well with again one member abstaining.
8 And I so move.

9 [Second]

10

11 JO BOUFFORD: Any comments? Discussion of this item? OK.
12 All in favor?

13

14 [Aye]

15 Opposed? Any opposed? And recusal by Ms Hines
16 (abstention) I'm sorry. Abstain. She's still here. Thank you
17 very much. Motion carries.

18

19 PETER ROBINSON: So with that very exciting process now
20 concluded I turn the next part of the report over to Dr. Kalkut
21 and both Ms. Hines and I will recuse ourselves from the next
22 item.

23

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 GARY KALKUT: Thank you. Ms. Hines and Mr. Robinson are
2 leaving the room. This is an application for ambulatory surgery
3 centers. 151008B, Pittsford Pain Center LLC, in Monroe County.
4 This is to establish and construct a single specialty ambulatory
5 surgery center for pain management services at 727 Linden Avenue
6 in Pittsford. The Department recommended approval with
7 conditions and contingencies and an expiration of the operating
8 certificate five years from the date of issuance. The
9 establishment and project review council made no recommendation
10 on this meaning not approved, not disapproved with two members
11 abstaining. And I'll turn it over to Mr. Abel to discuss the
12 considerations that the project review committee and how the
13 Department has approached this.

14

15 CHARLIE ABEL: Thank you. So, this is an ambulatory surgery
16 center application for brand new center specializing in pain
17 management, and the facility falls within the Finger Lakes HSA
18 planning region. And a statute requires that an HSA, and the
19 Finger Lakes is the only one that is active, has, it is the
20 responsibility of PHHPC and the commissioner to take into
21 consideration the HSA recommendation. And while we, the
22 Department, is recommending approval because the application
23 meets the statutory review criteria for CON approvals, HSA,
24 Finger Lakes HSA has recommended disapproval, and disapproval

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 based on need. The need - we had worked with an discussed with
2 the HSA prior to bringing this to the committee meeting and the
3 HSA made a very good presentation at the committee meeting in
4 support of it's disapproval. And we completely respect the
5 HSA's position and the real reason for the disjoint which is
6 very rare, you know, we do take into consideration the HSA's
7 recommendation in our analysis, and it is very rare that we
8 disagree, but the basis for the disagreement is that the need
9 methodology that the Department is required to use is concerns
10 different criteria, it involves different criteria than the HSA
11 and in fact, the HSA can use whatever criteria - its not bound
12 by the regulations as we are. And in the regulations for need
13 as they exist in the ASC, for ASCs, and we've discussed this
14 periodically over the years because of the sensitivity of
15 ambulatory surgery center applications that come before this
16 council and the predecessor council, is not population-based,
17 it's not comparative, doesn't require a comparison of existing
18 providers. It is really, it really boils down to has the
19 applicant demonstrated that the surgeons to perform surgeries at
20 this center that they have sufficient experience and their
21 utilization projections are sufficient such that the revenues
22 derived from those procedures would be sufficient to offset the
23 ambulatory surgery centers expenses. That was changed from a
24 population-based need methodology back in 1998 because at the

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 time New York State had very few ambulatory surgery centers and
2 it was believed that the regulations were overly restrictive,
3 and by comparison with other large states we clearly had very
4 very few. We had less than 50 ambulatory surgery centers at the
5 time. We still have, despite all the ambulatory surgery centers
6 that have come before this council and probably contrary to some
7 beliefs out there, we have relatively few ambulatory surgery
8 centers in operation now. We 140 across the
9 state. We do have a number in the pipeline that they're
10 resolving contingencies, they may be under construction and the
11 like, but you know, one could argue that we still want to
12 encourage even in the DSRIP world ambulatory surgery centers
13 that are freestanding separate and apart from hospitals. We
14 clearly want to be sure that more complex surgery procedures are
15 being done in a regulated setting rather than office-based
16 surgery. We recognize office-based surgery has a place in the
17 healthcare spectrum and clearly hospitals do. The basis for the
18 HSA disapproval is just to summarize real quick and I won't
19 overly make their point because you've got documents in front of
20 you, but they, the HSA has said that these pain management
21 services are available currently in hospitals in the region and
22 in office-based surgery settings. Office-based surgery
23 settings, non-certified settings. We don't dispute that
24 information. We are, 'we' the Department is bound by the

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 statutory criteria as it exists and the statutory criteria for
2 need and character and competence and financial feasibility are
3 met with this application. That being said, it's been since 1998
4 we've had this need methodology on the books, and this year
5 we've committed to review all of our need methodologies to
6 consider what needs updating and does not need updating, and
7 we've heard Dr. Rugge and we are very committed to working with
8 the planning committee to bring through this body updates on
9 need methodologies, released reassessments of the need
10 methodologies for nursing home need methodology, hospice, CHHAs.
11 We know that just from the periodic questions related to
12 ambulatory surgery center need methodology, we want to be able
13 to look at that. And so, you know, we are committed to do so.
14 We have a full plate. I think we probably have most pressing is
15 the nursing home need methodology and so ambulatory surgery
16 centers from our perspective has not yet created a pressing
17 problem that should get bumped up before some of the other need
18 methodologies. Still, we're going to do what we can to run
19 parallel processes on all of these things.

20 So we are content. 'We' the Department. We are satisfied
21 with our review of this project. We are content to continue to
22 recommend approval of this project. We believe that the
23 applicant has demonstrated that it deserves an approval by
24 virtue of all of the CON review criteria for ambulatory surgery

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 centers, and we present this project for your consideration with
2 our approval.

3

4 JO BOUFFORD: Thank you. Dr. Kalkut, I'd like to have a
5 few moments for people, members of the committee to speak if
6 they'd wish.

7

8 GARY KALKUT: Sure. I'd just like to make a motion to
9 approve before questioning and then we can go

10

11 JO BOUFFORD: Is there a second? Thank you. Fine. All in
12 favor. So we'll have the discussion now. So are there members
13 or questions from the council or other members of the committee?
14 I'm advised that we have 14 council members present and we need
15 13 to vote. The abstention question is an issue. So let's talk
16 about what we need to talk about. Mr. Fassler.

17

18 MICHAEL FASSLER: Just a question for the Department.
19 And again, in this case, we have physicians moving
20 from office-based to surgery center. In the Department's view,
21 is a pain procedure more appropriate in a surgery center versus
22 office center? Office-based. That was one of the reasons you
23 want to move in that direction.

24

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 CHARLIE ABEL: I'll - I know Chris has a comment on this
2 but I'm going to say it really depends upon the nature of the
3 service that's being provided. You're going to have certain
4 procedures that are more invasive than other procedures with
5 respect to managing pain and it's really up to the physicians
6 discretion and professional judgement as to what setting is best
7 for the procedure. At the establishment and project review
8 committee the applicant I think made some comments specific to
9 that where the extra precautionary conditions and safety,
10 patient safety conditions that are present in an ambulatory
11 surgery center were a consideration in some of the procedures
12 and where they should be performed.

13

14 CHRIS DELKER: Yeah, I think further to Mr. Fassler's
15 question, we really can't get into the business of deciding the
16 setting that's appropriate for any am-surg procedure. That
17 would just be almost regulating medical practice in a way. What
18 we go by is are the procedures being proposed considered
19 surgical, usually by Medicaid and Medicare and the majority of
20 pain management procedures being proposed by this applicant are
21 reimbursed by Medicaid under the products of ambulatory surgery.
22 So that's generally what we use as a guide and occasionally we
23 ask for medical input as well from you know, experts we might
24 find on this council or elsewhere.

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1

2 JO BOUFFORD: The members of the committee might wish to
3 comment. We had abstentions from Dr. Brown and Dr. Martin. I
4 don't know if you'd like to talk or what your thoughts are about
5 this.

6

7 LAWRENCE BROWN: THank you very much. Lawrence Brown,
8 first time speaking today. That's an accomplishment, I must
9 confess. I guess the thing for me was the conflict, and I
10 appreciate the Department sharing and providing clarity with
11 respect to it and I certainly can understand that two well
12 meaning and well informed entities may come to different
13 decisions with respect to an application. And that to me was I
14 must confess one of the things that was somewhat troubling. In
15 a way, I guess partly from Brooklyn, I'm a community man and I
16 tend to give favor to local issues and local guidance, but then
17 I do understand the State has a responsibility to in fact look
18 at all the citizens in the State of New York. So I appreciate
19 that view too. I was really mixed on that basis. I think I am
20 clearer now, so I will not have an abstention next time.

21

22 JO BOUFFORD: Dr. Martin, would you like to comment?

23

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 GLENN MARTIN: So, I mean, I was conflicted because I,
2 again, I was sort of deferring to the people who were on the
3 ground locally and know what they're doing and actually are one
4 of the, seem very confident, have a long history of doing this,
5 did a good analysis and the like. I also understand the
6 constraints of what the State's operating under when they have
7 to make these recommendations. I have to say though that I
8 suspect I'm going to vote in favor of it if only because I'm
9 kind of - well, one because I kind of think I've got to, and
10 two, I am intrigued to see whether or not that group has the
11 clout they think they do in terms of the insurers and major
12 players because they basically think they're going to make it
13 financially infeasible if they do it. So it's one of those rare
14 situations where the market might actually be intriguing to
15 watch. So it might be a public health experiment in my eye,
16 which would not be a good point to vote for it, but the fact is
17 I think they do meet the statutory requirements to allow it to
18 be established with all due difference to the excellent analysis
19 and probably the more accurate analysis being done by the folks
20 in that health planning agency.

21

22 JO BOUFFORD: Dr. Kalkut.

23

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 GARY KALKUT: Yeah, the outcome on a policy basis of
2 relooking at a need methodology that is 17 years old I think is
3 a very important piece of this and the individual again caught
4 in that circumstance right now I think is another point, but
5 that to me is the larger issue.

6

7 JO BOUFFORD: I think we are, we are to take the advice of
8 the local HSA but not be bound by it, so obviously the state
9 statute would presumably be primary, is that right counsel? In
10 terms of our actions?

11

12 JIM DERING: Correct. We're operating under the state
13 statute and our regulations.

14

15 JO BOUFFORD: Any other questions or comments on this?
16 Yes, Dr. Rugge.

17

18 JOHN RUGGE: I think this is one of those cases where
19 difficult cases make either good or bad law, but I think the
20 committee discussion does several things. One is that the
21 standard for financial feasibility has really become irrelevant
22 in we're dealing with a broken kind of regulatory structure, in
23 this case, one that's least irrelevant. Another key point was
24 that clearly there is discretionary prerogative for this council

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 to make a binding decision based upon the fourth criteria that
2 being 'other.' And to my mind what this boils down to is there
3 clearly seems to be a sufficient capacity within the community.
4 The argument of the applicant is that capacity has splintered
5 among multiple institutions and we'd have doctors going from
6 hither to thither in order to meet the needs of their patients.
7 on the other hand in the office-based setting, they were already
8 able to do that service, and so it's unclear as to why they need
9 to go hither to, they're already doing it. And then finally
10 financial feasibility may boil down to whether indeed the Finger
11 Lakes process will preclude insurance reimbursement making all
12 this moot. Based on that, my feeling is to support the
13 judgement of the HSA and that they are on the ground, they are
14 local, they know the community, they're dealing with both payers
15 and providers, and I don't think that we as a statewide entity
16 have the need to override that local judgment.

17

18 JO BOUFFORD: Is there any issue about us going in that
19 direction? That was the nature of my question was, is that an
20 option available to us?

21

22 JIM DERING: I think the HSA recommendation is just that, a
23 recommendation, and as Charlie has outlined in his memo, the
24 recommendation is inconsistent with our statute and our process

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 respectfully so. So, members are free to vote up or down, but I
2 think we should really follow our state process.

3

4 JO BOUFFORD: Hopefully. Any other questions or comments?
5 Alright. All in favor? Should we have our hands raised? All in
6 favor of the motion raise their hands? Any opposed? OK. We have
7 a - any abstentions? Continuing abstentions? OK. Doesn't pass.
8 13 affirmative. So it doesn't pass. So, what does that mean
9 exactly at this point then.

10

11 GARY KALKUT: Is there another motion? Does anyone on the
12 council, would that be the next step?

13

14 JO BOUFFORD: OK. Dr. Martin.

15

16 GLENN MARTIN: I believe the proper thing is to unlimbo it
17 would be to make a motion to disapprove the motion.

18

19 JIM DERING: Could I speak on that for a second? So, in
20 terms of the unlimboing an application, it seems to be something
21 that's occurring you know, lately. It's happened two times.
22 Prior to that it happened, it hadn't happened for about 10 years
23 I think. Just want to throw out one consideration and I don't
24 know if the program folks want to speak to it. One option with

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 this is bringing it back another time when there are more
2 members here. I'm just concerned about the frequency, the
3 unlimboing is certainly a good tool, you know, if there's going
4 to be you know, if the council won't be able to reach a decision
5 up or down. I'm just concerned with regard to how many matters
6 or potentially sent to hearing and the resource issues in
7 connection with that. So if I could—

8

9 CHARLIE ABEL: Yeah, I think Jim expressed the concern
10 pretty well. It's - disapproving a project just to allow it to
11 go to fair hearing I'm not sure is a good strategy. The, and we
12 certainly can with, actually if you do nothing further in terms
13 of motions or votes, as no recommendation, we in all likelihood
14 would bring this back next cycle. Although we would appreciate
15 from the group if there is additional information that you
16 believe would be helpful in order to make an informed decision,
17 I'd be happy to hear that so that we can reach out to the
18 applicant and do that. I shouldn't say, just so that everyone
19 understands as part of the process, if this project was approved
20 by PHHPC, granted we don't have a full complement of PHHPC
21 members today, but either today or some other future date, the
22 HSA does have article 78 hearing rights. They can request a
23 hearing on their own if they feel so strongly about this
24 project. And the - and I, at it's very core this gets more

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 personal than from the Department's perspective. You know, for
2 folks who believe that the project should be approved to vote
3 for disapproval, if that's the alternative motion, just to move
4 the project along the process, to me doesn't feel right.

5

6 JO BOUFFORD: I wonder if I could suggest, I just was
7 getting the numbers, so the vote here was 11-3. We need 13 to
8 be definitive in one way or another, and we have six individuals
9 absent. So, I'm going to suggest if we wait until the next
10 cycle and why wouldn't that be the case. I don't know what we
11 have to do officially to do that. If there's no action to come
12 back to the next cycle, and perhaps people can be more informed
13 or others who are not here. NO? Why not? Why is that something
14 that's - I mean, not bad idea or good idea, but is it not
15 possible?

16

17 HOWARD BERLINER: But the thing, I mean,

18

19 JO BOUFFORD: Dr. Berliner.

20

21 HOWARD BERLINER: I'm not sure why it would come back at
22 all. I'm not quite - why don't we come back at the next cycle.

23

24 JO BOUFFORD: Because it's not been decided.

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

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CHARLIE ABEL: This is an establishment -

HOWARD BERLINER: We decided not to approve it.

JO BOUFFORD: No, you didn't approve it, but it would be, it's now sitting there are no recommendation bucket. So then presumably it would need to come back again to get an action, unless we decide to act on to disapprove it which would be a motion in there with some discussion as to whether that was advisable or not as a strategy, as opposed to having it come back the next time.

HOWARD BERLINER: But why would it come back?

JO BOUFFORD: Because there's been no action, my understanding is there has to be some action one way or another, right?

HOWARD BERLINER: But no action is ultimately no action?

JIM DERING: There needs to be 13 votes up or 13 votes down in order for there to be a determination.

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 JO BOUFFORD: He's asking why would it come back at all?
2 Would it just hang there forever if we haven't acted?

3

4 JIM DERING: Correct, so -

5

6 JO BOUFFORD: I understand, but my understanding of advice
7 was that if we don't act today it could come back for a cycle,
8 to the next cycle for discussion and consideration and we have
9 six members who may be there and there might be an opportunity
10 for a vote one way or another. So that's the reason for that.

11

12 JIM DERING: Just to get into the limbo issue a little
13 more, so, in order for there to be a right to challenge a
14 determination there needs to be an affirmative vote up or down
15 of 13 members, majority of the council, and so recently there
16 have been two circumstances where the council wasn't able to get
17 an affirmative vote of 13 up or down, and in order to avoid
18 having the application stay in limbo, so in order to avoid a
19 scenario where the applicant can't exercise their legal rights
20 and the application is in essence floating out there, the
21 council had decided to deny those applications to let them go to
22 a hearing. So, to talk about that a little bit more, so in
23 essence what we have in those circumstances is it going to an
24 administrative law judge and then the administrative law judge

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 in some regards making the determination. In order for there to
2 be administrative hearing, that involves the preparation of
3 witnesses, that involves a hearing that in essence is like a
4 trial, but before an administrative law judge. That takes a lot
5 of resources on the part of the Department and on the part of
6 the applicants. So, to use that as a mechanism when there isn't
7 an affirmative vote is, can present issues from the Department's
8 standpoint. If there was a circumstance where after many, many
9 good efforts or after good efforts, it just can't get there then
10 OK, maybe that's considered. Here where we have a situation
11 where six members aren't here and we only have 13 members here,
12 to vote to send that to a hearing, it just seems problematic
13 from my standpoint.

14

15 JO BOUFFORD: Ok, Dr. Berliner, then Dr. Gutierrez, then
16 Dr. Martin.

17

18 HOWARD BERLINER: It's not as if anyone wants there to be
19 an administrative law hearing. It's something that in the past
20 when we've done it it's been in theory to benefit the applicant
21 so that they can pose a challenge. But the idea that an
22 application would just keep coming back until it got a
23 sufficient number of votes to pass seems a little bit -

24

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 JO BOUFFORD: That wasn't exactly my purpose. I mean, my
2 purpose was just to say that we have six people missing and it's
3 not like it's a 5-4 or 6-5 with a highly contentious discussion.
4 That wasn't the purpose. I was just suggesting we might recycle
5 rather than disapproving and starting a process.

6

7 HOWARD BERLINER: I understand, and it just seems, I
8 mean, so if there were only three people missing, would that,
9 and it still failed, would that - what's the number that -

10

11 JO BOUFFORD: OK, let's hear, can we - you want, counsel,
12 want to say something? I was going to hear from other people
13 and come back again.

14

15 JIM DERING: If you don't mind if I could, so I think
16 historically and Coleen and Lisa could probably speak to this
17 better than I can, but I think the idea of having an application
18 come back to revote is not something that's new. I think it's
19 something that's very typical. I think what's atypical is
20 voting to send it to a hearing.

21

22 JO BOUFFORD: Doctor, could we just go in order, if you
23 don't mind. Dr. Gutierrez.

24

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 ANGEL GUTIERREZ: Dr. Berliner already eloquently
2 expressed what I wanted to say, however semantically the
3 creators of limbo, back in the medieval times have recently
4 decided a limbo no longer exists. So we need to come up with
5 some other semantic way of saying what we are trying to say.

6

7 JO BOUFFORD: Dr. Martin then Dr.

8

9 GLENN MARTIN: I have no particular expertise in limbo. My
10 tribe got through millennia without it. But I'm just concerned
11 procedurally, what are we doing? Because I would be happy to
12 postpone it but it already seems to me it has been addressed and
13 is off the agenda. So It's unclear to me what's actually
14 happening.

15

16 JO BOUFFORD: Why has it been - that part -

17

18 GLENN MARTIN: Well, we voted on it, we took action. I
19 mean, it may have failed, but -

20

21 JO BOUFFORD: The action is no recommendation. Right?

22

23 CHRIS DELKER: You didn't take action because there was no
24 decision reached.

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

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JO BOUFFORD: the decision was that we didn't have enough votes to pass it.

JOHN RUGGE: Just point of information,

JO BOUFFORD: Let me see if he's finished with the comment.

GLENN MARTIN: I'm not an expert in parliamentary procedure or anything else, it just seems to me that it failed. I don't know who would put it on the agenda for next month. Sounds like the State was going to do that, but that's not necessarily what happens automatically. So, I'm not sure -

JO BOUFFORD: Mr. Dering, do you want to clarify that question? It's a procedural question.

JIM DERING: In order for there to be an action, there have to be 13 votes. So, up or down. So if there aren't 13 votes, there's no action.

GLENN MARTIN: Alright. But I guess -

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 JO BOUFFORD: He's asking where does the decision come to
2 bring it back if that is an option? Would we need to affirm
3 that or would that be something the Department do? That's
4 really what you're asking? Let me ask Dr. Rugge to make his
5 comment and then Charlie.

6

7 JOHN RUGGE: Just a point of information, who sets the
8 agenda? Is it the commissioner or is it the chair of the
9 council? I think that's probably not our job. Whoever sets the
10 agenda needs to decide whether to bring it back or not. Who
11 does set the agenda?

12

13 CHARLIE ABEL: The commissioner does set the agenda. And
14 to answer Dr. Martin's question we, it is not automatic that a
15 project that receives no recommendation come back the next
16 cycle. And this has happened numerous other times when there's
17 been no recommendation. And the project remains a pending
18 project for us if it's an establishment project, because the
19 commissioner cannot be the decider on establishment projects.
20 This body is. If it does not make a decision as to approval or
21 disapproval, then it remains a pending project for us. If there
22 are again, if there are specifics that this body would like the
23 applicant to provide in terms of information or document,
24 whatever, we can, the Department staff can work with the

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 applicant to provide that and while the Department is bound by
2 the three statutory criteria as we've described in the
3 regulations to implement the statute, someone mentioned earlier
4 that this body does have the fourth criteria which is all other
5 such matters it deems necessary. So, the, if there is something
6 that you feel is needed to complete this application,
7 information submitted that you would need to render a decision,
8 we can work with the applicant on those requests.

9

10 JO BOUFFORD: Dr. Martin and then Dr. Kalkut. Dr. Brown,
11 sorry, then Dr. Kalkut.

12

13 LAWRENCE BROWN: I appreciate the information that
14 colleagues and Department has provided and counsel provided.
15 I'm sure I think we should move the agenda. I'm not sure we're
16 going to get any more information that's going to be - unless
17 someone's going to make a motion to disapprove, I think we need
18 to move the agenda.

19

20 GARY KALKUT: My question was also a procedural one
21 related to disapproval. If there was a motion to disapprove and
22 that did not pass with all the requisits, what's a yes and
23 what's a no? does that change the, how this is handled in terms

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 of putting back on the agenda or not? Because right now we just
2 have a no decision on an approval motion.

3

4 JIM DERING: Sure, if there was a no decision on a
5 disapproval we would be in the same spot that we're in now. So
6 it wouldn't change.

7

8 JO BOUFFORD: So-

9

10 LAWRENCE BROWN: My motion on the table is to move the
11 agenda.

12

13 JOHN RUGGE: is a motion to disapprove it passes then it
14 can't come back.

15

16 JO BOUFFORD: would somebody like to move -

17

18 JIM DERING: Correct.

19

20 JO BOUFFORD: Is there, except through this hearing
21 process that he described earlier would precipitate the
22 opportunity for a hearing if they wish to pursue it.

23

24 JIM DERING: And just to comment on the -

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

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2 JO BOUFFORD: We proceeded, his motion was to keep going
3 and leave it where it is. I'm sorry?

4

5 JIM DERING: If I could make one comment. And I would
6 hope that - I think the in my opinion, the goal of PHHPC should
7 be to reach a determination on matters at least 13 up or 13
8 down. I would hope that I this circumstance based on my
9 comments I would hope that people wouldn't disapprove merely to
10 send it, to create the hearing right.

11

12 JO BOUFFORD: So I guess, so your motion is to leave the
13 decision as it was and move on.

14 Second.

15 Alright. Any discussion of that motion? OK. All in
16 favor?

17 [Aye]

18 Opposed? Any abstentions. OK. Stays 11-3. No
19 recommendation. And I guess the commissioner can decide the
20 disposition. The establishment committee can - I thought you
21 said earlier the commissioner sets the agenda. No, I
22 understand. That's what I meant. He can decide whether to put
23 it on the agenda again. Thank you very much.

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 OK. Mr. Robinson, would you like to move ahead on the,
2 hear a report on the ad-hoc committee on freestanding ambulatory
3 surgery centers and charity care.

4

5 PETER ROBINSON: It would be my honor. I assume then
6 the report of the committee on establishment is concluded.

7

8 JO BOUFFORD: It is concluded.

9

10 PETER ROBINSON: Excellent. Ok. Well, I do want to
11 thank first of all the members of the ad-hoc committee on
12 ambulatory surgery and charity care, and especially Mr. Delker
13 from the Department who has done yeoman's work in bringing us
14 this far. You have a copy of the draft report in the material
15 that you got in advance. So I just want to highlight a couple
16 of things in it and then get your feedback. We are not going to
17 ask for action on the report at this meeting. We will be having
18 another cycle on committee day so that we can get input from
19 other members of the industry that are interested in providing
20 that input and trying to incorporate that into anything that we
21 finalize. So I just ask committee members to give us your
22 thoughts now so that we can incorporate that thinking as well.
23 So, just to recall, the committee was organized in order to take
24 a look at why freestanding ambulatory surgery centers were

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 falling short in reaching their projected number of cases for
2 the underserved, and I think we were especially focused on the
3 inability of many if not almost all of these centers to meet
4 their charity care goals, and this became apparent as we began
5 to look at those centers that were coming up on the end of their
6 five year limited life, and then needed to be considered for
7 either perpetual life if that's possible in this world, but at
8 least a more permanent status. So, we had a series of four
9 meetings beginning in September of last year, so this has been
10 ongoing for a while. And we did hear from ambulatory surgery
11 center operators, some consumer groups came in, the FQHCs were
12 also involved in providing us with input, and some very
13 important suggestions from the New York State association of
14 ambulatory surgery centers as well as other stakeholders. And
15 here we were looking at trying to get to the practical aspects
16 of making sure that these centers were reaching and serving
17 uninsured and Medicaid clients and we heard especially about how
18 the services and the characteristics of these, of individual
19 ambulatory surgery centers which were driven in part by
20 circumstances of geography and healthcare markets in which each
21 operate. That that creates some real complications. So, as an
22 example, centers that focus exclusively on ophthalmology are
23 almost going to see entirely a Medicare related population and
24 so we began to struggle with this one size fits all kind of

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 approach to handling these charity care obligations and I think
2 that certainly came out in the conversation. The other thing
3 that we're paying attention to is the changing landscape. So in
4 addition to those circumstantial factors, we had a report
5 earlier about DSRIP and the impact that DSRIP is going to have,
6 the expansion of coverage so that the number of people in New
7 York State that are uninsured is being dramatically reduced with
8 significant numbers going into Medicaid programs and others
9 getting coverage through the exchanges. The structure of PPSs
10 themselves as part of DSRIP is going to matter in terms of
11 managing access and how patients are going to be organized to
12 access care through these PPSs. So that's going to also be
13 important.

14 So where we are at the moment, and this is what the report
15 reflects, we concluded that there is no specific minimum or
16 optimum proportion of Medicaid and charity care cases that can
17 be prescribed uniformly for ambulatory surgery centers. And so
18 we're going to recommend at least at this point and I think this
19 is where we remain open for input that the assessment of
20 Medicaid and charity care efforts for each ambulatory surgery
21 center be undertaken with regard to the individual
22 characteristics of each applicant and the circumstances
23 including the types of surgical procedures that are being
24 proposed, how those services align with the rest of the

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 organization of healthcare services in the market that they
2 operate in, and also just geographically where the uninsured and
3 the Medicaid populations live in relation to these ambulatory
4 surgery centers.

5 We think that these kinds of assessments could be done
6 prospectively when applications come in so that we can establish
7 some realistic goals that are relevant to each center and then
8 use the five-year limited life period as a way of assessing them
9 against almost a tailored set of standards and requirements. And
10 what you can do is see in the paper that we submitted some of
11 the review criteria we're looking at. So, I think this is kind
12 of where we are at the moment. I would say that we had a set of
13 key points that came up at the last meeting. One was the need
14 for better monitoring of ambulatory surgery centers in advance
15 of the five year limited life renewal, so getting feedback here
16 to the council in advance of the end of the life, so we only
17 have one shot at looking at this, but rather can review and
18 provide further input to the Department on these applications
19 that looks particularly at their Medicaid participation in
20 charity care rates.

21 The other thing is that this interface between charity care
22 and bad debt is likely to become a more prominent issue, we
23 think. When you look at how people access coverage through the
24 exchange especially with these medal levels now where patient

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 responsibilities can range from 10 percent to up to 40 percent
2 of the cost of healthcare, for many people who take those lower
3 levels of coverage, their the ones that probably have the most
4 limited ability to provide payment and so we fully anticipate
5 that bad debt is going to be a bigger factor for ambulatory
6 surgery centers and other providers as well in the future. So,
7 we need to think about how we interface with that, but actually
8 also look to the ambulatory surgery centers as part of the
9 individual tailored plan that we might put into place to not
10 necessarily expect but maybe to define proactively charity care
11 for some part of that patient contribution for those patients
12 that might be eligible for it. So, just a factor that we're
13 kind of going to be looking at.

14 I know that just since this draft report was issued, Mr.
15 Delker got some sort of additional information on the
16 contribution that existing ambulatory surgery centers are making
17 to the bad debt and charity care pools in the State, and I
18 wonder, Chris, if you wouldn't mind commenting on that.

19

20 CHRIS DELKER: We had earlier put together information
21 that was not complete in the sense that it represented only the
22 amount that the ASCs were unable to collect from the payers and
23 had to pay directly into the pool and that was about \$3 to \$4
24 million a year. The HICRA surcharge ambulatory surgery services

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 delivered by freestanding providers, not hospital providers is
2 9.6 percent for commercial and indemnity plans and commercial
3 managed care plans and it's about 7 percent on Medicaid, the
4 non-State, State share of Medicaid and other government payers
5 like workers compensation. The total of that contribution, that
6 surcharge on ambulatory surgery centers over the six year period
7 of 2009 to 14 inclusive was \$1.7 billion. So, the freestanding
8 ambulatory surgery activities represent a subsidy if you will to
9 the hospital safetynets and other eligible safety net providers
10 of that averages about \$285 million a year, although the average
11 has been higher in recent years as the number of am-surge
12 centers has increased. So I think that provides more of a
13 context for consideration of charity care and support of the
14 underserved. There's already a transfer if you will of funds
15 from ambulatory surgery centers into the safety net that's
16 occurring by statute. In addition to the considerations this
17 committee might want to add to providers for direct charity care
18 and active enrolment of Medicaid clients.

19

20 PETER ROBINSON: Well, thank you for that comment,
21 Chris. I'm going to just open it up, Dr. Ruge.

22

23 JOHN RUGGE: As you suggested, bad debt is not the
24 equivalent of charity care. It is not fair to look at

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 increasing bad debt as a substitute for charity care because
2 that does place a burden on patients and also a deterrent to
3 care. One idea that only occurred to me now is that all FQHCs as
4 you probably know are required to have a sliding fee schedule,
5 and I know very well of one FQHC that is solicited acceptance of
6 the sliding fee scale by specialty providers and have received
7 that. In this case, I wonder if that might serve as a proxy for
8 meeting the charity care requirement, that if a surgical center
9 went to the FQHCs in this community, accepted patients on
10 referral using the sliding fee, that there be no more arithmetic
11 necessary to demonstrate commitment to the underserved.

12

13 PETER ROBINSON: As we begin to think about that very
14 issue, I think the idea of a sliding scale does make a lot of
15 sense, and I think we are going to at least give consideration
16 to including that as part of our recommendation. So thank you
17 for that comment. I think it's right on target. And it is not
18 easy to develop a sliding fee and it's not easy to receive from
19 patients family income of the rest, so by already plugging into
20 an existing system which FQHCs are mandated to have, may
21 mobilize this in a way that's simply saying go ahead and develop
22 a sliding fee and then let us decide if that sliding fee is
23 really fair or not. I'm just saying maybe good to use a

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 prebuilt mechanism rather than require the development of a
2 whole new system.

3

4 PETER ROBINSON: Thank you for that. I think - thank
5 you for those suggestions. Other comments? Observations?

6

7 JO BOUFFORD: I had another question when you were
8 proposing this issue of better monitoring before renewal. Would
9 a renewal for this perpetual license you talk about, would that
10 be normally coming to the council or would that be
11 administrative? Because I wasn't aware that it came back to us.

12

13 CHRIS ROBINSON: Well, the ones that were approved
14 within the last, what is it, five years, last - those approved I
15 the last three years don't have to come back. That's
16 administrative. But those beforehand, you recall there was a
17 policy change for that a couple years ago. Those beforehand
18 still have to come back and you're seeing some of those now that
19 are coming back for permanent establishment, if you will. But as
20 to the monitoring a suggestion was made at the last meeting was
21 that the Department perhaps every six months give the council a
22 list of those five years that you still have authority over and
23 how they're doing at what interval, and so that would enable use
24 to certainly advise them, you need to increase your Medicaid or

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 charity care uncompensated care, whatever, well in advance of
2 the five years, and it would also give this council as Peter
3 said at the beginning, some sort of a heads up about which ones
4 might be coming down instead of just having to make the decision
5 on the information given to you at one meeting.

6

7 PETER ROBINSON: right, and I think even for those that
8 the council does not have any direct responsibility for now
9 getting those interim reports even depending on, regardless of
10 the, whether they're before and after the change in the CON
11 thresholds, that I think that would help inform the council in
12 terms of how effective the guidelines were that we've been
13 establishing and whether we're having problems with them still
14 or not.

15

16 JO BOUFFORD: So that would be part of your final
17 recommendation - define both of those elements that you
18 described.

19

20 PETER ROBINSON: We're looking at incorporating those
21 things in the final draft. Right.

22

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B

1 JO BOUFFORD: Dr. Martin, you had a comment? Dr. Martin.
2 Dr. Brown. I don't know why I keep calling you Dr. Martin. Dr.
3 Brown.

4
5 LAWRENCE BROWN: Well, we're both on two similar
6 advisory councils, I guess that's the reason.

7
8 JO BOUFFORD: I doubt it very seriously.

9
10 LAWRENCE BROWN: I guess, I need some clarification.
11 That there has been limited life approvals. If they occurred
12 before three years ago, there was a difference about whether or
13 not they come back before the council? I'm not sure I understood
14 that.

15
16 CHARLIE ABEL: Sure. I can explain. As part of this
17 council's CON streamlining work that came out of Dr. Ruge's
18 planning committee, the recommendation was that for limited life
19 approvals on going forward basis. The operating certificate
20 would be limited, not the establishment approval which had been
21 the case. And that if, so those limited life approvals when they
22 were due for review the department would do the review
23 administratively. We could choose to as we have in some cases
24 extent a limited life for some defined duration. If they did

PUBLIC HEALTH AND HEALTH PLANNING COUNCIL

JUNE 11, 2015

90 CHURCH STREET, CR 4A AND 4B

1 not, if the applicant did not meet all of their commitments or
2 approve if they had, and clearly if the applicant or the
3 provider at that point in the limited life applying for
4 perpetual life, if they clearly were not living up to their
5 promises, then the Department would be in a position to
6 recommend that the application not be approved. In those cases,
7 those applications would come to this council, but if the
8 Department were to approve one of these post-CON reform limited
9 operating certificate approvals then this body would not see
10 those approvals.

11

12 LAWRENCE BROWN: I guess the reason I raise that is I know
13 that during my short stay on this council we've asked the
14 Department for a lot of data to inform our decision making, and
15 I guess I'm a bit concerned going forward that this process
16 allows us - I'm trying to be really, I understand that the
17 Department is doing the best that it could be, but I've come to
18 appreciate there are some times during these council meetings
19 that we've come to a point that we don't believe we have enough
20 information to make a decision. Now we're asking you to with
21 this proposal to me, provide more data and some of it in an
22 administrative and not coming back. So, please forgive me, I'm a
23 little uncomfortable with that. Just a statement of my comfort
24 level. Thank you for allowing me that.

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

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JO BOUFFORD: Alright, any other statements of comfort or discomfort. Oh, I think it's Peter's group is putting their final report together working with staff it's important to have those concerns articulated.

PETER ROBINSON: So we welcome all of you to participate in the committee day and sit in on the ad-hoc committee meeting which is going to be part of the committee day and continue to provide input to this process, so thank you.

JO BOUFFORD: Thank you very much. Yes, Dr. Rugge.

JOHN RUGGE: Peter, do you expect this to be the final committee meeting and then we'll be ready to go?

PETER ROBINSON: I do.

JO BOUFFORD: Any other comments, questions? Alright. Fine. I think that concludes our business unless there's any other business for the public session? Hearing none, I will ask for a motion to - I guess I can declare us adjourned, can I not? Thank you, I declare this meeting adjourned, and we will go into executive session for report of the committee on health

**PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
JUNE 11, 2015
90 CHURCH STREET, CR 4A AND 4B**

1 personnel interprofessional relations. Dr. Grant will be
2 chairing that. So let me ask all those who are not members of
3 the Council to please leave the room.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225(5)(a) of the Public Health Law, Part 4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary of State, to read as follows:

4.1 Scope.

All owners of cooling towers, and all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law, shall comply with this Part.

4.2 Definitions.

As used in this Part, the following terms shall have the following meanings:

(a) Building. The term “building” means any structure used or intended for supporting or sheltering any use or occupancy. The term shall be construed as if followed by the phrase “structure, premises, lot or part thereof” unless otherwise indicated by the text.

(b) Commissioner. The term “commissioner” means the New York State Commissioner of Health.

(c) Cooling Tower. The term “cooling tower” means a cooling tower, evaporative condenser or fluid cooler that is part of a recirculated water system incorporated into a building’s cooling, industrial process, refrigeration or energy production system.

(d) Owner. The term “owner” means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises.

4.3 Registration.

All owners of cooling towers shall register such towers with the department within 30 days after the effective date of this Part. Thereafter, all owners of cooling towers shall register such towers with the department prior to initial operation, and whenever any owner of the cooling tower changes. Such registration shall be in a form and manner as required by the commissioner and shall include, at a minimum, the following information:

- (a) street address of the building at which the cooling tower is located, with building identification number, if any;
- (b) intended use of the cooling tower;
- (c) name(s), address(es), telephone number(s), and email address(es) of all owner(s) of the building;
- (d) name of the manufacturer of the cooling tower;
- (e) model number of the cooling tower;
- (f) specific unit serial number of the cooling tower;
- (g) cooling capacity (tonnage) of the cooling tower;
- (h) basin capacity of the cooling tower;
- (i) whether systematic disinfection is maintained manually, through timed injection, or through continuous delivery;
- (j) the contractor or employee engaged to inspect and certify the cooling tower; and
- (k) commissioning date of the cooling tower.

4.4 Culture sample collection and testing; cleaning and disinfection.

- (a) All owners of cooling towers shall collect samples and obtain culture testing:

(1) within 30 days of the effective date of this Part, unless such culture testing has been obtained within 30 days prior to the effective date of this Part, and shall take immediate actions in response to such testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(2) in accordance with the maintenance program and plan, and shall take immediate actions in response to such testing as specified in the plan, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that if a maintenance program and plan has not yet been obtained in accordance with section 4.6 of this Part, bacteriological culture samples and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity shall be obtained, at intervals not exceeding 90 days while the tower is in use, and any immediate action in response to such testing shall be taken, including interpreting Legionella culture results, if any, as specified in Appendix 4-A.

(b) Any person who performs cleaning and disinfection shall be a commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower and certified in accordance with the requirements of Article 33 of the Environmental Conservation Law and 6 NYCRR Part 325, or a pesticide apprentice under the supervision of a certified applicator.

(c) Only biocide products registered by the New York State Department of Environmental Conservation may be used in disinfection.

(d) All owners shall ensure that all cooling towers are cleaned and disinfected when shut down for more than five days.

4.5 Inspection and certification.

(a) Inspection. All owners of cooling towers shall inspect such towers within 30 days of the effective date of this Part, unless such tower has been inspected within 30 days prior to the effective date of this Part. Thereafter, owners shall ensure that all cooling towers are inspected at intervals not exceeding every 90 days while in use. All inspections shall be performed by a New York State licensed professional engineer; certified industrial hygienist; certified water technologist; or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, as incorporated by section 4.6 of this Part.

(1) Each inspection shall include an evaluation of:

- (i) the cooling tower and associated equipment for the presence of organic material, biofilm, algae, and other visible contaminants;
- (ii) the general condition of the cooling tower, basin, packing material, and drift eliminator;
- (iii) water make-up connections and control;
- (iv) proper functioning of the conductivity control; and
- (v) proper functioning of all dosing equipment (pumps, strain gauges).

(2) Any deficiencies found during inspection will be reported to the owner for immediate corrective action. A person qualified to inspect pursuant to paragraph (a) of this section shall document all deficiencies, and all completed corrective actions.

(3) All inspection findings, deficiencies, and corrective actions shall be reported to the owner, recorded, and retained in accordance with this Part, and shall also be reported to the department in accordance with section 4.10 of this Part.

(b) Certification. Each year, the owner of a cooling tower shall obtain a certification from a person identified in paragraph (a) of this section, that such cooling tower was inspected, tested, cleaned, and disinfected in compliance with this Part, that the condition of the cooling tower is appropriate for its intended use, and that a maintenance program and plan has been developed and implemented as required by this Part. Such certification shall be obtained by November 1, 2016, and by November 1 of each year thereafter. Such certification shall be reported to the department.

4.6 Maintenance program and plan.

(a) By March 1, 2016, and thereafter prior to initial operation, owners shall obtain and implement a maintenance program and plan developed in accordance with section 7.2 of Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE 188-2015), 2015 edition with final approval date of June 26, 2015, at pages 7-8, incorporated herein by reference. The latest edition of ASHRAE 188-2015 may be purchased from the ASHRAE website (www.ashrae.org) or from ASHRAE Customer Service, 1791 Tullie Circle, NE, Atlanta, GA 30329-2305. E-mail: orders@ashrae.org. Fax: 678-539-2129. Telephone: 404-636-8400, or toll free 1-800-527-4723. Copies are available for inspection and copying at: Center for Environmental Health, Corning Tower Room 1619, Empire State Plaza, Albany, NY 12237.

(b) In addition, the program and plan shall include the following elements:

- (1) a schedule for routine bacteriological sampling and analysis (dip slides or heterotrophic plate counts) to assess microbiological activity and a schedule for Legionella sampling and culture analysis; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health

Law, routine testing shall be performed at a frequency in accordance with the direction of the department.

(2) emergency sample collection and submission of samples for Legionella culture testing to be conducted in the case of events including, but not limited to:

- (i) power failure of sufficient duration to allow for the growth of bacteria;
- (ii) loss of biocide treatment sufficient to allow for the growth of bacteria;
- (iii) failure of conductivity control to maintain proper cycles of concentration;
- (iv) a determination by the commissioner that one or more cases of legionellosis is or may be associated with the cooling tower, based upon epidemiologic data or laboratory testing; and
- (v) any other conditions specified by the commissioner.

(3) immediate action in response to culture testing, including interpreting Legionella culture results, if any, as specified in Appendix 4-A; provided that where the owner is a general hospital or residential health care facility, as defined in Article 28 of the Public Health Law, the provisions shall additionally require immediately contacting the department for further guidance, but without any delay in taking any action specified in Appendix 4-A.

(c) An owner shall maintain a copy of the plan required by this subdivision on the premises where a cooling tower is located. Such plan shall be made available to the department or local health department immediately upon request.

4.7 Recordkeeping.

An owner shall keep and maintain records of all inspection findings, deficiencies, corrective actions, cleaning and disinfection, and tests performed pursuant to this Part, and certifications, for at least three years. An owner shall maintain a copy of the maintenance program and plan required by this Part on the premises where a cooling tower is located. Such records and plan shall be made available to the department or local health department immediately upon request.

4.8 Discontinued use.

The owner of a cooling tower shall notify the department within 30 days after removing or permanently discontinuing use of a cooling tower. Such notice shall include a statement that such cooling tower has been disinfected and drained in accordance with the same procedures as set forth in the shutdown plan, as specified in the maintenance program and plan required pursuant to this Part.

4.9 Enforcement.

(a) An officer, employee or agent of the department or local health department may enter onto any property to inspect the cooling tower for compliance with the requirements of this Part, in accordance with applicable law.

(b) Where an owner does not register, obtain certification, clean or disinfect, culture test or inspect a cooling tower within the time and manner set forth in this Part, the department or local health department may determine that such condition constitutes a nuisance and may take such action as authorized by law. The department or local health department may also take any other action authorized by law.

(c) A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

4.10 Electronic registration and reporting.

(a) (1) Within 30 days of the effective date of this Part, and thereafter within 10 days after any action required by this Part, owners shall electronically input the following information in a statewide electronic system designated by the commissioner:

- (i) registration information;
- (ii) date of last routine culture sample collection, sample results, and date of any required remedial action;
- (iii) date of any legionella sample collection, sample results, and date of any required remedial action;
- (iv) date of last cleaning and disinfection;
- (v) dates of start and end of any shutdown for more than five days;
- (vi) date of last certification and date when it was due;
- (vii) date of last inspection and date when it was due;
- (viii) date of discontinued use; and
- (ix) such other information as shall be determined by the department.

(2) The commissioner may suspend this requirement in the event that the electronic system is not available.

(b) The data in the system referenced in paragraph (a) shall be made publicly available, and shall be made fully accessible and searchable to any local health department. Nothing in this Part shall

preclude a local health department from requiring registration and reporting with a local system or collecting fees associated with the administration of such system.

4.11 Health care facilities

(a) All general hospitals and residential health care facilities, as defined in Article 28 of the Public Health Law, shall, as the department may determine appropriate:

- (1) adopt a Legionella sampling plan for its facilities' potable water distribution system;
- (2) report the results of such sampling; and
- (3) take necessary responsive actions.

(b) With respect to such general hospitals and residential health care facilities, the department shall investigate to what extent, if any, requirements more stringent than those set forth in this Part are warranted.

4.12 Severability.

If any provisions of this Part or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other persons, entities, and circumstances.

Appendix 4-A

Interpretation of Legionella Culture Results from Cooling Towers	
Legionella Test	Approach
Results in CFU ¹ /ml	

<p>No detection (< 10 CFU /ml)</p>	<p>Maintain treatment program and <i>Legionella</i> monitoring.</p>
<p>For levels at ≥ 10 CFU /ml but < 1000 CFU /ml perform the following:</p>	<ul style="list-style-type: none"> ○ Review treatment program. ○ Institute immediate <u>online disinfection</u>² to help with control ○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> ▪ Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy. ▪ If < 100 CFU /ml repeat <u>online disinfection</u>² and retest. ▪ If ≥ 100 CFU /ml but < 1000 CFU /ml further investigate the water treatment program and immediately perform <u>online disinfection</u>.² Retest and repeat attempts at control strategy. ○ If ≥ 1000 CFU /ml undertake control strategy as noted below.
<p>For levels ≥ 1000 CFU /ml perform the following:</p>	<ul style="list-style-type: none"> ○ Review the treatment program ○ Institute immediate <u>online decontamination</u>³ to help with control ○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> ▪ Continue to retest at the same time interval until two consecutive readings show acceptable improvement, as determined by a person identified in 10 NYCRR 4.5(a). Continue with regular maintenance strategy. ▪ If < 100 CFU /ml repeat <u>online disinfection</u>² and retest;

	<ul style="list-style-type: none"> ▪ If ≥ 100 CFU /ml but < 1000 CFU /ml further investigate the water treatment program and immediately perform <u>online disinfection</u>.² Re-test and repeat attempts at control strategy. ▪ If ≥ 1000 CFU /ml carry out <u>system decontamination</u>⁴
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¹ Colony forming units.

² Online disinfection means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.

³ Online decontamination means – Dose the recirculation water with a chlorine-based compound equivalent to at least 5 mg/l (ppm) free residual chlorine for at least one hour; pH 7.0 to 7.6.

⁴ System decontamination means – Maintain 5 to 10 mg/l (ppm) free residual chlorine for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual chlorine at pH 7.0 – 7.6 and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in the state of New York.

Legislative Objectives:

This rulemaking is in accordance with the legislative objective of PHL Section 225 authorizing the PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize health and safety. Specifically, these regulations establish requirements for cooling towers relating to: registration, reporting and recordkeeping; testing; cleaning and disinfection; maintenance; inspection; and certification of compliance. Additionally, these regulations require general hospitals and nursing homes to implement a *Legionella* sampling plan and take necessary responsive actions, as the department may deem appropriate.

Needs and Benefits:

Improper maintenance of cooling towers can contribute to the growth and dissemination of *Legionella* bacteria, the causative agent of legionellosis. Optimal conditions for growth of *Legionella* include warm water that is high in nutrients and protected from light. People are exposed to *Legionella* through inhalation of aerosolized water containing the bacteria. Person-

to-person transmission has not been demonstrated. Symptoms of legionellosis may include cough, shortness of breath, high fever, muscle aches, and headaches, and can result in pneumonia. Hospitalization is often required and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older; current or former smokers; those with chronic lung diseases; those with weakened immune systems from diseases like cancer, diabetes, or kidney failure; and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require disinfectants—chemicals that kill or inhibit bacteria (including *Legionella*)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing *Legionella*.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation

found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an “urban cooling tower” effect. The “urban cooling tower” effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to: seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; set cycles of operations that determine when fresh water is needed; and shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled *Legionellosis: Risk Management for Building Water Systems* (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures, and other requirements.

However, none of the guidance is obligatory. Consequently, maintenance deficiencies such as poor practice in operation and management can result in bacterial overgrowth, increases in *Legionella*, and mist emissions that contain pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations requires that all owners of cooling towers ensure proper maintenance of the cooling tower *Legionella* sampling plan for their potable water system, report the results, and take necessary actions to protect the safety of their patients or residents, as the Department may deem appropriate. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well

as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems, and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of *Legionella* and to determine appropriate response actions in advance of any environmental sampling for *Legionella*. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge, and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control, Physical Facilities Management, Engineering, Clinicians, Laboratory, and Hospital Management.

Costs:

Costs to Private Regulated Parties:

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to their cooling tower maintenance program and plan. The cost per dip

slide test is \$3.50. Assuming that some plans may require tests be performed twice a week, this could result in an annual cost of \$364. If heterotrophic plate count analysis is used the cost per sample on average is \$25.

- Emergency *Legionella* Culture Testing – Owners of cooling towers are required to conduct additional testing for Legionella in the event of disruption of normal operations or process control, or when indicated by epidemiological evidence. The average cost of each sample analysis is estimated to be approximately \$125.00.
- Maintenance Program and Plan Development – The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at \$150 per hour (\$600 to \$1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (C.I.H.), certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, for inspection of the cooling towers at intervals not exceeding 90 days while in use. The cost of such services is estimated to be approximately \$150.00 per hour and estimated to take approximately eight (8) hours.
- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The certification can follow one of the required inspections and requires some additional evaluation and considerations. The cost of such services is estimated to be approximately \$150.00 per hour and is estimated to take approximately four (4) hours.

- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately \$5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- Health Care Facilities – The cost of adopting a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing record keeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at \$150 per hour (\$975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at \$150 per hour (\$1950). It is anticipated that facilities may develop the plan using existing staff.

Costs to State Government and Local Government:

State and local governments will incur costs for administration, implementation, and enforcement. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset further by a reduction in the need to respond to community legionellosis outbreaks.

Local Government Mandates:

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

Paperwork:

The regulation imposes new registration, reporting and recordkeeping requirements for owners of cooling towers.

Duplication:

This regulation does not duplicate any state requirements.

Alternatives:

The no action alternative was considered. Promulgating this regulation was determined to be necessary to address this public health threat.

Federal Standards:

There are no federal standards or regulations pertaining to registration, maintenance, operation, testing, and inspection for cooling towers.

Compliance Schedule:

On August 17, 2015, when this regulation first became effective, owners were given until September 16, 2015, to register their cooling towers and perform bacteriological sampling. Now that the deadline has past, all owners should have registered their cooling towers, and any owners that have not registered their cooling towers must come into compliance immediately. All owners must register such towers prior to initial operation.

By March 1, 2016, all owners of existing cooling towers must obtain and implement a maintenance program and plan. Until such plan is obtained, culture testing must be performed every 90 days, while the tower is in use.

All owners must inspect their cooling towers at least every 90 days while in use. All owners of cooling towers shall obtain a certification that regulatory requirements have been met by November 1, 2016, with subsequent annual certifications by November 1st of each year.

Owners must register cooling towers and report certain actions, using a statewide electronic system. Reportable events include date of sample collections; date of cleaning and disinfection; start and end dates of any shutdown lasting more than five days; dates of last inspection and when due; dates of last certification and when due; and date of discontinued use. These events must be reported to the statewide electronic system within 10 days of occurrence.

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Regulatory Flexibility Analysis for Small Business and Local Governments

Effect of Rule:

The rule will affect the owner of any building with a cooling tower, as those terms are defined in the regulation. This could include small businesses. At this time, it is not possible to determine the number of small businesses so affected. This regulation affects local governments by establishing requirements for implementing, administering, and enforcing elements of this Part. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

Compliance Requirements:

Small businesses that are also owners of cooling towers must comply with all provisions of this Part. A violation of any provision of this Part is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Part shall constitute a separate and distinct violation of such provision.

Professional Services:

To comply with inspection and certification requirements, small businesses will need to obtain services of a P.E., C.I.H., certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015. Small businesses will need to secure laboratory services for routine culture sample testing and, if certain events occur, emergency *Legionella* culture testing.

To comply with disinfection requirements, small businesses will need to obtain the services of a commercial pesticide applicator or pesticide technician, or pesticide apprentice under supervision of a commercial pesticide applicator. These qualifications are already required for the properly handling of biocides that destroy *Legionella*.

Compliance Costs:

Costs to Private Regulated Parties:

Building owners already incur costs for routine operation and maintenance of cooling towers. This regulation establishes the following new requirements:

- Routine Bacteriological Culture Testing – The regulations require routine bacteriological testing pursuant to industry standards. The cost per test is \$3.50. Assuming tests are performed twice a week, this would result in an annual cost of \$364.
- Emergency *Legionella* Culture Testing – Owners of cooling towers are required to conduct additional testing for *Legionella* in the event of disruption of normal operations. The average cost of each sample analysis is estimated to be approximately \$125.00.
- Inspection – Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (C.I.H.), certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015; for inspection of the cooling towers at intervals not exceeding once every 90 days while the cooling towers are in use. The cost of such services is estimated to be approximately \$150.00 per hour and estimated to take approximately eight (8)

hours.

- Annual Certification – The same persons qualified to perform inspections are qualified to perform annual certifications. The cost of such services is estimated to be approximately \$150.00 per hour and is estimated to take approximately four (4) hours.
- Emergency Cleaning and Disinfection – If emergency cleaning and disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately \$5,000.00 for labor, plus the cost of materials.
- Recordkeeping and Electronic Reporting – Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.
- The formulation of a cooling tower program and sampling plan would require 4 to 8 hours at \$150 per hour (\$600 to \$1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Formulation of a sampling plan for Article 28 facilities is dependent upon any existing plan and the status of existing record keeping. It is estimated that with prior records and a maintenance plan the time required should a consultant be hired would be 6.5 hours at \$150 per hour (\$975). Without a prior plan and poor maintenance documentation the time required would be 13 hours at \$150 per hour (\$1950). It is anticipated that facilities may develop the plan using existing staff.

Costs to State Government and Local Government:

State and local governments possess authority to enforce compliance with these regulations. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset by a reduction in the need to respond to community legionellosis outbreaks.

Economic and Technological Feasibility:

Although there will be an impact of building owners, including small businesses, compliance with the requirements of this regulation is considered economically and technologically feasible as it enhances and enforces existing industry best practices. The benefits to public health are anticipated to outweigh any costs. This regulation is necessary to protect public health.

Minimizing Adverse Impact:

The New York State Department of Health will assist local governments by providing a cooling tower registry and access to the database, technical consultation, coordination, and information and updates.

Small Business and Local Government Participation:

Development of this regulation has been coordinated with New York City.

Cure Period:

Violation of this regulation can result in civil and criminal penalties. In light of the magnitude of the public health threat posed by the improper maintenance and testing of cooling towers, the risk that some small businesses will not comply with regulations justifies the absence of a cure period.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

Nature of the Impact:

The Department of Health expects there to be a positive impact on jobs or employment opportunities. The requirements in the regulation generally coincide with industry standards and manufacturers specification for the operation and maintenance of cooling towers. However, it is expected that a subset of owners have not adequately followed industry standards and will now hire firms or individuals to assist them with compliance and to perform inspections and certifications.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employments opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

Emergency Justification

Improper maintenance of cooling towers can contribute to the growth and dissemination of *Legionella* bacteria, the causative agent of legionellosis. Legionellosis causes cough, shortness of breath, high fever, muscle aches, headaches and can result in pneumonia. Hospitalization is often required, and between 5-30% of cases are fatal. People at highest risk are those 50 years of age or older, current or former smokers, those with chronic lung diseases, those with weakened immune systems from diseases like cancer, diabetes, or kidney failure, and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005-2014 increased 323% when compared to those reported in the previous ten year period.

Outbreaks of legionellosis have been associated with cooling towers. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Because water is part of the process of removing heat from a building, these devices require biocides—chemicals that kill or inhibit bacteria (including *Legionella*)—as means of controlling bacterial overgrowth. Overgrowth may result in the normal mists ejected from the tower having droplets containing *Legionella*.

For example, in 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were dialysis patients or companions escorting the patients to their dialysis session. One fatality was in the local neighborhood. The cooling tower was found to have insufficient chemical treatment. The entire tower was ultimately replaced by the

manufacturer in order to maintain cooling for the hospital and to protect public health. In June and July of 2008, 12 cases of legionellosis including one fatality were attributed to a small evaporative condenser on Onondaga Hill in Syracuse, Onondaga County. An investigation found that the unit was not operating properly and this resulted in the growth of microorganisms in the unit. Emergency biocide treatment was initiated and proper treatment was maintained. No new cases were then detected thereafter.

Recent work has shown that sporadic cases of community legionellosis are often associated with extended periods of wet weather with overcast skies. A study conducted by the New York State Department of Health that included data from 13 states and one United States municipality noted a dramatic increase in sporadic, community acquired legionellosis cases in May through August 2013. Large municipal sites such as Buffalo, Erie County reported 2- to 3-fold increases in cases without identifying common exposures normally associated with legionellosis. All sites in the study except one had a significant correlation, with some time lag, between legionellosis case onset and one or more weather parameters. It was concluded that large municipalities produce significant mist (droplet) output from hundreds of cooling towers during the summer months. Periods of sustained precipitation, high humidity, cloud cover, and high dew point may lead to an “urban cooling tower” effect. The “urban cooling tower” effect is when a metropolitan area with hundreds of cooling towers acts as one large cooling tower producing a large output of drift, which is entrapped by humid air and overcast skies.

More recently, 133 cases of legionellosis, which included 16 fatalities, occurred in Bronx, NY (July-September, 2015). This event was preceded by an outbreak in Co-Op City in the Bronx, from December 2014 to January 2015, which involved 8 persons and no fatalities. Both of these outbreaks have been attributed to cooling towers, and emergency disinfection of

compromised towers helped curtail these outbreaks. These events highlight the need for proper maintenance of cooling towers.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; and set cycles of operations that determine when fresh water is needed; and how to shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled *Legionellosis: Risk Management for Building Water Systems* (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures and other requirement.

However, none of the guidance is obligatory. Consequently, poor practice in operation and management can result in bacterial overgrowth, increases in legionellae, and mist emissions that contain a significant dose of pathogenic legionellae. This regulation requires that all owners of cooling towers ensure proper maintenance of the cooling towers, to protect the public and address this public health threat.

Further, these regulations require all general hospitals and residential health care facilities (i.e., nursing homes) to develop a sampling plan, report the results, and take necessary actions to protect the safety of their patients or residents. The details of each facility's sampling plan and remedial measures will depend on the risk factors for acquiring Legionnaires' disease in the

population served by the hospital or nursing home.

Most people in nursing homes should be considered at risk, as residents are typically over 50 years of age. In general hospitals, persons at risk include those over 50 years of age, as well as those receiving chemotherapy, those undergoing transplants, and other persons housed on healthcare units that require special precautions. Additional persons who might be at increased risk for acquiring Legionnaires' disease include persons on high-dose steroid therapy and persons with chronic lung disease. Certain facilities with higher risk populations, such as those with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units, require more protective measures.

An environmental assessment involves reviewing facility characteristics, hot and cold water supplies, cooling and air handling systems and any chemical treatment systems. The purpose of the assessment is to discover any vulnerabilities that would allow for amplification of *Legionella* spp. and to determine appropriate response actions in advance of any environmental sampling for *Legionella*. Initial and ongoing assessment should be conducted by a multidisciplinary team that represents the expertise, knowledge and functions related to the facility's operation and service. A team should include, at a minimum, representatives from the following groups: Infection Control; Physical Facilities Management; Engineering; Clinicians; Laboratory; and Hospital Management.

These regulations, which originally became effective on August 17, 2015, implemented important requirements that protect the public from the threat posed by *Legionella*. To ensure that protection is maintained, the Commissioner of Health and the Public Health and Health

Planning Council have determined it necessary to file these regulations on an emergency basis. Public Health Law § 225, in conjunction with State Administrative Procedure Act § 202(6) empowers the Council and the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

SUMMARY OF EXPRESS TERMS

The following summarizes the purpose and impact of each section. The summary is for convenience, and it is not a substitute for the express terms of the regulation.

- 4-1.1 Scope.
 - Provides that the regulation applies to all owners of cooling towers.
- 4-1.2 Definitions.
 - This section defines key terms.
 - In particular, a “cooling tower” is now defined as: “a cooling tower, evaporative condenser, fluid cooler or other wet cooling device that is capable of aerosolizing water, and that is part of, or contains, a recirculated water system and is incorporated into a building’s cooling process, an industrial process, a refrigeration system, or an energy production system.”
 - The definition of “owner” is now defined as follows: “any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of, a cooling tower or the premises where the cooling tower is located. In all instances, the legal owner of the building shall be deemed an owner within the meaning of the Subpart. Further, where a tenant owns a cooling tower that services the tenant’s leased premises, the tenant is an “owner” within the meaning of this Subpart. Additionally, if a tenant does not own the cooling tower but has a lease or contractual arrangement to maintain the cooling tower, the tenant shall be deemed an agent having control of the cooling tower, and thus an “owner,” for purposes of this Subpart.”
- 4-1.3 Electronic registration and reporting.

- Requires owners of cooling towers to register such towers with the Department using a statewide electronic system. Required registration fields have been slightly revised.
- Establishes a schedule for routine *Legionella* culture sampling and analysis, which includes reporting intervals not exceeding 90 days.
- Requires reporting of certain events, including:
 - last bacteriological culture sample collection date and result;
 - last *Legionella* culture sample collection date and result;
 - date of any required remedial action;
 - last inspection date;
 - last certification date;
 - date of removal or permanent discontinued use of a cooling tower; and
 - cooling tower system volume (including any piping, basin, and sump).
- The proposed regulations generally require reporting of certain events every 90 days. This is a change from the emergency regulations, which required reporting within 10 days.
- Affords public access to the statewide electronic system, as appropriate, and requires such system to be accessible and searchable to local health departments.
- Clarifies that where both a landlord and a tenant are considered “owners” of a cooling tower pursuant to Section 4-1.2, then either the owner or the tenant shall register the cooling tower. Both parties, however, are obligated to ensure that registration and reporting are completed.
- 4-1.4 Maintenance program and plan.

- Requires owners to obtain or update the maintenance program and plan for all operational cooling towers by September 1, 2016, and prior to the startup of newly installed cooling towers. The plan must include the following elements:
 - A schedule for routine bacteriological culture sampling and analysis to assess microbiological activity. The proposed regulation establishes a new, minimum sampling requirement, in which such sampling and analysis must be conducted: (1) at intervals not to exceed 30 days while the cooling tower is in use; and (2) at additional times, as needed, to validate process adjustments. The component that specifies a minimum sampling interval is a new requirement.
 - The emergency regulation contained a requirement for a schedule of routine *Legionella* culture sampling and analysis. The new regulation requires sampling within two weeks of seasonal start-up and thereafter at intervals not to exceed 90 days. In addition, the new regulation requires that year-round use towers be sampled at intervals not to exceed 90 days and within two weeks after start-up following maintenance. These are new requirements.
 - Provisions for immediate *Legionella* culture sampling and analysis following specified conditions, such as power failure, loss of biocide of sufficient duration to allow for the growth of bacteria, and if the State or local health department determines that one or more cases of *Legionella* is or may be associated with the tower. In addition to the conditions above, the proposed regulation describes conditions whereby the department or local health department may require sampling.

- Provisions requiring immediate and appropriate action, including any necessary remedial action, in response to bacteriological and *Legionella* culture analyses.
 - Provisions requiring that any and all *Legionella* culture analysis must be performed in accordance with Section 4-1.5. This is a new requirement.
 - Provisions for shutdown and for removing or permanently discontinuing use of a cooling tower. These are new requirements.
 - Provisions requiring appropriate actions during idle conditions. This is a new requirement.
 - Provisions requiring cleaning and disinfection of a cooling tower that has been shut down without treatment for more than five days. This is a new requirement.
- 4-1.5 *Legionella* culture analysis.
 - Requires that *Legionella* culture analysis be performed by a laboratory that is approved to perform such analysis by the New York State Environmental Laboratory Approval Program (ELAP). This is a new requirement.
- 4-1.6 Notification.
 - Requires an owner of a cooling tower to notify the local health department within 24 hours of receipt of a *Legionella* culture sample result that exceeds 1,000 Colony forming units (CFU) per milliliter. The owner must also notify the public of the test result in a manner determined by the local health department or by the department, if the department elects to determine the manner of public notification. This is a new requirement.

- 4-1.7 Disinfection.
 - Establishes qualifications of persons who may disinfect a cooling tower.
 - Requires that the name and certification number of the applicator or the business name and registration number of the company providing the disinfection be maintained on-site in accordance with Section 4-1.9. This is a new requirement.
 - Permits only biocide products registered by the New York State Department of Environmental Conservation to be used in disinfection.
 - “Disinfection” is clarified to exclude the cleaning of a cooling tower through application of detergents, penetrants, brushes or other tools, high-powered water, or any other method that does not involve the use of a pesticide, as defined in 6 NYCRR Part 325.
- 4-1.8 Inspection and certification.
 - Inspection.
 - Requires that all owners of cooling towers ensure that such towers are inspected prior to seasonal start up and at intervals not exceeding every 90 days while in use. Year-round towers shall be inspected at intervals not exceeding every 90 days and prior to start up following maintenance. The inspection requirement prior to start up is new.
 - Certification.
 - By November 1, 2016, and by November 1st of each year thereafter, the owner of a cooling tower must obtain a certification that the cooling tower has a maintenance program and plan, and that all activities within that plan or required by this Subpart were implemented.

- Reporting.
 - All inspection findings, deficiencies, and corrective actions, and all certifications, must be reported to the owner. This section is new to the regulation.

- 4-1.9 Recordkeeping.
 - Describes the records and documentation that the owner must maintain onsite for at least three years. Such records must be made available to the department or local health department upon request.

- 4-1.10 Enforcement.
 - Provides that the department or local health department may require any owner to conduct *Legionella* culture sampling and analysis, following a determination, based upon epidemiologic or laboratory testing, that one or more cases of legionellosis are or may be associated with a cooling tower. This is a new provision.
 - Permits an officer or employee of the department or local health department to enter onto any property to inspect a cooling tower for compliance with the requirements of this Subpart. The proposed regulation clarifies that such officers or employees may take water samples.
 - Provides that a violation of any provision in this Subpart is subject to all civil and criminal penalties as provided for by law. Further, every day that an owner remains in violation of any provision constitutes a separate and distinct violation of such provision.

- 4-1.11 Variances and waivers.
 - Grants local health departments authority to issue variances from this regulation, upon approval of the New York State Department of Health. The local and State health department must be satisfied that the variance will not present a danger to public health.
 - The department may also grant general or specific waivers where it is satisfied that a waiver will not present a danger to public health.

- 4-1.12 Severability.
 - Standard severability clause is included.

- Appendix 4-A
 - This Appendix describes required responsive actions for *Legionella* culture test results. As compared to the emergency regulations, these regulations raise the threshold level for detecting *Legionella* in laboratory culture analyses, from ≥ 10 colony forming units per milliliter (CFU/mL) to ≥ 20 CFU/mL.
 - Responsive actions have been updated and clarified. The term “acceptable improvement” was changed to an actual quantitative target of “ < 20 CFU/mL.” Also, where an owner receives a laboratory *Legionella* culture analyses result ≥ 1000 CFU/mL, the owner must provide appropriate notifications per section 4-1.6.
 - The footnotes for *on-line decontamination* and *system decontamination* were modified to allow the use of a halogen-based compounds (chlorine or bromine).

SUBPART 4-2 Covered Facilities

- 4-2.1 Scope.
 - This Subpart addresses *Legionella* exposure in general hospitals and residential health care facilities (collectively, “covered facilities”). This area was addressed through section 4.11 of the emergency regulation.
- 4-2.2 Definitions.
 - Defines key terms.
- 4-2.3 Environmental assessment
 - Requires covered facilities to perform an environmental assessment of the facility, using forms provided or approved by the department, no later than September 1, 2016, unless an environmental assessment was performed on or after September 1, 2015.
 - Requires an annual update of the environmental assessment, and in specified conditions.
 - Requires that copies of the completed environmental assessment form be retained in accordance with Section 4-2.6.
- 4-2.4 Sampling Plan
 - Requires that all covered facilities adopt and implement a sampling plan for their potable water systems by December 1, 2016, and that new covered facilities must adopt such plan prior to providing services.
 - In addition to any sampling required by the sampling plan, *Legionella* culture sampling and analysis of the potable water system must occur immediately, as

directed by the department, where (1) the department determines that one or more cases of legionellosis are, or may be, associated with the facility; and (2) under any other condition specified by the department.

- The sampling plan must be reviewed and updated annually, and in specified conditions.
 - The proposed regulation requires that the sampling plan and sampling results be retained in accordance with Section 4-2.6 of this Subpart.
- 4-2.5 *Legionella* culture analysis.
 - Legionella culture analyses must be performed by a laboratory approved to perform such analyses by the New York State Environmental Laboratory Program (ELAP).
- 4-2.6 Recordkeeping.
 - Specifies that all records related to the environmental assessment, sampling plan, and associated sampling results must be retained for three years and must be made available immediately to the department upon request.
- 4-2.7 Enforcement.
 - Authorizes the department to conduct an assessment and/or a *Legionella* culture sampling and analysis of the potable water system at any time.
 - Provides that where an owner of a covered facility does not comply with any provision contained within this Subpart, the department may determine that such condition constitutes a violation and may take such action as authorized by law.

Further, each day an owner is in violation of a provision constitutes a separate and distinct violation.

- 4-2.8 Variances and waivers.
 - Grants the department authority to issue variances and waivers from this regulation, subject to specified conditions.

- 4-2.9 Severability.
 - Standard severability clause is included.

- Appendix 4-B
 - This new appendix contains a table with comparison thresholds for routine *Legionella* culture sampling results. However, in the event that one or more cases of legionellosis are, or may be, associated with the facility, the sampling interpretation shall be in accordance with the direction of a qualified professional and the department.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 225(5)(a) of the Public Health Law, Part 4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon publication of a Notice of Adoption in the State Register, to read as follows:

PART 4: Protection Against *Legionella*

SUBPART 4-1 Cooling Towers

§ 4-1.1 Scope.

All owners of cooling towers shall comply with this Subpart.

§ 4-1.2 Definitions.

As used in this Subpart, the following terms shall have the following meanings:

(a) *Bacteriologic culture sampling and analysis*. The term *bacteriologic culture sampling and analysis* means the collection of a water sample for the measurement of live culture growth of the aerobic bacterial populations by heterotrophic plate count (HPC), dip slides, or similar method used by the industry and according to the manufacturer's directions.

(b) *Building*. The term *building* means any structure used or intended for supporting or sheltering any use or occupancy. The term shall be construed as if followed by the phrase "structure, premises, lot or part thereof" unless otherwise indicated by the text.

(c) *Cooling Tower*. The term *cooling tower* means a cooling tower, evaporative condenser, fluid cooler or other wet cooling device that is capable of aerosolizing water, and that is part of, or contains, a recirculated water system and is incorporated into a building's cooling process, an industrial process, a refrigeration system, or an energy production system.

(d) *Legionella culture sampling and analysis*. The term *Legionella culture sampling and analysis* means the collection of a water sample for the measurement of the live culture of *Legionella* involving the use of specialized media and laboratory methods for growth to determine the species and serogroup.

(e) *Owner*. The term *owner* means any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of, a cooling tower or the premises where the cooling tower is located. In all instances, the legal owner of the building shall be deemed an owner within the meaning of the Subpart. Further, where a tenant owns a cooling tower that services the tenant's leased premises, the tenant is an "owner" within the meaning of this Subpart. Additionally, if a tenant does not own the cooling tower but has a lease or contractual arrangement to maintain the cooling tower, the tenant shall be deemed an agent having control of the cooling tower, and thus an "owner," for purposes of this Subpart.

§ 4-1.3 Electronic registration and reporting.

(a) *Registration*. All owners of cooling towers shall register such towers with the department, using a statewide electronic system designated by the department, prior to initial operation, and whenever any owner of the cooling tower changes. Such registration shall include, at a minimum, the following information:

- (1) street address of the building at which the cooling tower is located, with building identification number, if any;
- (2) name(s), addresses(es), telephone number(s), and email address(es) of the owner(s) of the cooling tower;
- (3) name of the manufacturer of the cooling tower;

- (4) model number of the cooling tower;
- (5) specific unit serial number of the cooling tower, if available;
- (6) cooling capacity of the cooling tower;
- (7) cooling tower system volume, inclusive of all piping, basin(s), and sump;
- (8) intended use of the cooling tower;
- (9) whether the cooling tower operates year-round or seasonally and, if seasonally, start and end date of operation;
- (10) whether systematic disinfection in accordance with section 4-1.7 of this Subpart is maintained manually, through timed injection, or through continuous delivery;
- (11) whether maintenance is performed by in-house personnel, by a contractor, or by other parties; and
- (12) year the cooling tower was placed into service.

(b) *Reporting.* Effective upon adoption of the regulation, at intervals of no more than 90 days while a cooling tower is in use, the owner of the cooling tower shall report to the department using the statewide electronic system:

- (1) date of last bacteriological culture sample collection, the analysis result(s), and date of any required remedial action, pursuant to section 4-1.4(b)(1) of this Subpart;
- (2) date of last *Legionella* culture sample collection, the analysis result(s), and date of any required remedial action, pursuant to section 4-1.4(b)(2) - (4) of this Subpart;
- (3) date of last inspection, pursuant to section 4-1.8 of this Subpart;
- (4) date of last certification, pursuant to section 4-1.8 of this Subpart;
- (5) date of removal or permanent discontinued use of the cooling tower, if applicable; and
- (6) such other information as shall be determined by the department.

(c) The department shall make data in the statewide electronic system publicly available, as appropriate. The statewide electronic system shall be made fully accessible and searchable to any local health department. Nothing in this Subpart shall preclude a local health department from requiring registration and reporting with a local system or collecting fees associated with the administration of such system.

(d) Where both a landlord and a tenant are considered “owners” of a cooling tower pursuant to Section 4-1.2 of this Subpart, either the owner or the tenant shall register the cooling tower. However, both parties are obligated to ensure that registration and reporting are completed as required by this Subpart.

§ 4-1.4 Maintenance program and plan.

(a) By September 1, 2016, and thereafter prior to initial start-up of a newly installed cooling tower, the owner shall obtain or update a maintenance program and plan for each cooling tower, developed in accordance with section 7.2 of Legionellosis: Risk Management for Building Water Systems (ANSI/ASHRAE 188-2015), 2015 edition with final approval date of June 26, 2015, at pages 7-8, incorporated herein by reference. The latest edition of ASHRAE 188-2015 may be purchased from the ASHRAE website (www.ashrae.org) or from ASHRAE Customer Service, 1791 Tullie Circle, NE, Atlanta, GA 30329-2305. E-mail: orders@ashrae.org. Fax: 678-539-2129. Telephone: 404-636-8400, or toll free 1-800-527-4723. Copies are available for inspection and copying at: Center for Environmental Health, Corning Tower Room 1619, Empire State Plaza, Albany, NY 12237.

(b) In addition, the maintenance program and plan shall include the following elements:

- (1) a schedule for routine bacteriological culture sampling and analysis to assess microbiological activity at intervals not to exceed 30 days while the cooling tower is in use, and that requires additional bacteriological culture sampling and analysis, as needed, to validate process adjustments;
- (2) a schedule for routine *Legionella* culture sampling and analysis within two weeks of seasonal start-up and, thereafter, at intervals not to exceed 90 days while the cooling tower is in use. Cooling towers in use year-round must sample at intervals not to exceed 90 days, and within two weeks after start-up following maintenance;
- (3) in addition to the routine *Legionella* culture sampling and analysis required by paragraph (2) of this subdivision, conditions that require immediate *Legionella* culture sampling and analysis, which shall include, but are not limited to:
 - (i) power failure of sufficient duration to allow for the growth of bacteria;
 - (ii) loss of biocide treatment of sufficient duration to allow for the growth of bacteria;
 - (iii) failure of conductivity control, or any other control methods, to maintain proper cycles of concentration;
 - (iv) a determination by the department or local health department that one or more cases of legionellosis is or may be associated with the cooling tower, based upon epidemiologic data or laboratory testing; and
 - (v) any other conditions specified by the department or local health department.
- (4) provisions requiring immediate and appropriate action, including remedial action, in response to bacteriological and *Legionella* culture analyses. For *Legionella* culture analyses, such provisions shall include, but not be limited to, taking all responsive actions

required by Appendix 4-A, including contacting the local health department within 24 hours pursuant to the conditions specified in section 4-1.6 of this Subpart;

(5) provisions requiring that any and all *Legionella* culture analyses must be performed in accordance with section 4-1.5 of this Subpart;

(6) a shutdown and disinfection plan for removing or permanently discontinuing use of a cooling tower;

(7) provisions requiring manual or automated flushing of any piping, basin, sump, or wetted surface during idle conditions; and

(8) provisions requiring cleaning and disinfection prior to startup of a stagnant cooling tower that has been shut down without treatment and recirculation for more than five consecutive days.

§ 4-1.5 *Legionella* culture analysis.

All *Legionella* culture analyses must be performed by a laboratory that is approved to perform such analysis by the New York State Environmental Laboratory Approval Program (ELAP).

§ 4-1.6 Notification.

(a) The owner of a cooling tower shall notify the local health department within 24 hours of receipt of a *Legionella* culture sample result that exceeds 1,000 Colony forming units (CFU) per milliliter. The local health department shall notify the state department of health with 24 hours of receipt of such a report.

(b) The owner shall notify the public of such test results in a manner determined by the local health department or, in the event that the department elects to determine the manner of public notification, by the department.

§ 4-1.7 Disinfection.

(a) Any person who disinfects a cooling tower shall be a commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower and certified in accordance with the requirements of Article 33 of the Environmental Conservation Law and 6 NYCRR Part 325, or a pesticide apprentice under the supervision of a certified applicator.

(b) The name and certification number of the applicator or the business name and registration number of the company providing the disinfection shall be maintained on-site in accordance with section 4-1.9 of this subpart.

(c) Only biocide products registered by the New York State Department of Environmental Conservation may be used in disinfection.

(d) The term “disinfection” shall not include the cleaning of a cooling tower through application of detergents, penetrants, brushes or other tools, high-powered water, or any other method that does not involve the use of a pesticide, as defined in 6 NYCRR Part 325.

§ 4-1.8 Inspection and certification.

(a) Inspection.

(1) All owners of cooling towers shall ensure that such towers are inspected prior to seasonal start-up and at intervals not exceeding every 90 days while in use. Year-round

towers shall be inspected at intervals not exceeding every 90 days and prior to start-up, following maintenance.

(2) All inspections shall be performed by a: New York State licensed professional engineer; certified industrial hygienist; certified water technologist; environmental consultant or water treatment professional with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015, as incorporated by section 4-1.4 of this Subpart.

(3) Each inspection shall include an evaluation of the:

(i) cooling tower and associated equipment for the presence of organic material, biofilm, algae, debris and other visible contaminants;

(ii) general condition of the cooling tower basin, remote sump, packing material, and drift eliminators;

(iii) water make-up connections and control, including backflow protection and/or airgaps as needed;

(iv) proper functioning of the conductivity control; and

(v) proper functioning of all water treatment equipment, including, but not limited to, pumps, timers, valves, and strain gauges.

(4) Any deficiencies found during inspection shall be reported to the owner for immediate corrective action. A person qualified to inspect pursuant to paragraph (a) of this section shall document all deficiencies, and all completed corrective actions.

(b) *Certification.* By November 1, 2016, and by November 1st of each year thereafter, the owner of a cooling tower shall obtain a certification from a person identified in paragraph (a) of this

section, that such cooling tower has a maintenance program and plan, and that all activities within that plan or required by this Subpart were implemented, including but not limited to:

- (1) all bacteriological culture sampling and analysis;
- (2) all *Legionella* culture sampling and analysis, including any immediate *Legionella* culture sampling and analysis performed pursuant to paragraphs (b)(3) and (b)(4) of section 4-1.4 of this Subpart;
- (3) any disinfection performed pursuant to section 4-1.7 of this Subpart; and
- (4) all inspections performed pursuant subdivision (a) of this section.

(c) *Reporting.* All inspection findings, deficiencies, and corrective actions, and all certifications, shall be reported to the owner, who shall retain such information, in accordance with section 4-1.9 of this Subpart.

§ 4-1.9 Recordkeeping.

The owner of a cooling tower shall maintain records for at least three years of all sampling and analyses; disinfection schedules and applications; inspection findings, deficiencies, and corrective actions; and certifications. An owner shall maintain a copy of the maintenance program and plan required by this Subpart on the premises where a cooling tower is located. Such records and plan shall be made available to the department or local health department immediately upon request.

§ 4-1.10 Enforcement.

(a) The department or local health department may require any owner to conduct *Legionella* culture sampling and analysis, following a determination, based upon epidemiologic data or

laboratory testing, that one or more cases of legionellosis are or may be associated with a cooling tower.

(b) An officer or employee of the department or local health department may enter onto any property to inspect a cooling tower for compliance with the requirements of this Subpart, in accordance with applicable law, and may take water samples as part of such inspections.

(c) Where an owner does not register, obtain certification, disinfect, perform or obtain culture sampling and analysis, or inspect a cooling tower within the time and manner set forth in this Subpart, the department or local health department may determine that such condition constitutes a nuisance and may take such action as authorized by law. The department or local health department may also take any other action authorized by law.

(d) A violation of any provision of this Subpart is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Subpart shall constitute a separate and distinct violation of such provision.

§ 4-1.11 Variances and waivers.

(a) Variances. In order to allow time for compliance with this Subpart, an owner may submit a written application to a local health department for a variance from any provision of this Subpart, for a period not exceeding 90 days, accompanied by an explanation of why such variance will not present a danger to public health. With the approval of the department, the local health department may approve such application for a variance in writing, subject to any conditions that the department or local health department may deem appropriate to protect public health. The local health department or department may revoke such variance upon a determination that the variance may present a danger to public health.

(b) Waivers. The department may issue a written general or specific waiver with respect to any provision of this Subpart, subject to any conditions the department may deem appropriate, where the department is satisfied that such waiver will not present a danger to public health. The department may revoke such waiver upon a determination that the waiver may present a danger to public health.

§ 4-1.12 Severability.

If any provisions of this Subpart or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Subpart or the application thereof to other persons, entities, and circumstances.

Appendix 4-A

Interpretation of <i>Legionella</i> Culture Results from Cooling Towers	
<i>Legionella</i> Test Results in CFU/mL ¹	Approach
No detection (< 20 CFU/mL)	Maintain treatment program and <i>Legionella</i> monitoring in accordance with the maintenance program and plan.
For levels at ≥ 20 CFU/mL but < 1000 CFU/mL perform the following:	<ul style="list-style-type: none"> ○ Review treatment program. ○ Institute immediate <u>online disinfection</u>² to help with control ○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> ▪ Continue to retest at the same time interval until one sample retest result is < 20 CFU/mL. With receipt of result < 20 CFU/mL, resume routine maintenance program and plan. ▪ If retest is ≥ 20 CFU/mL but < 100 CFU/mL, repeat <u>online disinfection</u>² and retest until < 20 CFU/mL attained. ▪ If retest is ≥ 100 CFU/mL but < 1000 CFU/mL, further investigate the water treatment program and immediately perform <u>online disinfection</u>.² Retest and repeat attempts at control strategy until < 20 CFU/mL attained. ○ If retest is ≥ 1000 CFU/mL, undertake control strategy as noted below.

<p>For levels ≥ 1000 CFU/mL perform the following:</p>	<ul style="list-style-type: none"> ○ Review the treatment program and provide appropriate notifications per section 4-1.6 of this Subpart. ○ Institute immediate <i>online decontamination</i>³ to help with control ○ Retest the water in 3 – 7 days. <ul style="list-style-type: none"> ▪ Continue to retest at the same time interval until one sample retest result is < 20 CFU/mL. With receipt of result < 20 CFU/mL, resume routine maintenance program and plan. ▪ If any retest is ≥ 20 CFU/mL but < 100 CFU/mL, repeat <i>online disinfection</i>² and retest until < 20 CFU/mL attained. ▪ If any retest is ≥ 100 CFU/mL but < 1000 CFU/mL, further investigate the water treatment program and immediately perform <i>online disinfection</i>.² Re-test and repeat attempts at control strategy until < 20 CFU/mL attained. ▪ If any retest is ≥ 1000 CFU/mL: <ul style="list-style-type: none"> • carry out <i>system decontamination</i>⁴.
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¹ Colony forming units per milliliter.

² Online disinfection means – Dose the cooling tower water system with either a different biocide or a similar biocide at an increased concentration than currently used.

³ Online decontamination means – Dose the recirculation water with a halogen-based compound (chlorine or bromine) equivalent to at least 5 milligrams per liter (mg/l) or parts per million (ppm) free residual halogen for at least one hour.

⁴ System decontamination means – Maintain between 5 to 10 mg/l (ppm) free residual halogen for a minimum of one hour; drain and flush with disinfected water; clean wetted surface; refill and dose to 1 – 5 mg/l (ppm) of free residual halogen and circulate for 30 minutes. Refill, re-establish treatment and retest for verification of treatment.

For chlorine treatment the pH range should be 7.0 to 7.6; for bromine treatment the pH range should be 7.0 to 8.7. At higher pH values the treatment times may need to be extended.

NOTE: Stabilized halogen products should not be used for remediation.

SUBPART 4-2 Health Care Facilities

§ 4-2.1 Scope.

All general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law (collectively, “covered facilities”) shall comply with this Subpart.

§ 4-2.2 Definitions.

(a) *Covered facilities*. The term *covered facilities* means all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law.

(b) *Legionella culture sampling and analysis*. The term *Legionella culture sampling and analysis* means the collection of a water sample for the measurement of the live culture of *Legionella* involving the use of specialized media and laboratory methods for growth to determine the species and serogroup.

(c) *Potable water system*. The term *potable water system* means a building water distribution system that provides water intended for human contact or consumption.

§ 4-2.3 Environmental Assessment.

(a) By September 1, 2016, all covered facilities must perform an environmental assessment of the facility using forms provided or approved by the department, unless an environmental assessment was performed on or after September 1, 2015.

(b) Environmental assessments shall be updated annually and under the following conditions:

(1) in the event that one or more cases of legionellosis are, or may be, associated with the facility;

(2) upon completion of any construction, modification, or repair activities that may affect the potable water system;

(3) expansion or relocation of a facility's hematopoietic stem cell transplant and solid organ transplant units; or

(4) any other conditions specified by the department.

(c) The facility shall retain copies of the completed environmental assessment form in accordance with section 4-2.6 of this Subpart.

§ 4-2.4 Sampling Plan.

(a) By December 1, 2016, all covered facilities shall adopt and implement a *Legionella* culture sampling plan for their potable water systems. New covered facilities shall adopt such a plan prior to providing services. The plan must include at a minimum:

(1) *Legionella* culture sampling sites as determined by the environmental assessment;

(2) provisions requiring *Legionella* culture sampling and analysis at intervals not to exceed 90 days for the first year following adoption of the sampling plan. Thereafter, the plan shall include provisions for annual *Legionella* culture sampling and analysis; provided that the plan shall further require that those portions of any potable water system that serve hematopoietic stem cell transplant or solid organ transplant patients shall continue to be sampled and analyzed at intervals not to exceed 90 days.

(3) provisions requiring actions in response to *Legionella* culture analysis results, including all responsive actions required by Appendix 4-B, and specific time frames for such actions.

(b) In addition to the sampling required by the facility's sampling plan, a covered facility shall conduct *Legionella* culture sampling and analysis of the potable water system in a timeframe to be determined by the department upon:

(1) a determination by the department that one or more cases of legionellosis are, or may be, associated with the facility, or

(2) any other conditions specified by the department.

(c) A covered facility shall review its sampling plan annually and under the following conditions:

(1) in the event that one or more cases of legionellosis are, or may be, associated with the facility;

(2) upon completion of any construction, modification, or repair activities that may affect the potable water system;

(3) upon expansion or relocation of a facility's hematopoietic stem cell transplant and solid organ transplant units; or

(4) any other conditions specified by the department.

(d) A copy of the sampling plan and sampling results shall be retained in accordance with section 4-2.6 of this Subpart.

§ 4-2.5 *Legionella* culture analysis.

All *Legionella* culture analyses must be performed by a laboratory that is approved to perform such analysis by the New York State Environmental Laboratory Approval Program (ELAP).

§ 4-2.6 Recordkeeping.

A covered facility shall maintain the environmental assessment required by section 4-2.3 and the sampling plan required by section 4-2.4 of this Subpart, and any associated sampling results, on the facility premises for at least three years. Such records shall be made available to the department immediately upon request.

§ 4-2.7 Enforcement.

(a) The department may conduct an assessment and/or *Legionella* culture sampling and analysis of the potable water system at any time.

(b) A violation of any provision of this Subpart is subject to all civil and criminal penalties as provided for by law. Each day that an owner remains in violation of any provision of this Subpart shall constitute a separate and distinct violation of such provision.

§ 4-2.8 Variances and waivers.

(a) *Variances.* In order to allow time for compliance with this Subpart, a facility may submit a written application to the department for a variance from any provision of this Subpart, for a period not exceeding 90 days, accompanied by an explanation of why such variance will not present a danger to public health. The department may approve such application for a variance in writing, subject to any conditions that it may deem appropriate to protect public health. The department may revoke such variance upon a determination that the variance may present a danger to public health.

(b) *Waivers.* The department may issue a written general or specific waiver with respect to any provision of this Subpart, subject to any conditions the department may deem appropriate, where the department is satisfied that such waiver will not present a danger to public health. The department may revoke such waiver upon a determination that the waiver may present a danger to public health.

§ 4-2.9 Severability.

If any provisions of this Subpart or the application thereof to any person or entity or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Subpart or the application thereof to other persons, entities, and circumstances.

Appendix 4-B

Interpretation of Routine¹ <i>Legionella</i> Culture Results from Covered Facilities	
Percentage of Positive <i>Legionella</i> Test Sites	Approach
< 30%	Maintain environmental assessment and <i>Legionella</i> monitoring in accordance with the sampling plan.
≥ 30%	<ul style="list-style-type: none"> • Immediately institute short-term control measures² in accordance with the direction of a qualified professional,⁴ and notify the department. • The water system shall be re-sampled no sooner than 7 days and no later than 4 weeks after disinfection to determine the efficacy of the treatment. <ul style="list-style-type: none"> ○ Retreat and retest. If retest is ≥ 30% positive, repeat short-term control measures.² ○ With receipt of results < 30% positive, resume monitoring in accordance with the sampling plan. • For persistent results, as determined by the department, showing ≥ 30% positive sites, long-term control measures³ shall be implemented in accordance with the direction of a qualified professional⁴ and the department.
<p>¹ In the event that one or more cases of legionellosis are, or may be, associated with the facility, the sampling interpretation shall be in accordance with the direction of a qualified professional⁴ and the department.</p>	

² Short-term control measures are temporary interventions that may include, but are not limited to, heating and flushing the water system, hyperchlorination, or the temporary installation of treatment such as copper silver ionization (CSI).

³ Long-term control measures may include, but are not limited to, continuous low-level chlorination, CSI, chlorine dioxide or chloramination.

⁴ Control measures shall be conducted in accordance with the direction of a qualified professional. A qualified professional is a New York State licensed professional engineer; certified industrial hygienist; certified water technologist; environmental consultant or water treatment professional with training and experience performing assessments and sampling in accordance with current standard industry protocols.

SUMMARY OF REGULATORY IMPACT STATEMENT

Needs and Benefits:

Legionellosis describes any illness caused by exposure to *Legionella* bacteria, including Legionnaire's Disease and Pontiac Fever. Potential sources of exposure to *Legionella* bacteria include water in the home, workplace, healthcare facilities or aerosol-producing devices in public places. Improper maintenance of cooling towers can contribute to the growth and dissemination of *Legionella* bacteria. Inadequate surveillance for *Legionella* bacteria in the potable water systems at general hospitals and residential health care facilities can also increase the risk of legionellosis.

Symptoms of legionellosis may include cough, shortness of breath, high fever, muscle aches, and headaches, and can result in pneumonia. Hospitalization is often required, and between 5 and 30% of cases are fatal. People at highest risk are those 50 years of age or older; current or former smokers; those with chronic lung diseases; those with weakened immune systems from diseases like cancer, diabetes, or kidney failure; and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005 and 2014 increased 323%, compared to those reported in the previous ten-year period.

Outbreaks of legionellosis have been associated with cooling towers, as well as with the potable water systems of general hospitals and residential health care facilities. Subpart 4-1 of these regulations establish requirements for cooling towers relating to: registration, reporting and recordkeeping; testing; disinfection; maintenance; inspection; and certification of compliance. Subpart 4-2 of these regulations require general hospitals and residential health care facilities to

implement an environmental assessment and *Legionella* sampling plan for their potable water systems and take necessary responsive actions.

These proposed regulations incorporate important clarifications and revisions from the emergency regulations initially adopted by the Public Health and Health Planning Council on August 17, 2015. In general, the Department organized and streamlined the language for concision and clarity. Certain sections were renumbered and related provisions consolidated. Further, the proposed regulations have been divided into two Subparts.

Costs:

Subpart 4-1

Building owners already incur costs for routine operation and maintenance of cooling towers. There will be some increased costs associated with sampling, inspection, and certification of cooling towers. These costs are detailed in the Regulatory Impact Statement.

State and local governments will incur costs for administration, implementation, and enforcement. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset further by a reduction in the need to respond to community legionellosis outbreaks.

Subpart 4-2

General hospitals and residential healthcare facilities already incur costs associated with running infection control programs. The regulations would incur new costs for those facilities that are not already conducting annual environmental assessments, and would require all such facilities to adopt and implement a *Legionella* sampling plan. In many instances, facilities can

complete the environmental assessment using existing hospital staff (maintenance, operations, and nursing staff). The cost of these requirements is expected to be offset by the reduced risk of Legionellosis in such facilities.

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Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council (PHHPC) is authorized by Section 225 of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. PHL Section 225(5)(a) provides that the SSC may deal with any matter affecting the security of life or health, or the preservation or improvement of public health, in the state of New York.

Legislative Objectives:

This rulemaking is in accordance with the legislative objective of PHL Section 225 authorizing PHHPC, in conjunction with the Commissioner of Health, to protect public health and safety by amending the SSC to address issues that jeopardize such health and safety. Subpart 4-1 establishes requirements for cooling towers relating to: registration, reporting and recordkeeping; testing; disinfection; maintenance; inspection; and certification of compliance. Subpart 4-2 establishes requirements for potable water systems for general hospitals and residential health care facilities.

Needs and Benefits:

Legionellosis describes any illness caused by exposure to *Legionella* bacteria, including Legionnaire's Disease and Pontiac Fever. Symptoms of legionellosis may include cough, shortness of breath, high fever, muscle aches, and headaches, and can result in pneumonia. People at highest risk are those 50 years of age or older; current or former smokers; those with chronic lung diseases; those with weakened immune systems from diseases like cancer, diabetes,

or kidney failure; and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005 and 2014 increased 323%, compared to those reported in the previous ten-year period.

Illnesses caused by the *Legionella* bacteria are a serious public health threat, as these cases often require hospitalization, and between 5 and 30% of cases are fatal. Optimal conditions for *Legionella* growth include warm water that is high in nutrients and protected from light. People are exposed to *Legionella* through inhalation of aerosolized water containing the bacteria. Outbreaks of legionellosis have been associated with cooling towers, as well as with the potable water systems of hospitals and residential health care facilities.

The proposed regulations govern operation and maintenance of cooling towers, as well as potable water systems for general hospitals and residential healthcare facilities. These proposed regulations incorporate important clarifications and revisions, as compared to the emergency regulations adopted by PHHPC on August 17, 2015. In general, the Department has organized and streamlined the language for concision and clarity. Certain sections were renumbered and related provisions consolidated. Further, the proposed regulations have been divided into two Subparts: the first regulates cooling towers, and the second regulates potable water systems of general hospitals and residential health care facilities.

Subpart 4-1

Improper maintenance of cooling towers can contribute to the occurrence of *Legionella*. A cooling tower is an evaporative device that is part of a recirculated water system incorporated into a building's cooling, industrial process, refrigeration, or energy production system. Water is part of the process of heat transfer, and these devices require disinfectant to kill or inhibit the

growth of bacteria (including *Legionella*) in such water. The mists normally aerosolized from the tower contain any bacteria growing in this water, including *Legionella*.

Notably, cooling tower manuals typically contain warnings that *Legionella* and other bacteria may be amplified and disseminated if the cooling tower is not properly maintained. Manuals typically recommend that the cooling tower be located at a distance and direction that avoids contaminated discharge from being drawn into fresh air intakes.

In 2005, a cooling tower located at ground level adjacent to a hospital in New Rochelle, Westchester County resulted in a cluster of 19 cases of legionellosis and multiple fatalities. Most of the individuals were either dialysis patients, or companions escorting patients to their dialysis session. The cooling tower was found to have insufficient chemical treatment to control bacterial overgrowth. The tower was ultimately replaced by the manufacturer in order to maintain cooling for the hospital and to protect public health.

Additionally, in June and July of 2008, 12 cases of legionellosis, including one fatality, were attributed to a small cooling tower in Syracuse, New York. After an investigation, it was determined that the unit was not operating properly, resulting in the growth of microorganisms in the unit. No new cases were detected after emergency biocide treatment was initiated and proper treatment was maintained.

Recently, 133 cases of legionellosis, which included 16 fatalities, occurred in the Bronx, New York (July-August, 2015). Epidemiologic, environmental, and laboratory investigations of the Legionnaires' disease outbreak in the South Bronx identified a hotel cooling tower as the source of this outbreak. The investigation included a DNA comparison of isolates cultured from cooling towers in the South Bronx and case-patients who lived, worked or visited the area. DNA

from the hotel cooling tower isolates and the outbreak-associated cases were indistinguishable.

In both situations, emergency disinfection of compromised cooling towers helped curtail these outbreaks. These outbreaks highlight the need for proper operation, monitoring, on-going treatment and maintenance of cooling towers. Prior to the issuance of the emergency regulation in August 2015, cooling towers were unregulated in New York State.

The heating, ventilation, and air-conditioning (HVAC) industry has issued guidelines on how to: seasonally start a cooling tower; treat it with biocides and other chemicals needed to protect the components from scale and corrosion; set cycles of operations that determine when fresh water is needed; and shut down the tower at the end of the cooling season. The American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has recently released a new Standard entitled *Legionellosis: Risk Management for Building Water Systems* (ANSI/ASHRAE Standard 188-2015). Section 7.2 of that document outlines components of the operations and management plan for cooling towers. The industry also relies on other guidance for specific treatment chemicals, emergency disinfection or decontamination procedures, and other requirements.

Absent regulation, however, this industry guidance is not obligatory. Consequently, maintenance deficiencies, such as poor practice in operation and management, can result in bacterial overgrowth and mist emissions that contain pathogenic *Legionella* bacteria. This regulation requires that all owners of cooling towers ensure that such towers are properly maintained, to protect the public and address this public health threat.

Subpart 4-2

The proposed regulations require that all general hospitals and residential healthcare facilities perform an environmental assessment of their facility. The facilities must also adopt a *Legionella* sampling plan for their potable water system, report the results, and take necessary actions to protect the safety of their patients and/or residents. Additionally, facilities must perform immediate *Legionella* culture sampling and analysis of potable water systems, in a manner directed by the Department, where the Department determines that one or more cases of legionellosis are, or may be, associated with the facility. The Department may also require immediate sampling and analysis based upon any other conditions it specifies.

Most healthy people do not get Legionnaires' disease after being exposed to *Legionella*. In both general hospitals and nursing homes, the risk for disease increases in people who are: over 50 years of age; receiving chemotherapy; undergoing or who have undergone transplants; or receiving immunosuppressive therapy for other conditions. Hospitals will often group these patients together due to the requirements for special precautions. General hospitals who have patients within hematopoietic stem-cell transplant (HSCT) and solid organ transplant units are especially at risk. Accordingly, the potable water systems serving such patients require more frequent sampling under the regulations.

Additionally, people with chronic lung disease are at increased risk for acquiring Legionnaires' disease. Many residents of nursing homes are at risk for legionellosis, as the risk increases with increasing age, especially in the presence of underlying chronic disease.

From 2007 to date, the Department has been involved with the environmental assessment or investigation of 230 Legionellosis events that involved one or more cases, located in 173 hospitals and nursing homes. These cases have demonstrated the need for general hospitals and

nursing homes to conduct regular environmental assessments, implement a sampling plan for the potable water systems, and to take necessary responsive action.

Costs:

Costs to Private Regulated Parties:

Subpart 4-1

Building owners already incur costs for routine operation and maintenance of cooling towers. The proposed regulation, however, establishes certain requirements that have associated costs, to the extent these actions are not already being performed.

- *Routine Bacteriological Culture Sampling and Analysis.* The regulations require routine bacteriological sampling and analysis using dip slides or heterotrophic plate counts (HPC).
 - The cost per dip-slide test is \$3.50. Assuming these tests are performed once each month, this would result in an annual cost of \$42 for year-round towers. For seasonal towers, the approximate cost for this sampling is \$24.50.
 - The cost per HPC test would average \$20. Assuming HPC is performed once each month, this would result in an annual cost of \$240 for year-round cooling towers. For seasonal towers, the approximate cost would be \$140.
- *Routine and Immediate Legionella Culture Sampling and Analysis.* Owners of cooling towers are required to conduct *Legionella* culture sampling and analysis at intervals not to exceed every 90 days while the cooling tower is in use, and immediately in the event of disruption of normal operations. The average cost of each sample analysis is estimated to be approximately \$125. If four samples are collected per year for a year-round cooling tower, the approximate cost is \$500. In the case of a seasonal tower, if three samples are

collected per year, the approximate annual cost is \$375.

- *Inspection.* Owners of cooling towers shall obtain the services of a professional engineer (P.E.), certified industrial hygienist (C.I.H.), certified water technologist, or environmental consultant or water treatment professional with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015; for inspection of the cooling towers at intervals not exceeding once every 90 days while the cooling towers are in use. The cost of such services is estimated to be approximately \$150 per hour and estimated to take approximately eight (8) hours. For year-round towers, the approximate annual cost of inspection is \$4,800, and for seasonal towers, the approximate annual cost of inspection is \$3,600.
- *Annual Certification.* The same persons qualified to perform inspections are qualified to perform annual certifications. The cost of such services is estimated to be approximately \$150 per hour and is estimated to take approximately four (4) hours. The approximate cost of annual certification for both year-round and seasonal towers is \$600.
- *Disinfection.* If disinfection is required, owners of cooling towers are required to obtain the services of a certified commercial pesticide applicator or pesticide technician who is qualified to apply biocide in a cooling tower, or a pesticide apprentice under the supervision of a certified applicator. The cost of such services is estimated to be approximately \$5,000 for labor, plus the cost of materials.
- *Recordkeeping and Electronic Reporting.* Owners of cooling towers are required to maintain certain specified records and to electronically report certain specified information. The costs of these administrative activities are predicted to be minimal.

- The formulation of a cooling tower maintenance program and plan is estimated to require 4 to 8 hours at \$150 per hour (\$600 to \$1200). The range represents the cost for reviewing and modifying an existing plan versus the preparation of a new plan.
- Where power producers and industrial facilities disinfect a cooling tower using halogenation, they may be required to dehalogenate discharge streams from cooling towers to meet State Pollutant Discharge Elimination permit System (SPDES) permit conditions. Piping, and attendant monitoring equipment (e.g., conductivity probes, continuous halogen monitors), may require design and capital expenditures in accordance with the unique operating conditions of the tower.

Subpart 4-2

General hospitals and residential healthcare facilities already incur costs for routine operation and maintenance of infection control programs. This regulation establishes the following requirements, which have associated costs:

- *Annual Environmental Assessment.* In many instances, physical facilities staff can complete the environmental assessment in cooperation with other hospital staff (maintenance, operations, and nursing staff). The work can normally be completed in 2 to 3 hours. In the event that a consultant is used, these costs range between \$300 and \$450.
- *Sampling Plan.* If the facility already has a sampling plan and maintains proper maintenance records, but requires a consultant to determine compliance with these new requirements, the associated cost would be 6.5 hours at \$150 per hour (\$975). Without a prior plan, and with poor maintenance documentation, the associated cost would be 13 hours, or more, at \$150 per hour (approximately \$1,950). In some cases, facilities may be

able to develop a sampling plan using existing staff. Further, these costs will have already been realized by those facilities following the department's guidance documents issued prior to the emergency regulations.

- *Routine and Immediate Legionella Culture Sampling and Analysis.* Covered facilities are expected to sample at intervals not to exceed every 90 days for the first year after adoption of the sampling plan. If ten samples were to be collected during each sampling round, and the cost of each sample analysis is estimated to be approximately \$125.00, the total cost per year of such sampling is estimated to be \$5,000. This would be an annual cost for facilities with hematopoietic stem-cell transplant (HSCT) and solid organ transplant units. For facilities without such units, the annual cost of sampling is estimated to be \$1,250, as sampling may be performed on an annual basis.

Costs to State Government and Local Government:

State and local governments will incur costs for administration, implementation, and enforcement of Subpart 4-1. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset further by a reduction in the need to respond to community legionellosis outbreaks.

State government will incur costs for enforcement of Subpart 4-2 for general hospitals and residential healthcare facilities. However, the cost is expected to be outweighed by the benefit of reduced cases of legionellosis at these facilities.

Local Government Mandates:

The SSC establishes a minimum standard for regulation of health and sanitation. Local governments can, and often do, establish more restrictive requirements that are consistent with the SSC through a local sanitary code. PHL § 228. Local governments have the power to enforce the provisions of the State Sanitary Code, including Subpart 4-1, utilizing both civil and criminal options available. PHL §§ 228, 229, 309(1)(f) and 324(1)(e). With respect to Subpart 4-2, the Department, rather than local governments, will conduct enforcement.

Paperwork:

The regulation imposes new registration, reporting and recordkeeping requirements for owners of cooling towers. Additionally, general hospitals and residential healthcare facilities will be required to perform periodic environmental assessments and to adopt and implement a *Legionella* sampling plan. The regulation imposes new recordkeeping requirements for general hospitals and residential healthcare facilities related to the environmental assessment, the sampling plan and sample results.

Duplication:

This regulation does not duplicate any state requirements.

Alternatives:

No alternatives were considered, as promulgating this regulation was determined to be necessary to address the public health threat.

Federal Standards:

There are no federal standards or regulations pertaining to registration, maintenance, operation, testing, and inspection for cooling towers, or to *Legionella* sampling of potable water systems for general hospitals or residential healthcare facilities.

Compliance Schedule:

These permanent regulations, which incorporate revisions to the emergency regulations currently in effect, will be effective upon publication of a Notice of Adoption in the State Register.

Subpart 4-1

All owners of existing cooling towers should already be complying with the current emergency regulations. By September 1, 2016, all owners of existing cooling towers must begin routine bacteriological sampling analysis every 30 days while the tower is in use, and *Legionella* culture sampling and analysis every 90 days while the tower is in use. As in the emergency regulations, owners of cooling towers must obtain a certification that regulatory requirements have been met by November 1, 2016, with subsequent annual certifications by November 1st of each year.

Owners must register cooling towers and report certain actions, using a statewide electronic system. Reportable events include dates of sample collection; dates of disinfection; date of last inspection; date of last certification; and date of discontinued use. Reporting must be made through the electronic registry in intervals not exceeding 90 days.

Subpart 4-2

By September 1, 2016, all covered facilities must perform an environmental assessment of the facility using forms provided, or approved, by the department, unless an environmental assessment was performed on or after September 1, 2015. The assessment shall be updated annually and updated in the event of a case of facility-acquired legionellosis, facility repair, new construction, changes in the potable water system, and upon any other conditions specified by the department.

Additionally, all covered facilities must adopt and implement a *Legionella* sampling plan for the facilities' potable water system by December 1, 2016. The plan must include *Legionella* culture sampling and analysis at intervals not to exceed 90 days for the first year after the adoption of the sampling plan. Thereafter, sampling is to be performed annually, at a minimum, provided that general hospitals with hematopoietic stem cell and solid organ transplant units must continue to sample at intervals not to exceed 90 days. The sampling plan must be reviewed annually and updated in the event of a case of facility-acquired legionellosis, significant construction, repair work, or changes to the potable water system and/or facilities' use that may affect hematopoietic stem cell and solid organ transplant units, and any other conditions specified by the department.

In addition to the sampling required by a facility's sampling plan, immediate *Legionella* culture sampling and analysis of the potable water system must occur, at the direction of the department, when (1) a determination is made by the department that one or more cases of legionellosis are, or may be, associated with the facility; or (2) any other conditions specified by the department.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

The rule will affect the owner of any building with a cooling tower, as those terms are defined in the regulation, which could include small businesses and local governments. Any general hospitals and residential health care facilities owned or operated by a local government or that qualifies as a small business will be required to complete an environmental assessment, adopt and implement a *Legionella* sampling plan for the facilities' potable water system, and take appropriate responsive actions. At this time, it is not possible to determine the number of small businesses or local governments affected.

Local governments must also enforce Subpart 4-1, relating to regulation of cooling towers. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

Compliance Requirements:

Compliance requirement for small businesses and local governments are the same as those requirements set forth in the Regulatory Impact Statement.

Professional Services:

To comply with inspection and certification requirements with respect to cooling towers, small businesses and local governments will need to obtain services of a P.E., C.I.H., certified water technologist, or environmental consultant with training and experience performing

inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015. Small businesses and local governments will need to secure laboratory services for *Legionella* culture analysis. To comply with disinfection requirements with respect to cooling towers, small businesses and local governments will need to obtain the services of a commercial pesticide applicator or pesticide technician, or pesticide apprentice under supervision of a commercial pesticide applicator.

Compliance with the provisions that apply to general hospitals and healthcare facilities may require expertise in areas such engineering, physical facility management, water treatment methods, and monitoring of the environmental conditions of their potable water distribution systems.

Compliance Costs:

Compliance costs for small business and local government are consistent with the costs outlined in the Regulatory Impact Statement.

Economic and Technological Feasibility:

Although there will be an impact on building owners, including small businesses and local governments, compliance with the regulation is considered economically and technologically feasible, in part because the requirements are consistent industry best practices. This regulation is also necessary to protect public health, and it is expected to reduce cases of legionellosis in communities around cooling towers, as well as for patients and residents in general hospitals and residential healthcare facilities. Accordingly, the benefits to public health are anticipated to outweigh any costs.

Minimizing Adverse Impact:

The Department provides a cooling tower registry, technical consultation, coordination, and information and updates. In addition, the Department has issued guidance for general hospitals and cooling towers, which is consistent with the proposed regulations. Covered facilities that have followed the guidance will already be in compliance with most of the new regulations.

Small Business and Local Government Participation:

Development of the emergency regulations, upon which these regulations were based, was coordinated with New York City.

Cure Period:

Violation of this regulation can result in civil and criminal penalties. However, the regulations allow for time to adopt plans and performed required actions. Accordingly, and in light of the magnitude of the public health threat posed by *Legionella*, no cure period is warranted.

RURAL AREA FLEXIBILITY ANALYSIS

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

JOB IMPACT STATEMENT

Nature of the Impact:

The New York State Department of Health (NYSDOH) expects there to be a positive impact on jobs or employment opportunities. The requirements in the regulation generally coincide with industry standards and manufacturers specification for the operation and maintenance of cooling towers. However, it is expected that a subset of owners have not adequately followed industry standards and will hire firms or individuals to assist them with compliance and to perform inspections and certifications.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the proposed regulations.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by Sections 2800 and 2803 of the Public Health Law, Part 405 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication in the New York State Register, to read as follows:

A new section 405.33 is added as follows:

405.33 Screening mammography services

(a) *Applicability.* This section shall apply to any general hospital or extension clinic that is certified as a mammography facility pursuant to the Mammography Quality Standards Act (MQSA).

(b) *Extended service hours.*

Any general hospital or extension clinic certified as a mammography facility pursuant to the MQSA shall provide extended hours, i.e. in the early morning, evening, or weekend hours, for screening mammography services. Extended hours for screening mammography services shall be provided on at least two days each week, for at least two hours each day offered, for a total of at least four hours each week, including but not limited to the following times:

- (1) Monday through Friday, between the hours of 7:00 a.m. and 9:00 a.m.;
- (2) Monday through Friday, between the hours of 5:00 p.m. and 7:00 p.m.; or
- (3) Saturday or Sunday, between the hours of 9:00 a.m. and 5:00 p.m.

(c) *Waiver.*

- (1) A facility may submit an application for a waiver from the requirements of this section, in whole or in part, if it can demonstrate, to the Department's satisfaction, that the facility:
 - (i) does not have sufficient staff to provide extended hours for screening mammography services in accordance with this section, and that it is making diligent efforts to obtain staffing such that it can provide extended hours;
 - (ii) is in the process of discontinuing screening mammography services, as part of a consolidation or similar change; or
 - (iii) is subject to such other hardships as the Department deems appropriate.
- (2) The Department may deny, grant or extend a waiver for 90 days, or more if the Department determines appropriate, in its sole discretion.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (“PHL”) Section 2800 provides that “hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state . . . , the department of health shall have the central, comprehensive responsibility for the development and administration of the state’s policy with respect to hospital related services”

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

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State, by promoting the availability of high quality health services at a reasonable cost.

Needs and Benefits:

In 2014, nearly 22% of women in New York State (NYS) aged 50-74 reported not receiving mammograms at least every other year. Breast cancer is the most commonly diagnosed cancer and the second leading cause of cancer death among women in New York State. Each year, approximately 15,000 women in New York State are newly diagnosed with

breast cancer, and approximately 2,640 die from the disease. Some subpopulations who are less likely to have been screened include women without health insurance (61.7% screened) and women without a regular health care provider (63.0% screened). Screening for breast cancer can increase the likelihood of identifying cancer at an early stage, when treatment is most successful. Once screened, follow-up diagnostic testing is critical to ensuring women receive necessary, potentially life-saving treatment.

Women may not get screened because they are afraid that mammography may be painful, they do not know what screening guidelines are, they do not know where to go for screening, they may have transportation barriers, or they may think screening is unaffordable. When women need follow-up testing and treatment, they can be overwhelmed. They may need help with accessing services, navigating complex health systems, and managing treatment decisions. The Community Preventive Services Task Force, an independent panel of experts appointed by the Centers for Disease Control and Prevention (CDC), has recommended reducing structural barriers as an intervention to improve breast cancer screening. Reducing structural barriers includes modifying hours of service to meet client needs.

There are approximately 600 certified mammography facilities in New York State: 210 are hospital-based (152 hospital locations, plus 58 hospital extension clinic sites); 18 free-standing diagnostic and treatment center; and 372 other non-hospital based mammography facilities. A survey of 36 contractors in the Cancer Services Program, which provides cancer screening for the uninsured, found that the majority (95%) had at least one mammography provider (either hospital or nonhospital based) that offered extended hours. A recent review of

160 of 210 hospital-based mammography facilities in NYS found that 70% offer one or a combination of alternative hours of services (early morning, evening, or weekend), and 30% do not.

Costs:

Costs to the State Government:

The proposed rule does not impose any new costs on state government.

Costs to Local Government:

The proposed rule does not impose any new costs on local governments, with the exception of four general hospitals that are operated by local governments. The cost to local governments that operate general hospitals are the same as the costs to private regulated parties, as described below.

Costs to Private Regulated Parties:

Both the Affordable Care Act and the NYS Insurance Law require insurers to cover mammography. Facilities already obtain third-party payment for mammograms through Medicaid and other insurers, thereby reducing the cost to regulated parties. Further, these proposed rules are not expected to impose any additional costs on those hospitals and diagnostic and treatment centers that are already in compliance, and the 70% of hospital-based facilities that already offer some form of extended hours.

The primary cost for those facilities that will be required to extend or change their hours for screening mammography services, assuming they are not already offering such hours, is the cost of ensuring staff, such as technicians, radiologists, and intake and support staff, are available

to satisfy the extended hour requirement. The Department expects that most hospitals and hospital extension clinics that currently offer extended hours can modify the work hours of existing staff or use flex time to avoid incurring additional staff costs. Those facilities that need to modify their appointment hours to comply with these regulations may be able to use similar scheduling strategies to avoid incurring any new costs.

Costs to the Regulatory Agency:

The proposed rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

The four general hospitals that are operated by local governments will be required to comply with this regulations, as discussed above.

Paperwork:

The proposed rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

There were no significant alternatives to be considered during the regulatory process. The serious risk that breast cancer presents justifies requiring extended hours for screening mammography services.

Federal Standards

The proposed rule does not exceed any minimum standards of the federal government for the same or similar subject area. Although the Mammography Quality Standards Act (MQSA) governs certain aspects of mammography services, it does not govern the hours at which such services must be available.

Compliance Schedule:

The proposal will go into effect upon publication of the Notice of Adoption in the *New York State Register*.

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REGULATORY FLEXIBILITY ANALYSIS
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

The proposed rule will apply to the 152 hospitals and 58 hospital extension clinics providing screening mammography services in New York State. Of these, there are four hospitals run by a local government (county) and one hospital that qualifies as a small business. Facilities that are small businesses or operated by local governments will not be affected differently from other facilities.

Compliance Requirements:

Compliance requirements are applicable to the one hospital considered a small business as well as the four hospitals operated by local governments. Compliance requires providing extended hours for screening mammography services.

Professional Services:

As noted in the Regulatory Impact Statement, this regulation will require additional staffing or staffing adjustment to ensure that screening mammography services are available at the required hours.

Compliance Costs:

Compliance costs for small businesses and local governments would be the same as those described in the Regulatory Impact Statement.

Economic and Technological Feasibility:

It is economically and technologically feasible for facilities that are small businesses or operated by local governments to comply with this amended rule.

Minimizing Adverse Impact:

Approximately 70% of hospital-based mammography facilities already offer some form of extended hours. By adopting a regulatory standard for which this is already a significant level of compliance, the Department has minimized the impact on regulated facilities. Additionally, the regulation includes a waiver provision for those facilities that can demonstrate hardship.

Small Business and Local Government Participation:

A copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments.

Cure Period:

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

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to the 152 hospitals and 58 hospital extension clinics providing screening mammography services in New York State. The Department identified 57 hospitals and 13 hospital extension clinics providing mammography facilities located in rural areas of the State, defined as counties with less than a population of 200,000. A review of the hospital screening mammography services determined that 67% already offer some form of extended hours. Since this percentage is similar to the statewide percentage of approximately 70% of facilities already offering some form extended hours, this proposed rule is not expected to have a disproportionate impact on rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

This regulation will require additional staffing or staffing adjustment to ensure that extended screening mammography services are available.

Costs:

Compliance costs for entities in rural areas would be the same as those described in the Regulatory Impact Statement.

Minimizing Adverse Impact:

Approximately 67% of facilities in rural areas are already offering some form of extended hours. By adopting a regulatory standard for which this is already a significant level of

compliance, the Department has minimized the impact on facilities. Additionally, the regulation includes a waiver provision for those facilities that can demonstrate hardship.

Rural Area Participation:

A copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including those from rural areas.

JOB IMPACT STATEMENT

No Job Impact Statement is included because the Department has concluded that the proposed regulatory amendments will not have a substantial adverse effect on jobs and employment opportunities. The basis for this conclusion is that requiring extended hours for screening mammography services does not reduce employment opportunities, and may create employment opportunities.

SUMMARY OF EXPRESS TERMS

This rule amends Sections 700.2 and Parts 717 and repeals and replaces Part 793 and 794 of Title 10 (Health) of NYCRR, the operational rules for hospices approved to provide services in New York State under Article 40 of the Public Health Law. The changes will make state regulations consistent with the federal conditions of participation/rules, which were revised and implemented on December 3, 2008, as well as consistent with Article 40 of Public Health Law.

Section 700.2(a)(27) (Definitions) is amended to increase the maximum bed capacity from 8 to 16 beds in a hospice residence.

Section 700.2(c)(55) (Definitions) is amended to define hospice patient as a person certified as being terminally ill, who, alone or in conjunction with designated family member(s), has voluntarily requested admission and been accepted into a hospice for which the Department has issued a certificate of approval; and clarifies that nothing provided herein shall be construed to require provision of services to a patient that are not covered by the patient's payment source.

Section 700.2(c)(58) (Definitions) is amended to clarify that palliative and supportive care is provided to a hospice patient for the reduction and abatement of pain and other symptoms and stresses associated with terminal illness and dying. This terminology (palliative and supportive care) is used in the definition of hospice found in 700.2(a)(23).

Section 700.2(c)(60) (Definitions) is added to include the definition of palliative care, as defined in Public Health Law Section 4012-b, provided to a person with advanced, life limiting illness.

Section 717.2 (Construction standards) is amended to increase the maximum bed capacity from 8 to 16 beds in a free standing hospice residence.

Section 717.3 (Patient and service areas in hospice inpatient facilities and units) is amended to reduce maximum room capacity from four to two patients as required by new federal rules.

Section 717.4 (Functional areas in hospice residences) is amended to allow a hospice to operate a maximum of twenty five percent of total residence beds as dually certified beds at any given time.

Section 793.1 (Governing authority) is repealed and replaced with a new section, entitled Patient Rights, which sets forth patient rights for hospice patients and requires alleged violations of mistreatment, neglect or abuse to be investigated and reported to the State, if verified.

Section 793.2 (Contracts) is repealed and replaced with a new section, entitled Eligibility, Election, Admission and Discharge, which sets forth provisions for determining

eligibility for and admitting persons into a hospice program as well as requirements for discharging a hospice patient.

Section 793.3 (Administration) is repealed and replaced with a new section, entitled Initial and Comprehensive Assessment, which requires hospices to complete initial and comprehensive assessments and reassessments within specified time periods and identifies the information required in such assessments.

Section 793.4 (Staff Services) is repealed and replaced with a new section, entitled Patient Plan of Care, Interdisciplinary Group and Coordination of Care, which defines the interdisciplinary group members responsible for management of hospice care, identifies the responsibilities of the group, and lists the information required in the hospice plan of care.

Section 793.5 (Personnel) is repealed and replaced with a new section, entitled Quality Assessment and Performance Improvement, which sets forth requirements for the hospice quality assessment and performance improvement program. Hospices will be required to track performance indicators and conduct performance improvement projects.

Section 793.6 (Patient referral, admission and discharge) is repealed and replaced with a new section, entitled Infection Control, which sets forth requirements for management of an infection control program including policies and procedures for preventing and managing persons exposed to blood-borne pathogens and appropriate training of staff.

Section 793.7 (Records and reports) is repealed and replaced with a new section, entitled Staff and Services, which identifies the types of personnel a hospice is expected to employ and their responsibilities. This section also clarifies employment options (direct or contract), qualifications and supervision requirements strengthening the onsite supervision home health aide requirement.

Section 793.8 is repealed.

Section 794.1 (Patient/family rights) is repealed and replaced with a new section, entitled Governing Authority, which lists the responsibilities of the governing authority. It also sets forth requirements for a patient complaint investigation process and emergency plan. This section also requires hospices to obtain and maintain a Health Commerce System account as a communication link with the Department of Health.

Section 794.2 (Patient/family plan of care) is repealed and replaced with a new section, entitled Contracts, which sets forth contract requirements between the hospice and individual, facility or agency providers delivering services on behalf of the hospice. This section also specifies requirements for management contracts and explains those responsibilities that may not be delegated by the governing body.

Section 794.3 (Medical records systems and charts) is repealed and replaced with a new section, entitled Personnel, which sets forth personnel requirements including health

requirements, identification and reference checks, maintenance and content of personnel records, job descriptions and orientation, performance appraisal and inservice education.

Section 794.4 (Hospice inpatient and residence services) is repealed and replaced with a new section, entitled Clinical Record, which sets forth requirements for maintenance and content of clinical records. Record retention standards are also included in this section.

Section 794.5 (Short Term Inpatient Service) is added and sets forth structural and operational standards for the provision of short-term inpatient service by the hospice. Physical plant, staffing, quality of life and patient comfort measures are addressed. This section also sets forth operational requirement for management and coordination of care.

Section 794.6 (Hospice Residence Service) is added and sets forth requirements for hospice residences, for those situations when a hospice chooses to offer a hospice operated home to a hospice patient without a suitable home in which to receive services, and increases maximum bed capacity from 8 to 16 beds.

Section 794.7 (Leases) is added and sets forth information which must be included in a lease agreement between a hospice and an inpatient setting or hospice residence.

Section 794.8 (Hospice Care Provided to Residents of a Skilled Nursing Facility (SNF) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)) is added and identifies responsibilities of the hospice and the facility when a resident elects

the hospice benefit. Services expected to be provided by the hospice and the facility are clarified, and development and implementation of collaborative plans of care and care coordination between the two entities is required.

Section 794.9 (Records and Reports) is added and identifies those records which must be maintained by the hospice, and the retention timeframes. This section also specifies reports which must be submitted to the Department of Health.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by subdivision (4) of section 4010 of the Public Health Law, Sections 700.2 and Parts 717, 793 and 794 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) are amended, repealed and/or replaced to be effective upon publication of a Notice of Adoption in the New York State Register, as follows:

* * *

Paragraph (27) of subdivision (a) of Section 700.2 (Definitions) is amended as follows:

(a) The following definitions of medical facilities, based on standards approved by the commissioner, shall apply to this Chapter unless the context otherwise requires:

(27) Hospice residence shall mean a hospice operated home which is residential in character and physical structure, and operated for the purpose of providing more than two hospice patients, but not more than [eight] sixteen (16) hospice patients, with hospice care.

Paragraph (55) and (58) of subdivision (c) of Section 700.2 (Definitions) is amended as follows:

(c) The following general definitions, based on standards approved by the commissioner, shall apply to this Chapter, unless the context otherwise requires:

* * *

(55) Hospice patient shall mean a person in the terminal stage of illness, with a life expectancy of approximately twelve [six] months or less, who, alone or in conjunction with designated family member(s), has voluntarily requested admission and has been accepted into a hospice for which the Department has issued a certificate of approval; provided, however, that nothing herein shall be construed to require provision of services to a patient that are not covered by the patient's payment source.

(58) Palliative and supportive care shall mean services provided to a hospice patient for the reduction and abatement of pain and other symptoms and stresses associated with terminal illness and dying.

Paragraph (60) of subdivision (c) of Section 700.2 (Definitions) is added as follows:

(60) Palliative care shall mean active, interdisciplinary care provided to a patient and/or a hospice patient with advanced, life-limiting illness, focusing on relief of distressing physical and psychosocial symptoms and meeting spiritual needs with the goal of achievement of the best quality of life for patients and families.

* * *

Section 717.2 is amended as follows:

Section 717.2 - Construction standards

717.2 Construction standards.

(a) An inpatient hospice unit, if attached to or part of a general hospital, nursing home or health-related facility, shall comply with the same provisions for institutional occupancies required by the latest version of the National Fire Protection Association

(NFPA) 101: Life Safety Code in effect, as the facility would be required to meet if such unit were used to house hospital inpatients, nursing home patients or health-related facility residents. Further details concerning this referenced material are contained in section 711.2(a) of this Title.

(b) A free-standing inpatient hospice facility or unit shall comply with the pertinent provisions for either residential occupancies or institutional occupancies as required by the latest version of the NFPA 101: Life Safety Code in effect. The determination as to which of these chapters and provisions contained therein are applicable shall be dependent upon an assessment of the requirements of the approved operational and functional inpatient programs of the hospice. Further details concerning this referenced material are contained in section 711.2(a) of this Title.

(c) A free-standing hospice residence shall have a minimum capacity of three (3) residents and a maximum capacity of [~~eight~~] sixteen (16) residents. For the purposes of local laws and ordinances governing fire safety and building construction standards, any such residence shall be deemed either a one- or two-family dwelling. All free-standing hospice residences that do not operate beds dually certified for inpatient care shall comply, at a minimum, with the requirements for small residential board and care facilities as contained in chapter 21, section 21-2 of the latest version of the NFPA 101: Life Safety Code in effect, applicable to small facilities with an evacuation capability classification of impractical. These codes and standards were published by the NFPA, Batterymarch Park, Quincy, MA 02169, and are available online at www.nfpa.org or for public inspection and copying at the [Office of Regulatory Reform] Regulatory Affairs Unit, New York State Department of Health, Corning Tower Building, Empire State

Plaza, Albany, New York 12237. Hospice residences that operate beds dually certified for inpatient care shall comply with the pertinent provisions for either residential occupancies or institutional occupancies as required by NFPA 101: Life Safety Code in accordance with subdivision (b) of this section.

Section 717.3 is amended as follows:

Section 717.3 - Patient and service areas in hospice inpatient facilities [or] and units.

(a) Patient rooms and facilities shall meet the following requirements:

(1) be at or above grade level;

(2) At least two rooms shall be designed for one bed and equipped with a private sink and toilet.

(3) Maximum room capacity shall be [four] for two patients and their families.

(4) Minimum net room areas exclusive of toilet rooms, and space occupied by furniture, lockers or wardrobes, or used for closets, alcoves or vestibule shall be 100 square feet in single-bed rooms and 80 square feet per bed in [multi-bed] double rooms.

(5) Each patient room shall have a window which can be opened without the use of tools.

(6) Each patient shall be provided with a separate nurse's calling device, furniture and closet space adequate for storage of clothing and personal items.

(7) Each patient in a [multi-bed] double room shall be provided with visual privacy by use of flame retardant cubicle curtains.

(8) Each patient room shall be accessible to a conveniently located toilet room. One room containing a toilet and a sink shall serve no more than [four] two beds.

(9) One bathtub or shower shall be provided for each 10 beds which are not otherwise

served by bathing facilities within patient rooms. A minimum of one bathtub shall be provided to serve the hospice inpatient facility. Each tub or shower shall provide for privacy and sufficient space to permit assistance, if necessary.

(10) Corridors, aisles, alcoves, vestibules and door widths shall be designed to make all toilets, wardrobes, closets and furniture accessible to and usable by the physically disabled.

(b) Patient and family areas shall include a dining area, space for recreation and private interactions including pastoral care, and accommodations for family privacy after the patient's death.

(c) As a minimum, sufficient areas shall be provided for staff and administrative functions to include but not necessarily be limited to:

(1) working area for conducting business transactions, completing medical and financial records, and performing other administrative and professional staff functions;

(2) storage space for medical records and administrative supplies;

(3) staff lounge and toilet rooms;

(4) clean work area or clean holding area which contains a work counter, handwashing and storage facilities;

(5) soiled work area or soiled holding area which contains a clinical sink or equivalent flushing rim fixture, sink equipped for handwashing, work counter, and waste receptacle;

(6) pharmaceutical distribution area which contains a work counter, refrigerator, sink and locked storage for biologicals and drugs;

(7) equipment storage area, including accommodations for wheelchairs and stretchers;

(8) interview space(s) for private interviews;

(9) multi-purpose room for conferences, meetings, and health education purposes; and
(10) food service facilities designed and equipped to meet the requirements of the hospice program, including but not limited to:

- (i) storage space for four days' supply of food, including cold storage;
- (ii) food preparation facilities as required by the program, including space and equipment for preparing and serving;
- (iii) handwashing facilities in the food preparation area;
- (iv) dishwashing facilities; and
- (v) waste storage and disposal equipment.

Section 717.4 is amended as follows:

717.4 Functional areas in hospice residences.

(a) A hospice residence shall be residential in character and physical structure, and shall not be located in a facility licensed under Article 28 of the Public Health Law. The physical layout shall be designed to accommodate the functional and operational program for the facility. All residents shall be provided opportunities for individual privacy, and all resident areas and functions shall be designed to accommodate the physically disabled.

(b) Each hospice residence shall comply with the following standards:

- (1) The maximum bedroom capacity shall be one resident.
- (2) Each resident bedroom shall be of sufficient size to accommodate wheelchair access to all functional areas of the room. All necessary equipment and accessories for daily living shall be residential in scale and appropriate for care of the resident.
- (3) Common space(s) adequate to accommodate staff, residents, family members and

other visitors, shall be provided for congregate meals, recreational, religious and social activities.

(4) Provisions for the preparation and serving of meals shall be conveniently located.

Such dietary/kitchen facilities shall be available for use by staff, residents, family members and other visitors.

(5) Private areas shall be provided to accommodate visitation by family members and others.

(6) A hospice residence may be approved to operate a maximum of twenty five percent (25%) of its total residence capacity as [two] dually certified beds at any given time, which beds may be used alternately for the provision of residential hospice care and inpatient hospice care, provided there is existing hospice inpatient bed need remaining in the county where the residence shall be located. Inpatient care shall be provided, as needed, to patients residing in the residence to ensure continuity of care and avoid transfer to an inpatient facility or unit. Patients shall be admitted directly from the community into a dually certified bed for inpatient care only when such patients shall continue to reside in the residence to receive routine home care following cessation of inpatient care. First priority for inpatient care in a dually certified bed shall be given to patients already residing in the residence. Should a dually certified bed be unavailable to an existing resident due to a community admission, the community admission shall be transferred to another inpatient facility.

(7) A hospice residence shall not be combined with a hospice inpatient unit. The hospice residence shall be separate and distinct from an inpatient unit, and physically separated by walls, doors or other physical structures. The inpatient unit and the hospice residence,

when adjacent to each other, shall have separate entrances onto each unit, but may share a common exterior main entrance and common areas for meals, family interactions, and spiritual and recreational activities.

Parts 793 (Organization and Administration) and 794 (Patient/Family Care Services) are repealed and replaced by new Parts 793 (Patient/Family Care Services) and 794 (Organization and Administration) to read as follows:

Part 793 Patient/Family Care Services

Section 793.1 Patient rights. (a) The governing authority shall establish written policies regarding the rights and responsibilities of the patient and shall assure the development of procedures implementing such policies to ensure that, as a minimum, the patient has a right to:

- (1) be fully informed of these rights prior to or at the time of admission, verbally and in writing, in a language and manner that the patient understands, as evidenced by written acknowledgment of receipt signed by the patient or the patient's representative, pursuant to subdivision (b) of this Section;
- (2) be given a statement of the services provided by the hospice and covered under the hospice benefit, including any limitations on those services, and of related charges including charges for services not covered by third-party payors or not covered by the hospice basic rate;
- (3) be fully informed of the patient's medical condition;
- (4) adequate, appropriate and timely care and services, including effective pain

management and symptom control for conditions relating to the patient's terminal illness, for the duration of the illness for which hospice was elected;

(5) be involved in developing his or her hospice plan of care;

(6) choose his or her attending physician;

(7) refuse to participate in experimental research;

(8) refuse medication, care and treatment after being fully informed of and understanding the consequences of such actions;

(9) voice complaints and recommend changes in policies and services to hospice staff, the New York State Department of Health or any outside representative of the patient's choice. The expression of such complaints by the patient or his/her designee shall be free from restraint, interference, coercion, discrimination or reprisal;

(10) express complaints about the care and services provided and to have the program investigate such complaints as specified in section 794.1 (l) of this Title. The program is responsible for notifying the patient or his/her designee that if the patient is not satisfied by the response the patient may complain to the Department of Health;

(11) be treated with consideration, respect and full recognition of the patient's dignity and individuality;

(12) make independent personal decisions and have knowledge of available choices;

(13) be assured of confidential treatment of patient records in accordance with applicable state and federal laws;

(14) be informed of the name and function of any person and/or agency providing care and services;

(15) receive services and/or continue to receive services without regard to age, race,

color, creed, gender, national origin, sexual orientation, disability or source of payment;

(16) receive services without discontinuation or diminishment because of the inability to pay for care;

(17) receive written information and assistance with executing advance directives as set forth in Article 29-CC of the Public Health Law and implementing regulations, as well as applicable federal regulations;

(18) exercise his or her rights without fear of discrimination or reprisal; and

(19) have his or her person and property treated with respect and to be free from mistreatment, neglect, or verbal, mental, sexual and/or physical abuse, including injuries of unknown source, and misappropriation of property.

(b) If a patient lacks capacity to exercise these rights, the rights shall be exercised by an individual, guardian or entity legally authorized to represent the patient.

(c) The governing authority must:

(1) ensure that all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone furnishing services on behalf of the hospice, are reported immediately by hospice employees and contracted staff to the hospice administrator;

(2) immediately investigate all alleged violations involving anyone furnishing services on behalf of the hospice and immediately take action to prevent further potential violations while the alleged violation is being verified. Investigations and/or documentation of all alleged violations must be conducted in accordance with established procedures;

(3) take appropriate corrective action in accordance with state law if the alleged violation is verified by the hospice administration or an outside body having jurisdiction, such as

the Department of Health or local law enforcement agency; and

(4) ensure that verified violations are reported to State and local bodies having jurisdiction including the Department of Health within 5 working days of becoming aware of the violation.

Section 793.2 - Eligibility, Election, Admission and Discharge

The governing authority shall ensure that:

(a) except as prohibited by article 45 of the Public Health Law or any other law or regulation, a patient referred to a hospice may be accepted from any source;

(b) policies and procedures for admission and discharge are developed and implemented;

(c) any individual admitted to hospice is certified as being terminally ill consistent with state and/or federal definitions. Written certification of terminal illness is required for each election period defined in paragraph (d)(4) of this Section. If the hospice cannot obtain the written certification within 2 calendar days after the election period begins, it must obtain an oral certification within 2 calendar days and the written certification before it submits a claim for payment.

(1) Initial certification of terminal illness must be obtained from either the medical director of the hospice or the physician member of the hospice interdisciplinary group provided for in Section 793.4 of this Part, and also from the individual's attending physician, if the individual has an attending physician. In connection with the initial certification, the medical director or physician designee must consider the following:

(i) diagnosis of the primary terminal condition, along with any supporting current clinically relevant information;

(ii) related diagnoses, if any, along with any supporting current clinically relevant information;

(iii) current subjective and objective medical findings;

(iv) current medication and treatment orders; and

(v) information about the medical management of any of the patient's conditions unrelated to the terminal illness.

(2) Subsequent certifications of terminal illness are obtained from the medical director of the hospice or the physician member of the hospice interdisciplinary group and must be based on the certifying individual's clinical judgment regarding the normal course of the individual's illness.

(3) All certifications must:

(i) specify that the individual's prognosis is for a life expectancy consistent with applicable state and federal statutes for purposes of payment;

(ii) include clinical information and other documentation that support the medical prognosis; and

(iii) be filed in the clinical record.

(d) an individual who meets the hospice eligibility requirements files an election statement with a particular hospice. If the individual is physically or mentally incapacitated, his or her representative as provided for in subdivision (b) of Section 793.1 of this Part may file the election statement;

(1) The election statement shall remain in effect as long as the individual remains in the care of a hospice unless the individual revokes the election in accordance with paragraph

3 of this subdivision or is discharged from the hospice in accordance with subdivision (e) of this Section. He/she may at any time file an election if again eligible for hospice care.

(2) The signed election statement must:

(i) identify the hospice that will provide care;

(ii) include the individual's or representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care; and

(iii) include the effective date of the election, which may be the first day of hospice care or a later date, but no earlier than the date of the election statement.

(3) An individual or representative may revoke the election of hospice care at any time by filing a signed and dated revocation statement with the hospice. This statement must include the effective date for the revocation.

(4) An individual may elect to receive hospice care during one or more of the following election periods, which are available in the order listed and may be selected separately at different times:

(i) an initial 90-day period;

(ii) a subsequent 90-day period;

(iii) an unlimited number of subsequent 60-day periods.

(e) a patient is discharged only if:

(1) the patient moves out of the hospice's service area or transfers to another hospice;

(2) the hospice determines that the patient no longer meets the eligibility criteria set forth in paragraph (c) of this Section; or

(3) the hospice determines, under a policy set by the hospice for the purpose of addressing discharge for cause that the patient's (or other persons in the patient's home) behavior is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability of the hospice to operate effectively is seriously impaired.

(i) The hospice must do the following before it seeks to discharge a patient for cause:

(a) advise the patient that a discharge for cause is being considered;

(b) make a serious effort to resolve the problem(s) presented by the patient's behavior or situation;

(c) ascertain that the patient's proposed discharge is not due to the patient's use of necessary hospice services; and

(d) document the problem(s) and efforts made to resolve the problem(s) and enter this documentation into the clinical record.

(ii) prior to discharging a patient, a written discharge order must be obtained from the hospice medical director. If a patient has an attending physician involved in his or her care, this physician should be consulted before discharge and his or her review and decision included in the discharge note.

(iii) prior to discharging or transferring the patient from one hospice to another, continuing care and services are arranged and a discharge summary completed as specified in Section 794.4 of this Title.

Section 793.3 Initial and Comprehensive Assessment. (a) The hospice registered nurse, as a member of the interdisciplinary group identified in Section 793.4 of this Part, must complete an initial assessment within 48 hours after the election of hospice care in

accordance with Section 793.2 of this Part unless the physician, patient, or representative requests that the initial assessment be completed in less than 48 hours. Initial assessment means an evaluation of the patient's physical, psychosocial and emotional status related to the terminal illness and related conditions to determine the patient's immediate care and support needs.

(b) The hospice interdisciplinary group, in consultation with the individual's attending physician (if any), shall conduct and document in writing a patient-specific comprehensive assessment no later than 5 calendar days after the election of hospice care. Comprehensive assessment means a thorough evaluation of the patient's physical, psychosocial, emotional and spiritual status related to the terminal illness and related conditions including the caregiver's and family's willingness and capability to care for the patient.

(c) The comprehensive assessment must take into consideration the following factors:

- (1) the nature and condition causing admission (including the presence or lack of objective data and subjective complaints);
- (2) complications and risk factors that affect care planning;
- (3) functional status, including the patient's ability to understand and participate in his or her own care;
- (4) imminence of death;
- (5) severity of symptoms;
- (6) a review of all of the patient's prescription and over-the counter drugs, herbal remedies and other alternative treatments that could affect drug therapy. This includes, but is not limited to, identification of the following:

- (i) effectiveness of drug therapy;
 - (ii) drug side effects;
 - (iii) actual or potential drug interactions;
 - (iv) duplicate drug therapy; and
 - (v) drug therapy currently associated with laboratory monitoring;
- (7) an initial bereavement assessment of the needs of the patient's family and other individuals focusing on the social, spiritual, and cultural factors that may impact their ability to cope with the patient's death. Information gathered from the initial bereavement assessment must be incorporated into the plan of care and considered in the bereavement plan of care; and
- (8) the need for referrals and further evaluation by appropriate health professionals.
- (d) The comprehensive assessment must include data elements that allow for measurement of outcomes. The data elements must:
- (1) take into consideration aspects of care related to hospice and palliation;
 - (2) be measured and documented in the same way for all patients;
 - (3) be an integral part of the comprehensive assessment and documented in a systematic and retrievable way for each patient;
 - (4) be used in individual patient care planning and in the coordination of services; and
 - (5) be used in the aggregate for the hospice's quality assessment and performance improvement program.
- (e) The hospice interdisciplinary group must update the comprehensive assessment in collaboration with the individual's attending physician, if any, as frequently as the condition of the patient requires, but no less frequently than every 15 days. The update

must consider changes that have taken place since the initial assessment and include information on the patient's progress toward desired outcomes, as well as a reassessment of the patient's response to care.

793.4 Patient Plan of Care, Interdisciplinary Group and Coordination of Care. The governing authority must:

(a) designate an interdisciplinary group or groups composed of individuals who work together to meet the physical, medical, psychosocial, emotional, and spiritual needs of the hospice patients and families facing terminal illness and bereavement. The members of the interdisciplinary group are responsible for providing the care and services offered by the hospice, and the group must collectively supervise the care and services.

(1) The interdisciplinary group must include, but is not limited to:

(i) a doctor of medicine or osteopathy (who is an employee or under contract with the hospice);

(ii) a registered nurse;

(iii) a social worker; and

(iv) a pastoral or other counselor.

(2) The governing authority must designate a registered nurse who is a member of the interdisciplinary group to coordinate care and ensure continuous assessment of each patient's and family's needs and implementation of the interdisciplinary plan of care;

(b) if the hospice has more than one interdisciplinary group, specifically designate an interdisciplinary group to establish policies governing the day-to-day provision of hospice care and services;

(c) ensure that all hospice care and services furnished to patients and their families follow an individualized written plan of care established by the interdisciplinary group in collaboration with the patient's attending physician, if any, and, if they so desire, the

patient or representative and the primary caregiver. The plan of care shall indicate for each patient/family how palliative and supportive care is to be achieved including:

(1) goals and interventions based on the problems identified in the initial, comprehensive, and updated comprehensive assessments;

(2) all services necessary for the palliation and management of the terminal illness and related conditions and the individual(s) who will provide those services, including:

(i) interventions to manage pain and symptoms;

(ii) a detailed statement of the scope and frequency of services necessary to meet the specific patient and family needs;

(iii) measurable outcomes anticipated from implementing and coordinating the plan of care;

(iv) drugs, biologicals, treatments, medical supplies, appliances and durable medical equipment that must be provided by the hospice while the patient is under hospice care;

(v) identification of the registered nurse responsible for coordinating care; and

(vi) documentation in the clinical record of the patient's or representative's level of understanding, involvement, and agreement with the plan of care, in accordance with the hospice's own policies;

(d) ensure that the hospice interdisciplinary group confers with an individual educated and trained in drug management to ensure that drugs and biologicals meet each patient's needs;

(e) ensure that each patient and the primary care giver(s) receives education and training

regarding their responsibilities for the care and services identified in the plan of care followed by an assessment of their ability to provide care including their ability to self-administer drugs and biologicals;

(f) ensure discussion and written instructions are provided to the patient/family regarding the management and disposal of controlled drugs in the home when controlled drugs are initially ordered and documentation of such in the clinical record;

(g) ensure that the hospice interdisciplinary group reviews, revises and documents the individualized plan as frequently as the patient's condition requires, but no less frequently than every 15 calendar days. A revised plan of care must include information from the patient's updated comprehensive assessment, must note the patient's progress toward the outcomes and goals specified in the plan of care, and must be documented in the clinical record; and

(h) develop and maintain a system of communication and integration, in accordance with the hospice's own policies and procedures, to:

(1) ensure that the interdisciplinary group maintains responsibility for directing, coordinating, and supervising the care and services provided by all hospice and non-hospice healthcare providers;

(2) ensure that care and services provided are based on all assessments of the patient and family needs;

(3) provide for and ensure the ongoing sharing of information between all disciplines providing care and services in all settings, whether the care and services are provided directly or under arrangement; and

(4) provide for an ongoing sharing of information with other non-hospice healthcare

providers furnishing services unrelated to the terminal illness and related conditions.

Section 793.5 - Quality Assessment and Performance Improvement

The governing authority must ensure that the hospice:

(a) develops, implements, and maintains an ongoing, effective, hospice-wide data-driven program for quality assessment and performance improvement, which shall be evaluated annually. The program must:

- (1) reflect the complexity of the hospice organization and services;
- (2) involve all hospice services, including those services furnished under contract or arrangement, and all locations;
- (3) include the use of quality indicator data in the design of the program, which focuses on improved palliative and end of life outcomes;
- (4) take actions to demonstrate improvement in hospice performance;
- (5) address priorities for improved quality of care and patient safety; and
- (6) be capable of showing measurable improvement in indicators related to improved palliative outcomes and hospice services.

(b) maintains documentary evidence of the program, and be capable of demonstrating its operation;

(c) designates one or more individual(s) responsible for operating the program;

(d) designates a committee which includes licensed professionals, representative of the services provided by the hospice, and administrative personnel to participate in and make recommendations to the governing authority regarding the quality program and perform other quality management activities including:

(1) review of quality assessment and performance improvement efforts, at least annually, and in collaboration with the hospice interdisciplinary group recommend revisions to the governing authority, as necessary, of policies and procedures;

(2) review of patient care records for appropriateness of admission, adequacy of assessment of patient/family needs and quality and quantity of services provided;

(3) review of complaints and other investigations; and

(4) review of the effectiveness of the hospice's infection control program, including appropriate identification of infection and communicable disease transmission and control problems and plans for appropriate corrective action, improvement and subsequent prevention.

(e) measures, analyzes, and tracks quality indicators, including adverse patient events and/or potentially avoidable events and other aspects of performance, in the frequency and detail approved by the governing authority. The data shall include patient care data and other relevant data reflective of the hospice operation, the quality of all services provided and all activities that may impact patient care and must enable the hospice to:

(1) assess processes of care, hospice services, and operations;

(2) monitor the effectiveness and safety of services and quality of care; and

(3) identify opportunities and priorities for improvement.

(f) develops, implements and evaluates performance improvement projects conducted annually, sufficient in number and scope to reflect the hospice's population, internal organizational needs, and scope, complexity and past performance of services and operation, using quality indicator data collected. These projects must:

(1) focus on high risk, high volume, or problem-prone areas;

- (2) consider incidence, prevalence, and severity of problems in those areas;
- (3) take actions aimed at performance improvement in palliative outcomes, patient safety, and quality of care;
- (4) measure the success of such actions and track performance to ensure that improvements are sustained;
- (5) track and analyze the cause of any adverse patient event;
- (6) implement preventive actions and mechanisms that include feedback and learning throughout the hospice; and
- (7) be documented by the hospice including the reasons for conducting the project and the measurable progress achieved.

Section 793.6 Infection Control. The hospice must:

- (a) implement and enforce an agency wide program for the surveillance, identification, prevention, control and investigation of infectious and communicable diseases, which could result in staff, volunteers, visitors, or patients and family members becoming exposed to such communicable diseases or infections. Such a program shall include:
 - (1) policies and procedures for maintaining and documenting an effective infection control program in all settings where patients reside, including but not limited to protocols for addressing patient care issues and prevention of infection related to airborne pathogens, infusion therapy, urinary tract care, respiratory tract care, wound care and multi-drug resistant organisms;
 - (2) following accepted standards of practice to prevent transmission of infections and communicable disease;

- (3) monitoring staff for compliance with hospice policies and procedures related to infection control;
- (4) protocols for educating staff, contracted personnel, patients, families and other caregivers in infectious disease transmission, standard precautions and the prevention and control of infection; and
- (5) a specific program for protecting patients, staff and families from bi-directional spread of HIV and other blood borne pathogens, as specified in subdivision (b) of this Section.

(b) assure that a program be implemented and enforced for the prevention of circumstances which could result in staff, including housekeeping, direct care staff and volunteers, or patients and family members becoming exposed to significant risk body substances which could put them at significant risk of HIV infection, as defined in section 63.1 of this Title, or other blood borne pathogen infection, during the provision of services. Such a program shall include:

- (1) use of scientifically accepted protective barriers during job-related activities which involve, or may involve, exposure to significant risk body substances. Such preventative action shall be taken by the staff with each patient and shall constitute an essential element for the prevention of bi-directional spread of HIV or other blood borne pathogens.
- (2) use of scientifically accepted preventive practices during job-related activities which involve the use of contaminated instruments or equipment which may cause puncture injuries;
- (3) training at the time of employment and yearly staff development programs on the use

of protective equipment, preventive practices, and circumstances which represent a significant risk for all employees whose job-related tasks involve, or may involve, exposure to significant risk body substances;

(4) provision of personal protective equipment for staff which is appropriate to the tasks being performed; and

(5) a system for monitoring preventive programs to assure compliance and safety.

(c) implement and enforce a policy/procedure for the management of individuals who are exposed to significant risk body substances under circumstances which constitute significant risk of transmitting or contracting HIV or other blood borne pathogen infection. The policy/procedure shall include:

(1) a system for reporting to a designated individual in the hospice any exposure thought to represent a circumstance which constitutes significant risk of transmitting or contracting HIV or other blood-borne pathogen infection;

(2) evaluation of the circumstances of a reported exposure and services providing follow-up of the exposed individual which includes:

(i) medical and epidemiological assessment of the individual who is the source of the exposure, where that individual is known and available;

(ii) if indicated epidemiologically, HIV or other blood-borne pathogen counseling and voluntary testing of the source individual. Disclosure of the HIV status of the source individual can be made, consistent with Article 27-f of Public Health Law and Part 63 of this Title, with the express written consent of the protected individual, or a person authorized pursuant to law to consent to health care for the protected individual if such

person lacks capacity to consent, or pursuant to court order, if the HIV status is not known to the exposed individual;

(iii) appropriate medical follow-up of the exposed individual; and

(iv) assurances for protection of confidentiality for those involved in reported exposures.

Section 793.7 Staff and services. (a) At a minimum, hospice staff shall be composed of:

(1) a hospice administrator who is appointed by the governing authority and is an employee of the hospice who works a minimum of half-time for the hospice. The administrator is responsible for the day-to-day management of the hospice.

(2) a hospice medical director who is:

(i) a doctor of medicine or osteopathy who is licensed and registered to practice in New York State or maintains a current license and who is an employee or is under contract with the hospice. When the medical director is not available, a physician designated by the hospice shall assume the same responsibilities and obligations as the medical director; and

(ii) responsible for supervision of all physician employees and physicians under contract;

(3) a hospice nurse coordinator;

(4) a hospice social worker;

(5) a pastoral care coordinator; and

(6) a coordinator of volunteer services, whose responsibilities shall include:

(i) ensuring implementation of policies and procedures related to volunteer services;

(ii) providing and documenting volunteer orientation and training;

(iii) ensuring that volunteers are used in defined administrative or direct patient care roles under the supervision of a designated hospice employee;

(iv) ongoing efforts to recruit and retain volunteers; and

(v) demonstrating and documenting cost savings achieved through the use of volunteers including:

(a) identification of each position that is occupied by a volunteer and his or her work time; and

(b) estimates of the dollar costs that the hospice would have incurred if paid employees occupied the positions. Volunteers must provide services in an amount that, at a minimum, equals 5 percent of the total patient care hours of all paid hospice employees and contract staff.

(b) As the needs of the patient dictate, the hospice shall provide the following services:

(1) core services, which include nursing, physician, medical social services, dietary, bereavement and spiritual or pastoral care counseling; and

(2) non-core services which include physical therapy, occupational therapy, speech and language pathology, audiology, respiratory therapy, psychological, drugs and biologicals, laboratory, medical supplies, equipment and appliances, home health aide, personal care, housekeeper, homemaker, and inpatient services.

(c) With the exception of physician services, core services must routinely be provided directly by hospice employees. A hospice may use contracted staff only if necessary to supplement hospice employees in order to meet the needs of patients under extraordinary or other non-routine circumstances such as unanticipated periods of high patient loads, staffing shortages due to illness or other short-term temporary situations that interrupt

patient care such as natural disasters and temporary travel of a patient outside the hospice's service area.

(d) Non-core services as specified in subdivision (b) of this Section may be provided directly by the hospice or under contractual arrangements made by the hospice as specified in Section 794.2 of this Title.

(e) Physician, nursing, medical social services counseling and volunteer services shall be provided by the same health care practitioners to the same patient and family, whenever possible.

(f) Nursing services, physician services and drugs and biologicals must be routinely available on a 24-hour basis, 7 days a week. Other services must be available on a 24-hour basis when reasonable and necessary to meet the needs of the patient and family.

(g) The hospice medical director, physician employees, and contracted physician(s) of the hospice, in conjunction with the patient's attending physician, must assume responsibility for the palliation and management of the terminal illness and conditions related to the terminal illness. If the attending physician is unavailable, the medical director, contracted physician, and/or hospice physician employee is responsible for meeting the medical needs of the patient.

(h) Nursing care and services must be provided by or under the supervision of a registered nurse in accordance with patient assessments and plans of care:

(1) Nursing services in the home shall be provided by or under the direction of hospice personnel who meet the requirements of community health nurse as defined in section 700.2 of this Title.

(2) Highly specialized nursing services that are provided so infrequently that the

provision of such services by direct hospice employees would be impracticable and prohibitively expensive, may be provided under contract.

(3) Registered nurses certified as nurse practitioners may treat and write orders for hospice patients to the extent permitted by New York State Education Law.

(i) Medical social services must be provided by a qualified social worker, under the direction of a physician. Medical social services must be based on the patient's psychosocial assessment and the patient's and family's needs and acceptance of services.

(j) Counseling services must be available to the patient and family to assist the patient and family in minimizing the stress and problems that arise from the terminal illness, related conditions, and the dying process. Counseling services must include, but are not limited to:

(1) an organized program of bereavement counseling furnished under the supervision of a qualified professional with experience or education in grief or loss counseling.

Bereavement services shall be available to the family and other individuals in the bereavement plan of care up to 1 year following the death of the patient;

(2) dietary counseling performed by a qualified individual, which include dietitians as well as nurses and other individuals who are able to address and assure that the dietary needs of the patient are met; and

(3) spiritual counseling which is provided in accordance with the patient's and family's acceptance of this service, and in a manner consistent with patient and family beliefs and desires. All reasonable efforts should be made to facilitate visits by local clergy, pastoral counselors, or other individuals who can support the patient's spiritual needs to the best of its ability.

(k) All aide services must be provided by individuals who:

(1) have successfully completed a home health aide training and competency evaluation program as required by paragraph (9) of subdivision (b) of Section 700.2 or this Part; and

(2) are currently listed in good standing on the Home Care Registry in the State.

(l) Aide services must be ordered by a member of the interdisciplinary team, included in the plan of care and consistent with training and tasks permitted to be performed by home health aides, including but not limited to personal care and simple procedures as an extension of nursing or therapies.

(m) A registered nurse who is a member of the interdisciplinary group must make patient assignments, prepare written patient care instructions and provide supervision of aides.

(n) A registered nurse must make an on-site visit to the patient's home no less frequently than every 14 days to assess the quality of care and services provided by the aide and to ensure that services ordered by the hospice interdisciplinary group meet the patient's needs.

(1) The aide should be present during the registered nurse's on-site visit periodically, but no less frequently than every ninety days, or more frequently if an area of concern is noted by the supervising nurse.

(2) If an area of concern is verified by the nurse during the on-site visit, then the hospice must conduct, and the aide must successfully complete a competency evaluation.

(3) The supervising nurse must assess an aide's ability to demonstrate initial and continued satisfactory performance in meeting outcome criteria that include, but are not limited to:

- (i) following the patient's plan of care for completion of tasks assigned to the aide by the registered nurse;
 - (ii) creating successful interpersonal relationships with the patient and family;
 - (iii) demonstrating competency with assigned tasks;
 - (iv) complying with infection control policies and procedures;
 - (v) reporting changes in the patient's condition; and
 - (vi) completing appropriate records and documentation of care provided.
- (o) The hospice must ensure that staff are adequately supervised. The department shall consider the following factors as evidence of adequate supervision:
- (1) supervision of nursing personnel is conducted by a supervising nurse;
 - (2) personnel regularly provide services at the frequencies specified in the patient's plan of care, and in accordance with the policies and procedures of their respective services;
 - (3) personnel are assigned to the care of patients in accordance with their licensure, as appropriate, and their training, orientation and demonstrated skills;
 - (4) clinical records are kept complete, and changes in patient condition, adverse reactions, and problems with informal supports or home environment are charted promptly and reported to supervisory personnel;
 - (5) plans of care are revised as determined by patient condition, and changes are reported to the authorized practitioner and other personnel providing care to the patient;
 - (6) in-home visits are made by supervisory personnel to direct, demonstrate and evaluate the delivery of patient care and to provide clinical consultation;
 - (7) professional guidance on agency policies and procedures is provided;
 - (8) supervision of a home health aide is conducted by a registered professional nurse; and

- (9) in-home supervision, by professional personnel, of home health aides takes place:
- (i) to demonstrate to and instruct the aide in the treatments or services to be provided, with successful redemonstration by the aide during the initial service visit, or where there is a change in personnel providing care, if the aide does not have documented training and experience in performing the tasks prescribed in the plan of care;
 - (ii) to evaluate changes in patient condition reported by the aide and initiate any revision in the plan of care which may be needed; and
 - (iii) to instruct the aide as to the observations and written reports to be made to the supervising nurse.
- (p) Homemaker services shall be provided to assist in patient care. A qualified homemaker is an individual who has successfully completed hospice orientation and training in the tasks to be performed.
- (1) Homemaker services must be assigned, coordinated and supervised by a member of the interdisciplinary group.
- (2) Homemakers must report all concerns about the patient or family to the member of the interdisciplinary group and complete appropriate documentation of care provided.

Part 794 Organization and Administration

Section 794.1 Governing authority. The governing authority, as defined in Part 790 of this Title shall:

- (a) be responsible for the management and fiscal operations of the hospice, the provision of all hospice services, and continuous quality assessment and performance improvement;

- (b) ensure compliance with all applicable Federal, State and local laws, rules and regulations;
- (c) provide for coordinated, interdisciplinary inpatient and home care services, 24 hours a day, 7 days a week;
- (d) ensure adequate staff and resources to provide continuity of care based on the needs of the persons served;
- (e) adopt, amend and implement bylaws regarding the responsibilities, functions and activities of the governing body;
- (f) adopt the hospice budgets, control assets and funds, and provide for annual fiscal audits;
- (g) prohibit any employee of the hospice to be reimbursed by any party other than the hospice for service provided as part of the hospice program, or the splitting or sharing of fees between a referral agency/facility or individual and the hospice;
- (h) ensure the prompt submission of all records and reports required by the department;
- (i) ensure compliance with the pertinent provisions regarding the discontinuance of operations of a medical facility, as set forth in section 401.3 of this Chapter, in the event the hospice discontinues operation for any reason;
- (j) negotiate agreements with other patient care facilities/agencies for the referral and acceptance of hospice patients;
- (k) adopt and amend policies and procedures regarding management and operation of the hospice and the provision of patient care services;
- (l) ensure the development and implementation of a patient complaint procedure to include:

- (1) documentation of receipt, investigation and resolution of any complaint, including maintenance of a complaint log indicating the dates of receipt and resolution of all complaints received by the program;
 - (2) review of each complaint with a written response to all written complaints and to oral complaints, if requested by the individual making the oral complaint, explaining the complaint investigation findings and the decisions rendered to date by the program within 15 days of receipt of such complaint; and
 - (3) an appeals process with review by a member or committee of the governing authority within 30 days of receipt of the appeal.
- (m) ensure the development, implementation and annual review of a written emergency plan which is current and includes hospice emergency contact information, current staff call down list, and community partners contact list and procedures to be followed to assure health care needs of patients continue to be met in emergencies that interfere with the delivery of services, and orientation of all employees to their responsibilities in carrying out such a plan;
- (n) obtain, from the Department's Health Commerce System (HCS), accounts for each hospice it operates and ensure that sufficient, knowledgeable staff maintain and keep current such accounts. At a minimum, twenty-four hour, seven-day a week contacts for emergency communication and alerts must be designated by each hospice in the HCS Communications Directory. A policy defining the hospice's HCS coverage consistent with the hospice's hours of operation shall be created and reviewed by the hospice no less than annually. Maintenance of each hospice's HCS accounts shall consist of, but not be limited to, the following:

- (1) sufficient designation of the hospice's HCS coordinator(s) to allow for HCS individual user application;
- (2) designation by the governing authority of the hospice of sufficient staff users of the HCS accounts to ensure rapid response to requests for information by the State and/or local Department of Health;
- (3) adherence to the requirements of the HCS user contract; and
- (4) current and complete updates of the Communications Directory reflecting changes that include, but are not limited to, general information and personnel role changes as soon as they occur, and at a minimum, on a monthly basis.

Section 794.2 Contracts. (a) The governing authority may enter into contracts with appropriate qualified individuals, organizations, agencies and/or facilities, when necessary, to provide for those services required by patients/families when the hospice itself does not have sufficient staff or necessary equipment available to render such services directly.

- (1) Such contracts shall meet all applicable State and Federal requirements and shall specify:
 - (i) each party's responsibilities, functions, objectives, financial arrangements and charges, including responsibility for supervision;
 - (ii) that personnel meet the personnel requirements as set forth in section 794.3 of this Part, which can be verified by written documented evidence accessible to the hospice or department on request;
 - (iii) that services provided by contract to the patient shall be authorized by the hospice in

accordance with the plan of care developed by the hospice and that the contract provider agrees to abide by the patient care policies established by the hospice for its patients;

(iv) that the contracting provider agrees to participate in patient/family care planning conferences as requested by the hospice;

(v) that contracting providers who are licensed professionals agree to participate in:

(a) the coordination of all aspects of the patient's hospice care, including ongoing interdisciplinary comprehensive assessments, developing and evaluating the plan of care, and contributing to patient and family counseling and education;

(b) the hospice's quality assessment and performance improvement program; and

(c) hospice sponsored in-service training.

(vi) any provisions made for indemnification between the hospice and contracting providers; and

(vii) the following terms and conditions: "Notwithstanding any other provision in this contract, the hospice remains responsible for (a) ensuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, State and local statutes, rules and regulations; (b) planning, coordinating and ensuring the quality of all services provided; and (c) ensuring adherence to the plan of care established for patients."

(2) When a contract is with a licensed medical facility or certified home health agency, the service provided must be in compliance with the applicable provisions of article 28 or 36 of the Public Health Law, respectively, and the applicable rules and regulations promulgated thereunder. If such statutory and regulatory provisions are inconsistent with the provisions of article 40 of the Public Health Law or the regulations promulgated thereunder, then the contracting provider shall comply with the applicable provisions of

article 40 of the Public Health Law and the regulations promulgated thereunder.

(3) When a contract is between the hospice and a Skilled Nursing Facility (SNF) /Intermediate Care Facility (ICF) to provide hospice services to residents of the SNF/ICF, the provisions of section 794.8 of this Part related to contracts shall also apply.

(b) Except when a management contract has been approved pursuant to this section, the governing authority may not delegate its responsibility for the operation of the hospice to another organization, a parent or subsidiary corporation or through a managing authority contract. An improper delegation may be found to exist where the governing authority no longer retains authority over the operation and management of the hospice, including but not limited to such areas as:

(1) authority to hire or fire the administrator;

(2) authority for the maintenance and control of the books and records;

(3) authority over the disposition of assets and the incurring of liabilities on behalf of the hospice; or

(4) authority over the adoption and enforcement of policies regarding the operation of the hospice.

(c) If the governing authority enters into a management contract, the requirements of this subdivision shall be met.

(1) For the purpose of this section, a management contract is an agreement between a hospice's governing authority and a managing authority for the purpose of managing the day-to-day operation of the hospice or any portion thereof.

(2) Management contracts shall be effective only with the prior written consent of the Commissioner, and shall include the following:

- (i) a description of the proposed roles of the governing authority and managing authority during the period of the proposed management contract. The description shall clearly reflect retention by the governing authority of ongoing responsibility for statutory and regulatory compliance;
- (ii) a provision that clearly recognizes that the responsibilities of the hospice's governing authority are in no way obviated by entering into the management contract, and that any powers not specifically delegated to the managing authority through the provisions of the contract remain with the governing authority;
- (iii) a clear acknowledgment of the authority of the Commissioner to void the contract pursuant to paragraph (9) of this subdivision;
- (iv) a plan for assuring maintenance of the fiscal stability, the level of service provided and the quality of care rendered by the hospice during the term of the management contract;
- (v) an acknowledgment that the costs of the contract are subject to all applicable provisions of Part 86 of this Title;
- (vi) a requirement that the reports described in paragraph (10) of this subdivision will be provided to the department and to the governing authority annually for the term of the management contract;
- (vii) an express representation that any management contract approved by the Commissioner is the sole agreement between the managing authority and the governing authority for the purpose of managing the day-to-day operation of the hospice or any portion thereof, and that any amendments or revisions to the management contract shall be effective only with the prior written consent of the Commissioner; and

(viii) a provision that includes the terms of paragraph (8) of this subdivision.

(3) No management contract shall be approved if the governing authority does not retain sufficient authority and control to discharge its responsibility as the certified operator.

The following elements of control shall not be delegated to a managing authority;

(i) direct independent authority to hire or fire the administrator;

(ii) independent control of the books and records;

(iii) authority over the disposition of assets and the authority to incur on behalf of the hospice liabilities not normally associated with the day-to-day operation of a hospice; and

(iv) independent adoption of policies affecting the delivery of health care services.

(4) In addition to a proposed written contract complying with the provisions of paragraph (2) of this subdivision, a governing authority seeking to enter into a management contract shall submit to the department, at least 60 days prior to the intended effective date, unless a shorter period is approved by the Commissioner due to extraordinary circumstances, the following:

(i) documentation indicating that the proposed managing authority holds all necessary approvals to do business in New York State;

(ii) documentation of the goals and objectives of the management contract, including a mechanism for periodic evaluation of the effectiveness of the arrangement in meeting these goals and objectives;

(iii) evidence of the managing authority's financial stability;

(iv) information necessary to determine that the character and competence of the proposed managing authority, and its principals, officers and directors, are satisfactory, including evidence that all agencies or health care facilities managed or operated, in or

outside of New York State, have provided a high level of care; and

(v) evidence that it is financially feasible for the hospice to enter into the proposed management contract, recognizing that the costs of the contract are subject to all applicable provisions of Part 86 of this Title.

(5) During the period between a hospice's submission of a request for approval of a management contract and disposition of that request, a hospice may not enter into any arrangement for management contract services other than a written interim consultative agreement with the proposed managing authority. Any interim agreement shall reflect consistency with the provisions of this section, and shall be submitted to the department no later than five days after its effective date.

(6) The term of a management contract shall be limited to three years and may be renewed only when authorized by the Commissioner, provided compliance with this section and the following provisions can be demonstrated:

(i) that the goals and objectives of the contract have been met within specified timeframes;

(ii) that the quality of care provided by the hospice during the term of the contract has been maintained or has improved; and

(iii) that the reporting requirements contained in paragraph (10) of this subdivision have been met.

(7) Any application for renewal shall be submitted at least 90 days prior to the expiration of the existing contract.

(8) A hospice's governing authority shall, within the terms of the contract, retain the authority to discharge the managing authority and its employees from their positions at

the hospice with or without cause on not more than 90 days notice. In such event, the hospice shall notify the department in writing at the time the managing authority is notified. The hospice's governing authority shall provide a plan for the operation of the hospice subsequent to the discharge, to be submitted with the notification to the department.

(9) A management contract shall terminate and be deemed cancelled, without financial penalty to the governing authority, not more than 60 days after notification to the parties by the department of a determination that the management of the hospice is so deficient that the health and safety of patients would be threatened by continuation of the contract.

(10) Each managing authority shall submit annual reports to the department and the governing authority providing measurements of hospice performance in the following areas:

(i) financial operations, including a balance sheet, any change in financial position, and a statement of revenues and expenses sufficient to determine liquidity, working capital, net operating margin and age, extent and type of payables and receivables;

(ii) personnel; and

(iii) services delivered.

Section 794.3 Personnel. The governing authority shall ensure for all personnel, which includes direct employees, contract staff and volunteers:

(a) the development and implementation of written personnel policies and procedures, which are reviewed annually and revised as necessary;

(b) that personnel are qualified as specified in section 700.2 of this Title;

(c) that the health status of all new personnel is assessed prior to the beginning of patient/family contact. The assessment shall be of sufficient scope to ensure that no person shall assume his/her duties unless he/she is free from a health impairment that is of potential risk to the patient/family or to employees or that may interfere with the performance of his/her duties including the habituation or addiction to depressants, stimulants, alcohol, or other drugs or substances which may alter the individual's behavior;

(d) that a record of the following tests and examinations is maintained for all employees, and those volunteers who have direct patient/family contact:

(1) a certificate of immunization against rubella which means:

(i) a document prepared by a physician, physician assistant, specialist assistant, nurse practitioner or a laboratory possessing a laboratory permit issued pursuant to Part 58 of this Title, demonstrating a serologic evidence of rubella antibodies, or

(ii) a document indicating one dose of live virus rubella vaccine was administered on or after the age of twelve months, showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization, or

(iii) a copy of a document described in (i) or (ii) of this paragraph which comes from a previous employer or the school which the employee attended as a student;

(2) a certificate of immunization against measles, for all personnel born on or after January 1, 1957, which means:

(i) a document prepared by a physician, physician assistant, specialist assistant, nurse practitioner or a laboratory possessing a laboratory permit issued pursuant to Part 58 of

this Title, demonstrating serologic evidence of measles antibodies, or

(ii) a document indicating two doses of live virus measles vaccine were administered with the first dose administered on or after the age of 12 months and the second dose administered more than 30 days after the first dose but after 15 months of age showing the product administered and the date of administration, and prepared by the health practitioner who administered the immunization, or

(iii) a document, indicating a diagnosis of the employee as having had measles disease, prepared by the physician, physician assistant/specialist assistant or nurse practitioner who diagnosed the employee's measles, or

(iv) a copy of a document described in (i), (ii) or (iii) of this paragraph which comes from a previous employer or the school which the employee attended as a student;

(3) if any licensed physician, physician assistant/specialist assistant or nurse practitioner certifies that immunization with measles or rubella vaccine may be detrimental to the employee's health, the requirements of paragraph (1) and/or (2) of this subdivision relating to measles and/or rubella immunization shall be inapplicable until such immunization is found no longer to be detrimental to such employee's health. The nature and duration of the medical exemption must be stated in the employee's employment medical record; and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the American Academy of Pediatrics and the Immunization Practices Advisory Committee of the U.S. Department of Health and Human Services);

(4) either tuberculin skin test or Food and Drug Administration (FDA) approved blood assay for the detection of latent tuberculosis infection, prior to employment or voluntary

service, and no less than every year thereafter for negative findings. Positive findings shall require appropriate clinical follow-up but no repeat tuberculin skin test or blood assay. The hospice shall develop and implement policies regarding follow-up of positive test results;

(5) documentation of any immunization(s) required by the Department;

(6) documentation of vaccination against influenza, or wearing of a surgical or procedure mask during the influenza season, for personnel who have not received the influenza vaccine for the current influenza season, pursuant to section 2.59 of this Title; and

(7) an annual, or more frequent if necessary, health status assessment to assure that all personnel are free from health impairment that is of potential risk to the patient/family or to employees or that may interfere with the performance of his/her duties;

(e) that a record of all tests, examinations, health assessments and immunizations required by this section is maintained for all personnel who have direct patient contact;

(f) that personal identification is produced by each applicant and verified by the program prior to retention of an applicant by the program;

(g) that prior to patient contact, employment history from previous employers, if applicable, and recommendations from other persons unrelated to the applicant if not previously employed, are verified;

(h) that personnel records include, as appropriate, records of professional licenses and registrations; verifications of employment history and qualifications for the duties assigned; signed and dated applications for employment; records of pre-employment physical examinations and health status assessments; criminal background check; performance evaluations; time and payroll records; dates of employment, resignations,

dismissals, inservice training and other pertinent data; provided that all documentation and information pertaining to an employee's medical condition or health status, including such records of physical examinations and health status assessments shall be maintained separate and apart from the non-medical personnel record information and shall be afforded the same confidential treatment given patient clinical records under section 794.4 of this Part;

(i) that time and payment records are maintained for all personnel;

(j) that there is a current written job description for each position which delineates responsibilities and specific education and experience requirements;

(k) that all personnel, including hospice employees, volunteers and contract staff with direct patient and family contact, receive orientation to the concept of hospice care, his or her specific job duties, and the policies and procedures for the hospice operation, inservice education necessary to perform his/her responsibilities and continuing programs for development and support. At a minimum home health aides shall participate in 12 hours of inservice education per year, which may occur while the aide is furnishing care. Inservice may be offered by any organization and must be supervised by a registered nurse;

(l) that employees providing care in the home display proper and current identification, including name, title and current photograph of care provider and name of the program providing the service, to be returned to the program upon termination of employment; and

(m) that an annual assessment of the performance and effectiveness of all personnel is conducted. Such assessment shall include an assessment of skills and competence of

individuals providing care including volunteers and include:

- (1) written policies and procedures describing the methods of competency assessment, which shall be implemented; and
- (2) training and education to personnel to improve competency in areas identified by the assessment process as requiring such improvement.

Section 794.4 Clinical record. The governing authority shall ensure that:

- (a) there is a standardized clinical record system which is maintained in conformance with generally accepted medical record practices;
- (b) a clinical record containing past and current findings is maintained for each hospice patient. The clinical record must contain correct clinical information that is available to the patient's attending physician and hospice staff including:
 - (1) initial assessment, comprehensive assessments and updated comprehensive assessments;
 - (2) initial plan of care and updated plans of care;
 - (3) clinical notes. A clinical note means a notation of a contact with the patient and/or the family that is written and dated by any person providing services and that describes signs and symptoms, treatments and medications administered, including the patient's reaction and/or response, any changes in physical, emotional, psychosocial or spiritual condition during a given period of time;
 - (4) signed copies of the notice of patient rights pursuant to Section 793.1 of this Title and election statement pursuant to Section 793.2 of this Title;
 - (5) responses to medications, symptom management, treatments and services;

- (6) outcome measure data elements;
- (7) physician certification and recertification of terminal illness;
- (8) any advance directives;
- (9) physician orders;
- (10) documentation regarding instructions and written information provided to patients and families on the use, management and disposal of controlled substances and durable medical equipment and supplies; and
- (11) a discharge summary if the patient is discharged from hospice, completed by appropriate personnel, including but not limited to:
 - (i) reason for discharge and date;
 - (ii) a summary of the hospice care given including treatments, symptoms and pain management; and
 - (iii) patient status upon discharge including a description of any remaining needs.
- (c) the clinical record for each patient is in a form that can be summarized for transferral of information for inpatient care, home care services, and bereavement services, as appropriate;
- (d) the clinical record meets the following requirements as applicable:
 - (1) all entries shall be current;
 - (2) all entries shall be legible and recorded in dark ink to facilitate photocopying;
 - (3) all entries shall be signed and dated, including the time of day and authenticated; and
 - (4) all records shall be kept in a place convenient to and easily retrievable by the hospice staff;

- (e) the clinical record, whether hard copy or in electronic form, is readily available on request by an appropriate authority;
- (f) the clinical record, its contents and the information contained is safeguarded against loss or unauthorized use. The hospice must be in compliance with state and federal requirements, including Section 18 of the Public Health Law, governing the disclosure of personal health information.
- (g) each patient's clinical record shall be retained by the hospice for at least a six-year period after death or discharge from the hospice. In the case of a minor who is discharged from the hospice, clinical records shall be retained for at least a six-year period after death or discharge or, if the minor attains majority (18 years), for a three-year period thereafter, whichever period is longer.

Section 794.5 – Short-term Inpatient Service.

- (a) Part 702 of this Title, Section 717.3 of this Title and Part 14 of the Sanitary Code shall apply to hospice inpatient settings as applicable.
- (b) The hospice may provide short-term inpatient services for respite and for pain control and management of symptoms related to the terminal illness in a free-standing hospice facility, a skilled nursing facility or a general hospital.
- (c) The provision of inpatient services shall be consistent with applicable Federal requirements and with the definition of hospice as defined in section 700.2 of this Title, and shall include, but not be limited to:
 - (1) 24-hour nursing services that meet the needs of all patients and are furnished in accordance with the patient's plan of care, including the services of a registered

professional nurse if a hospice patient has been admitted to inpatient services for other than respite care. Each patient must receive all nursing services as prescribed and must be comfortable, clean, well groomed, and protected from accident, injury and infection;

(2) accommodations to enable families to store and prepare food brought in by the family;

(3) accommodations to enable families to remain with the patient throughout the night;

(4) flexible visitation policies which include 24-hour a day visiting privileges regardless of age of visitor;

(5) provision of adequate and wholesome food and supplemental nourishments under the direction of a dietician;

(6) flexibility in meal times and in selection of food based on individual needs of patients;

(7) accommodations for recreational and religious activities;

(8) adequate space for private small group interactions;

(9) retention and use of personal possessions as space and safety permits;

(10) a telephone accessible to the patient; and

(11) oxygen available to each patient, as necessary.

(d) In addition to meeting the provisions of section 794.2 of this Part and any applicable State and Federal requirements, contractual arrangements with a facility for inpatient services must include a written agreement describing the arrangements and the agreement shall specify that:

(1) a member of the hospice interdisciplinary care group shall conduct onsite reviews of the inpatient services provided to ensure conformance with the established plan of care, at

least weekly;

(2) the hospice supplies the inpatient provider with a copy of the patient's plan of care and specifies the inpatient services to be furnished;

(3) the inpatient provider has established patient care policies consistent with those of the hospice and agrees to abide by the palliative care protocols and plan of care established by the hospice for its patients;

(4) the hospice patient's inpatient clinical record includes a record of all inpatient services furnished and events regarding care that occurred at the facility;

(5) upon discharge from the inpatient service, a copy of the discharge summary and if requested a copy of the inpatient medical record will be forwarded to the hospice and retained as part of the hospice clinical record;

(6) the inpatient facility has identified an individual within the facility who is responsible for the implementation of the provisions of the agreement;

(7) the hospice retains responsibility for ensuring that the training of personnel who will be providing the patient's care in the inpatient facility has been provided and that a description of the training and the names of those giving the training are documented; and

(8) a method for verifying that the requirements in paragraphs (d)(1) through (d)(6) of this section are met.

(e) The hospice that provides inpatient care directly in its own facility must demonstrate compliance with all of the following standards:

(1) ensuring that staffing for all services reflects its volume of patients, their acuity, and the level of intensity of services needed to ensure that plan of care outcomes are achieved and negative outcomes are avoided;

- (2) providing 24-hour nursing services that meet the nursing needs of all patients and are furnished in accordance with each patient's plan of care;
- (3) providing pharmacy services under the direction of a licensed pharmacist responsible for evaluating the patient's response to drug therapy, identification of potential drug reactions and recommend corrective action;
- (4) having a written policy for dispensing drugs accurately and maintaining records of receipt and disposition of controlled drugs;
- (5) maintaining a safe physical environment free of hazards for patients, staff, and visitors which includes:
 - (i) addressing real or potential threats to health and safety of patients, others and property;
 - (ii) having a written disaster plan in effect for managing power failures, natural disasters and other emergencies affecting the ability to provide care. The plan must be periodically reviewed and rehearsed with staff;
 - (iii) developing and implementing procedures for routine storage and prompt disposal of trash and medical waste; light, temperature and ventilation/air exchanges; emergency gas and water supply; and scheduled and emergency maintenance and repair of all equipment;
- (6) ensuring that patient areas are designed to preserve the dignity, comfort, and privacy of patients; and
- (7) developing and implementing policies that meet federal standards for use of seclusion and restraints.

Section 794.6 Hospice Residence Service. (a) Part 702 of this Title, Section 717.4 of Part 717 of this Title and Part 14 of the Sanitary Code shall apply to all hospice residence settings, as applicable.

(b) Hospice residence as defined in Part 702 of this Title shall mean a hospice operated home which is residential in character and physical structure, and operated for the purpose of providing more than two hospice patients, but not more than sixteen hospice patients, with hospice care.

(c) Hospice residence service shall include, but not be limited to:

(1) the provision of services as specified in Section 794.5(c)(2), (3), (4), (6), (7), (8), (9), (10) and (11) of this Part.

(2) the provision of either home health aide, licensed practical nurse or registered nurse services, as appropriate, to address the medical needs and ensure the safety and well-being of residents on a 24-hour a day basis;

(3) the provision of adequate and wholesome food and supplemental nutrition under the direction of a dietician. The hospice residence must:

(i) store, prepare, distribute and serve food under sanitary conditions in accordance with the sanitary requirements of Part 14 (Service Food Establishments) of Chapter 1 (State Sanitary Code) of this Title;

(ii) offer each resident at least three meals, or their equivalent, each day at regular times, with not more than 14 hours between a substantial evening meal and breakfast; and

(iii) prepare and serve therapeutic diets, prescribed by a physician, and planned and supervised by a professionally qualified dietitian; and

(4) routine and emergency drugs and biologicals, provided either directly to residents, or obtained under contract as described in section 794.2 of this Part, in accordance with Article 33 of the Public Health Law and Part 80 of this Title.

Section 794.7 Leases. (a) Whenever a hospice leases premises in which the inpatient component of a hospice or a hospice residence is to be provided, the hospice shall ensure that the lease contains the following language:

"The landlord acknowledges that its rights of reentry into the premises set forth in this lease do not confer on it the authority to operate a hospital or hospice as defined in articles 28 and 40, respectively, of the Public Health Law on the premises and agrees to provide the New York State Department of Health with notification by certified mail of 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 expiration of the lease."

(b) Upon receipt of notice from the landlord of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and 60 days prior to the expiration of the lease, the hospice shall immediately notify by certified mail the New York State Department of Health of receipt of such notice or service of such process or that the lease is about to expire.

(c) No lease covering the administrative office site or the premises in which the inpatient component of a hospice or a hospice residence as defined in Article 40 of the Public

Health Law is to be conducted and no lease covering any equipment used in the operation of a hospice may contain any provision whereby rent, or any increase therein, is based upon the Consumer Price Index or any other cost of living index. In the event the lease covering such hospice premises or equipment contains provisions whereby it is the lessor's responsibility to pay necessary expenses associated with such premises or equipment, such as real estate taxes, utilities, heat, insurance, maintenance and operating supplies, such lease may contain provisions which allow adjustments to the rent only to the extent necessary to compensate the lessor for changes in such expenses.

Section 794.8 Hospice care provided to residents of a Skilled Nursing Facility (SNF) or Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID).

(a) A hospice that provides hospice care to residents of a SNF or ICF/IID, hereafter referred to as the facility, must assume responsibility for professional management of the hospice services provided to the resident, in accordance with the hospice plan of care, including assessing, planning, monitoring, directing and evaluating the patient's/resident's hospice care across all settings.

(b) The hospice and the facility must have a written agreement for the provision of hospice services between the two entities signed by an authorized representative of the hospice and the facility. The written agreement must include the following provisions:

- (1) the manner in which the facility and the hospice are to communicate with each other and document such communications to ensure that the needs of patients are addressed and met 24 hours a day;
- (2) that the facility immediately notifies the hospice if:

- (i) a significant change in a patient's physical, mental, social, or emotional status occurs;
 - (ii) clinical complications appear that suggest a need to alter the plan of care;
 - (iii) a need to transfer a patient from the facility arises, and the hospice makes arrangements for, and remains responsible for, any necessary continuous care or inpatient care necessary which is related to the terminal illness and related conditions; or
 - (iv) a patient dies;
- (3) that the hospice is responsible for determining the appropriate course of hospice care, including the determination to change the level of services provided;
- (4) that the facility is responsible for furnishing 24-hour room and board care; and for meeting the personal care and nursing needs that would have been provided by the primary caregiver at home and at the same level of care provided before hospice care was elected;
- (5) a delineation of the hospice's responsibilities, which include, but are not limited to providing:
- (i) medical direction and management of the patient;
 - (ii) core services including nursing and counseling (including spiritual, dietary and bereavement), as well as medical social services; medical supplies, durable medical equipment and drugs necessary for the palliation of pain and symptoms associated with the terminal illness and related conditions; and all other hospice services that are necessary for the care of the resident's terminal illness and related conditions; and
 - (iii) services at the same level and to the same extent as those services would be provided if the resident were in his or her own home;
- (6) that the hospice may use the facility nursing personnel where permitted by State and

Federal law and as specified by the SNF or ICF/IID to assist in the administration of prescribed therapies included in the plan of care only to the extent that the hospice would routinely use the services of a hospice patient's family in implementing the plan of care;

(7) that the hospice must report all alleged violations involving mistreatment, neglect, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property by anyone unrelated to the hospice to the facility administrator within 24 hours of the hospice becoming aware of the alleged violation;

and

(8) a delineation of the responsibilities of the hospice and the SNF or ICF/IID to provide bereavement services to facility staff.

(c) A written hospice plan of care must be established and maintained in consultation with facility representatives.

(1) The hospice plan of care must identify the care and services that are needed and specifically identify which provider is responsible for performing the respective functions that have been agreed upon and included in the hospice plan of care.

(2) The hospice plan of care should reflect the participation of the hospice, the facility staff, and the patient and family to the extent possible.

(3) Based on collaboration between the hospice and the facility, the hospice plan of care should reflect:

- (i) a common problem list;
- (ii) palliative interventions;
- (iii) palliative outcomes;
- (iv) responsible discipline;

(v) responsible provider; and

(vi) patient goals.

(4) The hospice must approve any changes in the hospice plan of care before implementation and discuss such changes with the patient or representative, and facility representatives.

(d) For each patient, the hospice must designate a member of the interdisciplinary group who will be responsible for:

(1) providing overall coordination of the hospice care of the resident with the facility representatives and communicating with facility representatives and other health care providers and physicians participating in the provision of care;

(2) providing the facility, for each hospice patient, with:

(i) the most recent hospice plan of care;

(ii) the hospice election form and any advance directives;

(iii) the physician certification and recertification of the terminal illness;

(iv) the names and contact information for hospice personnel involved in hospice care;

(v) hospice medication information;

(vi) hospice physician and attending physician (if any) orders; and

(vii) instructions on how to access the hospice's 24-hour on-call system;

(e) Hospice staff must orient facility staff furnishing care to hospice patients to the hospice philosophy; hospice policies and procedures regarding methods of comfort, pain control, and symptom management; principles about death and dying and individual responses to death; patient rights; appropriate forms; and record keeping requirements.

Section 794.9 Records and reports. (a) The governing authority shall ensure that:

(1) the following records are retained on file at the principal office of the hospice within its approved geographic service area and available to the Department upon request:

(i) the certificate of incorporation, if applicable;

(ii) the certificate of approval;

(iii) all current contracts, leases and other agreements entered into by the hospice;

(iv) current operating policies and procedures; and

(v) a current patient/family roster;

(2) copies of the documents under subparagraphs (1)(iv) and (v) of this subdivision are retained on file at each suboffice of the hospice, if applicable;

(3) the following reports and records are retained by the hospice and available to the department upon request:

(i) minutes of the meetings of the hospice governing authority and the quality assurance committee which shall be retained for three years from the date of the meeting;

(ii) the reports of hospice surveys and inspections by outside agencies with statements attached thereto specifying the steps taken to correct any deficiencies or to carry out the recommendations contained therein which shall be retained for five years from the date of such survey or inspection;

(iii) records of all financial transactions which shall be retained eight years from the date of the transaction;

(iv) personnel records, which shall be retained six years from the date of employee termination or resignation;

(v) records of complaints and appeals, which shall be retained three years from

resolution; and

(vi) records of tracking, receipt and resolution of accident and incidents.

(b) The hospice shall furnish annually to the department a copy of:

(1) the current annual report submitted to its governing body; and

(2) other such data, records and reports as may be required by the department.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 4010(4) of the Public Health Law authorizes the adoption and amendment of regulations for hospice providers approved pursuant to PHL Article 40 (Hospices).

Section 4002 of the Public Health Law was amended by adding a new subdivision 5 to read as follows: “Terminally ill” means an individual has a medical prognosis that the individual’s life expectancy is approximately one year or less if the illness runs its normal course.

Legislative Objective:

PHL Article 40 provides that hospice care may offer persons with terminal illness an appropriate palliative care alternative to curative treatments and protects such vulnerable individuals through the imposition of care delivery standards for providers. It is the legislative intent that hospice’s interdisciplinary program and innovative approach to home and inpatient services be available statewide.

The proposed regulations attempt to achieve these legislative objectives by expanding the definition of terminal illness to conform with the statutory language as well as allow individuals the opportunity to receive hospice care earlier in their terminal illness – providing care to those who need it and reducing the need for emergency room visits and hospital stays.

Needs and Benefits:

The proposed rule making was necessitated by changes in the federal conditions of participation/rules for hospice providers and recent Medicaid Redesign Initiatives. State

rules have been revised and reordered to be consistent with federal rules thereby facilitating provider compliance and surveillance activities. The intent of these revisions is to improve care delivery processes and support performance improvement activity at the provider level. Additionally, amendments were a result of changes made in Chapter 441 of the Laws of 2011 and Medicaid Redesign efforts to expand hospice benefits. Individuals could benefit from receiving hospice services earlier in their terminal illness and having their symptoms managed on an on-going basis, thereby reducing the need for emergency room visits and hospital stays.

Costs:

Costs to Regulated Parties:

Nominal costs may be incurred by hospice providers if coordination, management and documentation of care has not been effectively implemented by the hospice; or if data-driven, outcome-based quality assessment and performance improvement activities have not been taking place. These nominal costs are associated with federal quality assessment and performance improvement program requirements and would have to be incurred regardless of the proposed regulatory changes. There are currently 45 hospices in New York State.

Costs to the Agency and to the State and Local Governments Including this Agency:

The change in hospice patient eligibility which allows individuals with a 12-month life expectancy to elect the hospice benefit, has been estimated to have a net aggregate increase in gross Medicaid expenditures of \$1,704,658. The aggregate NY State and Local Government share of the increase in Medicaid expenditures is approximately \$400,000 for State government, and another \$400,000 for local

governments in the aggregate. Pursuant to 42 CFR Section 447.205, the Department gave public notice in December 2011 to amend the NYS Medicaid Plan for hospice services to expand access to the hospice benefit. No additional costs are anticipated for the Agency or for State and Local Governments.

Local Government Mandates:

There are no local mandates in this rule. However, 6 counties operate hospice programs and will be required to meet these rules in the same manner as will private entities, as there is no exemption authority for publicly sponsored programs.

Paperwork:

Under the proposed rules, providers will now be required to report verified incidences of mistreatment or abuse to the Department of Health and or state/local bodies having jurisdiction, as required by federal rules. All other reporting requirements are consistent with existing regulations.

Duplication:

Proposed rules will be duplicative of, but consistent with, federal rules. There are no known conflicts with federal rules; consistency should facilitate provider compliance and improve effectiveness of surveillance processes.

Alternatives:

The Department could choose to retain existing standards in which case federal rules would supersede State rules where gaps or inconsistency exist. This option was rejected as it would be confusing to both providers and surveyors. Furthermore, conforming state requirements to the federal requirements will facilitate the enforcement of both.

Federal Standards:

Section 418 of 42 CFR sets forth the federal rules for hospices. The proposed State rules are consistent with federal rules, but do exceed federal rules as follows:

- The quality assessment and performance improvement section includes the requirement to have a quality committee to assure comprehensive representation and involvement in quality activities and to assure a broader quality oversight process at the provider level. This is a state requirement that is not included in the federal rules.
- Infection control includes standards for prevention and management of HIV and other bloodborne pathogen infections, consistent with existing standards for all provider types in NYS. The standards exceed federal rules by including the required program specifications.
- The responsibilities of the governing body are more clearly delineated in the proposed rules than in the federal rules, including implementation of a complaint investigation procedure and requiring that the governing body obtain a Health Commerce System account for communication with the Department.
- The proposed rule specifically states the requirements for contracts, including management contracts, to ensure hospice and provider accountability and governing body responsibilities. Such requirements are not stated in the federal rules.
- Health requirements for personnel are specific and consistent with other provider types in NYS to assure adequate patient care protection. Job descriptions, employee identification and personnel records are also required as appropriate business practices. These requirements are not stated in the federal rules.

Compliance Schedule:

As the amendments ensure conformance with federal standards that were already in effect as of December 3, 2008, and any state requirements exceeding federal rules are already in effect, regulated parties should already be in compliance, and should readily be able to comply as of the effective date of these regulations.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS

Effect of Rule:

Local governments will not be affected by this rule except to the extent that they are providers of hospice services. There are 6 county-based hospice providers. The small businesses which will be affected are hospice providers which employ fewer than 100 persons. There are approximately 36 small business hospices in NYS.

Compliance Requirements:

Regulated parties are expected to be in immediate compliance as these rules are consistent with federal standards already in effect as of Dec. 3, 2008, and rules that exceed the federal rules are already in place for existing hospice providers in NYS. The proposed regulations will create a new state reporting requirement, consistent with federal rules, for reporting verified instances of patient mistreatment, abuse or neglect to the Department or to other state and local authorities. The reporting will be done through existing complaint reporting mechanisms. The proposed regulations also require the hospice to report to the Department data on quality indicators and patient outcomes, which will be the basis for performance improvement activities. This may require additional staff training and electronic data systems at the hospice. The Department implemented a hospice quality initiative intended to assist hospices with meeting this requirement. All other reporting requirements mentioned in the proposed regulations currently exist for the hospice providers.

The Department does not intend to publish a small business regulation guide in connection with this regulation. Although a number of hospices are small businesses, the impact is not expected to be substantial. Additional guidance will be posted on the web as needed after the regulation is promulgated.

Professional Services:

No additional professional staff are expected to be needed as a result of the regulations. Quality assessment and performance improvement requirements could be handled by existing staff with appropriate training, unless staff shortages already exist at the hospice.

Compliance Costs:

There are no capital costs associated with these proposed rules. Additional costs may be associated with maintaining and analyzing data and carrying out performance improvement activities. The costs for small businesses and county sponsored hospices should not be significantly different from the costs to other affected providers.

Economic and Technological Feasibility:

The Department has considered feasibility and believes the rules can be met with minimal economic and technological impact. Departmental resources have been identified to assist hospices with quality indicators and performance improvement. Other regulations should not affect the routine cost of doing business.

Minimizing Adverse Impact:

While the Department has considered the options of State Administrative Procedure Act (SAPA) Section 202-b(1) in developing this rule, flexibility does not exist

for any particular entity since the new requirements are consistent with new federal rules already in effect.

Small Business and Local Government Participations:

The Hospice and Palliative Care Association of NYS, which represents the majority of the hospices statewide, were included during the development of the proposed rulemaking. The Department will meet the requirements of SAPA Section 202-b(6) in part by publishing a notice of proposed rulemaking in the State Register with a comment period.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

All counties in NYS have rural areas with the exception of 7 downstate counties. Counties with rural areas are served by 34 of the existing 47 hospices in NYS.

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

Regulated parties are expected to be in immediate compliance as these rules are consistent with federal standards already in effect as of Dec. 3, 2008, and rules that exceed the federal rules are already in place for existing hospice providers in NYS.

The proposed regulations will create a new state reporting requirement, consistent with federal rules, for reporting verified instances of patient mistreatment, abuse or neglect to the Department or other state and local authorities. The reporting will be done through existing complaint reporting mechanisms. The proposed regulations also require the hospice to report to the Department data on quality indicators and patient outcomes, which will be the basis for performance improvement activities. This may require additional staff training and electronic data systems at the hospice. The Department implemented a hospice quality initiative intended to assist hospices with meeting this requirement. All other reporting requirements mentioned in the proposed regulations currently exist for the hospice providers.

Additional quality indicator and outcome data will need to be maintained in support of the reporting of the quality indicators and patient outcomes. This can be

accomplished by existing clinical and/or administrative staff with appropriate training. Professional personnel required of the hospice is unchanged from existing requirements.

Costs:

There are no capital costs associated with these rules; any such costs would result from new federal rules, regardless of whether amendments were made to state regulation. Additional training of staff in quality assessment and performance improvement may be required to be in compliance with the requirements of the new federal rules.

Minimizing Adverse Impact:

While the Department has considered the options in State Administrative Procedure Act (SAPA) Section 202-bb(2)(b), the proposed regulatory changes are consistent with new federal requirements. Therefore, Department authority to minimize impact is limited. Adverse impact is expected to be minimal.

Rural Area Impact:

The Department will meet the requirements of SAPA Section 202-bb(7) in part by publishing a notice of proposed rulemaking in the State Register with a comment period.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. The proposed regulations are intended to be consistent with current federal rules and also expand the definition of “terminal illness” to allow expanded access to hospice services and improve patient care. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 3612(5) and 3612(7)(a) of the Public Health Law, sections 763.7 and 766.4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Sections 763.7(a)(3)(i) and (ii) are amended as follows:

763.7 Clinical records.

(a) The agency shall maintain a confidential clinical record for each patient admitted to care or accepted for service to include:

* * *

(3) medical orders and nursing diagnoses to include all diagnoses, medications, treatments, prognoses, and need for palliative care. Such orders shall be:

(i) signed by the authorized practitioner within [30 days] 12 months after admission to the agency, or prior to billing, whichever is sooner;

(ii) signed by the authorized practitioner within [30 days] 12 months after issuance of any change in medical orders or prior to billing, whichever is sooner, to include all written and oral changes and changes made by telephone by such practitioner; and

(iii) renewed by the authorized practitioner as frequently as indicated by the patient's condition but at least every 60 days;

Sections 766.4(d)(1) and (2) are amended as follows:

Section 766.4 Medical Orders

* * *

(d) Medical orders shall reference all diagnoses, medications, treatments, prognoses, need for palliative care, and other pertinent patient information relevant to the agency plan of care; and

(1) shall be authenticated by an authorized practitioner within [thirty (30) days] 12 months after admission to the agency; and

(2) when changes in the patient's medical orders are indicated, orders, including telephone orders, shall be authenticated by the authorized practitioner within [thirty (30) days] 12 months.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Section 3612(5) of the Public Health Law authorizes the adoption and amendment of regulations for certified home health agencies pursuant to Article 36 of the Public Health Law (Certified Home Health Agencies, Long Term Home Health Care Programs and AIDS Home Care Programs). Section 3612(7) (a) of the Public Health Law authorizes the adoption and amendment of regulations for licensed home care services agencies pursuant to Article 36.

Legislative Objective:

Article 36 of the Public Health Law was intended to promote the quality of home care services provided to residents of New York State and to ensure their adequate availability as a viable alternative to institutional care. The proposed regulation furthers this objective by aligning state regulations with federal rules governing payment for home health episodes, thereby making home care rules and regulations clear and consistent to both home health providers and physicians ordering home health care services for their patients.

Needs and Benefits:

The proposed rule making achieves consistency with the federal rules governing home health episode payment for certified home health agencies, long term home health care programs and AIDS home care programs. There are no corresponding federal rules and regulations for licensed home care services agencies.

Home care providers have identified difficulties in obtaining signed physician orders under the current timeframe of thirty (30) days, which adversely impacts their ability to

bill and receive payment for services that were delivered based on verbal orders. The increased reliance on the use of hospitalists, whose relationship with patients tend to be transient in nature, and the use of hospital based clinics for medical care, contribute to the difficulty in obtaining signed physician orders within the current timeframes. Typically, the initial and subsequent follow-up physician orders are in the form of verbal orders. Obtaining the required signed orders from the physician who prescribed the care is challenging and time consuming. The current 30-day timeframe, coupled with payment rules, adversely impacts the ability of the home care agencies to bill and obtain reimbursement for services.

The inability to obtain signed physician orders in the 30 day period was identified as a main concern of the Home and Community Based Care Workgroup (Workgroup). In 2013, the Legislature created the Workgroup by enacting PHL Section 3614, as a response to changes in the delivery of, and reimbursement for, home health care services through New York State's Medicaid Redesign initiatives. The Workgroup, composed of eleven members representing providers, managed care plans and consumers, examined and made recommendations on issues which included but were not limited to state and federal regulatory requirements and related policy guidelines (including the applicability of the federal conditions of participation); efficient home and community based care delivery, including telehealth and hospice services; and alignment of functions between managed care entities and home and community based providers. The Workgroup, consistent with input from the provider associations, determined that a longer period to obtain signed physician orders would decrease the number of denied claims for payment from governmental payers. Additional input from Medicaid payment policy makers also

indicated that extending the allowable time to obtain signed physician orders would alleviate the adverse impact related to claims submissions and payment exception rules.

Costs to Regulated Parties:

The regulated parties (providers) are not expected to incur any additional costs as a result of the proposed rule change. There are no additional costs to local governments for the implementation of and continuing compliance with this amendment.

Local Government Mandates:

The proposed amendment does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of this amendment.

Duplication:

Proposed rules will be consistent with federal rules for home health agencies certified to participate in the Medicare and Medicaid programs. There are no known conflicts with federal rules; consistency should facilitate provider compliance and improve effectiveness of surveillance processes.

Alternatives:

The Department could choose to retain existing standards. During its discussions with providers, provider associations and the Workgroup, the Department evaluated timeframes ranging from sixty (60) days to two years. After careful analysis, it was determined that 12 months is optimal because it provides consistency with payment rules for governmental payers.

Federal Standards:

This amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

There are no significant actions which are required by the affected providers to comply with the amendments. As the amendments are consistent with federal standards that were already in effect, and any state requirements exceeding federal rules are already in effect, regulated parties should already be in compliance, and should readily be able to comply as of the effective date of these regulations.

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

No regulatory flexibility analysis for small businesses and local governments is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on small businesses or local governments, and it does not impose additional reporting, record keeping or other compliance requirements on small business home care agencies or local government home care agencies. The proposed amendment seeks to extend the timeframe agencies have to obtain signed physician orders.

STATEMENT IN LIEU OF RURAL AREA FLEXIBILITY ANALYSIS

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on facilities in rural areas, and it does not impose additional reporting, record keeping or other compliance requirements on facilities in rural areas. The proposed amendment seeks to extend the timeframe agencies have to obtain signed physician orders.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

No Job Impact Statement is required pursuant to section 201 a (2)(a) of the State Administrative Procedure Act. The proposed regulations are intended to be consistent with current federal rules for certified home health agencies and as consistent as feasible with proposed certified home health agency state regulations for licensed home care services agencies. It is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs or employment opportunities.

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

§ 22.3 - Supplementary reports of certain birth defects [congenital anomalies] for epidemiological surveillance; filing.

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

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

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

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

[Anencephalus and similar anomalies

Spina bifida

Congenital anomalies of the nervous system

Congenital anomalies of the eye

Congenital anomalies of ear, face, neck

Congenital anomalies of heart

Congenital anomalies of circulatory system

Congenital anomalies of respiratory system

Cleft palate and cleft lip

Congenital anomalies of upper alimentary tract

Congenital anomalies of digestive system

Congenital anomalies of urinary system

Congenital anomalies of genital organs

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

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

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

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

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

§ 22.9 – Reports: place of filing

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

REGULATORY IMPACT STATEMENT SUMMARY

Statutory Authority:

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

Legislative Objectives:

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

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

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

Needs and Benefits:

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

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

Hereditary muscular dystrophies and other myopathies are a family of diseases that cause progressive and steady muscle weakness and wasting. The most common muscular dystrophy is Duchenne MD, followed by Becker MD. A recent US study indicated the prevalence of boys age 5 to 24 with Duchenne and Becker MD was 1.3 to

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

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

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

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

The proposed amendment also allows reporting by qualified health care professionals other than physicians—specifically, nurse practitioners and physician

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

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

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

Finally, the proposal replaces the term "congenital malformation" in favor of the term "birth defect" and renames the CMR the "New York Birth Defects Monitoring

Program.” In a nationally representative survey conducted in 2007, respondents were asked what their first choice would be to describe problems at birth that can result in physical or mental disabilities. The preferred term was “birth defects”. This term was chosen over congenital malformations and congenital anomalies, among other choices. Using the term that is preferred by the public will enable positive engagement with affected families and improve the Department’s communication with the public.

Costs to Regulated Parties:

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

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

Reporting by smaller, community-based health care facilities and individual providers will result in some costs primarily because, while physicians have always been required to report birth defects, this requirement has not been enforced for providers who are not associated with New York hospitals. The Department has minimized the administrative costs associated with the reporting requirement by integrating the reporting process with technologies that healthcare providers already utilize. Healthcare providers currently rely on the Department's Health Commerce System (HCS) for communication and reporting to the Department. Within the HCS, the Department is implementing a comprehensive web-based reporting system known as the Child Health Information Integration (CHI²) project to be used as the central website to report and track newborn screening, immunizations, lead and newborn hearing screening. Reporting of birth defects will become a component of the CHI² system in order to reduce the reporting burden of community-based healthcare facilities and providers.

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

With regards to extending the CMR reporting requirements to nurse practitioners, physician assistants and midwives, the Department does not expect that regulated parties

will incur any associated direct costs. Rather, the Department expects that this change will relieve physicians and hospitals from being the only classes of healthcare providers authorized to submit a report when a child is diagnosed with a birth defect.

For clinical laboratories, the Department anticipates the regulatory change will require annual reporting of approximately 6,600 additional genetic or chromosomal anomalies recognized during pregnancy, and approximately 400 reports related to children diagnosed between the ages of 2 and 10 years old, for a total of 7,000 additional reports annually. The Department anticipates the ongoing costs to the roughly 50 clinical cytogenetic laboratories providing diagnostic testing for genetic and chromosomal anomalies to be minimal because these laboratories will report using the Electronic Clinical Laboratory Reporting System (ECLRS) as many already do. The Department estimates that the additional number of reports that these labs will make to ECLRS will cost approximately \$1,400. Clinical laboratories may experience a one-time expense related to modifying the laboratory's software to identify the additional cases that must be reported, which the Department estimates will require a maximum of 16 hours of work by a computer specialist at an estimated rate of pay of \$100/hour.

Costs to the Regulatory Agency:

The Department has been using a web-based electronic reporting system in place since 2006. Currently, the CMR receives and processes about 12,000 reports annually. Thus, annual cost to DOH to receive and process the additional 1,000-1,200 cases will be minimal.

Costs to the State Government:

There will be no costs to state government. For the last ten years, reporting to the CMR has been conducted electronically. Currently, the Department uses the Health Commerce System to receive CMR reports. Reporters upload cases individually or in batch reports. The electronic reporting system already includes automated processes to match and combine reports for the same child, to ensure de-duplication of data reported from multiple reporters. Additional data quality control processes are built into the system.

Costs to Local Government:

Hospitals owned by local governments would be affected but, as discussed above, the costs will be minimal because the additional reporting requirement is relatively small.

Local Government Mandates:

There are no mandates on local governments, other than the additional reporting requirements that would apply to hospitals owned by a local government.

Paperwork:

This change will generate very little physical paperwork because reporting will be performed electronically as is described under “Costs to Regulated Parties.”

Duplication:

This change does not involve any duplication in laws. In terms of duplication of effort, the reporting software will prevent the repeated reporting of the same birth defect for a particular child.

Alternatives:

If no changes are made to this regulation, the Department will continue to collect incomplete reporting for birth defects, and prevalence estimates will remain inaccurate. This will impede the Department's ability to detect and quantify environmental exposures that negatively impact the health of embryos and fetuses in New York State.

Concerning FAS, in particular, failure to change the reporting requirement will hamper prevention efforts and may cost New York more in the long-term. One study placed the nationwide annual cost of treating birth defects associated with FAS at \$1.6 billion. Another study used a societal perspective and generated nationwide cost estimates of \$9.69 billion. These costs included estimates of the value of productivity lost as a result of cognitive disabilities, as well as the cost of treatment and residential care. In addition to improving outcomes for affected children, early diagnosis and appropriate interventions are likely to generate significant costs savings over time.

Federal Standards:

There are no federal mandates for state-level reporting of birth defects. However, several of the 36 state birth defect surveillance programs require reporting of these birth defects past the age of 2 years, including Hawaii, Texas, Washington State and Colorado. At least eleven states receive reports of birth defects that occur during pregnancy.

Compliance Schedule:

Regulations will take effect immediately upon filing. The Department will continue its efforts to make reporting easier and more efficient, while simultaneously conducting outreach to understand and address any concerns that may arise.

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REGULATORY IMPACT STATEMENT

Statutory Authority:

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

Legislative Objectives:

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

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

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

Needs and Benefits:

The currently proposed amendments to the existing regulation will modernize the CMR in six ways and improve the ability of the CMR to meet the original objectives of the legislation. First, the amendments will establish a case reporting period of ten years for certain defects that often are not diagnosed within the current two-year capture period. The defects subject to the 10-year reporting requirements are: fetal alcohol syndrome (“FAS”); Duchenne and Becker muscular dystrophy; heart malformations; and chromosomal and genetic anomalies.

Second, the amendments will institute case reporting for birth defects diagnosed during pregnancy. Third, the changes will allow reporting from nurse practitioners, physician assistants and midwives, thereby reducing the reporting burden on pediatricians, obstetricians, general and other practitioners and improving reporting in communities where physicians are scarce. Fourth, the amendments will add granularity to the reported data by creating separate categories for certain diseases that are currently reported under a single, broad category. Finally, the changes clarify prior requirements

for clinical cytogenetic laboratories to report diagnostic test results for chromosomal and genetic anomalies.

The Department's proposal seeks to extend the case capture periods for certain diseases. Currently, health regulations require physicians and hospitals to report birth defects that are diagnosed within two years of a child's birth, yet many birth defects are not diagnosed until after age two. In particular, conditions such as fetal alcohol syndrome, Duchenne and Becker muscular dystrophy, certain heart malformations, and some chromosomal and genetic anomalies are not diagnosed until the child is older than two years.

By extending the capture period for certain diseases, the Department's proposal will enhance its epidemiologic surveillance and advance its understanding of birth defects and their environmental causes. The Department's proposal seeks to update the capture periods for the following diseases:

Fetal alcohol syndrome (FAS) is a serious but preventable birth defect that results from heavy maternal intake of alcohol during pregnancy. Significantly, the hallmark signs of FAS are challenging to recognize in infants.

FAS is not uncommon, with national estimates of occurrence at 5–20 cases per 10,000 live births. For birth years 2001 to 2007, the annual prevalence of FAS reported by the CMR was 0.64 per 10,000 live births, about 10-fold less than national estimates. These figures suggest significant underreporting of FAS in New York State. Further, studies indicate that FAS is more easily diagnosed from ages two to ten years. A comparison of the CMR with other FAS surveillance data found that, in one region of

New York State, almost 30% of FAS cases were diagnosed after the age of two. In addition, a recent analysis of children referred to an Erie County FAS Diagnostic Center found the average age of diagnosis of FAS to be 4.9 years, with only 39% diagnosed before their second birthday and 82% diagnosed by a child's tenth birthday. Consistent with current CMR regulations, these diagnoses were not required to be reported to the CMR for children over the age of two. These findings support the Department's proposal to extend the case capture period for FAS to ten years of age.

Hereditary muscular dystrophies and other myopathies are a family of diseases that cause progressive and steady muscle weakness and wasting. The most common muscular dystrophy is Duchenne MD, followed by Becker MD (together, "DBMD"). The age of onset and severity of symptoms are unique for each dystrophy, as is the average age of diagnosis for individuals.

Worldwide, the birth prevalence of Duchenne MD is estimated at 1 to 3.9 per 10,000 live births, and a recent US study indicated the prevalence of boys age 5 to 24 with DBMD for 2007 was 1.3 to 1.8 per 10,000 males. However, the CMR indicated an annual birth prevalence of "hereditary progressive muscular dystrophy" from 1998 to 2007 of only 0.08 per 10,000 live births. The remarkable difference in these statistics suggests significant underreporting of Duchenne MD in New York State.

The statistical difference is likely the result of New York's inadequate two-year case capture period, at least in part. Duchenne MD is commonly not suspected until the child is over two years of age, and one study reported a mean age of diagnosis of 5 years. According to the Department's records, 95% of children were diagnosed with DBMD before their tenth birthday. By increasing the capture period of Duchenne MD to ten

years of age, the Department will improve the accuracy and completeness of its surveillance for this disease, which will help the Department understand the prevalence of this condition and identify regions where healthcare services may be inadequate.

Congenital heart defects (CHDs) are the most common organ system malformations, and they remain the leading cause of infant deaths from birth defects. Approximately 1 out of every 115 to 150 babies is born with a heart defect, compared to only 1 in every 800 to 1,000 babies born with Down syndrome. Variation in prevalence has been associated with maternal race and ethnicity.

Although major heart defects are usually apparent in a newborn, minor defects are often not detected until later in life and can have serious consequences. One study indicates that 70% of children with CHD are diagnosed within the first year of life; an additional 18% are diagnosed in year 2; and 3% are diagnosed up to seven years later. That study found that children with CHD with few or mild symptoms are frequently under-diagnosed, especially in areas with inadequate health services (e.g., lack of nearby tertiary centers and/or cardiology services; insufficient pediatrician awareness and expertise regarding mild malformations). Further, in the past decade, there have been significant advances in medical technologies that can detect mild CHDs in children older than two years of age.

These findings support the Department's proposal to extend the case capture period for CHDs to ten years of age. The improved surveillance will assist the Department's efforts to study causation and support its prevention efforts.

Genetic and Chromosomal Anomalies. The CMR was established prior to the sequencing of the human genome and the associated advances in the scientific

community's understanding of the role genetics plays in causing birth defects. Because the field of genetics and birth defects is so new, there is little or no documentation in the literature about diagnostic timing for many of these syndromes.

However, it is known that genetic and chromosomal anomalies are often not recognized until after two years of age, because it can require several years to observe a child prior to diagnosis. Genetic testing may also be delayed past the age of two because of the cost, insurance policies, or other restrictions related to genetic testing.

By capturing data concerning those children diagnosed with birth defects through genetic and chromosomal testing, the Department will enhance its understanding of the epidemiology of these diseases. The following are two examples of genetic anomalies that will be captured under the CMR's proposed case capture periods.

DiGeorge syndrome ("DGS", also called velocardiofacial syndrome, or VCFS) is a disease that creates cognitive impairments, among other things. DGS has an estimated incidence of 2.5/10,000 live births, yet the CMR's annual birth prevalence of this genetic microdeletion from 1998 to 2007 was only 0.55/10,000 live births. Notably, when a child has minimal facial dysmorphisms, minor cardiac anomalies, and slight cognitive impairments, the child may not be diagnosed within two years of birth. These findings suggest underreporting of DGS in New York State.

The Department believes that the likely underreporting can be remedied, at least in part, by extending the case capture period. A longer capture period, to age 10 years, will dramatically improve the Department's ability to identify children with this disease.

Cystic fibrosis (CF) is the most common life-limiting recessive genetic disorder in Caucasians, with an incidence of 3.1/10,000 live born in the U.S. The reported incidence

has varied from 0.5/10,000 to 3.3/10,000 live births, depending on the population sampled and the method of detection (i.e., newborn screening, newly reported cases, or calculations based on death certificates). However, the CMR's annual birth prevalence of CF from 1998 to 2007 was 1.16 per 10,000 live births. The discrepancy in these statistics likely reflects the CMR's insufficient two-year window of surveillance, which the Department's proposal seeks to address.

The Department's proposal would also require reporting of birth defects diagnosed or identified during pregnancy. This reporting requirement is important due to the increase in routine prenatal screening. For example, observational studies and clinical trials suggest that periconceptual use of folic acid can reduce neural tube defects (NTDs), including anencephaly and spina bifida. In New York State, however, the Department is currently unable to accurately confirm this association or the impact of prevention efforts, because these defects are often diagnosed early in pregnancy and may result in pregnancy outcome other than live birth. Therefore, many NTDs may not be reported to the Congenital Malformations Registry under the current regulations.

In general, for many diseases, the CMR data appears to suggest a prevalence rate in New York that is far below the range of what would be expected, where an approximate expected value is based on data gathered in other states through the National Birth Defects Prevention Network. In particular, CMR data indicates an anencephaly prevalence rate in New York that is approximately 84% less than expected; for anophthalmia, 94% less than expected; Patau syndrome or trisomy 13, 18% less than expected; for Edwards syndrome or trisomy 18, 56% less than expected; spina bifida

without anencephaly, 73% less than expected; and for encephalocele, 44% less than expected. It is highly improbable that the CMR's extremely low prevalence figures reflect the actual prevalence of these diseases in New York State. Rather, the figures are very likely the result of under-reporting by hospitals and healthcare professionals.

These deficiencies in data impede the Department's ability to study the prevalence of birth defects in New York and its relation to environmental factors. The proposed regulatory amendments would correct these deficiencies.

The proposed amendment also allows reporting by qualified health care professionals other than physicians—specifically, nurse practitioners, physician assistants, and midwives. Over the past several years, a growing number of national, state and specialty-specific studies indicate that the physician workforce in the United States is facing current and future shortages. The number of generalist residency graduates and medical students entering primary care has declined each year since 1998. Moreover, the shortage of family physicians will be most acute in rural and underserved populations. These trends highlight the need to allow reporting by nurse practitioners, physician assistants, and midwives. Indeed, anecdotal reports indicate that nurse practitioners, physician assistants, and midwives are already filling this role because of the burden on physicians.

Additionally, reporting by nurse practitioners and physician assistants is key to diagnosing children with fetal alcohol syndrome. Children with fetal alcohol syndrome are more likely to be in foster care settings and covered by Medicaid. Programs serving these children are more likely to employ nurse practitioners and physician assistants

rather than physicians. Thus, to obtain meaningful data concerning fetal alcohol syndrome as well as other birth defects, it is imperative that nurse practitioners and physician assistants be required to report to the CMR.

The regulation would also clarify the requirement that clinical laboratories performing diagnostic testing for birth defects must report to the CMR. This requirement is not new. In 1978, Commissioner Whalen issued a blanket order directing that all laboratories report birth defects to the Department pursuant to PHL § 2733. Although that order remains legally effective, 35 years have passed and many clinical laboratories are not aware of the reporting requirement. Placing the requirement in the regulations will help ensure that clinical laboratories are aware that they must report diagnostic test results to the CMR. This will also support the capture of cases where diagnosis is either occurs during pregnancy or is delayed past age two.

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

Finally, the proposal replaces the term “congenital malformation” in favor of the term “birth defect” and renames the CMR the “New York Birth Defects Monitoring Program.” In a nationally representative survey conducted in 2007, respondents were asked what their first choice would be to describe problems at birth that can result in physical or mental disabilities. The preferred term was “birth defects”. This term was chosen over congenital malformations and congenital anomalies, among other choices. Using the term that is preferred by the public will enable positive engagement with affected families and improve the Department’s communication with the public.

Costs to Regulated Parties:

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

Approximately 160 New York hospitals and their associated physicians, nurse practitioners, physician assistants, and midwives will be affected by this change. The Department anticipates that the costs to these parties will be minimal, primarily because the number of additional birth defects to be reported annually through hospitals (five to six cases per year, on average) will be small, relative to the number of reports already being submitted. Hospitals already report cases to the CMR electronically using one of two methods: by individual child and by batch file. To report a child individually, hospital staff log onto the secure CMR website and enter the required data. It takes about

3 to 5 minutes to enter a complete case. Alternatively, hospitals can submit monthly batch files to the CMR. The additional hospital staff time to enter six to seven additional cases per year may require 20-30 minutes annually. Alternatively, a hospital can incorporate the additional diagnoses into a monthly batch file. Hospitals are already familiar with the process of modifying batch files, so this process is not new or unusual.

Reporting by smaller, community-based health care facilities and individual providers will result in some costs primarily because, while physicians have always been required to report birth defects, this requirement has not been enforced for providers who are not associated with New York hospitals. The Department has minimized the administrative costs associated with the reporting requirement by integrating the reporting process with technologies that healthcare providers already utilize. Healthcare providers currently rely on the Department's Health Commerce System (HCS) for communication and reporting to the Department. Within the HCS, the Department is implementing a comprehensive web-based reporting system known as the Child Health Information Integration (CHI²) project to be used as the central website to report and track newborn screening, immunizations, lead and newborn hearing screening. Reporting of birth defects will become a component of the CHI² system in order to reduce the reporting burden of community-based healthcare facilities and providers.

Providers will be required to spend 3-5 minutes entering case information for each child or fetus diagnosed with a birth defect that is newly reportable under the updated CMR regulations. Statistically, this should involve very few cases for such providers. Because most providers already use and have free access to the online electronic reporting system, the proposed regulation will not impose any additional equipment or

technology costs. The only costs will be in the amount of time required to use the CHI² to report additional birth defects, which is expected to be negligible. The Department will assist any providers that currently do not have access to the web based reporting system.

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

For clinical laboratories, the Department anticipates the regulatory change will require annual reporting of approximately 6,600 additional genetic or chromosomal anomalies recognized during pregnancy, and approximately 400 reports related to children diagnosed between the ages of 2 and 10 years old, for a total of 7,000 additional reports annually. The Department anticipates the ongoing costs to the roughly 50 clinical cytogenetic laboratories providing diagnostic testing for genetic and chromosomal anomalies to be minimal because these laboratories will report using the Electronic Clinical Laboratory Reporting System (ECLRS), which in turn provides appropriate reports to the CMR. These laboratories already use the ECLRS system. The Department estimates that the additional number of reports that these labs will make to ECLRS is expected to cost approximately \$1,400.

Clinical laboratories may experience a one-time expense related to modifying the laboratory's software to identify the additional cases that must be reported. However, the Department estimates that it would require a maximum of two days (16 hours) of work by a computer specialist to modify software to identify the additional cases required by

the regulation for reporting to ECLRS. The estimated rate of pay for a computer specialist is up to \$100/hour.

Costs to the Regulatory Agency:

The Department has been using a web-based electronic reporting system in place since 2006. Currently, the CMR receives and processes about 12,000 reports annually. Thus, annual cost to DOH to receive and process the additional 1,000-1,200 cases will be minimal.

Costs to the State Government:

There will be no costs to state government. For the last ten years, reporting to the CMR has been conducted electronically. Currently, the Department uses the Health Commerce System to receive CMR reports. Reporters upload cases individually or in batch reports. The electronic reporting system already includes automated processes to match and combine reports for the same child, to ensure de-duplication of data reported from multiple reporters. Additional data quality control processes are built into the system.

Costs to Local Government:

Hospitals owned by local governments would be affected but, as discussed above, the costs will be minimal because the additional reporting requirement is relatively small.

Local Government Mandates:

There are no mandates on local governments, other than the additional reporting requirements that would apply to hospitals owned by a local government.

Paperwork:

This change will generate very little physical paperwork because reporting will be performed electronically. In terms of electronic reporting requirements, physicians, nurse practitioners, physician assistants and hospitals will be required to submit a total of approximately 900 additional reports to the CMR annually. Hospitals already report cases to the CMR electronically using one of two methods: by individual child and by batch file. It takes about 3 to 5 minutes to enter an individual case. On average, hospitals will need to make an additional six to seven reports annually. The additional hospital staff time to enter six to seven additional cases per year may require 20-30 minutes annually. Alternatively, a hospital can incorporate the additional diagnoses into a monthly batch file, which will save some time. Hospitals are already familiar with the process of modifying batch files, so this process is not new or unusual.

Smaller healthcare providers will also be required to spend 3-5 minutes entering case information for each child or fetus diagnosed with a birth defect that is newly reportable under the updated CMR regulations. Statistically, this should involve very few cases for such providers. The Department will assist any providers that currently do not have access to the web based reporting system.

For all clinical laboratories, the Department anticipates the regulatory change will require annual reporting of approximately an additional 7,000 genetic or chromosomal anomalies. Laboratories will use the Electronic Clinical Laboratory Reporting System

(ECLRS), which in turn provides appropriate reports to the CMR. These laboratories already use the ECLRS system, and the additional number of reports that individual laboratories will make to ECLRS is relatively small and does not represent a significant reporting burden.

Duplication:

This change does not involve any duplication in laws. In terms of duplication of effort, the reporting software will prevent the repeated reporting of the same birth defect for a particular child.

Alternatives:

If no changes are made to this regulation, the Department will continue to collect incomplete reporting for birth defects, and prevalence estimates will remain inaccurate. This will impede the Department's ability to detect and quantify environmental exposures that negatively impact the health of embryos and fetuses in New York State.

Concerning FAS, in particular, failure to change the reporting requirement will hamper prevention efforts and may cost New York more in the long-term. One study placed the nationwide annual cost of treating birth defects associated with FAS at \$1.6 billion. Another study used a societal perspective and generated nationwide cost estimates of \$9.69 billion. These costs included estimates of the value of productivity lost as a result of cognitive disabilities, as well as the cost of treatment and residential care. In addition to improving outcomes for affected children, early diagnosis and appropriate interventions are likely to generate significant costs savings over time.

Federal Standards:

There are no federal mandates for state-level reporting of birth defects. However, several of the 36 state birth defect surveillance programs require reporting of these birth defects past the age of 2 years. For example, FAS must reported at any age in Hawaii, to age six in Texas, and to age 10 in Washington State. In Colorado, reporting of most defects is up to age 3, but reporting of FAS is required up to age 10. Other states have FAS capture periods ranging from 4 to 18 years. At least eleven states receive reports of birth defects that occur during pregnancy.

Compliance Schedule:

Regulations will take effect immediately upon filing. The Department will continue its efforts to make reporting easier and more efficient, while simultaneously conducting outreach to understand and address any concerns that may arise.

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**REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES
AND LOCAL GOVERNMENTS**

Effect of Rule:

This amended rule will have limited impact on small businesses providing health care because many of these businesses are affiliated with a general hospital. These small businesses include community-based healthcare providers (pediatricians, family practitioners and maternal-fetal medicine specialists) and some laboratories with small offices.

The amended rule will have a small impact on those healthcare facilities that are owned by local governments and that also diagnose birth defects and genetic diseases. These healthcare facilities will be required to make additional reports to the CMR based on the updated list of reportable birth defects and genetic diseases. Although the Department does not maintain a listing of local government-owned facilities that would be required to report, the Greater NY Hospital Association estimated that the number is relatively few. Further, the Department reasonably expects the burden on such facilities to be small—only 3-5 minutes per additional case. The number of cases will vary depending on the size of the facility, but the Department estimates that such facilities will report an average of 5-6 newly reportable cases per year, per facility.

Compliance Requirements:

Because healthcare providers and facilities are transitioning to electronic record-keeping systems, reporting and record keeping are expected to be simple and require very little time. The Department publishes a CMR guide to assist hospitals with reporting. A

guide will also be developed for other healthcare providers as well as clinical laboratories.

Professional Services:

No additional professional services are required under the amended rule.

Compliance Costs:

Staff working in small community-based healthcare providers and small clinical laboratories will need to learn how to report with the updated CMR requirements.

Economic and Technological Feasibility:

The amended rule is economically and technologically feasible because local governments and small businesses that are affected will continue submitting reports using their free access to the Department's electronic reporting system.

Minimizing Adverse Impact:

By offering free access to the electronic reporting system, the Department has minimized the costs and impact on local governments and small businesses operating in New York State.

Small Business and Local Government Participation:

The Department has reached out to the healthcare community to gather feedback on the proposed amended rule. Those contacted include: NYS American Academy of Pediatrics, NYS Academy of Family Physicians, Nurse Practitioner Association of NYS, NYS Nurses Association, NYS Society of Physician Assistants, NY Health Information Management Association, Greater NY Hospital Association, Healthcare Association of NYS, NYS March of Dimes, NYS Clinical Geneticists, Genetic Counselors, Midwives, Neurologists, Neuromuscular Specialists, and Pediatric Cardiologists. Additionally, the

Department contacted other NYS agencies and programs which provide services to children affected by these birth defects, specifically fetal alcohol syndrome.

The Department received comments from two organizations that represent health care providers. The President of the New York State Society of Physician Assistants stated, “After soliciting input from our leadership, we wholeheartedly support this suggested regulatory change.” No concern was expressed about costs. Greater New York Hospital Association (GNYHA), representing nearly 150 voluntary, not-for-profit, and public hospitals expressed concern that “raising the maximum reporting age to 10 ... could potentially create an administrative burden for health care providers ... already contending with a wide range of such requirements.” GNYHA strongly recommended that the DOH work closely with providers to develop and implement a reporting system that places the least possible amount of administrative burden on those impacted by this potential regulatory change.

The Department also received positive support for these regulatory changes from non-profit organizations and other State agencies, including the NYS Council on Children and Families, the NYS Office of Alcoholism and Substance Abuse Services, the NY State Education Department’s Office of Special Education, and the Long Island Council on Alcoholism and Drug Dependence. These organizations view the proposed regulatory change as positive steps for meeting the needs of children and families affected by these devastating birth defects.

The Department asked several maternal-fetal medicine practices for input concerning the proposed changes and received replies from three practices (Hudson Valley Perinatal Consulting, Harrison, NY; University GYN/OB, Inc, at Women and

Children's Hospital of Buffalo, Buffalo, NY; and Fetal Testing Unit of Mercy Hospital Buffalo South, Buffalo, NY). As for access to the Department's web based reporting system, one had access, one did not, and the third was uncertain. All three expressed concerns about time required to report and assurances of patient confidentiality.

The Department reached out to the NYS Association of Licensed Midwives, who supported the amendment. In a survey sent to midwives, all respondents supported the regulatory amendment. The most common concern was the time required to comply, which the Department will minimize through its electronic reporting.

Public Health Law § 206(1)(j) ensures that diagnoses reported to the New York Birth Defects Monitoring Program shall be kept confidential and shall be used solely for the purposes of the Department's scientific research. The statute further provides that such records are not admissible as evidence in a court of law. Regarding time to report, the Department expects that some of these practices may not actually have to report separately but that their associated institution or hospital will be able to assume that responsibility, thus reducing the anticipated burden.

The Department is committed to minimizing the administrative burden of these new reporting requirements. By using the CHI² system as a reporting tool, the administrative burden will not be significant.

The Department will continue to communicate with stakeholders throughout the regulatory process. Prior to adoption of the rule, all amendments will appear in the New York State Register for public comment.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

This regulation would apply statewide and affect the 44 counties that are considered rural.

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

This change involves a small increase in reporting using a system already being utilized by healthcare professionals to submit other reports. No additional requirement for professional services is required under the amended regulation.

Costs:

There is minimal cost to report. The costs are associated with staff time to report additional cases electronically. The number of additional cases to be reported is expected to be small relative to the number of cases already reported.

Minimizing Adverse Impact:

Any adverse impact will be minimized by using the Department's pre-existing Health Commerce System for electronic reporting. The impact will be further reduced when the Department implements the CHI² reporting system.

Rural Area Participation:

Regulated parties in rural areas have been contacted through the Department's reaching out to statewide associations of healthcare professionals, such as the NYS American Academy of Pediatrics, NYS Academy of Family Physicians, Nurse Practitioner Association of NYS, NYS Nurses Association, NYS Society of Physician

Assistants, NY Health Information Management Association, Healthcare Association of NYS, NYS March of Dimes, and NYS Clinical Geneticists.

JOB IMPACT STATEMENT

Nature of Impact:

There will be minimal impact, because health care facilities are currently required to report other conditions to the Department of Health. The Department does not expect there to be a positive or negative impact on jobs or employment opportunities.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the amended rule.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

SUMMARY OF EXPRESS TERMS

A new section for Part 415 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is proposed, to be designated as section 415.41 and entitled “Specialized Programs for Residents with Neurodegenerative Diseases”.

(a) General. For purposes of the proposed regulation, “Neurodegenerative Disease” shall mean Huntington’s disease or Amyotrophic Lateral Sclerosis. “Specialized program” means a discrete unit within a nursing home that offers services and facilities for individuals with Neurodegenerative Diseases, with the goal of helping them attain or maintain the highest practicable level of physical, affective, behavioral and cognitive functioning. The program must be located in a nursing unit which is specifically designated for this purpose and physically separate from other facility units.

The proposed regulation also provides that the facility shall make information and data available to assist the Department of Health (Department) in evaluating the effectiveness of specialty units and their impact on outcomes for individuals with Neurodegenerative Diseases. Such evaluation will be conducted four years after the adoption of the proposed regulation and the Department will consider whether changes are warranted to the programmatic requirements.

(b) Admission. The proposed regulation requires nursing homes to develop written

admission criteria for specialty units for individuals with Neurodegenerative Diseases.

At a minimum, the resident's medical record must document that the resident has a Neurodegenerative Disease diagnosis, cannot appropriately be served and is not safe in a less restrictive setting, and can benefit from the care and services available in a specialty unit. The proposed regulation also provides that the facility shall evaluate the effects of its admission criteria on its success in achieving its goals and objectives for the unit and requires the facility to report its findings to the Department no later than two years after the first admission to the unit and annually thereafter.

(c) Assessment and Care Planning. The proposed regulation requires a home evaluation with the future resident and his or her family prior to admission to discuss care needs.

The proposed regulation also requires development of a care plan for each resident, which shall include a discharge plan, by an interdisciplinary resident care team. The care plan must be reviewed and modified at least once a month for the first three months following admission and then quarterly or upon a significant change in the resident's condition thereafter.

(d) Discharge. The proposed regulation requires that a proposed discharge plan must be developed within 30 days of admission for each resident as part of the overall care plan and shall include input from all professionals caring for the resident, the resident and his or her family, as appropriate, and any outside agency or resource anticipated to be involved with the resident following discharge. The resident must be discharged to a less restrictive setting when he or she no longer meets one or more of the admission criteria

for the unit. Additionally, the proposed regulation provides that a facility shall evaluate the effects of its discharge criteria on its success in achieving the goals and objectives for the specialty unit and report its findings to the Department, beginning no later than two years after the first discharge from the unit and annually thereafter.

Further, nursing homes with specialty units should use best efforts to coordinate with general hospitals expertise in caring for individuals with Neurodegenerative Diseases. In the event of a transfer to any general hospital, the facility must require a member of the specialty unit's staff to accompany the resident, if feasible, and in any case must communicate with the hospital and provide any relevant information about the resident at the time of transfer. The resident shall be given priority readmission status to the unit as warranted by his or her condition.

(e) Program/Unit Staffing Requirements. The facility must maintain consistent assignment of direct care staff to residents in the specialty unit. In addition, the proposed regulation requires that a specialty unit shall be managed by a program coordinator and that a physician must be responsible for medical direction of the unit. The proposed regulation also identifies other specific categories of personnel who must be assigned or available to the specialty unit, including a psychiatrist, a clinical psychologist or licensed clinical social worker, at least one registered professional nurse on each shift, a respiratory therapist, and a therapeutic recreation specialist.

(f) Program/Unit Service and Environmental Requirements. The program must include a variety of medical, behavioral, counseling, recreation and exercise, nutrition and other services as appropriate to the needs of each individual resident. Further, the environment shall be customized to both meet the needs and characteristics of residents and minimize injuries to residents and staff. The proposed regulation also provides that residents shall not be prevented from participating in approved clinical trials and permits nursing homes with specialty units to facilitate participation therein.

(g) Program/Unit Training Requirements. The facility must ensure that all staff assigned to the direct care of the residents have pertinent experience or have received training in the care of people with Neurodegenerative Diseases. Training shall be appropriate to the functions and responsibilities of specific staff in the unit, and shall be made available to families, friends and caregivers of residents as appropriate. The facility also must ensure that educational programs are conducted for staff who do not provide direct care but who come in contact with these residents on a regular basis, such as housekeeping and dietary aides.

Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health in section 2803(2) of the Public Health Law, Part 415 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new section 415.41 to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

415.41 Specialized Programs for Residents with Neurodegenerative Diseases.

(a) General.

1. “Specialized program” shall mean a discrete unit with a planned array of services, staffing, equipment and physical facilities designed to serve individuals with Neurodegenerative Diseases. The program shall provide goal-directed, comprehensive and interdisciplinary services directed at attaining or maintaining the individual at his or her highest practicable level of physical, affective, behavioral, psychosocial and cognitive functioning.

2. For purposes of this section, “Neurodegenerative Disease” shall mean Huntington’s disease or Amyotrophic Lateral Sclerosis.

3. For purposes of this section, and consistent with the requirements of section 415.11 of this Part, the “interdisciplinary resident care team” shall, at a minimum, include the resident’s physician, a registered professional nurse with responsibility for the resident and, depending on the resident’s diagnosis, needs and symptoms, other appropriate staff in disciplines as determined by the resident’s needs, which may include staff assigned to

the unit as set forth in subdivision (e) of this section.

4. The program shall be located in a nursing unit which is specifically designated for this purpose and physically separate from other facility units. Residents of the unit shall have access to the facility's centralized recreational and therapeutic resources that are not located in the unit.

5. In addition to the implementation of the quality assessment and assurance plan for this program as required by section 415.27 of this Part, the facility shall participate with the department in an evaluation of the efficacy and effectiveness of the program and its impact on resident, family and staff outcomes, to be conducted four years after the adoption of this section.

6. The factors to be reviewed shall include but not be limited to resident, family and staff characteristics and outcomes, including staff, resident and family satisfaction, falls, tailored care planning, injuries (staff and residents), health care and services utilization, including hospitalization and emergency room admissions; nursing home and hospital length of stay; and discharge status. The facility shall collect data and furnish records, reports and data in a format as requested by the department and shall make members of the interdisciplinary resident care team available for participation in the evaluation, as requested by the department. Following completion of such evaluation, the department shall consider whether any revisions to the programmatic requirements for Neurodegenerative Disease specialty units are necessary.

(b) Admission.

1. This provision shall be implemented as a Quality Assessment and Performance Improvement (QAPI) project. The facility shall develop written admission criteria for the specialty unit, to include the criteria in paragraph (2) of this subdivision and take into account the facility's goals and objectives regarding outcomes (e.g. self-inflicted injuries/falls, chorea-related trauma, hospitalization (length of stay), emergency department utilization, bed hold, and satisfaction surveys of residents with Neurodegenerative Diseases, staff, families, and others) for residents who live in the specialty unit. The facility shall evaluate the effects of its admission criteria on its success in achieving its goals and objectives for the unit and report its findings to the department no later than two years after the effective date of this rule and annually thereafter.

2. At a minimum, for residents admitted to the unit, there shall be documented evidence in the resident's medical record that:

(i) the resident has been diagnosed with Neurodegenerative Disease as determined by highly suggestive family history, neurological testing, genetic testing when available, formal consultation setting, or formal neurological diagnostic consultation.

(ii) the resident cannot be managed and is not safe and his or her needs cannot be met in an available, less restrictive setting; and

(iii) the resident has the ability to benefit from the specialized care and services available

in the unit.

(c) Assessment and Care Planning.

1. Any assessment of a potential resident must include the admission criteria described in paragraph (2) of this subdivision. Where feasible, one or more members of the staff of the specialty unit shall conduct an evaluation of the home or current residence, living situation (e.g. homeless), or inpatient setting, of the future resident and his/her family prior to admission to discuss care needs. For purposes of this paragraph, “feasible” means the resident’s home or other setting is within reasonable travel distance (in terms of round trip travel time) from either the facility or the home(s) of the staff member(s) conducting the home evaluation. The staff member(s) shall identify preliminary approaches and interventions appropriate for the resident and, based on the results of the evaluation, shall record them in the resident’s care plan prior to admission to the unit.

2. Each resident’s care plan shall include care and services that are therapeutically beneficial to the resident, appropriate to the resident’s interests and selected by the resident or resident’s caregiver as appropriate. The care plan shall be prepared by the interdisciplinary resident care team prior to the resident’s admission to the unit and may require environmental accommodations.

3. Based on the resident’s response to therapeutic interventions, as well as the progression of the disease and its impact on the resident’s functioning, health and psychosocial status, the resident shall be reassessed and the care plan, including the discharge plan, shall be

reviewed and modified at least once a month for the first three months following admission and then quarterly or upon any significant change in the resident's condition thereafter. The care plan shall be reviewed by at least three members of the interdisciplinary team and shall include at least one certified nurse aide who is assigned to the resident on a permanent basis.

4. Facility or unit staff shall initiate a discussion of advance directives, in accordance with the provisions of section 400.21 of this Subchapter, with the resident or the resident's family member or other adult, consistent with section 400.21 as soon as practicable following the decision to admit the resident to the unit.

(d) Discharge.

1. This provision shall be implemented as a Quality Assessment and Performance Improvement (QAPI) project. The facility shall develop written discharge criteria for the specialty unit, which at a minimum shall address the provisions of paragraph (5) of this subdivision.

2. The resident and his or her family and/or caregivers shall be notified of discharge criteria upon admission.

3. A written discharge plan shall be developed within 30 days of admission for each resident as part of the overall care plan and shall include input from all professionals caring for the resident, the resident's family and/or caregivers, as appropriate, and any

outside agency or resource anticipated to be involved with the resident following discharge. The discharge plan shall be reviewed and modified at least once a month for the first three months following admission and then quarterly or upon any significant change in the resident's condition thereafter.

4. When the interdisciplinary team determines that discharge of a resident to another facility or community-based program is appropriate, a discharge plan shall be implemented which is designed to assist and support the resident, family and caregivers in the transition to the new setting. The resident and his or her family and/or caregivers, as appropriate, shall receive preparation for discharge from the specialty unit through the facility's educational and counseling services.

5. The resident shall be discharged to a less restrictive setting when he or she no longer meets the minimum admission criteria for the unit set forth in paragraph (2) of subdivision (b) of this section or meets other discharge criteria established pursuant to paragraph (1) of this subdivision.

6. The facility shall evaluate the effects of its discharge criteria on its success in achieving its goals and objectives for the unit and report its findings to the department beginning no later than two years after the effective date of this rule and annually thereafter.

7. (i) The facility shall make best efforts to coordinate with a general hospital or hospitals

that are known to have expertise in caring for individuals with Neurodegenerative Diseases to which residents can be transferred if appropriate.

(ii) In the event a resident of a specialty unit requires transfer to a general hospital:

(a) When feasible, a resident who is transferred to a hospital shall be accompanied by an informed member of the program's direct care staff to ensure continuity of care. For purposes of this paragraph, "feasible" means that round trip travel time between the facility and the hospital is reasonable.

(b) When it is not feasible for a staff member to accompany the resident to the hospital, unit staff, preferably the resident's physician or the specialty unit's medical director, shall communicate with a physician or another health care practitioner at the receiving hospital at the time of the transfer.

(c) In either case, the staff member or physician shall provide to the receiving hospital appropriate documentation and other information that may be needed at the time of transfer to ensure continuity of care.

(d) The resident shall be given priority readmission status to the unit as his or her condition may warrant.

(e) Program/Unit Staffing Requirements.

1. The facility shall maintain consistent assignment of direct care staff to residents who live in the unit.
2. The facility shall ensure that any direct care staff assigned to the unit have been thoroughly trained and educated with regard to the special needs of unit residents, are competent to work in the unit, and are familiar to unit residents.
3. The assignment of direct care staff must be sufficient to enable timely and appropriate care as determined by resident assessment and to protect both resident and staff safety. In addition to the staff assigned to the unit as specified in this subdivision, the facility shall make available other staff as necessary for the provision of care and services set forth in each resident's care plan.
4. The unit shall be managed by a program coordinator who is a licensed or certified health care professional with previous formal education, training and experience in the administration of a nursing home, preferably with experience in a program that focuses on the care and management of individuals with Neurodegenerative Diseases. The program coordinator shall be dedicated only to the specialty unit. The program coordinator shall be responsible for the operation and oversight of the program. Other responsibilities of the program coordinator shall include:
 - (i) planning for and coordination of direct care and services;

(ii) screening prospective admissions;

(iii) developing and implementing in-service and continuing education programs, in collaboration with the interdisciplinary team, for all staff in contact or working with these residents;

(iv) participating in the facility's decisions regarding resident care and services that affect the operation of the unit; and

(v) ensuring the development and implementation of a program plan and policies and procedures specific to this program.

5. A physician who preferably has specialized training in the care of individuals with Neurodegenerative Diseases shall be responsible for the medical direction and medical oversight of this program and shall assist with the development and evaluation of policies and procedures governing the provision of medical services in this unit. If, at the time the physician is appointed as medical director of the unit, he or she does not have experience in providing care to individuals with Neurodegenerative Diseases, he or she shall have access to physicians who do have such experience.

6. A psychiatrist who preferably has clinical experience working with individuals who have Neurodegenerative Diseases shall be available on staff or on a consulting basis (including via telemedicine in conformance with applicable law) to the residents and to the

program.

7. A clinical psychologist or a licensed clinical social worker who preferably has clinical experience working with individuals who have Neurodegenerative Diseases shall be available on staff or on a consulting basis (including via telemedicine in conformance with applicable law) to the residents, staff and family.

8. A social worker who preferably has training and experience in caring for individuals with Neurodegenerative Diseases shall be available either on staff or on a consulting basis (including via telemedicine in conformance with applicable law) to work with the residents, staff and family as needed.

9. There shall be at least one registered professional nurse deployed on each shift in the unit who preferably has training and experience in caring for individuals with Neurodegenerative Diseases. This registered nurse may not be the specialty unit program director required under paragraph (4) of this subdivision.

10. A therapeutic recreation specialist certified by a nationally recognized body acceptable to the department shall be responsible for the therapeutic recreation program.

11. A respiratory therapist shall be available to residents who are no longer able to maintain normal oxygen and carbon dioxide levels.

(f) Program/Unit Service and Environmental Requirements.

1. The program shall consist of a variety of medical, behavioral, counseling, recreational, exercise, nutritional, and other services as appropriate to the needs of each individual resident.

2. Specific services that shall be available to residents who need them include but are not limited to: neurology; pulmonary specialist; psychotherapy; physical, occupational, respiratory and speech therapy; specialized eating and nutritional interventions to maximize independence and prevent unplanned weight loss and dehydration; technology to enable the resident to communicate effectively with family, friends, staff and other residents; and oral care. Consults as needed shall be provided by but are not limited to surgical, podiatry, optometry, ophthalmology, orthopedic, cardiac, gastroenterology; dental and hearing licensed professionals.

3. The therapeutic recreation program shall incorporate the principles of rehabilitation, occupational, physical, and nutritional and speech therapies.

4. Appropriate activities that accommodate individual residents' interests shall be available at times that accommodate their waking hours.

5. Support groups for residents, families and staff shall be established and facilitated by the social worker or other counseling professional.

6. The environment shall be customized to both meet the needs and characteristics of residents and minimize injuries to residents and staff.

(i) Each resident's living space shall be customized to safely accommodate his/her specific movement and motor control characteristics and changes in movement and motor control characteristics as the resident's disease evolves.

(ii) Such customization may include but is not limited to padding around hard surfaces that could harm the resident, staff or visitors; self-protective equipment such as soft helmet, elbow and knee pads; broda chairs (including shower/commode, bariatric, geriatric and glider chairs) with HD special padding if needed; and adequate space to accommodate high amplitude involuntary movements without injury to either the resident, staff or visitors.

(iii) The unit shall include, in their new construction designs, small recreational and dining room areas where residents can be with their families in privacy and comfort.

(iv) Units shall include central bathing and toilet facilities that can accommodate two-person assists. In-room toilets and bathing accommodations should be modified or restricted to ensure resident safety and privacy as described in (i) and (ii).

7. The unit shall be equipped and staff shall be trained as necessary for the provision and management of non-invasive ventilation for residents for whom this service is appropriate.

Supervision shall be provided by a respiratory therapist and pulmonary specialist.

8. Residents shall not be prevented from participating in research projects and clinical trials that have been approved by an Institutional Review Board (IRB) that is registered with the federal Office of Human Research Protection (OHRP) in the United States Department of Health and Human Services and in compliance with the human subjects research requirements at 45 CFR Part 46 as determined by OHRP. To the extent practicable, facilities may facilitate residents' participation in such research and trials by, for example, becoming trial sites, providing transportation to the trial site, providing assistance to enroll in the research, and working with families to facilitate participation.

9. The facility shall provide outdoor access to residents.

(g) Program/Unit Training Requirements

1. The facility shall ensure that all staff assigned to the direct care of the residents have pertinent experience or have received training in the care and management of people with Neurodegenerative Diseases.

2. Training shall be appropriate to the functions and responsibilities of specific staff in the unit and shall include but not be limited to:

(i) the Neurodegenerative Disease itself, e.g., signs and symptoms, genetics, diagnosis, management, progression/history of the disease, prognosis and epidemiology;

(ii) how each type of staff can contribute to better quality of care and quality of life for resident;

(iii) injury prevention for the resident, staff and visitors;

(iv) creating an organized environment that minimizes stressors, maintains routines and encourages/maximizes independent functioning and decision-making;

(v) ensuring adequate hydration and nutrition; and

(vi) providing and encouraging cognitive stimulation and socialization through passive and active participation in appropriate activities.

3. Families and informal supports, including the resident's friends and caregivers, shall also have access to this training as appropriate to their activities in the unit.

4. The facility shall ensure that educational programs are conducted for staff who do not provide direct care but who come in contact with the residents on a regular basis such as housekeeping and dietary aides. The educational programs shall familiarize staff with the goals of the specialty unit and the needs of residents with Neurodegenerative Diseases.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Public Health Law (PHL) section 2803(2)(v) provides that the Public Health and Health Planning Council shall adopt rules and regulations, subject to the approval of the Commissioner of Health, governing the standards and procedures followed by nursing homes which, at a minimum, must meet federal standards.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State through the efficient provision and proper utilization of health services of the highest quality at a reasonable cost. The proposed amendments are consistent with this objective through the development of specialty units designed to address the unique needs of individuals with Neurodegenerative Disease and help them maintain or attain the highest practicable level of physical, affective, behavioral and cognitive functioning.

Needs and Benefits:

The purpose of the proposed amendments to 10 NYCRR Part 415 is to provide regulatory standards for nursing home specialty care units for people with Neurodegenerative Diseases. The environmental and care needs for nursing home residents with Neurodegenerative Diseases, at least before the end stages of the disease, often vary from those of other populations in need of nursing home care today. The proposed standards

do not codify clinical pathways and interventions as these may change over time. Rather, they describe the service and environmental needs of people with Neurodegenerative Diseases and the nursing home's responsibilities to meet the resident's needs as well as, to a certain extent, their families' needs.

Four nursing homes have taken steps to create specialty units for people with Neurodegenerative Diseases. Specifically, the following facilities either have already established specialized care units for people with Neurodegenerative Diseases or have submitted Certificate of Need (CON) applications to do so are:

- Terence Cardinal Cooke Health Care Center – an established 48-bed unit in New York City;
- Ferncliff Nursing Home – an established 38-bed unit in Rhinebeck;
- Victoria Home – CON submitted for a 12-bed unit in Ossining; and
- Sitrin Health Care Center – CON submitted for a 32-bed unit in New Hartford

These four facilities will serve as a statewide resource for individuals with Neurodegenerative Diseases, leading to better service for people living in New York and repatriation of out-of-state residents to nursing homes that are closer to their home communities and families. For example, there are currently about 50 Medicaid-eligible New Yorkers with Huntington's Disease living in out-of-state nursing homes. Many of these New Yorkers would not have had to seek nursing home care outside of New York had there been a nursing home capable of caring for them closer to their home

communities and families.

Costs to Regulated Parties:

Nursing homes are not required to implement the proposed regulation, as the operation of specialty units is voluntary. A nursing home may incur costs associated with the construction of a specialty unit for individuals with Neurodegenerative Diseases. The Department will establish Medicaid reimbursement rates for nursing home providers for delivering appropriate services through the specialty units. A facility is unlikely to apply for approval to operate a specialty unit if it does not expect that doing so will be cost effective.

Costs to Local Governments:

Nursing homes are not required to implement the proposed regulation, as the operation of specialty units is voluntary. To the extent a nursing home operated by a local government seeks approval to operate a specialty unit, the costs will be the same as for other regulated parties who operate such units.

Costs to State Government:

The proposed rule does not impose any new costs on state government, as regulation of specialty units will be managed as part of the Department's overall nursing home surveillance activities.

Local Government Mandates:

The proposed amendments do not impose any program, mandate, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district. Implementation is voluntary.

Paperwork:

Nursing homes interested in operating a specialty unit for individuals with Neurodegenerative Diseases would need to submit and receive approval of a CON application. In addition, nursing homes are already required to maintain compliance with certain reporting, record-keeping obligations and staffing under federal and State requirements. For nursing homes interested in providing specialty care for Neurodegenerative Diseases, which is voluntary, the proposed regulations require additional reporting on admissions, discharges and outcomes and compliance with certain staffing requirements as necessary to meet the objectives of the specialty units. This additional reporting will allow the Department to assess compliance and implementation.

Duplication:

The proposed regulation does not duplicate, overlap or conflict with any other State or federal rules and regulations, but sets forth additional standards for care in specialty units for individuals with Neurodegenerative Diseases.

Alternatives:

“Scatter beds” as opposed to specialty unit beds were considered but rejected. Specialty

units are preferable from a clinical perspective, as they will enable residents to be cared for by an interdisciplinary care team in a customized environment, and likely will be more cost effective in providing residents with the enhanced level of service required.

Federal Standards:

The proposed amendments exceed federal standards by setting forth additional standards for care in specialty units for individuals with Neurodegenerative Diseases.

Compliance Schedule:

As implementation of the proposed amendments is voluntary, there is no compliance schedule. CON applicants will determine a compliance schedule in conformance with the scope of changes needed in their facilities to accommodate the specialty unit regulatory requirements.

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Regulatory Flexibility Analysis for Small Businesses and Local Governments

Effect of Rule:

Implementation of this rule is voluntary, subject to submission and approval of a Certificate of Need (CON) application. It is not known how many small nursing homes (those with less than 100 beds) or how many nursing homes owned and operated by counties and cities will choose to implement the proposed regulation.

Compliance Requirements:

Nursing homes are already required to maintain compliance with certain reporting, record-keeping obligations and staffing under federal and State requirements. For nursing homes interested in providing specialty care for Neurodegenerative Diseases, which is voluntary, the proposed regulations require additional reporting on admissions, discharges and outcomes and compliance with certain staffing requirements as necessary to meet the objectives of the specialty units. This additional reporting will allow the Department to assess compliance and implementation.

Professional Services:

Implementation is voluntary. The professional staff needed to comply with the proposed specialty unit regulations do not vary from the professional staff required to comply with current nursing home rules and regulations, except that the proposed regulation expresses a preference for professional staff with experience in meeting the unique needs of individuals with Neurodegenerative Diseases.

Compliance Costs:

Implementation of the proposed regulation is voluntary, subject to submission and approval of a CON application. A nursing home may incur costs associated with the construction of a specialty unit for individuals with Neurodegenerative Diseases. The Department will establish Medicaid reimbursement rates for nursing home providers for delivering appropriate services through the specialty units. A facility is unlikely to apply for approval to operate a specialty unit if it does not expect that doing so will be cost effective.

Economic and Technological Feasibility:

The proposed regulation is economically and technically feasible. In particular, implementation is voluntary, and a nursing home is unlikely to propose construction and operation of a specialty unit unless it is cost-effective for the facility.

Minimizing Adverse Impact:

As implementation of the proposed rule is voluntary, a nursing home is unlikely to propose construction and operation of a specialty unit unless it is cost-effective for the facility.

Small Business and Local Government Participation:

The Department of Health created a stakeholder advisory group, which helped guide the development of the proposed regulation. The members of this group include representatives of small businesses, specifically nursing homes interested in serving

individuals with Neurodegenerative Diseases, as well as family members and advocates for individuals with Neurodegenerative Diseases and clinical experts with experience caring for such individuals. In addition, a copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and local governments.

The proposed regulation provides that the facility shall make information and data available to assist the Department of Health in evaluating the effectiveness of specialty units and their impact on outcomes for individuals with Neurodegenerative Diseases. Such evaluation will be conducted four years after the adoption of the proposed regulations and the Department will consider whether changes are warranted to the programmatic requirements. This period of time is designed to ensure that there is sufficient experience to allow the Department to assess implementation.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

While there are a number of nursing homes located in rural areas throughout the State, implementation of the proposed rule is voluntary. Nursing homes in rural areas will not be affected differently than those in non-rural areas.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Nursing homes are already required to maintain compliance with certain reporting, record-keeping obligations and staffing under federal and State requirements. For nursing homes interested in providing specialty care for Neurodegenerative Diseases, which is voluntary, the proposed regulations require additional reporting on admissions, discharges and outcomes and compliance with certain staffing requirements as necessary to meet the objectives of the specialty units. This additional reporting will allow the Department to assess compliance and implementation.

Costs:

Implementation of the proposed rule is voluntary, subject to the submission and approval of a Certificate of Need application. A nursing home may incur costs associated with the construction of a specialty unit for individuals with Neurodegenerative Diseases. The Department will establish Medicaid reimbursement rates for nursing home providers for delivering appropriate services through the specialty units. A facility is unlikely to apply

for approval to operate a specialty unit if it does not expect that doing so will be cost effective.

Minimizing Adverse Impact:

As implementation of the proposed rule is voluntary, a nursing home is unlikely to propose construction and operation of a specialty unit unless it is cost-effective for the facility.

Rural Area Participation:

The Department of Health created a stakeholder advisory group, which helped guide the development of the proposed regulation. The group's members are located throughout the state and include family members and advocates for individuals with Neurodegenerative Diseases, clinical experts with experience caring for individuals with Neurodegenerative Diseases, and representatives of nursing homes interested in serving such individuals. In addition, a copy of this notice of proposed rulemaking will be posted on the Department's website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including individuals and entities located in rural areas.

The proposed regulation provides that the facility shall make information and data available to assist the Department of Health in evaluating the effectiveness of specialty units and their impact on outcomes for individuals with Neurodegenerative Diseases. Such evaluation will be conducted four years after the adoption of the proposed

regulations and the Department will consider whether changes are warranted to the programmatic requirements. This period of time is designed to ensure that there is sufficient experience to allow the Department to assess implementation.

**STATEMENT IN LIEU OF
JOB IMPACT STATEMENT**

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



**Project # 161022-C
St. Joseph's Hospital Health Center**

**Program: Hospital
Purpose: Construction**

**County: Onondaga
Acknowledged: January 14, 2016**

Executive Summary

Description

St. Joseph's Hospital Health Center, a 431-bed, not-for-profit, acute care hospital located at 301 Prospect Avenue in Syracuse (Onondaga County), requests approval for the certification of 20 additional Intensive Care Unit (ICU) beds, and for the renovation of requisite space to accommodate the beds. The 20-bed unit for this project is already in operation under temporary emergency approval in the former ICU suite located on the third floor of the main hospital building.

On January 15, 2015, St. Joseph's received temporary emergency approval from the Department of Health to operate an additional 14 medical/surgical beds and six ICU beds (the Unit) for a six-month period. The Unit became operational on May 15, 2015 and has been operating with approved temporary waivers. The hospital will be requesting an extension to its temporary emergency approval to operate the Unit for an additional period of time while this CON application is under review and physical plant changes are made to address the temporary waivers. The hospital has been using the 14 medical/surgical beds as a Progressive Care Unit (PCU) to bridge the gap between ICU and medical/surgical unit care. PCU patients typically require higher intensity nursing care than general medical/surgical unit patients; therefore, the hospital is requesting certification

of all 20 beds as ICU beds in order to give St. Joseph's the most flexibility to provide critical care services on an as needed basis. St. Joseph's is currently certified for 28 intensive care beds and will be certified for 48 as a result of this project.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

Medical/Surgical occupancy remains high and ICU data has shown a constant increase from 2010 to 2014. The permanent certification of additional ICU beds is justified by the strong utilization.

Program Summary

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

Financial Summary

Project costs of \$614,778 will be met via equity from the hospital. The projected budget is as follows:

Revenues	\$7,675,028
Expenses	<u>3,420,557</u>
Net Income	\$4,254,571

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [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. Construction must start on or before August 1, 2016 and construction must be completed by October 1, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

April 14, 2016

Need Analysis

Background/Analysis

St. Joseph's Hospital Health Center, a 431-bed not for profit located at 301 Prospect Avenue, Syracuse (Onondaga County), 13203 seeks approval for the certification of 20 net new Intensive Care Unit (ICU) beds at the Hospital, and for the renovation of requisite space to accommodate the beds. The 20-bed unit that is the subject of this application is already in operation on the 3rd floor of the main Hospital building under a temporary emergency approval.

The emergency approval was granted for 14 medical surgical beds and six ICU beds. The facility has been using the 14 medical surgical beds as a "progressive care unit", which is a unit designed to bridge the gap between intensive care and medical/surgical beds. The hospital, however, is requesting certification of all 20 as ICU beds to provide the most flexibility. Approval of this request will increase permanently certified ICU beds from the current 28 to 48 total, and total beds from 431 to 451.

As seen in the following table, medical surgical utilization remains very high for this facility.

	Beds	Discharges				Occupancy			
		2011	2012	2013	2014	2011	2012	2013	2014
Medical/Surgical (includes ICU & CCU)	345	20,411	22,756	22,371	20,958	85.9%	93.5%	94.0%	89.9%
Pediatric	16	23	28	20	19	1.8%	2.2%	1.3%	1.2%
Obstetric	26	2,159	2,122	2,117	1,960	60.5%	60.9%	59.5%	52.7%
General Psychiatric	30	842	1,212	1,045	786	101.2%	101.1%	94.8%	79.1%
Chemical Dependence	0	92	160	156	108	0.0%	0.0%	0.0%	0.0%
High-Risk Neonates	14	198	247	210	164	63.4%	66.9%	51.4%	37.3%
Total	431	23,725	26,525	25,919	23,995	81.8%	88.3%	87.7%	82.3%

Source: SPARCS, Feb 2016

Per the table below, ICU discharges continue to rise and represent an increasing percentage of medical/surgical cases. When considering ICU utilization, viewing the Average Daily Census against the current number of ICU beds (28) and ICU occupancy rates from 2011-2014 indicates rates far in excess of optimal rates. It is clear the emergency approved ICU beds are being utilized and will be needed going forward.

Year	ICU Discharges	ICU as a % of all Med/Surg Discharges	Average Daily Census	ICU Occupancy Rates (28 beds)
2011	2,580	12.64%	30	107%
2012	2,980	13.32%	35.3	126%
2013	3,154	14.10%	37.5	134%
2014	3,170	15.13%	35.1	125%

Conclusion

The continued rise in ICU discharges and medical/surgical utilization shows the need for the permanent certification of these 20 ICU beds.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

St. Joseph's Hospital Health Center, an existing Article 28 acute care hospital located at 301 Prospect Avenue in Syracuse (Onondaga County), seeks approval for the certification of 20 net new Intensive Care Unit (ICU) beds and for the renovation of requisite space to accommodate the beds.

The 20-bed unit is already in operation on the 3rd floor of the main Hospital building under a temporary emergency approval. On January 15, 2015, St. Joseph's received temporary emergency approval to operate 14 medical/surgical (M/S) beds and six ICU beds for a six-month period. The Hospital has been using the M/S beds as a Progressive Care Unit (PCU), a type of unit that bridges the gap between intensive care units and medical/surgical units. In order to offer the most flexibility in providing critical care services on the 20-bed unit, the Hospital is requesting that all 20 beds be certified as ICU beds.

Prior to operating the 20-bed unit under temporary emergency approval, surgical inpatients were experiencing significant delays in being transferred to critical care beds and, as a result, were forced to remain in the Post-Anesthesia Care Unit (PACU) until a bed became available. Emergency Department (ED) patients also experienced long ED boarding times prior to being admitted. Additionally, St. Joseph's has developed strong working relationships with regional hospitals that no longer provide higher-level acute care services as well as being a receiving referral center for cardiac surgery and vascular patients. Both of these circumstances has led to the need to accommodate a growing number of critical care patients from counties outside of Onondaga County.

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 cost, which is for renovations and architect/engineering fees, is estimated at \$614,778, further broken as follows:

Renovation and Demolition	\$441,623
Design Contingency	44,162
Construction Contingency	44,162
Architect/Engineering Fees	48,579
Other Fees (Consultant)	30,900
CON Fee	2,000
Additional Processing Fee	<u>3,352</u>
Total Project Cost	\$614,778

Project costs are based on a construction start date of August 1, 2016, and a two-month construction period. The hospital will provide equity to meet the total project cost.

Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, during the first and third years, summarized below:

<u>Revenues</u>	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Disch.</u>	<u>Total</u>	<u>Per Disch.</u>	<u>Total</u>
Medicaid Fee For Service	\$2,870	\$2,118,246	\$2,877	\$2,974,558
Medicaid Managed Care	\$2,392	1,026,330	\$2,443	1,441,229
Medicare Fee For Service	\$2,025	135,697	\$2,027	190,553
Medicare Managed Care	\$1,828	367,339	\$1,749	515,838
Commercial Fee For Service	\$4,315	1,738,785	\$4,232	2,441,698
Private Pay/Charity Care	\$45	1,221	\$84	1,715
Other	\$2,886	<u>77,932</u>	\$2,736	<u>109,437</u>
Total Revenues		\$5,465,550		\$7,675,028
 <u>Expenses</u>				
Operating		\$2,469,279		\$3,389,818
Capital		<u>30,739</u>		<u>30,739</u>
Total Expenses		\$2,500,018		\$3,420,557
Excess of Revenues over Expenses		\$2,965,532		\$4,254,571
Utilization (Discharges)		1,892		2,657
Cost Per Discharge		\$1,321.36		\$1,287.38

Expense and utilization assumptions are based on the historical experience of the hospital operating the 20 beds on the temporary emergency approval basis.

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee For Service	39.00%	38.92%
Medicaid Managed Care	22.67%	22.21%
Medicare Fee For Service	3.54%	3.54%
Medicare Managed Care	10.63%	11.10%
Commercial Fee For Service	21.30%	21.72%
Private Pay/Charity Care	1.43%	1.01%
Other	1.43%	1.50%

Capability and Feasibility

Project costs of \$614,778 will be met via equity from operations from St. Joseph's Hospital Health Center. BFA Attachment A is the 2013 and 2014 certified financial statements of St. Joseph's Hospital Health Center and Subsidiaries, which indicates the availability of sufficient funds for the equity contribution.

The submitted budget indicates an excess of revenues over expenses of \$2,965,532 and \$4,254,571 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for intensive care services. The submitted budget appears reasonable.

As shown on BFA Attachment A, 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 operating losses of \$9,190,069 from 2013 through 2014. The applicant indicated that the reason for the 2014 loss was the result of the following: a decrease in revenues mostly due to self-pay patients who qualified for charity care, an increase in salaries and fringe benefits expenses, and increased depreciation and interest expenses. The applicant is implementing the following steps to improve operations: continuing to improve its facilities through reinvestment; expanding the managed care environment and the hospital's communication structure through the use of a comprehensive EMR system; improving quality and outcomes through partnerships with its medical staff; developing regional and national partnerships to

enhance access to best practices and overhead reductions; and the hospital has signed an agreement to become part of the Trinity Health Group Purchasing Organization (GPO) Health Trust.

Attachment B is the internal financial statements of St. Joseph's Hospital Health Center and Subsidiaries as of August 31, 2015. As shown, the entity had a positive working capital position and a positive net asset position through August 31, 2015. Also, the consolidated entity incurred operating losses of \$22,183,681 through August 31, 2015, of which the hospital incurred losses of \$5,452,691 through August 31, 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	Financial Summary - 2013 and 2014 certified financial statements of St. Joseph's Hospital Health Center
BFA Attachment B	Financial Summary - August 31, 2015 internal financial statements of St. Joseph's Hospital Health Center.



**Project # 161031-C
Samaritan Medical Center**

Program: Hospital
Purpose: Construction

County: Jefferson
Acknowledged: January 27, 2016

Executive Summary

Description

Samaritan Medical Center (SMC), a 290-bed, voluntary not-for-profit, Article 28 hospital located at 830 Washington Street, Watertown (Jefferson County), requests approval to convert seven pediatric beds to five maternity and two psychiatric beds in conjunction with expansions and improvements to their maternity, pediatrics and mental health units and associated support spaces. The hospital's total licensed bed capacity will remain 290 beds.

SMC is a regional hospital provider serving Jefferson and surrounding counties. The additions and renovations will address needed upgrades to existing services and infrastructure to maintain a code-compliant, state-of-the-art medical center capable of providing quality healthcare. After the completion of the project, the applicant believes it will be in position to provide services much more efficiently and improve patient experience.

OPCHSM Recommendation
Contingent Approval

Need Summary

The conversion of these beds will help the facility move towards the DOH planning optimum while meeting the healthcare needs of the local community.

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 \$34,711,217 will be funded by SMC's accumulated funds. The projected budget is as follows:

Revenues:	\$197,823,850
Expenses:	<u>191,887,145</u>
Net Income:	\$5,936,705

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 documentation of approval by the Office of Mental Health, acceptable to the Department. [PMU]
3. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-02. These drawings must resolve all issues noted in the request for additional information dated March 11, 2016. [AER]

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 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]
3. Construction must start on or before 8/1/2016 and construction must be completed by 8/1/2020, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

April 14, 2016

Need Analysis

Background/Analysis

Samaritan Medical Center is a 290-bed hospital and Level 2 Perinatal Center in Watertown, Jefferson County.

	Current Beds	Discharges			Occupancy		
		2012	2013	2014	2012	2013	2014
Medical/Surgical	192	5,074	5,353	5,207	41.5%	45.7%	41.8%
Pediatric	27	385	317	230	11.2%	10.0%	7.6%
Obstetric	24	1,814	1,797	1,786	50.9%	47.4%	47.1%
General Psychiatric	32	1,146	1,219	1,164	82.0%	72.0%	71.8%
High-Risk Neonates	15	43	56	52	3.4%	4.9%	4.1%
Total	290	8,567	8,822	8,492	42.6%	43.7%	40.6%

Note: 2015 data is incomplete

Pediatric utilization has decreased from 11.2 percent in 2012 to 7.9 percent in 2015. A reduction in beds from this area would raise occupancy of remaining beds and put more resources in areas where SMC projects greater need in the near future.

As SMC serves nearby Fort Drum which is without a hospital of its own, utilization of its services is greatly impacted by the needs of and fluctuations in the military population and their families. At the same time, SMC must also address the needs of the surrounding rural communities. This proposal will allow them to do both.

The following bed chart for Samaritan Medical Center is provided for reference.

Bed Type	Current Beds	Bed Change	Beds Upon Completion
Coronary Care	4		4
Intensive Care	6		6
Maternity	24	5	29
Medical / Surgical	166		166
Neonatal Intensive Care	7		7
Neonatal Intermediate Care	8		8
Pediatric	27	-7	20
Physical Medicine and Rehabilitation	16		16
Psychiatric	32	2	34
Total	290	0	290

Conclusion

The reallocation of beds together with the proposed facility improvements will better position Samaritan Medical Center to meet the needs of its service area.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Samaritan Medical Center, an existing 290 bed Article 28 Acute Care Hospital, located at 830 Washington Street, in Watertown (Jefferson County), requests approval to perform renovation and expansion to several units of the hospital and convert seven pediatric beds to five maternity and two psychiatric beds.

This project represents the final phase of Campus Master Plan where Samaritan identified several priorities to improve existing patient care and support service departments. The current room configurations for Samaritan's maternity, pediatrics, NICU and mental health inpatient units do not allow for family-centered patient care. All of the improvements in this project will provide an improved patient experience, easier patient and visitor accessibility and service levels that should be much more efficient.

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 \$34,711,217, broken down as follows:

New Construction	\$6,322,800
Renovation & Demolition	17,932,750
Site Development	560,000
Asbestos Abatement or Removal	770,000
Design Contingency	2,205,050
Construction Contingency	1,917,650
Architect/Engineering Fees	1,839,224
Construction Manager Fees	699,315
Movable Equipment	2,272,572
Application Fees	2,000
Additional Processing Fees	189,856
Total Project Cost	\$34,711,217

Total project costs are based on a construction start date of August 1, 2016, with a four-year construction period.

The total project costs will be funded from SMC's accumulated funds.

Operating Budget

The applicant has submitted an incremental operating budget, in 2016 dollars, for the first and third years, as summarized below:

	<u>Per Discharge or Per Visit</u>	<u>Current Year</u>	<u>Per Discharge or Per Visit</u>	<u>Years One and Three</u>
<u>Revenue</u>				
Revenue - Inpatient	\$7,729.98	\$83,035,489	\$7,729.98	\$83,035,489
Revenue - Outpatient	\$409.90	\$108,407,875	\$409.90	\$108,407,875
Other Operating Income *		<u>\$6,380,486</u>		<u>\$6,380,486</u>
Total Revenue		\$197,823,850		\$197,823,850
<u>Expenses</u>				
Operating-Inpatient	\$8,545.21	\$91,792,616	\$8,545.21	\$91,792,616
Operating-Outpatient	\$322.40	\$85,265,580	\$322.40	\$85,265,580
Capital-Inpatient	\$606.26	\$6,512,451	\$737.58	\$7,923,127
Capital-Outpatient	\$25.34	<u>\$6,701,973</u>	\$26.11	<u>\$6,905,822</u>
Total Expenses		\$190,272,620		\$191,887,145
Net Income		<u>\$7,551,230</u>		<u>\$5,936,705</u>
Utilization (Inpatients Days)		10,742		10,742
Utilization (Outpatient Visits)		264,471		264,471
Inpatient cost per Discharge		\$9,151		\$9,283
Outpatient Cost per Visit		\$348		\$349

*Other Operating Income consists of Grants, Cafeteria, Library, Medical Education, Physician Services and Refunds.

The following is noted with respect to the submitted budget:

- Expense assumptions are based upon SMC's historical experience and adjusted for investment. Capital expenses are projected to increase by 1% in year one (held constant for year three).
- Revenue assumptions are based on the SMC's actual 2014 payor mix experience and held constant for year one and three.
- Utilization assumptions are based on the facility's current per day occupancy pattern and current outpatient visits and held constant for year one and year three.

Inpatient and outpatient utilization by payor source for the first and third years is anticipated as follows:

<u>Payor</u>	<u>Years One and Three</u>		
	<u>Discharges</u>	<u>Visits</u>	<u>%</u>
Medicaid-FFS	1,850	49,025	18.49%
Medicare-FFS	3,595	94,853	35.87%
Commercial-FFS	1,820	54,811	20.72%
Private Pay	335	8,182	3.09%
All other	<u>3,142</u>	<u>57,600</u>	<u>21.78%</u>
Total	10,742	264,471	100.00%

Capability and Feasibility

Total project cost of \$34,711,217 will be satisfied from the accumulated funds of SMC. The cash outflow for the project will span over the four-year construction period. The applicant has sufficient cash reserves currently for the project. The incremental working capital requirement is estimated at \$269,088 based upon two months of Year Three incremental expenses. The applicant will provide working capital from ongoing operations. BFA Attachment A is SMC'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 \$5,936,705 in Year One and in Year Three. Revenues are projected based on current experience and payor mix and assumes no growth in volumes over the next three years.

As shown on BFA Attachment A, SMC has maintained an average working capital position of \$143,440,725 and an average net asset position of \$282,817,814 for the 2013 - 2014 period. BFA Attachment B is SMC's internal financial summary as of November 30, 2015, which shows positive income from operations of \$4,586,492.

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 Statement for 2013 and 2014, Samaritan Medical Center
BFA Attachment B Internal Financial Summary for November 30, 2015, Samaritan Medical Center

SAMARITAN MEDICAL CENTER AND AFFILIATES

Consolidated Balance Sheets

December 31, 2014 and 2013

<u>Assets</u>	<u>2014</u>	<u>2013</u>
Current assets:		
Cash and cash equivalents	\$ 37,550,094	31,805,631
Investments	2,830,795	2,453,205
Patient accounts receivable, net of allowance for doubtful accounts of \$10,023,008 for 2014 and \$7,857,401 for 2013	34,139,797	34,670,355
Pledges receivable	626,456	953,623
Other receivables	10,023,414	9,230,334
Inventories	2,687,982	2,226,753
Prepaid expenses and other current assets	2,724,212	2,309,686
Total current assets	<u>90,582,750</u>	<u>83,649,587</u>
Assets limited as to use:		
Restricted collateral	3,604,036	2,100,348
Assets held in trust	1,475,534	1,381,009
Construction project funds	2,033,898	2,086,087
Permanently restricted endowment funds	2,836,163	2,785,165
Board designated investments	354,712	355,743
	<u>10,304,343</u>	<u>8,708,352</u>
Property and equipment, net	171,442,184	178,386,656
Debt issuance costs, net	1,242,005	1,300,838
Investments, net of current portion	5,285,253	5,076,846
Pledges receivable, net of current portion	181,008	170,726
Resident funds	287,916	334,371
Grants receivable	-	80,290
Other assets, net	4,169,332	4,433,171
Total assets	<u>\$ 283,494,791</u>	<u>282,140,837</u>

<u>Liabilities and Net Assets</u>	<u>2014</u>	<u>2013</u>
Current liabilities:		
Current portion of long-term debt	\$ 2,298,338	2,109,654
Accounts payable	13,088,659	11,653,040
Accrued payroll and fringe benefit expense	19,540,569	18,814,741
Accrued expenses and other liabilities	6,037,598	5,182,304
Estimated third-party payor settlements	3,893,103	5,726,978
	<u>44,858,267</u>	<u>43,486,717</u>
Total current liabilities		
Long-term debt, net of current portion	73,751,347	76,046,675
Retirement plan obligations	23,238,693	17,242,436
Asset retirement obligation	364,932	659,050
Resident funds	287,916	334,371
Other liabilities	3,596,812	3,014,233
	<u>146,097,967</u>	<u>140,783,482</u>
Total liabilities		
Net assets:		
Unrestricted	132,637,097	136,288,712
Temporarily restricted	1,823,988	2,136,261
Permanently restricted	2,935,739	2,932,382
	<u>137,396,824</u>	<u>141,357,355</u>
Total net assets		
Commitments and contingent liabilities (notes 2(n) and 11)		
Total liabilities and net assets	\$ <u>283,494,791</u>	<u>282,140,837</u>

SAMARITAN MEDICAL CENTER AND AFFILIATES

Consolidated Statements of Operations and Changes in Net Assets

Years ended December 31, 2014 and 2013

	<u>2014</u>	<u>2013</u>
Unrestricted revenues, gains and other support:		
Patient service revenue (net of contractual allowances and discounts)	\$ 246,723,062	230,034,957
Provision for bad debts	<u>(11,734,815)</u>	<u>(10,092,259)</u>
Net patient service revenue less provision for bad debts	234,988,247	219,942,698
Other revenue	6,242,974	5,381,590
Net assets released from restrictions for operations	<u>624,245</u>	<u>92,822</u>
Total unrestricted revenues, gains and other support	<u>241,855,466</u>	<u>225,417,110</u>
Expenses:		
Salaries and wages	113,753,259	109,485,890
Fringe benefits	31,444,146	33,672,773
Supplies and other expenses	75,312,243	71,069,364
Depreciation and amortization	14,398,888	13,330,988
Provision for bad debts	96,150	193,705
Interest	2,304,382	2,081,961
New York State gross receipts assessment	<u>3,484,216</u>	<u>3,018,142</u>
Total expenses	<u>240,793,284</u>	<u>232,852,823</u>
Income (loss) from operations	<u>1,062,182</u>	<u>(7,435,713)</u>
Nonoperating revenue (expense):		
Other revenue, net	102,178	988,929
Interest income from operating escrow	5,221	2,755
Investment income	780,730	573,618
Net realized gains (losses) on sale of investments and assets limited as to use	<u>(50,203)</u>	<u>64,608</u>
Total nonoperating revenue (expense), net	<u>837,926</u>	<u>1,629,910</u>
Excess (deficiency) of revenues over expenses	1,900,108	(5,805,803)
Change in net unrealized gains on investments and assets limited as to use	104,540	868,395
Pension and other postretirement liability adjustments	(7,154,877)	15,545,098
Grants and contributions for capital acquisitions	176,383	281,966
Net assets released from restrictions for capital acquisition	<u>1,322,231</u>	<u>6,444,973</u>
Increase (decrease) in unrestricted net assets	<u>\$ (3,651,615)</u>	<u>17,334,629</u>

SAMARITAN MEDICAL CENTER AND AFFILIATES

Consolidating Balance Sheet

December 31, 2014

<u>Assets</u>	<u>Samaritan Medical Center</u>	<u>Samaritan Medical Practice P.C.</u>	<u>Edward John Noble</u>	<u>Samaritan Keep Nursing Home, Inc.</u>	<u>The Samaritan Medical Center Foundation of Northern New York, Inc.</u>	<u>Samaritan Senior Village, Inc.</u>	<u>Eliminations</u>	<u>Total</u>
Current assets:								
Cash and cash equivalents	\$ 34,481,506	302,616	320,226	377,779	2,053,293	14,674	-	37,550,094
Investments	1,628,458	-	-	-	1,202,337	-	-	2,830,795
Patient accounts receivable, net of allowance for doubtful accounts of \$10,023,008	25,181,203	1,483,222	-	4,144,449	-	3,330,923	-	34,139,797
Pledges receivable	-	-	-	-	626,456	-	-	626,456
Other receivables	8,483,419	1,980	-	38,015	-	1,500,000	-	10,023,414
Inventories	2,224,336	335,097	-	73,218	-	55,331	-	2,687,982
Prepaid expenses and other current assets	2,253,904	54,494	-	199,917	10,000	205,897	-	2,724,212
Total current assets	<u>74,252,826</u>	<u>2,177,409</u>	<u>320,226</u>	<u>4,833,378</u>	<u>3,892,086</u>	<u>5,106,825</u>	<u>-</u>	<u>90,582,750</u>
Assets limited as to use:								
Restricted collateral	-	-	-	2,104,036	-	1,500,000	-	3,604,036
Assets held in trust	-	-	-	1,475,534	-	-	-	1,475,534
Construction project funds	2,033,898	-	-	-	-	-	-	2,033,898
Permanently restricted endowment funds	874,471	-	-	-	1,961,692	-	-	2,836,163
Board designated investments	199,004	-	-	141,932	13,776	-	-	354,712
	<u>3,107,373</u>	<u>-</u>	<u>-</u>	<u>3,721,502</u>	<u>1,975,468</u>	<u>1,500,000</u>	<u>-</u>	<u>10,304,343</u>
Property and equipment, net	107,822,516	272,483	-	3,225,675	-	60,121,510	-	171,442,184
Debt issuance costs, net	632,020	-	-	-	-	609,985	-	1,242,005
Investments, net of current portion	-	-	-	-	5,285,253	-	-	5,285,253
Pledges receivable, net of current portion	-	-	-	-	181,008	-	-	181,008
Resident funds	-	-	-	161,491	-	126,425	-	287,916
Other assets, net	4,097,276	-	-	50,000	-	22,056	-	4,169,332
Total assets	<u>\$ 189,912,011</u>	<u>2,449,892</u>	<u>320,226</u>	<u>11,992,046</u>	<u>11,333,815</u>	<u>67,486,801</u>	<u>-</u>	<u>283,494,791</u>

SAMARITAN MEDICAL CENTER AND AFFILIATES

Consolidating Balance Sheet, Continued

December 31, 2014

<u>Liabilities and Net Assets</u>	<u>Samaritan Medical Center</u>	<u>Samaritan Medical Practice P.C.</u>	<u>Edward John Noble</u>	<u>Samaritan Keep Nursing Home, Inc.</u>	<u>The Samaritan Medical Center Foundation of Northern New York, Inc.</u>	<u>Samaritan Senior Village, Inc.</u>	<u>Eliminations</u>	<u>Total</u>
Current liabilities:								
Current portion of long-term debt	\$ 1,661,883	-	-	-	-	636,455	-	2,298,338
Accounts payable	10,888,446	143,423	12,204	958,993	49,648	1,035,945	-	13,088,659
Accrued payroll and fringe benefit expense	16,365,085	-	6,000	2,642,654	-	526,830	-	19,540,569
Accrued expenses and other liabilities	5,115,121	-	-	490,565	-	431,912	-	6,037,598
Estimated third-party payor settlements	3,384,283	-	279,996	453,768	-	(224,944)	-	3,893,103
Due to (from) affiliates/other funds, net	(15,281,070)	2,306,469	-	3,824,891	1,611,166	7,538,544	-	-
Total current liabilities	22,133,748	2,449,892	298,200	8,370,871	1,660,814	9,944,742	-	44,858,267
Long-term debt, net of current portion	46,963,007	-	-	-	-	26,788,340	-	73,751,347
Retirement plan obligations	21,258,041	-	-	1,734,288	-	246,364	-	23,238,693
Asset retirement obligation	364,932	-	-	-	-	-	-	364,932
Resident funds	-	-	-	161,491	-	126,425	-	287,916
Other liabilities	3,524,756	-	-	50,000	-	22,056	-	3,596,812
Total liabilities	94,244,484	2,449,892	298,200	10,316,650	1,660,814	37,127,927	-	146,097,967
Net assets:								
Unrestricted	93,141,304	-	22,026	1,675,396	7,444,160	30,354,211	-	132,637,097
Temporarily restricted	1,651,752	-	-	-	167,573	4,663	-	1,823,988
Permanently restricted	874,471	-	-	-	2,061,268	-	-	2,935,739
Total net assets	95,667,527	-	22,026	1,675,396	9,673,001	30,358,874	-	137,396,824
Total liabilities and net assets	\$ 189,912,011	2,449,892	320,226	11,992,046	11,333,815	67,486,801	-	283,494,791

SAMARITAN MEDICAL CENTER AND AFFILIATES
Consolidating Statement of Operations and Changes in Net Assets (Deficit)
Year ended December 31, 2014

	Samaritan Medical Center	Samaritan Medical Practice P.C.	Edward John Noble	Samaritan Keep Nursing Home, Inc.	The Samaritan Medical Center Foundation of Northern New York, Inc.	Samaritan Senior Village, Inc.	Eliminations	Total
Unrestricted revenues, gains and other support:								
Patient service revenue (net of contractual allowances and discounts)	\$ 201,703,336	5,920,244	-	22,056,117	-	17,269,067	(225,702)	246,723,062
Provision for bad debts	<u>(10,259,972)</u>	<u>(85,763)</u>	<u>-</u>	<u>(766,069)</u>	<u>-</u>	<u>(623,011)</u>	<u>-</u>	<u>(11,734,815)</u>
Net patient service revenue less provision for bad debts	191,443,364	5,834,481	-	21,290,048	-	16,646,056	(225,702)	234,988,247
Other revenue	5,300,539	-	75	765,542	1,161,073	1,675,250	(2,659,505)	6,242,974
Net assets released from restrictions for operations	<u>624,245</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>624,245</u>
Total unrestricted revenues, gains and other support	<u>197,368,148</u>	<u>5,834,481</u>	<u>75</u>	<u>22,055,590</u>	<u>1,161,073</u>	<u>18,321,306</u>	<u>(2,885,207)</u>	<u>241,855,466</u>
Expenses:								
Salaries and wages	86,516,649	6,088,906	-	12,464,005	370,513	8,683,699	(370,513)	113,753,259
Fringe benefits	23,831,503	1,344,684	-	4,087,444	87,143	2,180,515	(87,143)	31,444,146
Supplies and other expenses	65,127,281	2,686,484	384	4,926,777	405,653	4,593,215	(2,427,551)	75,312,243
Depreciation and amortization	11,696,691	98,149	-	520,154	-	2,083,894	-	14,398,888
Provision for (recoveries of) bad debts	-	-	(1,474)	-	97,624	-	-	96,150
Interest	1,517,733	-	-	-	-	786,649	-	2,304,382
New York State gross receipts assessment	<u>1,582,763</u>	<u>-</u>	<u>-</u>	<u>1,205,356</u>	<u>-</u>	<u>696,097</u>	<u>-</u>	<u>3,484,216</u>
Total expenses	<u>190,272,620</u>	<u>10,218,223</u>	<u>(1,090)</u>	<u>23,203,736</u>	<u>960,933</u>	<u>19,024,069</u>	<u>(2,885,207)</u>	<u>240,793,284</u>
Income (loss) from operations	<u>7,095,528</u>	<u>(4,383,742)</u>	<u>1,165</u>	<u>(1,148,146)</u>	<u>200,140</u>	<u>(702,763)</u>	<u>-</u>	<u>1,062,182</u>
Nonoperating revenue (expense):								
Other revenue, net	99,345	-	-	2,833	-	-	-	102,178
Interest income from operating escrow	4,933	-	-	284	-	4	-	5,221
Investment income	349,830	-	32	89,578	341,290	-	-	780,730
Net realized gains (losses) on sale of investments and assets limited as to use	<u>1,594</u>	<u>-</u>	<u>-</u>	<u>8,334</u>	<u>(60,131)</u>	<u>-</u>	<u>-</u>	<u>(50,203)</u>
Total nonoperating revenue (expense), net	<u>455,702</u>	<u>-</u>	<u>32</u>	<u>101,029</u>	<u>281,159</u>	<u>4</u>	<u>-</u>	<u>837,926</u>
Excess (deficiency) of revenues over expenses	<u>7,551,230</u>	<u>(4,383,742)</u>	<u>1,197</u>	<u>(1,047,117)</u>	<u>481,299</u>	<u>(702,759)</u>	<u>-</u>	<u>1,900,108</u>
Change in net unrealized gains on investments and assets limited as to use	4,676	-	-	670	99,194	-	-	104,540
Pension and other postretirement liability adjustments	<u>(6,508,058)</u>	<u>-</u>	<u>-</u>	<u>(448,063)</u>	<u>-</u>	<u>(198,756)</u>	<u>-</u>	<u>(7,154,877)</u>
Equity transfer (to) from affiliate	<u>(6,999,710)</u>	<u>6,999,710</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Grants and contributions for capital acquisitions	112,959	-	-	63,424	-	-	-	176,383
Net assets released from restrictions for capital acquisition	<u>375,369</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>875,472</u>	<u>71,390</u>	<u>-</u>	<u>1,322,231</u>
Increase (decrease) in unrestricted net assets	<u>\$ (5,463,534)</u>	<u>2,615,968</u>	<u>1,197</u>	<u>(1,431,086)</u>	<u>1,455,965</u>	<u>(830,125)</u>	<u>-</u>	<u>(3,651,615)</u>



Financial Performance Dashboard - November 2015

OPERATING STATEMENT

	MTD Actual	MTD Budget	YTD Actual	YTD Budget
Net Patient Revenue	18,092,754	17,173,851	191,145,787	190,268,093
Other Operating Revenue	819,031	373,485	6,048,053	4,587,782
Total Operating Revenue	16,711,785	17,847,336	197,193,820	194,855,875
Salary and Benefits	10,039,859	9,560,954	108,948,374	105,115,491
Supplies and Other	5,910,835	5,443,025	63,838,935	60,437,443
Depreciation	1,022,163	981,950	10,818,658	10,588,051
Interest	188,383	181,985	1,728,205	1,885,834
Provision for Bad Debt	804,840	813,782	9,475,156	9,038,220
Total Operating Expense	18,044,060	18,981,698	192,607,328	187,043,039
Operating Profit/(Loss)	(1,332,275)	866,640	4,888,492	7,810,836
Revenue Cycle Enhancements	0	418,867	0	1,688,687
Non Operating Gain/(Loss)	(240,188)	0	7,540,382	0
Change in Net Assets	(1,572,463)	982,307	12,126,874	9,477,503
Operating Margin (Excl. Non Oper.)	-7.87%	3.22%	2.33%	4.01%
Operating Margin	-9.41%	5.80%	6.15%	4.88%

CASH FLOW STATEMENT

	MTD	YTD
Operating Profit/(Loss)	(1,332,275)	4,588,492
SCH/Tricare Strategic Funds	0	0
Non Operating Gain/(Loss)	(240,188)	7,540,382
Retirement/Captive PC Adj	0	0
Change in Net Assets	(1,572,463)	12,126,874
Depreciation	1,022,163	10,818,658
(Inc.)/Dec. in Assets	1,275,682	(8,083,158)
Inc./Dec. in Liabilities	2,315,138	4,140,873
Net Cash - Operating	3,046,520	18,801,248
Purchase of Equipment	(14,881,304)	(24,824,854)
Advance from (to) Affiliate	(282,518)	2,333,064
Other Investing Activities	1,178,324	(8,275,128)
Net Cash - Investing	(13,784,499)	(28,766,718)
Borrowings	14,826,770	14,826,770
Repayment of LOC	0	0
Payments on Debt	(1,239,756)	(2,394,208)
Net Cash - Financing	13,687,014	12,432,562
Change in Cash	2,869,035	2,467,093

BALANCE SHEET

	MTD 2015	Dec 2014	CHANGE	% CHANGE
Cash and Equivalents	38,035,987	33,588,894	2,487,093	7.35%
A/R - Patients	27,272,882	25,183,338	2,089,544	8.30%
A/R - 3rd Party	786,000	4,475,033	(3,679,033)	-82.21%
Other Receivables	28,959,336	23,935,480	3,023,856	12.63%
Prepaid/Inventory/Other	4,808,988	4,378,239	430,749	9.84%
Total Current Assets	98,872,983	91,540,984	4,332,009	4.73%
Other Assets	14,810,841	6,488,880	8,321,751	74.47%
Prop., Plant & Equipment	122,030,511	107,822,515	14,207,996	13.18%
Temporarily Restricted	1,127,040	1,014,378	112,662	11.11%
Permanently Restricted	874,471	874,471	0	0.00%
Total Assets	234,715,656	209,741,238	24,974,418	11.91%
Current Liabilities	52,938,989	40,288,850	12,649,149	31.40%
Long Term Debt	48,571,191	46,983,007	1,608,184	3.42%
Other Liabilities	25,411,084	26,820,853	(1,409,769)	-5.26%
Net Assets	107,794,402	95,867,528	12,126,874	12.68%
Total Liab./Net Assets	234,715,656	209,741,238	24,974,418	11.91%

VOLUME STATISTICS

	MTD 2015	MTD 2014	YTD 2015	YTD 2014
Acute				
Acute Patient Days	2,824	2,622	33,689	32,479
Acute Discharges	659	707	8,079	8,531
Average LOS	4.29	3.71	4.17	3.81
Exempt				
PMR Patient Days	123	104	1,399	1,890
Psych Patient Days	835	766	8,351	8,528
ALC				
ALC Patient Days	323	412	5,608	4,826
Outpatient Visits				
SFHC	8,745	7,285	97,504	91,318
Emergency Room	4,074	4,051	48,302	49,474
Outpatient Surgery	445	426	5,322	5,324
Outpatient Procedures	348	285	3,465	3,320
Rehabilitation	1,045	712	11,111	9,308
Outpatient Visits				
Laboratory	44,840	40,276	531,208	498,480
Ultrasound	1,138	1,075	15,391	13,048
Diagnostic Radiology	3,443	3,418	40,894	45,778
MRI Studies	320	436	4,175	5,095
CT Scans	1,193	1,301	15,557	15,242
Worked Full Time Equivalents	1,220	1,167	1,187	1,159
Paid Full Time Equivalents	1,373	1,321	1,357	1,336



**Project # 161037-C
Southampton Hospital**

**Program: Hospital
Purpose: Construction**

**County: Suffolk
Acknowledged: January 27, 2016**

Executive Summary

Description

Southampton Hospital (SH), a 125-bed acute care hospital located at 240 Meeting House Lane in Southampton, requests approval to construct and certify a cancer center extension clinic to be located at 740 County Road 39A, Southampton (Suffolk County). Providing linear accelerator and CT simulation services, the facility will operate under the name Southampton Hospital Phillips Family Cancer Center.

The Hospital will purchase a 2.2 acre parcel of land and construct a 13,200 square foot, two-story building on the site that will house the proposed Article 28 extension clinic and other non-Article 28 services. The Article 28 clinic will be located in separate and distinct space from the non-Article 28 services. The Article 28 space, which will include linear accelerator and CT simulation services, will be located on the 1st floor of the building and will encompass 7,803 square feet. The non-Article 28 services will include a physician private practice for medical oncology located on the 2nd floor of the new building.

On December 14, 2015, SH was contingently approved by the Public Health and Health Planning Council (PHHPC) to become a Division of University Hospital (CON 152083).

**OPCHSM Recommendation
Contingent Approval**

Need Summary

Southampton Hospital proposes to certify an extension clinic in Suffolk County. The site will be certified for Therapeutic Radiology and Medical Services - Other Medical Specialties operating one linear accelerator and one CT simulator. The applicant projects 4,008 in Radiology-Therapeutic treatments in Year 1 and 4,456 in Year 3.

Program Summary

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

Financial Summary

Project costs of \$20,361,543 will be met with \$3,461,543 in accumulated funds, \$2,900,000 in appraised land value, and \$14,000,000 in a Bank Mortgage financed over 15 years at 3.7% and amortized over 25 years. The projected incremental budget is as follows:

Revenues:	\$3,461,726
Expenses:	<u>3,163,627</u>
Gain:	\$298,099

The project includes non-Article 28 space, therefore total reimbursable cost is limited to \$14,081,532.

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 commitment for a permanent mortgage for the project to be provided from a recognized lending institution at a prevailing rate of interest that is determined to be acceptable by the Department of Health. This is to be provided within 120 days of approval of state hospital code drawings and before the start of construction. Included with the submitted permanent mortgage commitment must be a sources and uses statement and a debt amortization schedule, for both new and refinanced debt. [BFA]
3. The submission of Design Development and State Hospital Code (SHC) Drawings, as described in BAER Drawing Submission Guidelines DSG-03, for review and approval. [DAS]

Approval conditional upon:

1. The project must be completed within three years from the date of the Public Health and Health Planning Council recommendation letter. Failure to complete the project within the prescribed time shall constitute an abandonment of the application by the applicant and an expiration of the approval. [PMU]
2. The applicant must validate to the Department of Health that the actual Land purchase has taken place by submitting an executed copy of the Bill of Sale. [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 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. [DAS]
8. Construction must start on or before September 1, 2016 and construction must be completed by March 1, 2018, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

April 14, 2016

Need Analysis

Project Description

Southampton Hospital is seeking approval to establish an Article 28 extension clinic to be located at 740 County Road 39, Southampton, 11968, in Suffolk County. This project includes the addition of one linear accelerator.

Background and Analysis

The primary service area for the proposed extension clinic is eastern Long Island which includes the following zip codes: 11937, 11930, 11932, 11968, 11946, 11963, 11962, 11954, 11901, 11942, 11959, 11960, 11976, 11977, and 11978. There are currently no Article 28 linear accelerator machines located on the east end of Long Island. The closest existing Article 28 linear accelerator to this proposed clinic is at John T. Mather Hospital's extension clinic in East Setauket, which is 45 miles and 53 minutes away.

The need methodology set forth in 10 NYCRR Section 709.16 calculates the need for therapeutic radiology devices by health planning region. Department regulations require that at least ninety-five percent of the total population of the Nassau-Suffolk region live within one hour's driving time of a LINAC. Furthermore, need for LINAC machines is determined by assuming that 60% of the cancer cases in a planning region will be candidates for radiological therapy. Of these, half will require 15 treatments a year and half will require 35. Each LINAC machine can provide 6,500 treatments per year.

The table below shows a need for 16 LINAC devices (linear accelerators) in the Nassau-Suffolk health planning region:

	LINAC Need in Nassau-Suffolk Region	Total
1	# of Cancer Cases/Year	17,741
2	60% will be Candidates for Radiation Therapy	10,644
3	50% of (2) will be Curative Patients	5,322
4	50% of (2) will be Palliative Patients	5,322
5	Course of Treatment for Curative Patients is 35 Treatments	186,276
6	Course of Treatment for Palliative patients is 15 Treatments	79,833
7	The Total Number of Treatments [(5)+(6)]	266,109
8	Need for LINAC Machines ¹ [(7)/6,500]	41
9	Existing/Approved Resources (Upon Approval of CON 161037)	25
10	Remaining Need for LINAC Machines [(8)-(9)]	16

¹Each LINAC Machine has capacity for 6,500 Treatments

The Nassau-Suffolk health planning region has a total of thirteen facilities - eight hospitals and five hospital extension clinics - providing linear accelerator services as follows:

Current Resources	# Facilities With LINAC Services			# LINAC Machines		
	Hospitals	Hospital Clinics	Total	in Hospitals	in Hospital Clinics	Total
Nassau-Suffolk Region						
Nassau	5	2	7	8	5	13
Suffolk ¹	3	3	6	6	5	11
Region Total	8	5	13	16	10	24

¹ Includes approved resources under CON 132150 which is not yet operational.

This project should lower the number of residents of the Nassau-Suffolk region who are more than an hour drive to the closest LINAC. The proposed clinic is 53 minutes driving time from the closest LINAC facility, which is located in East Setauket, Suffolk County.

Conclusion

There is currently no LINAC provider within the primary service area of eastern Long Island. Approval of this project will provide for the continuity of care for cancer patients in the region by filling a void for LINAC services within eastern Long Island and the surrounding communities of Suffolk County. After approval of this project, there will still be a need for 16 additional LINAC devices in the Nassau-Suffolk planning region.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Southampton Hospital, an existing Article 28 facility located at 240 Meeting House Lane in Southampton (Suffolk County), seeks approval to construct an extension clinic to be built at 740 County Road 39A in Southampton. The proposed 13,200 square foot extension clinic will be located about 1.2 miles and four minutes travel time from the hospital.

The new two-story building will house the proposed Article 28 extension clinic and other non-Article 28 services. The Article 28 space (located in separate and distinct space from the non-Article 28 services) will provide linear accelerator and CT simulation services on the 1st floor of the building. Non-Article 28 services within the new building will include a private practice medical oncology practice on the 2nd floor.

This project will enhance the Hospital's oncology capabilities, provide the Hospital with the ability to handle the growing demand for high-quality linear accelerator services, and improve patient accessibility to services. Typically, patients receive linear accelerator services several times a week for at least a couple of weeks. At present, there is no Article 28 linear accelerator located on the east end of Long Island and within the primary service area of Southampton Hospital.

Staffing will consist of 5.79 FTEs in the first year after completion and has been project to be 6.11 FTEs by the third year of operation.

The site will be certified for Radiology – Therapeutic and Medical Services – Other Medical Specialties.

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

Contract of Sale

The applicant has submitted an executed Contract of Sale agreement for the parcel of land on which the new extension clinic will be built. The terms of the agreement are summarized below:

Date:	May 7, 2015
Purchaser:	Southampton Hospital Association
Seller:	Bertha Stachecki, Loretta Lynch, Joseph R. Stachecki and Henrietta J. Stachecki
Purchased Land:	Property with all buildings and improvements thereon at 740 County Road 39A, Southampton, NY 11968
Purchase Price:	\$3,175,000
Payment of Purchase Price:	\$317,500 cash deposit to be held in escrow with the remaining cash of \$2,857,500 at time of closing.

Clark & Marshall appraisers has determined the Market Value at \$2,900,000. The actual purchase will take place after final approval from the PHHPC.

Total Project Cost and Financing

Total project cost for land, new construction and the acquisition of fixed and moveable equipment is estimated at \$20,361,543, broken down as below. However, the Bureau of Architectural and Engineering Review has determined that this project includes costs of \$6,280,011 for non-Article 28 space. As a result, the total approved project cost for reimbursement purposes shall be limited to \$14,081,532.

Land	\$2,900,000
New Construction	9,472,890
Site Development	1,150,496
Design Contingency	473,644
Construction Contingency	473,644
Fixed Equipment	3,874,265
Planning Consultant Fees	246,247
Architect/Engineering Fees	780,000
Other Fees (Consultant)	26,000
Movable Equipment	46,440
Financing Costs	407,236
Interim Interest Expense	431,667
CON Application Fee	2,000
Additional Processing Fee	<u>77,014</u>
Total Project Cost	<u>\$20,361,543</u>

Total Reimbursable Cost **\$14,081,532**

Project costs are based on a September 1, 2016 construction start, and an 18-month construction period.

The applicant's financing plan appears as follows:

Equity	\$3,461,543
Land	2,900,000
Bank Mortgage (15-year term, 25-year amortization, 3.7% interest)	\$14,000,000

IDB Bank (Israel Discount Bank of New York) has provided a letter of interest for the mortgage at the above terms. The applicant stated that they expect to refinance the balance remaining when the loan comes due at the end of the 15-year term. BFA Attachment C is the mortgage table for the loan, which indicates an ending balance of \$7,172,309 after the 15-year term ends. BFA Attachment A shows sufficient funds to fund the remaining balance, if necessary.

A land appraisal by a member of the Members Appraisal Institute has been submitted with a land value of \$2,900,000.

Operating Budget

The applicant has submitted an incremental operating budget, in 2016 dollars, for the first and third years, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues		
Medicare	\$1,034,777	\$1,196,890
Medicaid	30,141	34,762
Commercial	1,839,709	2,130,559
Private Pay	11,335	12,958
Other*	<u>75,061</u>	<u>86,557</u>
Total Revenue	\$2,991,023	\$3,461,726
Expenses		
Operating	\$1,596,438	\$1,928,434
Capital	<u>1,257,587</u>	<u>1,235,193</u>
Total Expenses	\$2,854,745	\$3,163,627
Excess of Revenues over Expenses	<u>\$136,278</u>	<u>\$298,099</u>
Visits	4,008	4,456

*Other represents the patients who are on a sliding fee scale for payment.

Utilization by payor source for outpatient services for years one and three, is as follows:

Medicare	45.0%
Commercial	40.0%
Medicaid	7.5%
Private Pay	3.2%
Other*	4.3%

Utilization, revenue and expense projections are based on the feasibility study performed by ECG Management Consultants and the expected market share of services within the SH service area.

Capability and Feasibility

The project cost, \$20,361,543 will be met through \$3,461,543 accumulated funds, \$2,900,000 appraised land value and a \$14,000,000 mortgage at 3.7% with a 15-year term amortized over 25 years. BFA Attachment A is a financial summary for Southampton Hospital Association and Affiliates, which indicates the availability of sufficient funds.

The submitted incremental budget indicates an excess of revenues over expenses of \$136,278 and \$298,099 during the first and third years of operation, respectively. Revenues reflect current reimbursement methodologies for services. The budget appears reasonable.

BFA Attachment A is the 2013 and 2014 certified financial statements of the Southampton Hospital Association and Affiliates. As shown, the entity had a positive working capital position and an average positive net asset position for the period shown. The entity shows an average excess of revenues over expenses of \$6,621,071.

BFA Attachment B is the internal financial statements of the Southampton Hospital Association and Affiliates as of December 31, 2015. As shown, the entity has a positive working capital position and a positive net asset position. The entity shows a \$559,772 excess of revenue over expenses after non-operating gains.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Financial Summary, Southampton Hospital 2013-2014
BFA Attachment B	Financial Summary, Southampton Hospital 2015 internals
BFA Attachment C	Mortgage Amortization Schedule



Project # 161059-T
Olean General Hospital

Program: Hospital
Purpose: Transitional Care Beds

County: Cattaraugus
Acknowledged: February 23, 2016

Executive Summary

Description

This application was submitted in response to the Department's January 5, 2016 Dear Administrator Letter. The Department sought applications from Article 28 general hospitals interested in initiating Transitional Care Units in accordance with the provisions of Section 2802-a of Public Health Law.

Olean General Hospital is a voluntary not-for-profit, Article 28 acute care hospital located at 515 Main Street, Olean (Cattaraugus County). The facility, currently certified for 186 beds, requests approval to create a 16-bed Transitional Care Unit (TCU) through the conversion of a separate 15-bed sub-acute rehabilitation unit that the Hospital currently operates under a Swing Bed program (licensed as medical/surgical beds), and an additional medical/surgical bed from an acute care unit. The TCU unit will be located and self-contained on the third floor of the Hospital.

In 2009, Upper Alleghany Health System, a not-for-profit management holding corporation, became the sole corporate member and co-established operator of Olean General Hospital. Upper Alleghany Health System is also the sole corporate member of Bradford Regional Medical Center and its controlled subsidiaries, a nearby Pennsylvania hospital and health system.

OPCHSM Recommendation
Contingent Approval

Need Summary

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Program Summary

The proposed 16-bed TCU converts an existing 15-bed Swing Bed unit already configured and operating under Medicare RUGS program. Staffing for this unit has been in place since 2006 and has developed an expertise not easily replicated in the region. Conversion of the Swing Bed Unit will result in a minimal start up period for the TCU Unit. The additional bed (one medical/surgical bed) for the TCU Unit will come from another acute unit so that there will be no net increase in beds.

Financial Summary

Project costs of \$55,090 will be met with accumulated funds from Olean General Hospital. The projected operating budget is as follows:

Table with 2 columns: Category (Revenues, Expenses, Gain) and Amount (\$2,378,876, 1,784,169, \$594,707)

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 NYSE-CON upon mailing. [PMU]
2. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-04. The contingency must resolve all issues noted in the RFI dated 03-04-2016. [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. Construction must start on or before July 4, 2016 and construction must be completed by November 13, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
3. The submission of Final Construction Documents, signed and sealed by the project architect, as described in BAER Drawing Submission Guidelines DSG-04, prior to the applicant's start of construction. [AER]

Council Action Date

April 14, 2016

Need Analysis

Background

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Transitional Care Unit Purpose

Section 2802-a of the PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population, through the provision of appropriate services delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program will be required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will facilitate more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of the PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (COP) for skilled nursing facilities (SNFs), as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR).

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Requests for waivers will be reviewed on an individual basis. In addition, the Department will periodically request information concerning the implementation of this section of the Public Health Law and the operation of transitional care units participating in the demonstration.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The expected average length of stay for patients served in a TCU ranges from five to not over 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

Transitional Care Unit Criteria and Requirements

Section 2802-a requires that all providers applying to participate in this demonstration program meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare).

Additionally, a TCU must:

- Have a length of stay of not less than five days and not in excess of 21 days for any individual patient;
- Have a pre-opening survey, separate Medicare Number, and federal skilled nursing facility (SNF) certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents; and illustrate a synergistic relationship with long term care providers.

The Department will consider units with a range of bed size not to exceed 25, which adhere to the following requirements:

- Beds must be located at a single geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Background

Olean General Hospital (OGH) is a member of Upper Allegheny Health System (UAHS), a two-hospital system located in the southwestern part of New York State and northwestern Pennsylvania (where Bradford Regional Medical Center (BRMC), the other hospital UAHS is located). Since November 2009, UAHS, the active parent of both OGH and BRMC has acted as a stabilizing platform for these two rural sister hospitals. Through common management of both hospitals, UAHS has been able to demonstrate over \$4M of joint efficiencies/savings annually for the UAHS system. This collaboration continues today. Additional efficiencies and savings as well as recapture of inpatient case volume, through such initiatives as the jointly operated cardiac catheterization lab between OGH and Kaleida Health, and the possible formal merger of OGH and BRMC to gain sole community hospital status are being pursued. These efforts will likely put the OGH average daily census allowed in order to qualify for Swing Bed designation at risk. As a result, OGH is seeking to gain TCU designation which would obviate the need for the Swing Bed unit.

The Swing Bed designation was obtained by OGH in late 2006. At that time OGH recognized the specialized needs of the sub-acute patient and established the separate sub-acute rehabilitation unit. This 15-bed unit has experienced between a 12 and 14 patient average daily census over the last few years. Specialized staff have been trained over this time to care for the patients.

Program Review

The principal elements of the proposed TCU program are:

- Conversion of a 15-bed sub-acute rehabilitation unit that OGH currently operates under a Swing Bed program (licensed as medical/surgical beds) and conversion of an additional medical/surgical bed from an acute care unit, to be located in discrete space on the third floor of the hospital.
- Operation of the unit will:
 - help reduce unnecessary hospital readmissions;
 - enhance Olean General Hospital's ability to serve the targeted population.
- The patients served will include:
 - The most costly, complex convalescing elders that are clinically stable and would otherwise remain in an medical/surgical bed;
 - those in need of coordinated multi-level rehabilitation; and
 - frail elders still requiring extensive follow-up.
- Operation of the TCU with dedicated staff with access to specialist acute care professionals.
- The unit will be comprised of four double-bedded rooms and eight single-bedded rooms.

The TCU will focus on patients that would otherwise continue to be served in medical/surgical beds. These patients will remain in the TCU for a short stay of no more than 21 days. The TCU will focus on medically complex elderly patients who while clinically stable still require on-going physician oversight and the specialized services of hospital staff. Other patients expected to be routinely admitted include

those who may need an additional few days of rehabilitation prior to discharge to home as well as those needing more extensive rehabilitation therapy prior to discharge to an acute rehabilitation facility.

The TCU will be under the direct responsibility of the Hospital CEO and will include a senior team consisting of a Licensed Nursing Home Administrator who will be employed part-time as the TCU Administrator, a Nurse with hospital experience, and a part-time Physician Medical Director. The team will also include an MDS Coordinator, Registered Nurses, Certified Nurse Aides, a Social Worker, and Activities and Therapy staff. An interdisciplinary care team will be responsible for the coordination and continuity of patient care. Conversion of the Swing Bed Unit to the TCU will result in a minimal start up period for the TCU Unit.

In addition, Olean General Hospital has identified: collaborative relationships with community providers; a strategy for treating patients in the TCU; TCU specific discharge policies; comprehensive staffing to include physician coverage; and agrees to submit clinical and operational data on at least an annual basis as defined by the Department.

Recommendation

From a programmatic perspective, approval is recommended.

<h2>Financial Analysis</h2>

Total Project Costs

Total project costs for renovations and the acquisition of movable equipment are estimated at \$55,090, broken down as follows:

Renovation & Demolition	\$ 35,000
Design Contingency	3,500
Construction Contingency	3,500
Architect/Engineering Fees	4,000
Movable Equipment	6,800
Application Fee	2,000
Additional Processing Fee	<u>290</u>
Total Project Cost	\$55,090

Project costs are based on a construction start date of July 4, 2016. The Hospital will finance total project costs through accumulated funds.

Operating Budgets

The applicant has submitted a separate operating budget in 2016 dollars for the conversion of the sub-acute rehabilitation unit to the TCU, for the first and third years, as summarized below:

	<u>Year One and</u> <u>Year Three</u>
Revenues	\$2,378,876
Expenses	
Operating	\$1,780,469
Depreciation and Rent	<u>3,700</u>
Total Expenses	\$1,784,169
Net Income	<u>\$594,707</u>
Utilization - Patient Days	5,263
Cost Per Patient Day	\$339.00

The separate TCU operating budget does not depict any additional services. Utilization for the first and third years is 100% Medicare.

Expense and utilization assumptions are based on the historical experience of Olean General Hospital's inpatients who currently occupy the sub-acute rehabilitation unit as a Swing Bed Program for rural hospitals. Revenues have been adjusted to reflect the blended rate based on the RUGS for Medicare and the expenses include the additional depreciation on total project costs.

Capability and Feasibility

Project cost will be satisfied by accumulated funds from Olean General Hospital. BFA Attachment A is the financial summary of the Hospital showing sufficient funds.

Working capital will come from hospital operations, since the beds are being converting from Swing Beds to TCU beds.

The submitted budget indicates a net income of \$594,707 during the first and third years of operation. The Medicare revenues were based on a blend of DRGs associated with Olean General Hospital's medically complex patients and excess days these patients spent in the Hospital. The budget appears reasonable.

As shown on BFA Attachment A, Olean General Hospital maintained a positive net asset position, working capital and net income from operations in 2013 and 2014. BFA Attachment B is the internal financial summary of Olean General Hospital as of December 31, 2015, which shows the Hospital maintained \$1,670,387 net income from operations 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	Financial Summary of Olean General Hospital- 2013 and 2014
BFA Attachment B	Financial Summary of Olean General Hospital - 2015 internals



Project # 161061-T
Helen Hayes Hospital

Program: Hospital
Purpose: Transitional Care Beds

County: Rockland
Acknowledged: February 23, 2016

Executive Summary

Description

This application was submitted in response to the Department's January 5, 2016 Dear Administrator Letter. The Department sought applications from Article 28 general hospitals interested in initiating Transitional Care Units in accordance with the provisions of Section 2802-a of Public Health Law.

Helen Hayes Hospital is a public (State) Article 28 facility located at 51 N Route 9W, West Haverstraw (Rockland County). Helen Hayes operates a 130-bed acute care hospital and a 25-bed residential health care facility (RHCF). The applicant requests approval to create a 24-bed Transitional Care Unit (TCU) through the conversion of 18 medical/surgical beds and six physical medicine and rehabilitation beds. The TCU unit will be located in an existing, vacant medical/surgical unit on the first floor of the hospital.

OPCHSM Recommendation
Contingent Approval

Need Summary

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Program Summary

Helen Hayes Hospital is seeking approval to convert 18 medical/surgical beds and six physical medicine and rehabilitation beds to 24 TCU beds. As part of this initiative, hospitals, physicians and other post-discharge providers will work together to more closely coordinate care, leading to better outcomes, a better experience for the patient, and fewer complications such as preventable readmissions, infections or prolonged rehabilitation and recovery.

Financial Summary

Project costs of \$44,874 will be met with accumulated funds. The proposed incremental budget is as follows:

Table with 2 columns: Category, Amount. Rows: Revenues: \$2,225,218; Expenses: 645,762; Gain: \$1,579,456

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 NYSE-CON when mailed. [PMU]
2. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAER Drawing Submission Guidelines DSG-04 Nursing Homes. These drawings must resolve all issues noted in the request for additional information dated March 7, 2016. [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. Construction must start on or before September 1, 2016 and construction must be completed by September 22, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
3. 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)

Council Action Date

April 14, 2016

Need Analysis

Background

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Transitional Care Unit Purpose

Section 2802-a of the PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population, through the provision of appropriate services delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program will be required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will facilitate more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of the PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (COP) for skilled nursing facilities (SNFs), as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR).

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Requests for waivers will be reviewed on an individual basis. In addition, the Department will periodically request information concerning the implementation of this section of the Public Health Law and the operation of transitional care units participating in the demonstration.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The expected average length of stay for patients served in a TCU ranges from five to not over 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

Transitional Care Unit Criteria and Requirements

Section 2802-a requires that all providers applying to participate in this demonstration program meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare).

Additionally, a TCU must:

- Have a length of stay of not less than five days and not in excess of 21 days for any individual patient;
- Have a pre-opening survey, separate Medicare Number, and federal skilled nursing facility (SNF) certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents; and illustrate a synergistic relationship with long term care providers.

The Department will consider units with a range of bed size not to exceed 25, which adhere to the following requirements:

- Beds must be located at a single geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Background

Helen Hayes Hospital is located at 51-55 Route 9W North, West Haverstraw (Rockland County). Helen Hayes operates a 130-bed acute care hospital and a 25-bed residential health care facility (RHCF). The applicant requests approval to create a 24-bed Transitional Care Unit (TCU) through the conversion of 18 medical/surgical beds and six physical medicine and rehabilitation (PMR) beds.

Helen Hayes' 130-bed acute care hospital includes 82 physical medicine and rehabilitation beds, 18 medical/surgical beds, six coma recovery beds and 24 traumatic brain injury beds. The 82 physical medicine and rehabilitation beds qualify as an inpatient rehabilitation facility (IRF) for Medicare reimbursement purposes. Helen Hayes, as a specialty medical rehabilitation provider to the residents of the seven-county Hudson Valley region, is equipped with the services, programs, staff, equipment and expertise to provide comprehensive rehabilitation services to patients with all disabilities and at all levels.

Program Review

The principal elements of the proposed TCU program are:

- Conversion of 18 medical/surgical beds and six physical medicine and rehabilitation beds to a 24-bed TCU, to be located in an existing, vacant unit on the first floor of the hospital.
- Operation of the unit will:
 - reduce the length of stay at the medical/surgical and PMR beds;
 - help reduce unnecessary hospital readmissions;
 - enhance Helen Hayes' ability to serve the targeted population.
- The patients to be served will include:
 - The most costly, complex convalescing elders that are clinically stable and would otherwise remain in medical/surgical beds;
 - those in need of coordinated multi-level rehabilitation; and
 - frail elders still requiring extensive follow-up.
- Operation of the TCU with dedicated staff with access to specialist acute care professionals.
- The unit will be comprised of ten double-bedded rooms and four single-bedded rooms.

The TCU will focus on patients that would otherwise continue to be served in medical/surgical beds. These patients will remain in the TCU for a short stay of no more than 21 days. The TCU will focus on medically complex elderly patients who, while clinically stable, still require on-going physician oversight and the specialized services of hospital staff. Other patients expected to be routinely admitted include those who may need an additional few days of rehabilitation prior to discharge to home, as well as those needing more extensive rehabilitation therapy prior to discharge to an acute rehabilitation facility.

The TCU will be under the direct responsibility of the Hospital CEO and will include a senior team consisting of a Licensed Nursing Home Administrator who will be employed part-time as the TCU Administrator, a Nurse with hospital experience, and a part-time Physician Medical Director. The team will also include an MDS Coordinator, Registered Nurses, Certified Nurse Aides, a Social Worker, and

Activities and Therapy staff. An interdisciplinary care team will be responsible for the coordination and continuity of patient care.

As documented in the application, the lack of appropriate post-discharge alternatives for intensive rehabilitation in the Hudson Valley region has led to the need for a TCU for this specific community. In order to meet the New York State Department of Health's primary goal for the TCU Demonstration Program – improving quality outcomes for patients with TCU conditions through the provision of restorative care to maximize the patient's level of function and independence – Helen Hayes proposes to focus its unit primarily on those rehabilitation DRG clusters that can lead to high levels of excess days at acute hospitals when appropriate post-discharge placements are not available. These rehabilitation DRG clusters are anticipated to lead to an increased demand for TCU beds as a result of the migration from the International Classification of Diseases (ICD) system from ICD-9 to ICD-10 and a new CMS mandate for bundled payments for hip and knee replacement surgeries.

The change to ICD-10, which increased specificity of diagnoses (there are nearly five times as many diagnosis codes in ICD-10 than in ICD-9), means that patients who qualified under the Center for Medicare & Medicaid Services' (CMS) IRF criteria for post-acute care placement in a physical medicine and rehabilitation bed under ICD-9 may not have a qualifying diagnosis under ICD-10. This will result in Helen Hayes turning away admission referrals from other hospitals for patients who do not meet the IRF criteria due to the unavailability of subacute beds. While the average annual occupancy percentage of Helen Hayes' existing 25-bed RHC unit is approximately 85%, the unit occupancy fluctuates weekly; on numerous occasions, the occupancy percentage is over 96%, meaning that Helen Hayes must sometimes turn away referrals for subacute care.

The CMS mandate, which will begin on April 1, 2016, is that hospitals in the New York-Newark-Jersey City, NY-NJ-PA MSA, which encompasses five of the seven Hudson Valley Region counties (Dutchess, Orange, Putnam, Rockland and Westchester County), participate in a 90-day bundled payment initiative for hip and knee replacement surgeries. Under that CMS initiative, the hospital in which the hip or knee replacement takes place is accountable for the costs and quality of care from the time of the surgery through 90 days post-surgery. Depending on the hospital's quality and cost performance during the episode of care, the hospital will either earn a financial reward or be required to repay Medicare for a portion of the costs. As part of this initiative, hospitals, physicians and other post-discharge providers are to work together to more closely coordinate care, leading to better outcomes, a better experience for the patient, and fewer complications such as preventable readmissions, infections or prolonged rehabilitation and recovery.

Helen Hayes has existing collaborative relationships with many hospitals and RHCs in the region and has already received a memorandum of understanding (MOU) from two of those facilities, the New York State Veterans Home at St. Albans (Queens County) and the New York State Veterans Home at Montrose (Westchester County), in keeping with the stated goals of this TCU Demonstration Program. In addition, Helen Hayes has received two letters of support from area hospitals, New York-Presbyterian Hospital and Good Samaritan Hospital of Suffern.

Additionally, Helen Hayes Hospital has identified: collaborative relationships with long term care, durable medical equipment, and Community providers; a sound strategy for treating patients in the TCU; discharge policies; appropriate staffing to include physician coverage; and an agreement to forward clinical and operational data on an annual basis as defined by the Department.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Costs

Total project costs for renovations are estimated at \$44,874, broken down as follows:

Renovation & Demolition	\$ 32,926
Design Contingency	3,293
Construction Contingency	3,293
Architect/Engineering Fees	3,127
Application Fee	2,000
Additional Processing Fee	<u>235</u>
Total Project Cost	<u>\$44,874</u>

Project costs are based on a September 1, 2016 construction start date and a one month construction period. Helen Hayes Hospital will finance total project costs through accumulated funds.

Operating Budgets

The applicant has submitted an incremental operating budget in 2016 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$1,932,970	\$2,225,218
Expenses		
Operating	\$558,323	\$643,518
Depreciation and Rent	<u>2,244</u>	<u>2,244</u>
Total Expenses	\$560,567	\$645,762
Net Income	<u>\$1,372,403</u>	<u>\$1,579,456</u>
Utilization - Patient Days	2,897	3,335
Cost Per Day	\$193.50	\$193.63

Utilization for the first and third years is 100% Medicare. Expense and utilization assumptions are based on the historical experience of Helen Hayes Hospital inpatients. The budget appears reasonable.

Capability and Feasibility

Project cost will be satisfied with accumulated funds from Helen Hayes Hospital. BFA Attachment A is the financial summary of the Hospital showing sufficient funds. Working capital of \$107,627 based on two months of third year expenses will come from hospital operations.

The submitted incremental budget indicates a net income of \$1,372,403 and \$1,579,456 during the first and third years of operation. The Medicare revenues are based on a blend of the DRGs associated with Helen Hayes' medically complex patients and the excess days these patients spent in the Hospital.

As of March 31, 2015, Helen Hayes Hospital maintained a positive net asset position, positive working capital and a net operating loss of \$27,089,074, which was offset by \$29,368,919 in supplemental Medicaid Disproportionate Share Hospital and Upper Payment Limit funds to support its operations. As of August 31, 2015, Helen Hayes was maintaining a net income from operations of \$2,683,196 before supplemental Medicaid Disproportionate Share Hospital and Upper Payment Limit funds.

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 of Helen Hayes Hospital - March 2014 and 2015
BFA Attachment B Financial Summary of Helen Hayes Hospital - August 2015 internals



**Project # 161068-T
Good Samaritan Hospital Medical Center**

**Program: Hospital
Purpose: Transitional Care Beds**

**County: Suffolk
Acknowledged: February 23, 2016**

Executive Summary

Description

This application was submitted in response to the Department's January 5, 2016 Dear Administrator Letter. The Department sought applications from Article 28 general hospitals interested in initiating Transitional Care Units in accordance with the provisions of Section 2802-a of Public Health Law.

Good Samaritan Hospital Medical Center (GSHMC), a 437-bed, voluntary not-for-profit, Article 28 acute care hospital located at 1,000 Montauk Highway, West Islip (Suffolk County), requests approval to create a 22-bed Transitional Care Unit (TCU) through the conversion of 22 medical/surgical beds. The TCU unit will be located and self-contained on the third floor of the Hospital.

GSHMC is affiliated with the Catholic Health Services of Long Island (CHSLI) System, an integrated healthcare delivery system comprised of six acute care hospitals, a certified home health agency, three residential health care facilities, a regional home care and hospice network, a durable medical equipment company and Maryhaven Center of Hope, a community-based agency that provides mental health and substance abuse services and care for developmentally disabled adults and children. GSHMC is a partner provider in the Nassau Queens Performing Provider System (PPS) and the State University of New York at Stony Brook University Hospital PPS in the New York State Delivery System Reform Incentive Payment (DSRIP) Program.

**OPCHSM Recommendation
Contingent Approval**

Need Summary

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Program Summary

GSHMC proposes to create a 22-bed TCU by converting 22 medical/surgical beds to Transitional Care beds and perform requisite renovations. The TCU will re-establish the continuum of care afforded by coordination and integration and further the hospital's efforts to reduce the length of stay, facilitate the hospital's efforts at reducing the number of unnecessary readmissions, and enhance the hospital's capacity to serve the targeted population.

Financial Summary

Project costs \$5,318,583 will be met with accumulated funds from Good Samaritan Hospital Medical Center. The projected incremental budget is as follows:

Revenues:	\$4,780,608
Expenses:	<u>3,871,700</u>
Gain:	\$908,908

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 NYSE-CON upon mailing. [PMU]
2. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAER Drawing Submission Guidelines DSG-04. (AER). These drawings must resolve all issues noted in the request for additional information dated February 29, 2016. [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 submission of Final Construction Documents, signed and sealed by the project architect, as described in BAER Drawing Submission Guidelines DSG-05, prior to the applicant's start of construction. [AER]
3. Construction must start on or before January 1, 2017 and construction must be completed by September 15, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

April 14, 2016

Need Analysis

Background

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Transitional Care Unit Purpose

Section 2802-a of the PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population, through the provision of appropriate services delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program will be required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will facilitate more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of the PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (COP) for skilled nursing facilities (SNFs), as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR).

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Requests for waivers will be reviewed on an individual basis. In addition, the Department will periodically request information concerning the implementation of this section of the Public Health Law and the operation of transitional care units participating in the demonstration.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The expected average length of stay for patients served in a TCU ranges from five to not over 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

Transitional Care Unit Criteria and Requirements

Section 2802-a requires that all providers applying to participate in this demonstration program meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare).

Additionally, a TCU must:

- Have a length of stay of not less than five days and not in excess of 21 days for any individual patient;
- Have a pre-opening survey, separate Medicare Number, and federal skilled nursing facility (SNF) certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents; and illustrate a synergistic relationship with long term care providers.

The Department will consider units with a range of bed size not to exceed 25, which adhere to the following requirements:

- Beds must be located at a single geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Background

Good Samaritan Hospital Medical Center (GSHMC), located at 1000 Montauk Highway, West Islip (Suffolk County), is a 437-bed, acute care hospital and provides acute inpatient, critical care and ambulatory services to residents of Suffolk County. GSHMC has NYSDOH designations as an Area Trauma Center, a Level III Perinatal Center, a Stroke Center and a SAFE Center of Excellence. In addition, GSHMC is a major clinical campus of the New York Institute of Technology College of Osteopathic Medicine, as well as a clinical site for other medical schools, offering a multitude of student rotation experiences. GSHMC has AOA accredited, post-graduate residency programs in emergency medicine, family medicine, OB/GYN and pediatrics (which is also ACGME accredited). GSHMC also has a CPME and COTH accredited post-graduate residency program in podiatric surgery. GSHMC received approval from AOA in July 2015 to establish a post-graduate residency program in general surgery, beginning in July 2016. In addition to the New York Institute of Technology College of Osteopathic Medicine, GSHMC has medical training affiliations with the following medical schools: Mount Sinai School of Medicine; Lake Erie College of Osteopathic Medicine; SUNY Stony Brook; and New York College of Podiatric Medicine. GSHMC also has residency training affiliations with Winthrop-University Hospital, Nassau University Medical Center, Jacobi Medical Center, Elmhurst Hospital Center, Mercy Medical Center and St. Charles Hospital.

GSHMC is affiliated with the Catholic Health Services of Long Island (CHSLI) System, an integrated healthcare delivery system comprised of six acute care hospitals, a certified home health agency, three residential health care facilities, a regional home care and hospice network, a durable medical equipment company and Maryhaven Center of Hope, a community-based agency that provides mental health and substance abuse services and care for developmentally disabled adults and children. GSHMC is a partner provider in the Nassau Queens Performing Provider System (PPS) and the State University of New York at Stony Brook University Hospital PPS in the New York State Delivery System Reform Incentive Payment (DSRIP) Program. GSHMC will leverage the collaborative relationships with the other partners in the PPSs to facilitate the development of short- and long-term complex care to patients in the appropriate, least-restrictive environment, including nursing homes and community-based services.

Program Review

The principal elements of the proposed TCU program are:

- Conversion of 22 medical/surgical beds to be located in a discrete wing of the third floor of the hospital
- Operation of the unit will:
 - reducing the length of stay at the medical/surgical beds;
 - helping to reduce unnecessary hospital readmissions; and
 - enhancing Good Samaritan Hospital's ability to serve the targeted population.
- The patients served will include:
 - The most costly, complex convalescing elders that are clinically stable and would otherwise remain in medical/surgical beds;

- those in need of coordinated multi-level rehabilitation; and
- frail elders still requiring extensive follow-up.
- Operation of the TCU with dedicated staff with access to specialist acute care professionals.
- The unit will be comprised of seven double-bedded rooms and eight single-bedded rooms.

The TCU will focus on patients that would otherwise continue to be served in medical/surgical beds. These patients will remain in the TCU for a short stay of no more than 21 days. The TCU will focus on medically complex elderly patients who, while clinically stable, still require on-going physician oversight and the specialized services of hospital staff. Other patients expected to be routinely admitted include those who may need an additional few days of rehabilitation prior to discharge to home, as well as those needing more extensive rehabilitation therapy prior to discharge to an acute rehabilitation facility.

The TCU will be under the direct responsibility of the Hospital CEO and will include a senior team consisting of a Licensed Nursing Home Administrator who will be employed part-time as the TCU Administrator, a Nurse with hospital experience, and a part-time Physician Medical Director. The team will also include an MDS Coordinator, Registered Nurses, Certified Nurse Aides, a Social Worker, and Activities and Therapy staff. An interdisciplinary care team will be responsible for the coordination and continuity of patient care.

In addition, Good Samaritan Hospital has identified: collaborative relationships with community providers including cooperative agreements with three SNFs; a sound strategy for treating patients in the TCU; purposeful discharge policies; adequate staffing to include physician coverage; and a willingness to report clinical and operational data on at least an annual basis as defined by the Department.

Recommendation

From a programmatic perspective, approval is recommended.

<h2>Financial Analysis</h2>

Total Project Costs

Total project costs for renovations and the acquisition of movable equipment are estimated at \$5,318,583, broken down as follows:

Renovation & Demolition	\$ 3,400,000
Site Development	82,500
Asbestos Abatement or Removal	220,000
Design Contingency	340,001
Construction Contingency	340,001
Architect/Engineering Fees	300,000
Construction Manager Fees	125,000
Other Fees (Consultant)	30,000
Movable Equipment	6,800
Application Fee	2,000
Additional Processing Fee	<u>29,081</u>
Total Project Cost	<u>\$5,318,583</u>

Project costs are based on a construction start date of January 15, 2017, and an eight-month construction period. Good Samaritan Hospital Medical Center will finance total project costs through accumulated funds.

Operating Budget

The applicant has submitted an incremental operating budget in 2016 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$4,277,386	\$4,780,608
Expenses		
Operating	\$3,286,870	\$3,588,271
Depreciation and Rent	<u>283,429</u>	<u>283,429</u>
Total Expenses	\$3,570,299	\$3,871,700
Net Income	<u>\$707,087</u>	<u>\$908,908</u>
Utilization - Patient Days	6,826	7,629
Cost Per Day	\$523.04	\$507.50

Utilization for the first and third years is 100% Medicare. Expense and utilization assumptions are based on the historical experience of Good Samaritan Hospital Medical Center inpatients.

Capability and Feasibility

Project cost will be satisfied by accumulated funds from Good Samaritan Hospital Medical Center. BFA Attachment A is the financial summary of the Hospital showing sufficient funds.

Working capital of \$645,283 based on two months of third year expenses will come from hospital operations.

The submitted incremental budget indicates a net income of \$707,087 and \$908,908 during the first and third years of operation, respectively. The Medicare revenues were based on a blend of DRGs associated with GSHMC medically complex patients and excess days these patients spent in the Hospital. The budget appears reasonable.

Good Samaritan Hospital Medical Center maintained a positive net asset position, positive working capital and net income from operations of \$16,284,000 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	Financial Summary of Good Samaritan Hospital Medical Center - 2015 and 2014
BFA Attachment B	Financial Summary of Catholic Health Services of Long Island - 2013 and 2014



Project # 161069-T
Nyack Hospital

Program: Hospital
Purpose: Transitional Care Beds

County: Rockland
Acknowledged: February 23, 2016

Executive Summary

Description

This application was submitted in response to the Department's January 5, 2016 Dear Administrator Letter. The Department sought applications from Article 28 general hospitals interested in initiating Transitional Care Units in accordance with the provisions of Section 2802-a of Public Health Law.

Nyack Hospital (Nyack), a 375-bed, voluntary not-for-profit, Article 28 acute care hospital located at 160 North Midland Avenue, Nyack (Rockland County), requests approval to create a 16-bed Transitional Care Unit (TCU) through the conversion of 16 medical/surgical beds. The TCU unit will be located and self-contained on the fourth floor of the Maze Building (4-Maze Nursing Unit) on the hospital campus.

Nyack provides acute inpatient, critical care and ambulatory services to residents of Rockland County. Nyack also operates Nyack Hospital Home Care Department, a certified home health agency (CHHA) that provides nursing, home health aide, medical social services, occupational therapy, physical therapy, speech-language pathology services, and DME supplies to both long and short-term patients in Rockland County.

Montefiore Health System, Inc. (MHS) is the sole member and passive parent of the hospital. As a member of MHS, Nyack is a partner provider in the Montefiore Hudson Valley Collaborative, a PPS in the DSRIP Program.

Nyack is a vital access provider assurance program (VAPAP) facility. Their VAPAP Transformation Plan submitted to the

Department outlines the initiatives they are undertaking to become more effective and efficient in delivering health care services to the community. The plan, which the Department monitors on an ongoing monthly basis, details their efforts to strengthen primary care, ambulatory care and community-based services consistent with the goals of the DSRIP program. The TCU will allow the Hospital to reduce their excess Medicare days and create cost reductions in inpatient stays in line with their VAPAP Transformation Plan and DSRIP goals.

OPCHSM Recommendation
Contingent Approval

Need Summary
Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Program Summary
Approval of a 16-bed TCU at Nyack Hospital will bring intensive post-acute services to MHS. According to the applicant, this will afford MHS the ability to provide, and manage with patients, the continuum of care across varied settings and to have all of the care settings needed to be an effective and efficient ACO. Functioning as an ACO, MHS has the capability of prospectively planning budgets and resource needs for all of the settings within its ACO and is of sufficient size to support comprehensive, valid and reliable performance measurement across the continuum of care.

Financial Summary

Project costs of \$1,764,440 will be met with a capital lease of \$1,587,996 and \$176,444 in accumulated funds from the Nyack Hospital Foundation. The incremental budget is as follows:

Revenues:	\$3,191,778
Expenses:	<u>2,899,717</u>
Gain:	\$292,061

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 NYSE-CON upon mailing. [PMU]
2. Submission of an executed capital lease agreement, acceptable to the Department of Health. [BFA]
3. Submission of documentation, acceptable to the Department of Health, that Nyack Hospital Foundation has provided the equity for the project. [BFA]
4. The submission of State Hospital Code (SHC) Drawings, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-04. These drawings must resolve all issues noted in the request for additional information dated March, 1 2016. [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 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]
3. Construction must start on or before September 1, 2016 and construction must be completed by May 31, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

April 14, 2016

Need Analysis

Background

Section 2802-a of the Public Health Law authorizes the Commissioner to approve up to 18 general hospitals to operate TCUs on a demonstration basis. There are currently ten TCUs operating across the state.

Transitional Care Unit Purpose

Section 2802-a of the PHL defines "transitional care" as sub-acute care services provided to inpatients of a general hospital who no longer require acute care inpatient services, but continue to need specialized medical, nursing and other hospital ancillary services and are not yet ready for discharge. TCUs should be limited in length of stay and designed to meet and resolve patients' specific sub-acute medical care needs. Discharges from these units are to be timely and appropriate.

The improvement of quality outcomes for the TCU population, through the provision of appropriate services delivered in the most efficient manner, is the primary goal of the TCU demonstration program. Hospitals selected for this program will be required to demonstrate an overall decrease in length of stay, quantify the clinical benefits of the program for TCU patients, and illustrate a synergistic relationship with long term care providers in the community. Collaboration between hospitals and nursing homes in local service areas will facilitate more efficient allocation of patients between the two settings.

In accordance with Section 2802-a of the PHL, all providers applying to participate in this demonstration program must meet all Conditions of Participation (COP) for skilled nursing facilities (SNFs), as defined under Title XVIII of the Federal Social Security Act (Medicare). In order to qualify for Medicare certification, providers must comply with Part 415 of Title 10 of the New York Compilation of Codes, Rules and Regulations (10 NYCRR).

As part of this demonstration program, specific State SNF regulations that may impede the development of TCUs or their ability to provide appropriate services to patients may be subject to waiver, at the discretion of the Department. Requests for waivers will be reviewed on an individual basis. In addition, the Department will periodically request information concerning the implementation of this section of the Public Health Law and the operation of transitional care units participating in the demonstration.

Applicants must demonstrate the need for any services proposed within the TCU and emphasize the benefits of such a program to a specific community, including, but not limited to, addressing the absence of sufficient post-discharge services in nursing homes and community-based care.

Transitional care units should be limited in length of stay and designed to meet and resolve specific sub-acute medical care needs. The expected average length of stay for patients served in a TCU ranges from five to not over 21 days, following a qualifying acute care stay. TCU services will be reimbursed at the applicable Medicare per diem SNF rate.

Transitional Care Unit Criteria and Requirements

Section 2802-a requires that all providers applying to participate in this demonstration program meet all applicable requirements as defined under Title XVIII of the Federal Social Security Act (Medicare).

Additionally, a TCU must:

- Have a length of stay of not less than five days and not in excess of 21 days for any individual patient;
- Have a pre-opening survey, separate Medicare Number, and federal skilled nursing facility (SNF) certification;
- Be staffed by qualified staff dedicated to the TCU;
- Serve patients who will benefit from active rehabilitation. (It is expected that patients will actively participate in three hours or more of Occupational Therapy/Physical Therapy/Speech Therapy, every day, either three hours consecutively or in combination between rehabilitative sessions); and

- Collect information and submit reports to the Department on an annual basis to demonstrate an overall decrease in length of stay; quantify the clinical benefits of the program for TCU residents; and illustrate a synergistic relationship with long term care providers.

The Department will consider units with a range of bed size not to exceed 25, which adhere to the following requirements:

- Beds must be located at a single geographic location; and
- Beds must be located contiguously within a distinct unit/space within the hospital.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Background

Nyack Hospital (Nyack) is located at 160 North Midland Avenue, Nyack (Rockland County). Nyack, a 375-bed hospital, provides acute inpatient, critical care and ambulatory services to residents of Rockland County. Nyack has NYSDOH designations as an Area Trauma Center, a Level II Perinatal Center and a Stroke Center, as well as Joint Commission on Accreditation of Healthcare Organization certification as a Joint Replacement – Hip Program and a Joint Replacement – Knee Program. Nyack Hospital also operates a certified home health agency (CHHA), Nyack Hospital Home Care Department, which provides baseline services, home health aide, medical social services, medical supplies equipment and appliances, nursing, occupational therapy, physical therapy and speech language pathology services to both long- and short-term patients in Rockland County.

Montefiore Health System, Inc. (MHS) is the sole member and passive parent of Nyack. As a member of MHS, Nyack is a partner provider in the Montefiore Hudson Valley Collaborative, a performing provider system (PPS) in the New York State Delivery System Reform Incentive Payment (DSRIP) Program. Working with its partner providers of Hudson Valley hospitals, diagnostic and treatment centers, nursing homes, community-based programs and other organizations, the PPS is championing new models of providing individuals with high-quality care, while reducing expenditures through enhanced care coordination, community-focused care and education. Nyack will leverage its collaborative relationships with the other partners in the PPS to facilitate the development of short- and long-term complex care to patients in the appropriate, least-restrictive environment, including RHCs and community-based services.

Program Review

The principal elements of the proposed TCU program are:

- Conversion of 16 medical/surgical beds to 16 transitional care beds to be located on the 4th floor of the Maze Building.
- Operation of the unit will:
 - reduce the length of stay in the medical/surgical beds;
 - help reduce unnecessary hospital readmissions;
 - enhance Nyack Hospital's ability to serve the targeted population.
- The patients to be served include:
 - the most costly, complex convalescing elders that are clinically stable and would otherwise remain in an medical/surgical bed;
 - those in need of coordinated multi-level rehabilitation; and
 - frail elders still requiring extensive follow-up.
- Operation of the TCU with dedicated staff with access to specialist acute care professionals.
- The unit will be comprised of 16 single-bedded rooms.

The TCU will focus on patients that would otherwise continue to be served in medical/surgical beds. These patients will remain in the TCU for a short stay of no more than 21 days. The TCU will focus on medically complex elderly patients who, while clinically stable, still require on-going physician oversight and the specialized services of hospital staff. Other patients expected to be routinely admitted include those who may need an additional few days of rehabilitation prior to discharge to home, as well as those needing more extensive rehabilitation therapy prior to discharge to an acute rehabilitation facility.

The TCU will be under the direct responsibility of the Hospital CEO and will include a senior team consisting of a Licensed Nursing Home Administrator who will be employed part-time as the TCU Administrator, a Nurse with hospital experience, and a part-time Physician Medical Director. The team will also include an MDS Coordinator, Registered Nurses, Certified Nurse Aides, a Social Worker, and Activities and Therapy staff. An interdisciplinary care team will be responsible for the coordination and continuity of patient care.

In addition, Nyack Hospital has identified: collaborative relationships with community providers; a defined strategy for treating patients in the TCU; purposeful discharge policies, adequate staffing to include physician coverage, and committed to reporting required statistics to the Department on an annual basis.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Total Project Costs

Total project costs for renovations and the acquisition of movable equipment are estimated at \$1,764,440, broken down as follows:

Renovation & Demolition	\$1,070,196
Design Contingency	107,020
Construction Contingency	107,020
Architect/Engineering Fees	85,563
Other Fees (Consultant)	25,000
Movable Equipment	358,000
Application Fee	2,000
Additional Processing Fee	<u>9,641</u>
Total Project Cost	<u>\$1,764,440</u>

Project costs are based on a construction start date of September 1, 2016 and a nine-month construction period. Nyack Hospital will finance total project costs as follows:

Accumulated funds from the Foundation	\$176,444
Capital Lease (60 months, 1.962%)	\$1,587,996

The accumulated funds are from the Nyack Hospital Foundation. The Foundation has submitted a letter stating that they are willing to provide the necessary funds for this project. BFA attachment C shows that Nyack Hospital Foundation has sufficient equity.

The Capital Lease is for related construction and movable equipment. A draft lease proposal has been submitted by the applicant from Pantheon Capital for a 60-month period at a monthly lease rate factor of .01962. BFA Attachment B shows the net present value of the lease payments over the 60 months (5-year term).

Operating Budgets

The applicant has submitted an incremental operating budget in 2016 dollars, for the first and third years of operation, summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,023,790	\$3,191,778
Expenses		
Operating	\$2,708,053	\$2,719,441
Capital	<u>196,390</u>	<u>180,276</u>
Total Expenses	\$2,904,443	\$2,899,717
Net Income	<u>\$119,347</u>	<u>\$292,061</u>
Utilization - Patient Days	5,256	5,548
Cost Per Day	\$552.60	\$522.66

Utilization for the first and third years is 100% Medicare. Expense and utilization assumptions are based on the historical experience of Nyack Hospital inpatients.

Capability and Feasibility

Project costs of \$1,764,440 will be met with a capital lease of \$1,587,996 and \$176,444 in accumulated funds from the Nyack Hospital Foundation. BFA Attachment C presents the financial summary of the Foundation showing sufficient funds.

Working capital of \$483,286 based on two months of third year expenses will come from hospital operations.

The submitted incremental budget indicates a net income of \$119,347 and \$292,061 during the first and third years of operation, respectively. The Medicare revenues were based on a blend of DRGs associated with NH medically complex patients and excess days these patients spent in the Hospital. The budget appears reasonable.

Nyack Hospital experienced negative working capital, maintained a positive net asset position, and net loss from operations of \$2,206,736 as of November 31, 2015. The applicant indicated that the negative working capital and net operating losses are due to the following facts:

- Nyack Hospital is a safety net provider with a high percentage of Medicaid, uninsured and Medicaid dual-eligible patients. Declines in Medicaid reimbursement and volume changes had a negative impact on net patient revenues, which contributed to the Hospital's net operating losses. BFA Attachment D is Nyack Hospital's 2014-2015 statistical report, which supports that their payor mix is predominantly governmental payors. The facility's Medicaid and uninsured discharges accounted for 40% of all discharges in 2015, which was up from 36% all discharges in 2014.
- Nyack Hospital has been working on reducing their working capital deficit by cost savings and increasing patient revenues. As shown on their 2014 -2015 financials, the working capital deficit has been reduced by \$2,623,505.

Based on 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.

Attachments

BFA Attachment A	Financial Summary of Nyack Hospital- December 31, 2014
BFA Attachment B	Financial Summary of Nyack Hospital- November 30, 2015 internals
BFA Attachment C	Financial Summary of Nyack Hospital Foundation-2015 internals
BFA Attachment D	Nyack Hospital Statistical Report



- 152231-C – Niagara Falls Memorial Medical Center
- 152232-C – Catholic Health System (Mercy Hospital of Buffalo)
- 152234-C – Erie County Medical Center
- 152245-C – Kaleida Health System (Buffalo General Medical Center)

Program: Hospital
Purpose: Construction

County: Niagara
Acknowledged: November 24, 2015

Executive Summary

Description

Niagara Falls Memorial Medical Center (NFMMC), Kaleida Health System - Buffalo General Medical Center (Kaleida), Catholic Health System - Mercy Hospital of Buffalo (Mercy) and Erie County Medical Center (ECMC) request approval to construct and jointly license a percutaneous cardiac intervention (PCI) capable cardiac catheterization lab (Cath Lab) on the second floor of Niagara Falls Memorial Medical Center. These applications are in response to the Public Health and Health Planning Council’s directive at their October 6, 2011 meeting, for the competing local area hospitals to develop a collaborative PCI/Cath Lab solution to serve Niagara County’s residents.

NFMMC is a 171-bed, voluntary, acute care hospital located at 621 Tenth Street, Niagara Falls (Niagara County). The other three hospitals are all located in Erie County. There are currently no Cath Labs in Niagara County.

NFMMC policies, procedures, and Medical Staff Bylaws will govern the activities of the Cath Lab, and the financial operations, including producing the related financial statements, will be fully integrated within the financial system of NFMMC. The Cath Lab’s finances will be managed through a dedicated Joint Venture Fund (JV Fund) and operating expenses, as approved by the Governing Body, will be funded through the JV Fund. Capital costs approved by the Governing Body will also be addressed

through the JV Fund. An agreed-upon Dispute Resolution Procedure is provided for in the Joint Operating Agreement (JOA). Operational revenues and expenses will be shared 30:30:30:10, with ECMC holding the 10% share as delineated in the JOA.

The proposed project will not result in a major increase in patient volume, but will provide a change in service location to improve patient access by bringing care closer to the patients. The two Delivery System Reform Incentive Program (DSRIP) Performing Provider Systems (PPS) in Western New York (WNY), Millennium Collaborative Care and Community Care Partners of WNY, are working collaboratively to address DSRIP’s Improve Cardiovascular Health Project (Project 3.b.i.) and support the project.

OPCHSM Recommendation
Contingent Approval

Need Summary

The goal of the cardiac services need methodology (Section 709.14 of Title 10) is to maintain provider volumes associated with high quality outcomes and avoid the unnecessary duplication of services. This application meets the necessary requirements outlined in the methodology and will bring a needed service to the area. Niagara County’s African-American and Medicaid populations are undertreated and

underserved. Operation of a cardiac catheterization laboratory at NFMMC will close disparity gaps and provide access to life-saving diagnostic and therapeutic treatment.

Program Summary

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

Financial Summary

Total project costs of \$2,177,027 will be met through the co-operators' equity investment, at \$653,108 for each facility with a 30% ownership, and \$217,703 for ECMCC who has a 10% interest. In addition, NFMMC has submitted a grant request through the NYS Capital

Restructuring Finance Program for \$1.08 million. If funding is awarded, the grant proceeds will be used to help offset the cost of the Cath Lab equipment. The projected budget is as follows

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$7,161,907	\$8,905,129
Expenses	<u>\$7,062,688</u>	<u>\$7,850,988</u>
Gain	\$ 99,219	\$1,054,141

152231-C – Niagara Falls Memorial Medical Center 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 NYSE-CON upon mailing it. [PMU]
2. Submission of a photocopy of the amended Joint 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. Submission of assurances that the applicant and affiliates will agree to fully participate in anticipated data collection initiatives to include the study of access and/or acute myocardial infarction patients. [HSP]
3. NFMCMC must be committed to provide regular volume and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department of Health and the New York State Cardiac Advisor Commitment. [HSP]
4. NFMCMC must commit to 24/7 ST Myocardial Infarction (STEMI) coverage as required in 405.29(e)(2)(i)(b). [HSP]
5. 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]
6. Construction must start on or before July 1, 2016 and construction must be completed by February 1, 2017, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

April 14, 2016

152232-C – Catholic Health System
(Mercy Hospital of Buffalo)
Recommendations

Health Systems Agency

There will be no HSA recommendation for these projects.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the amended Joint 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. Submission of assurances that the applicant and affiliates will agree to fully participate in anticipated data collection initiatives to include the study of access and/or acute myocardial infarction patients. [HSP]
3. NFMCC must be committed to provide regular volume and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department of Health and the New York State Cardiac Advisor Commitment. [HSP]
4. NFMCC must commit to 24/7 ST Myocardial Infarction (STEMI) coverage as required in 405.29(e)(2)(i)(b). [HSP]

Council Action Date

April 14, 2016

152234-C – Erie County Medical Center Recommendations

Health Systems Agency

There will be no HSA recommendation for these projects.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a photocopy of the amended Joint 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. Submission of assurances that the applicant and affiliates will agree to fully participate in anticipated data collection initiatives to include the study of access and/or acute myocardial infarction patients. [HSP]
3. NFMCC must be committed to provide regular volume and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department of Health and the New York State Cardiac Advisor Commitment. [HSP]
4. NFMCC must commit to 24/7 ST Myocardial Infarction (STEMI) coverage as required in 405.29(e)(2)(i)(b). [HSP]

Council Action Date

April 14, 2016

152245-C – Kaleida Health System
(Buffalo General Medical Center)
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 amended Joint 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. Submission of assurances that the applicant and affiliates will agree to fully participate in anticipated data collection initiatives to include the study of access and/or acute myocardial infarction patients. [HSP]
3. NFMCC must be committed to provide regular volume and outcomes data summarizing cardiac catheterization laboratory activity in a format prescribed by the Department of Health and the New York State Cardiac Advisor Commitment. [HSP]
4. NFMCC must commit to 24/7 ST Myocardial Infarction (STEMI) coverage as required in 405.29(e)(2)(i)(b). [HSP]

Council Action Date

April 14, 2016

Need Analysis

Background

Niagara Falls Memorial Medical Center is a 171 bed hospital located at 621 Tenth Street Niagara Falls. NFMCC is a Level 1 Perinatal Center and a Stroke Center.

Upon approval, Niagara Falls Memorial Medical Center will add the following certified services to its operating certificate:

- Cardiac catheterization – adult diagnostic;
- Cardiac catheterization – percutaneous coronary intervention;

15.3% of New York State residents live below the federal poverty level. Niagara County has 13.7% and the City of Niagara Falls 24.9%. According to the NYS Poverty Report released by the New York State Community Action Association in March 2013, the poverty rate in the City of Niagara Falls for African-Americans is nearly twice as high as the Caucasian poverty rate. The number of Niagara Falls residents living in poverty has grown by 2% since the 2000, a significant percentage when put in context of the city's overall population decline of 9% since 2000.

Currently, Niagara County residents must leave their home county and travel significant distances to access cardiac catheterization services in either Erie County or outside of Western New York. Typically, 125 minutes lapse between the times a Niagara County resident experiences the signs of a heart attack and when the patient can begin to receive treatment at an Erie County-based facility. During inclement weather, the interval may stretch to 155-160 minutes. The timeline exceeds the national standard for providing an intervention.

Distance is not the only barrier to timely services. A large percentage of households in Niagara County have no access to a motor vehicle and rely on alternative modes of travel, such as walking and public transit. Placing a cath lab in the heart of the community could prevent unnecessary transfers out of Niagara County and bring cardiac care closer to home. Niagara's catheterization patients would be able to receive care in their home county and stay connected to their cardiologists and primary care physicians after the procedure.

A review of health status indicators for Niagara County reveals several underlying problems:

- The percentage of obese adults is 31.3% compared to a rate of 24.9% for New York State.
- The percentage of cigarette smoking among adults is 20.6% in Niagara County versus 17.6% in New York State (exclusive of NYC).
- The age-adjusted percentage of adults with physician diagnosed angina, heart attack or stroke is 41% higher in Niagara County than the statewide rate; 10.7% in Niagara compared to 7.6% in New York State.
- Niagara County has a 34% rate of hypertension as compared to a New York State rate of 26.8%.

Analysis

The Cardiac Catheterization Laboratory project has three major aims:

- Eliminate barriers to care through the operation of a Niagara County-based cardiac catheterization laboratory;
- Improve the management of heart disease through the use of best practices;
- Wage a strong and sustained campaign to prevent heart disease.

NFMCC, Mercy, and Kaleida will each appoint three representatives and ECMC will appoint one representative to a Clinical Committee which will provide clinical direction to and oversight of cardiac catheterization laboratory activities, including quality assurance, utilization review and the coordination and integration of services.

The planning area for PCI capable catheterization laboratories is one hour average surface travel time.

Volume Requirements per regulation:

- *Section 709.14(d)(1)(ii)(c): All PCI capable cardiac catheterization laboratory centers must yield 36 emergency PCI procedures per year within the first year of operation and at least 200 total PCI cases per year within two years of start-up.*
 - The standard will be met:
 - It is projected there will be 152 emergency PCI procedures performed in the first year of the Lab's operations and 562 PCI procedures performed in the third year of operation. Both the number of emergency PCIs and total PCI cases will exceed the above referenced minimums.
- *Section 709.14(d)(1)(ii)(k): Where public need is established herein, priority consideration shall be given to applicants that can demonstrate projected volume in excess of 300 PCI cases per year.*
 - This standard will be met:
 - Projected volume is 562 PCI cases in the third year of operation.

Heart disease is the number one cause of death in Niagara County (Vital Statistics Data, March 2014). Niagara County's age-adjusted cardiovascular disease rate per 100,000 residents is 287.8 versus a New York State rate of 234.6/100,000. The county has the fourth highest cardiovascular disease mortality rate in the state.

In 2010, the PCI volume for residents of Niagara County was 670 procedures. While by 2014, the volume of procedures had declined by 20 percent to 536, there are still over 530 Niagara County residents, annually, traveling to Erie County and beyond to seek treatment. The addition of this lab to Niagara Falls Memorial Medical Center will allow residents to stay in the area.

Niagara County Resident PCI Discharges, by facility					
Source: Cardiac Services Program, 2010 - 2014					
Hospital	2010	2011	2012	2013¹	2014²
Buffalo General Hospital	450	396	484	494	397
Erie County Med Center ³	23	37	30	4	0
Mercy Hospital	26	17	14	56	138
Millard Fillmore Hospital ³	171	92	8	0	0
Olean General Hospital	0	0	0	0	1
Total	670	542	536	554	536

¹Validation is nearing completion, numbers are unlikely to change

²Validation is ongoing but mostly complete; some changes possible, but unlikely to be substantive

³Not currently PCI certified

All current existing PCI capable cardiac catheterization laboratories within one hour travel time are expected to maintain a volume of at least 300 PCI procedures per year. Existing referral patterns indicate the additional service will not jeopardize the ability of surrounding facilities to maintain the requisite minimum volume. Currently, there are three hospitals licensed to perform PCI procedures in the Western region to of these, only one, Olean General Hospital, is not meeting the PCI volume standard of 300 procedures per year. However, this facility is located outside the one hour travel minimum and therefore does not impact consideration of this application.

Total PCI discharges, by facility - Western Region					
Source: Cardiac Services Reporting System, 2014.					
Hospital	2010	2011	2012	2013¹	2014²
Buffalo General Hospital	1,353	1,223	1,827	1,808	1,548
Mercy Hospital	689	718	741	977	1,141
Olean General Hospital	0	0	0	37	173
Millard Fillmore Hospital ³	843	642	40	0	0
Erie County Medical Center ³	144	165	153	23	0
Total	3,029	2,748	2,761	2,845	2,862

¹Validation is nearing completion, numbers are unlikely to change

²Validation is ongoing but mostly complete; some changes possible, but unlikely to be substantive

³Not currently PCI certified

Based on 709.14(d)(2), PCI capable cardiac catheterization labs are required to maintain a minimum PCI volume of 300 procedures per year and this volume level will be maintained following the approval.

Conclusion

The goal of the 709.14 cardiac services need methodology is to maintain provider volumes associated with high quality outcomes and avoid the unnecessary duplication of services. This application meets the necessary requirements outlined in the methodology and will bring a needed service to the area. Niagara County's African-American and Medicaid populations are undertreated and underserved. Operation of a cardiac catheterization laboratory at NFMCC will close disparity gaps, providing access to life-saving diagnostic and therapeutic treatment.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Program

The proposed project will improve patient access to services by bringing care closer to patients. Providing catheterization services at NFMCC will reduce the time it takes for Niagara County residents to be connected to services from a current interval of 125 to 155+ minutes down to approximately 90 minutes—closer to the national standard for the timely provision of cardiac catheterization care.

The proposed full-service cardiac surgery backup facilities for NFMCC are positioned in Buffalo. Mercy Hospital, located at 565 Abbott Road (24.9 miles/38 minutes from NFMCC) and Buffalo General Medical Center, located at 100 High Street (22.7 miles/34 minutes from NFMCC), both have extensive experience operating Cath Labs and will ensure the safe and efficient operation of this new diagnostic and PCI-capable cath lab.

Upon approval, the NFMCC site located at 621 Tenth Street in Niagara Falls will be certified for:

- Cardiac Catheterization- Adult Diagnostic; and
- Cardiac Catheterization - Percutaneous Coronary Intervention (PCI)

Staffing at NFMCC will increase by 10.8 FTEs the first year after completion and is anticipated to remain at that level through the third year of operation.

The Applicant has submitted a written plan that demonstrates their ability to comply with all of the standards for PCI Capable Cardiac Catheterization Laboratories and they have assured the Department that their program will meet all of the requirements of 409.29(e)(1) and 409.29(e)(2).

The NYS Cardiac Advisory Committee (CAC) met on July 20, 2015 and unanimously recommended APPROVAL of this project (with stipulated conditions) based on need of underserved population and conditions of weather causing travel in excess of an hour.

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.

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, approval is recommended.

Financial Analysis

Joint Operating Agreement (JOA)

The applicant has submitted an executed JOA, the terms of which are summarized below:

Date:	October 21, 2015
Parties:	Kaleida Health (Kaleida), Niagara Falls Memorial Medical Center (NFMMC), Erie County Medical Center Corporation (ECMCC) and Catholic Health System (CHS).
Location:	4,145 square feet of space on the NFMMC campus, plus storage space provided by NFMMC.
Governance:	Day-to-Day Operations: a Clinical Committee including three representatives each from Kaleida, CHS, NFMMC and the President or designee of ECMCC; Regarding questions concerning operation, including but limited to strategic and financial planning: a Governing Body including three representatives each from Kaleida, CHS, NFMMC and the President or designee of ECMCC.
Operation of the Lab:	The Cath Lab will be listed on the operating license of NFMMC; the lab and lab services will be integrated clinically with the services provided by NFMMC as follows: physicians will have staff membership and clinic privileges at NFMMC, NFMMC will maintain same monitoring and oversight of the Cath Lab, the physician director will be an employee of NFMMC, NFMMC professional committee will be responsible for oversight of medical activities, medical records will be integrated into medical records system of NFMMC, NFMMC will provide monitoring and oversight; NFMMC policies and practices will govern the activities of the lab and the production of financial statements, patients will have access to all NFMMC services and non-physician staff will be employed by NFMMC; financial operations will be fully integrated within the financial system of NFMMC, however will be treated as a separate cost center; the lab will be presented to the public as a department of NFMMC; the lab will comply with NFMMC's Medicare provider agreement and for billing purposes will be NFMMC patients; physicians practicing in the lab will be board certified (or accepted equivalent); the lab will maintain 24/7/365 capabilities; the resources of Kaleida Health and CHS will be used in recruiting Cath Lab personnel; NFMMC will have additional responsibilities as follows: billing and collections of payments, negotiation, administration and termination of agreements with managed care organizations, providing laundry and linens and books of accounts, bearing financial responsibility

	for providing patients with inpatient care after procedure and making diagnostic services available.
Financial Provisions:	\$2,500,000 will be required as capital and funded as follows: Kaleida 30%, NFMMC 30%, CHS 30% and ECMCC 10%; Cath Lab finances will be managed through a dedicated Joint Venture Fund (JV Fund); operating expenses related to the Cath Lab and approved by the Governing Body will be financed by the JV Fund and will be subject to an agreed-upon Dispute Resolution Procedure; capital costs will be addressed with JV Funds, as approved by the Governing Body; NFMMC will be responsible for recordkeeping, making payments from the JV Fund, and the JV Fund will have an annual financial review performed by a third party auditor, selected by the Governing Body.
Term:	Ten (10) years, automatic renewals for five (5) years unless one of the parties provides a six (6) month notice of intent not to renew, or if terminated by unanimous consent after five (5) years.
Distributions:	The Contribution Margin and Loss of the Cath Lab will be the amount by which the Net Cath Lab Revenues exceed Operating Expenses, and will be calculated on a quarterly basis. The Contribution Margin and Loss of the Cath Lab will be allocated to or paid by within 30 days of the end of the quarter as follows: Kaleida 30%, NFMMC 30%, ECMCC 10% and CHS 30%.

Under the terms of the JOA, the Cath Lab will be operated as a Department of NFMMC, and its financial operation will be fully integrated within NFMMC's financial system.

Total Project Cost and Financing

Total project costs for renovations and the acquisition of moveable equipment are estimated at \$2,177,027, broken down as follows:

Renovation & Demolition	\$408,000
Design Contingency	40,000
Construction Contingency	44,800
Planning Consultant Fees	8,000
Architect/Engineering Fees	50,000
Movable Equipment	1,612,330
CON Application Fee	2,000
CON Processing Fee	<u>11,897</u>
Total Project Cost	\$2,177,027

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

The project will be financed by accumulated funds. The percentages and amounts to be funded by the respective parties are as follows: NFMMC 30% or \$653,108, CHS 30% or \$653,108, Kaleida 30% or \$653,108, and ECMCC 10% or \$217,703. In addition, NFMMC has submitted a grant request through the NYS Capital Restructuring Finance Program for \$1.08 million. If funding is awarded, grant proceeds will be used to help offset the cost of the Cath Lab equipment. BFA Attachments A through D are, respectively, the co-operators' 2014 certified financial statements and internal financial statements as of August 31, 2015, which shows sufficient resources to meet the equity requirement.

Operating Budget

The applicant has submitted their first and third year operating budgets, in 2016 dollars, as summarized below:

	<u>Year One</u>	<u>Year Three</u>
Inpatient Revenues	\$4,242,782	\$5,460,873
Outpatient Revenues	2,821,480	3,328,171
Other Operating Income*	<u>97,645</u>	<u>116,085</u>
Total Revenues-Net of Bad Debts	\$7,161,907	\$8,905,129

Inpatient Expenses	\$2,550,883	\$2,993,720
Outpatient Expenses	<u>4,511,805</u>	<u>4,857,268</u>
Total Expenses	\$7,062,688	\$7,850,988
Net Income or (Loss)	<u>\$99,219</u>	<u>\$1,054,141</u>
Utilization (Inpatient Discharges)	370	441
Utilization (Outpatient Visits)	556	661
Cost Per Inpatient Discharge	\$6,894.28	\$6,788.48
Cost Per Outpatient Visit	\$8,114.76	\$7,348.36

*Other operating income is comprised of electrocardiogram, lab, x-ray, and stress test for cardiac cath outpatients.

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

	<u>Inpatient</u>	<u>Outpatient</u>
Medicaid Fee-For-Service	1.08%	.83%
Medicaid Managed Care	5.14%	8.82%
Medicare Fee-For-Service	24.32%	24.24%
Medicare Managed Care	35.95%	35.15%
Commercial Fee-For-Service	15.14%	13.91%
Commercial Managed Care	15.14%	13.91%
All Other	<u>3.23%</u>	<u>3.14%</u>
Total	100.00%	100.00%

Revenue assumptions are based on current Medicare and Medicaid rate methodologies, while Commercial and all other payers are based on the co-operators' experience. BFA Attachment E is the anticipated inpatient and outpatient cases further classified into Diagnosis Related Groups (DRG).

Expense assumptions are based upon the historical experience of the co-operators' identifiable costs. The breakeven point is expected to be close to the first year's budgeted utilization.

Utilization assumptions are based on a change in service location, which is expected to improve patient access bringing care closer to Niagara County residents. At the present time, Niagara County does not have a facility that offers cardiac catheterization services, causing area residents to travel outside the community. The applicant expects the budgeted cases to come primarily from Kaleida and Mercy, with minimal to no impact on each facility.

Capability and Feasibility

Total project costs of \$2,177,027 will be satisfied from the co-operators' accumulated resources. Based on the co-operators' percentage interest in the JOA, project investment is expected be as follows: NFMCC 30% or \$653,108, CHS 30% or \$653,108, Kaleida 30% or \$653,108, and ECMCC 10% or \$217,703. NFMCC has submitted a grant request through the NYS Capital Restructuring Finance Program for \$1.08 million. If grant funds are awarded, they will be used to help offset the co-operators' investment in the Cath Lab equipment.

Working capital requirements are estimated at \$1,308,498 based on two months of third year expenses, which will be funded from the participants' accumulated resources. It is estimated that NFMCC will provide \$741,816 of the working capital (\$498,953 for inpatient and \$242,863 or 30% of the outpatient needs). The remaining \$566,682 in outpatient working capital will be funded as follows: CHS 30% or \$242,863, Kaleida 30% or \$242,863, and ECMCC 10% or \$80,956. Review of BFA Attachments A through D, the 2014 certified and internal financial statements as of August 31, 2015, shows sufficient resources to meet the total equity requirement.

The submitted budget projects net income of \$99,219 and \$1,054,141 for the first and third years, respectively. BFA Attachment E is the anticipated inpatient and outpatient cases, further classified by ICD-9 Classification and CPT Codes, along with the anticipated revenues. BFA Attachment F shows total equity of \$3,485,525 as the first day of operations, further broken down by co-operator (NFMMC \$1,394,924; CHS \$895,971; Kaleida \$895,971; and ECMCC \$298,659). BFA Attachment G shows the proposed allocation of Year One and Year Three surpluses. The budget appears reasonable.

Review of BFA Attachments A through D, the co-operators' 2014 certified and internal financial statements as of August 31, 2015, shows the facilities had an average positive working capital position and generated an average positive operating income. The facilities had positive net assets with the exception for Mercy Hospital of Buffalo, which had an \$8,004,000 negative position that resulted from a change in the pension obligation, other than net periodic cost. It is expected that the net asset position will resolved itself as the facility has generated an average operating income of \$15,412,817 from 2013 through August 31, 2015.

The applicants point out that the cooperative effort between the Cath Lab co-operators furthers their corporate and social missions, and is supported by the two area PPSs, Millennium Collaborative Care and Community Partners of WNY, to address DSRIP goals of improving cardiovascular health in Niagara County.

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	Niagara Area Management Corporation, Certified and Internal Financial Summaries for December 31, 2014 and August 31, 2015
BFA Attachment B	Mercy Hospital of Buffalo, Certified and Internal Financial Summaries for December 31, 2014 and August 31, 2015
BFA Attachment C	Kaleida Health, Certified and Internal Financial Summaries for December 31, 2014 and August 31, 2015
BFA Attachment D	Erie County Medical Center, Certified and Internal Financial Summaries for December 31, 2014 and August 31, 2015
BFA Attachment E	Distribution of Inpatient and Outpatient Cardiac Cath Diagnostic Cases
BFA Attachment F	Co-Operators Equity Contribution
BFA Attachment G	Co-Operators Anticipated Surplus Allocation



**Project # 152356-E
Advanced Surgery Center**

Program: Diagnostic and Treatment Center **County:** Rockland
Purpose: Establishment **Acknowledged:** December 16, 2015

Executive Summary

Description

Advanced Surgery Center, LLC d/b/a Advanced Surgery Center, an existing proprietary Article 28 freestanding ambulatory surgical center (FASC) located at 150 South Pearl Street, Pearl River (Rockland County), requests approval for a two-year extension of their limited life. The Center is certified as a dual single-specialty FASC specializing in plastic surgery and ophthalmology services. The FASC was approved by the Public Health Council with a five-year limited life and began operating effective June 14, 2010.

The applicant is not proposing to add or change any services, or expand or renovate the facility in this application.

OPCHSM Recommendation

Contingent Approval of a two-year extension of the operating certificate 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 091059, is complete.

Based on CON 091059, Advanced Surgery Center projected Medicaid to be 2.0 percent and charity care at 3.0 percent for Year 3. According to AHCF cost reports, actual charity care and Medicaid in Year 3 (2013) was 0 percent, However, approval of the center's Medicaid certification was not granted until November 2013.

Upon approval of this CON, Advanced Surgery Center projects 411 procedures in Year 1, with 2.2 percent Medicaid and 3.2 percent charity care.

Program Summary

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

Financial Summary

There are no project costs associated with this application. The projected budget is as follows:

Revenues	\$1,766,023
Expenses	<u>814,288</u>
Net Income	\$951,785

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval of a two-year extension of the operating certificate 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, acceptable to the Department, to provide quarterly reports to DOH following the completion of each quarter of operation. Reports will be due within 60 days of the conclusion of each quarter as identified by the Effective Date on the Operating Certificate issued at project completion. Reports must include:
 - a. Actual utilization including procedures;
 - b. Breakdown of visits by payor source;
 - c. Percentage of charity care provided by visits;
 - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - e. Number of emergency transfers to a hospital;
 - f. Number of nosocomial infections recorded;
 - g. A brief list of all efforts made to secure charity cases; and
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

Approval conditional upon:

1. The project must be completed within three months 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 submission of quarterly reports to the Department, as prescribed by the related contingency, for the duration of the limited life approval of the facility. [RNR]

Council Action Date

April 14, 2016

Need Analysis

Analysis

The primary service area is Rockland County. The applicant had projected 573 procedures for Year 3 of the original CON 091059, but performed only 211.

The table below provides a projected and actual breakdown of procedures by payor, as well as projections for the first year after approval of the current CON.

	091059 Projected Year 3 (2013)	091059 2013 Actual	2014 Actual	152356 Projected (Year 1)
Medicare FFS/MC	14.0%	5.21%	6.09%	13.88%
Medicaid FFS/MC	2.0%	0.0%	.25%	1.95%
Commercial	30.0%	94.79%	41.12%	36.23%
Private Pay/Other	51.0%	0.0%	51.52%	44.68%
Charity Care	3.0%	0.0%	1.02%	3.26%
Total	100%	100%	100%	100%

Source: Applicants' annual reports

Per the FASC's establishment CON, Medicaid and Charity Care were projected to be 2% and 3%, respectively, of total procedures in the first and third years of operation. The applicant acknowledges the annual Medicaid and Charity Care utilization combined has been consistently below 1% and recognizes that the Center has not reached a desirable level of care to underserved populations during the initial five-year limited life. The applicant indicated the facility struggled for three years to secure a Medicaid provider number, which significantly hampered its ability to provide care to Medicaid patients. Staff verified that a request for Medicaid enrollment was received by the Department on November 11, 2010, and that the Department notified the Center of their enrollment confirmation (retroactive to June 14, 2010) via a letter dated November 15, 2013. Due to the delay, the applicant indicated that the Center has been actively pursuing Medicaid referrals for only two (2) years and was only recently able to complete the Medicaid managed care plan contracting process that began after it received its Medicaid provider number.

The applicant indicated that the FASC provided only plastic surgery services throughout its limited life, with only one surgeon performing the plastic surgery procedures. Although the Center was approved to add ophthalmology effective February 11, 2014, the service has not been fully implemented. The Center projects 50 ophthalmology procedures in Year One and 75 in Year Three, and anticipates that this service will enhance the Center's ability to attract and care for Medicaid and Charity Care patients. Advanced Surgery Center, LLC is committed to serving individuals needing care regardless of the source of payment or the ability to pay.

To improve their efforts in reaching the underserved, the applicant has proposed the following:

- The Center has secured Medicaid managed care contracts with Fidelis Care Plan, Affinity Health Plan and Hudson Health Plan.
- The Center reaches out on a regular basis to Nyack Hospital and Good Samaritan Hospital in an effort to obtain reconstructive surgery and ophthalmology Medicaid and Charity Care referrals from the hospitals' emergency departments. Copies of the outreach letters have been provided as documentation.
- The center will be meeting with Refuah Health Center, a Federally Qualified Health Center (FQHC), in an effort to increase additional underinsured patient referrals to the center.

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. The delay this center faced in being certified for Medicaid until November 2013 prevented the center from serving this population of patients. The center has increased their Medicaid utilization to 1.75 percent in 2015. The center also added a surgeon to provide ophthalmology services, in February 2014. Based upon these circumstances, approval for an additional two years of limited life is recommended.

Conclusion

Extending the limited life will allow the applicant additional time to reach the underserved population in the communities of Rockland County.

Recommendation

From a need perspective, contingent approval is recommended, with a two year extension of their operating certificate.

Program Analysis

Program Proposal

Advanced Surgery Center, LLC, an existing Article 28 multi-specialty diagnostic and treatment center certified as a dual single-specialty freestanding ambulatory surgical center, located at 150 South Pearl Street in Pearl River (Rockland County), requests permission for a two year extension of their operating certificate (initially granted via CON #091059B).

The Center, accredited by The Accreditation Association for Ambulatory Health Care (AAAHC), provides surgical services in the areas of plastic surgery and ophthalmology through the use of one procedure room. At the present time, there are no proposals to add any services, expand or renovate the facility or change anything about the Center.

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 their current year (2014) and their first and third years operating budgets subsequent to approval (inclusive of ophthalmology services), in 2016 dollars, as shown below:

	<u>Current Year</u>	<u>Year One</u>	<u>Year Three</u>
Revenues:			
Medicaid MC	\$4,264	\$38,375	\$38,375
Medicare FFS	102,333	142,333	162,333
Commercial FFS	690,748	695,748	698,248
Private Pay	12,792	15,292	14,292
Self- Pay	<u>852,775</u>	<u>852,775</u>	<u>852,775</u>
Total Revenues	\$1,662,912	\$1,744,823	\$1,766,023
Expenses:			
Operating	\$594,245	\$615,365	\$621,626
Capital	<u>192,612</u>	<u>192,612</u>	<u>192,612</u>
Total Expenses	\$786,857	\$807,977	\$814,288
Net Income	<u>\$876,055</u>	<u>\$936,846</u>	<u>\$951,785</u>
Utilization (Procedures)	394	461	486
Cost Per Procedure	\$1,997.10	\$1,752.66	\$1,675.39

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

	<u>Current Year (2014)</u>		<u>Year One</u>		<u>Year Three</u>	
	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>	<u>Procedures</u>	<u>%</u>
Medicaid MC	1	0.25%	9	1.95%	10	2.06%
Medicare FFS	24	6.09%	64	13.88%	84	17.28%
Commercial FFS	162	41.12%	167	36.23%	170	34.98%
Private Pay	3	0.76%	6	1.30%	5	1.03%
Self-Pay	200	50.76%	200	43.38%	200	41.15%
Charity Care	<u>4</u>	<u>1.02%</u>	<u>15</u>	<u>3.26%</u>	<u>17</u>	<u>3.50%</u>
Total	394	100%	461	100%	486	100%

Capability and Feasibility

There are no project costs associated with this application. The submitted budgets indicate a net income of \$936,846 and \$951,785 during the first and third years, respectively. Revenues are based on current reimbursement methodologies. The budgets are reasonable.

BFA Attachment A is the 2014 certified financial statements of Advanced Surgery Center. As shown, the entity had a positive working capital position and a positive net asset position in 2014. Also, the entity achieved a net income of \$876,055.

BFA Attachment B is the internal financial statements of Advanced Surgery Center as of September 30, 2015. As shown, the entity had a positive working capital position and a positive net asset position and achieved a net income of \$243,173 through September 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 Financial Summary - 2014 certified financial statements of Advanced Surgery Center
- BFA Attachment B Financial Summary - internal financial statements of Advanced Surgery Center as of September 30, 2015

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application for a two-year extension of limited life under CON #091059, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152356 E

Advanced Surgery Center

APPROVAL CONTINGENT UPON:

Approval of a two-year extension of the operating certificate 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, acceptable to the Department, to provide quarterly reports to DOH following the completion of each quarter of operation. Reports will be due within 60 days of the conclusion of each quarter as identified by the Effective Date on the Operating Certificate issued at project completion. Reports must include:
 - a. Actual utilization including procedures;
 - b. Breakdown of visits by payor source;
 - c. Percentage of charity care provided by visits;
 - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - e. Number of emergency transfers to a hospital;
 - f. Number of nosocomial infections recorded;
 - g. A brief list of all efforts made to secure charity cases; and
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [RNR]

APPROVAL CONDITIONAL UPON:

1. The project must be completed within three months 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 submission of quarterly reports to the Department, as prescribed by the related contingency, for the duration of the limited life approval of the facility. [RNR]

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



Project # 152289-E
Digestive Disease Center of Central New York, LLC

Program: Diagnostic and Treatment Center **County:** Onondaga
Purpose: Establishment **Acknowledged:** November 18, 2015

Executive Summary

Description

Digestive Disease Center of Central New York, LLC, an existing New York limited liability company that operates an Article 28 freestanding ambulatory surgery center (FASC) at 5100 West Taft Road, Liverpool (Onondaga County), requests approval to modify ownership of the Center by the withdrawal of one physician member and the addition of another, to maintain a total of three members. There will be no change in services.

Membership interest after the requested change is as follows:

<u>Proposed</u>	
Thomas Romano, MD.	37.5%
Borys Buniak, MD.	37.5%
Sara Mitchell, MD.	25.0%

OPCHSM Recommendation
Approval

Need Summary

There will be no Need review 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

The purchase price for the 25% ownership interests is \$500,000 and has been paid in full. No budget analysis was necessary as this is a 25% change in membership, and the Center is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

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 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

April 14, 2016

Program Analysis

Project Proposal

Digestive Disease Center of Central New York, LLC, an existing Article 28 single specialty ambulatory surgery center specializing in gastroenterological procedures, requests approval for the withdrawal of one physician member and the addition of a new physician member to maintain a total of three members. Other than the proposed changes in membership, there are no programmatic changes as a result of this request.

Character and Competence

The proposed new member is Sara H. Mitchell, MD. The following table details the proposed change in ownership:

Member Name	Membership Interest Proposed by this Application
Borys Buniak, M.D.	37.50%
Thomas Romano, M.D.	37.50%
Robert Epstein, M.D.	----
Sara H. Mitchell, M.D. **	25.0%

****Subject to Character & Competence Review**

The new proposed individual member, Sara H. Mitchell, M.D., is a practicing, board-certified Internist who completed a three year fellowship in gastroenterology and has over ten years of experience. She is currently on the staff at Digestive Disease Center of Central New York and plans to continue to perform approximately 1,800 procedures annually

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

Dr. Mitchell disclosed that she has one pending malpractice case.

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Membership Interest Purchase Agreement

The applicant has submitted an executed Membership Interest Purchase Agreement, as summarized below:

Date:	December 10, 2015
Company/Seller:	Digestive Center of Central New York, LLC members: Thomas Romano, MD and Borys Buniak, MD
Buyer:	Sara Howe Mitchell, MD
Purpose:	Purchase of 25 units of membership interests of the Company
Purchase Price:	\$500,000
Payment of Purchase Price:	In consideration for the membership interest, the Buyer has already paid the full purchase price in 2014.

Capability and Feasibility

The purchase price for the 25% ownership interests is \$500,000 and has been paid in full. BFA Attachment A is the personal net worth statement of Sara Mitchell, M.D., which indicates the availability of funds to pay the purchase price in full.

No budget analysis is necessary as this is a 25% change in membership, and the Center is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

BFA Attachment B is the 2012 through 2014 certified financial statements of Digestive Center of Central New York, LLC. As shown, the entity achieved an average positive working capital position and an average positive net asset position from 2012 through 2014. Also, the entity achieved an average net income of \$2,464,856 from 2012 through 2014.

BFA Attachment C is the November 30, 2015 internal financial statements (cash basis) for Digestive Center of Central New York, LLC. As shown, the entity had a positive working capital position and a positive net asset position through June 30, 2015. Also, the entity achieved a net income of \$2,717,817 through November 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	Personal net worth statement of new member
BFA Attachment B	Financial Summary - 2012 through 2014 certified financial statements of Digestive Center of Central New York, LLC
BFA Attachment C	Financial Summary – November 30, 2015 internal financial statements of Digestive Disease Center of Central New York, LLC

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 25% ownership interest to one (1) new member from two (2) existing members, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152289 E

Digestive Disease Center of Central New York, LLC

APPROVAL CONTINGENT UPON:

N/A

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]

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



**Project # 161009-B
Star Surgical Suites**

Program: Diagnostic and Treatment Center **County:** Nassau
Purpose: Establishment and Construction **Acknowledged:** January 11, 2016

Executive Summary

Description

Star Suites, LLC, a New York limited liability company, requests approval to establish and construct an Article 28 freestanding ambulatory surgery center (FASC). The FASC will be certified as a single-specialty FASC specializing in gastroenterology services. The facility will be housed in 11,900 square feet of leased space in an existing building located at 623 Stewart Avenue, Garden City (Nassau County). The FASC will include four procedure rooms, a pre-operating area, eight recovery bays, and requisite support areas. Upon approval, the FASC will be named Star Surgical Suites, LLC.

The proposed members of Star Suites, LLC and their ownership percentages are as follows:

Star Suites, LLC	
Members	%
Sridevi Bhumi, MD	36.50%
Christopher Demetriou, MD	36.50%
Steven Rubin, MD	17.00%
Frontier Health Associates, LLC	10.00%

Frontier Health Associates, LLC is owned by Jordan Fowler (39.00%), Dr. Oleg Gutnik (29.25%), Roy Bejarano (29.25%) and Jason Schifman (2.50%).

Frontier Health Associates, LLC has ownership interest in ten New York State FASC facilities. BFA Attachments C and D present the ownership interests and financial summaries, respectively, of the proposed members affiliated FASCs.

OPCHSM Recommendation

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

Need Summary

The procedures to be performed at the FASC are presently being performed in physicians' private offices. The applicant projects 3,900 procedures in Year 1, with Medicaid at 3.2% 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

Total project costs of \$4,605,260 will be met through members' equity of \$460,525 with the remaining balance of \$4,144,735 to be financed through two bank loans as follows: \$2,744,735 over 5 years at 5% interest for leasehold improvements, and \$1,400,000 over 5 years at 4.5% interest for moveable equipment. The projected budget is as follows:

	<u>Year One</u>	<u>Year Three</u>
Revenues	\$3,644,864	\$3,718,815
Expenses	<u>\$2,662,316</u>	<u>\$2,633,943</u>
Net Income/(Loss)	\$982,548	\$1,084,872

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 is recommended, 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 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 of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
 - a. Actual utilization including procedures;
 - b. Breakdown of visits by payor source;
 - c. Percentage of charity care provided by visits;
 - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - e. Number of emergency transfers to a hospital;
 - f. Number of nosocomial infections recorded;
 - g. A brief list of all efforts made to secure charity cases; and
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans.[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, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]

13. Submission of a photocopy of an amended and executed Administrative Service Agreement, acceptable to the Department. [CSL]
14. Submission of a photocopy of the applicant's amended and completed Articles of Organization, acceptable to the Department. [CSL]
15. Submission of a photocopy of an executed facility contract of sale, deed or lease agreement, acceptable to the Department. [CSL]
16. Submission of a photocopy of completed and executed Articles of Organization and Operating Agreement of Frontier Healthcare Associates, LLC, acceptable to the Department. [CSL]
17. Submission of a photocopy of the Billing Services Agreement of the applicant and completed Exhibit A- Business Associate 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 submission of annual reports to the Department, as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
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 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]
8. Construction must start on or before June 1, 2016 and construction must be completed by December 1, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

April 14, 2016

Need Analysis

Project Description

Star Suites, LLC is seeking approval to establish and construct a freestanding ambulatory surgery center providing single specialty gastroenterology surgery services to be located at 623 Stewart Avenue, Garden City, 11530, in Nassau County. Upon approval, Star Suites, LLC will change its name to Star Surgical Suites, LLC.

Analysis

The service area of Nassau County has a total of nine freestanding ambulatory surgery centers: five multi-specialty and four single-specialty. The table below shows the number of patient visits at ambulatory surgery centers in Nassau County for 2013 and 2014.

ASC Type	Facility Name	Total Patients 2013	Total Patients 2014
Multi	Day OP of North Nassau Inc	654	149
Multi	Day-OP Center of Long Island Inc	3,952	3,259
Single	Endoscopy Center of Long Island, LLC	7,141	7,981
Multi	Garden City Surgi Center	5,870	6,035
Single	Island Eye Surgicenter LLC	10,396	10,269
Single	Long Island Center for Digestive Health, LLC	5,772	6,020
Single	Meadowbrook Endoscopy Center	6,617	7,702
Multi	Pro Health Ambulatory Surgery Center, Inc	6,595	12,325
Multi	South Shore Ambulatory Surgery Center, LLC	5,537	4,646
Total		52,534	58,386

(Source: SPARCS-2015)

There was an 11.1% year-to-year increase in the number of patients served by ambulatory surgery centers. For the single gastroenterology specialty ASCs, the number of patient visits was 19,530 in 2013 and 21,703 in 2014, also an 11.1% year-to-year increase.

The applicant projects 3,900 procedures in Year 1 and 3,978 in Year 3 based on the current practices of participating surgeons. The table below shows projected utilization by payor source for Year 1 and Year 3.

	Year 1 Volume	Year 1 %	Year 3 Volume	Year 3 %
Commercial Ins	2,898	74.31%	2,956	74.31%
Medicare	729	18.72%	744	18.70%
Medicaid	195	5.00%	199	5.00%
Private Pay	0	0.0%	0	0.0%
Charity Care	78	1.97%	79	1.99%
Total	3,900	100.0%	3,978	100.0%

The Center has stated that it intends to obtain contracts with the following Medicaid Managed Care plans: Healthfirst and Fidelis.

The applicant is committed to serving all persons in need without regard to ability to pay or source of payment. The Center will seek to partner with local community organizations and FQHC's that can refer qualified uninsured patients to the Center. The Center has an Administrative Service agreement with Frontier Healthcare Management. Frontier has partnerships with several organizations that include the following FQHC's: Community Health Network, Charles B. Wang Center, and Hudson Health Care. Frontier Healthcare Management will assist the Center in establishing relationships with these organizations in order to develop referrals for underinsured patients to be treated at the proposed Center.

Conclusion

Approval of this project will bring office-based surgical procedures into an Article 28 regulated setting serving the same community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Project Proposal

Star Suites, LLC seeks approval to establish and construct a single-specialty ambulatory surgery center (ASC) specializing in gastroenterological procedures at 623 Stewart Avenue in Garden City (Nassau County). Upon approval, the ASC will be known as Star Surgical Suites, LLC.

This project consolidates the participating physicians' three separate, office-based surgical practices into a single, regulated Article 28 location, thus providing a measure of compliance with the latest standards of safe health care delivery at a location that is convenient and accessible for the surrounding community.

Proposed Operator	Star Suites, LLC
Doing Business As	Star Surgical Suites, LLC
Site Address	623 Stewart Avenue Garden City New York 11530 (Nassau County)
Surgical Specialties	Single Specialty: Gastroenterology
Operating Rooms	0
Procedure Rooms	4 (Class A)
Hours of Operation	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.)
Staffing (1st Year / 3rd Year)	16.5 FTEs / 16.5 FTEs
Medical Director(s)	Christopher Demetriou, M.D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Will be provided by South Nassau Communities Hospital 6.2 miles / 20 minutes
On-call service	24/7 service to immediately refer the patient to the Center's on-call physician.

Character and Competence

The members of the LLC are:

Name	Membership
Individual Physician Members	90%
Sridevi Bhumi, M.D. (36.50%)	
Christopher Demetriou, M.D. (36.50%), <i>Medical Director</i>	
Steven Rubin, M.D. (17.00%)	
Frontier Healthcare Associates, LLC	10%
Jordan Fowler (39.00%)	
Oleg Gutnik, M.D. (29.25%)	
Roy Bejarano (29.25%)	
Jason Schifman (2.5%)	

Three individual physician members, each of whom are practicing surgeons, board-certified in gastroenterology, hold a 90% membership interest. The remaining 10% membership interest is held by Frontier Healthcare Associates, LLC, an ambulatory endoscopy center development and management company comprised of four individual members.

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.

Frontier Healthcare Associates, LLC has disclosed membership interest in Yorkville Endoscopy. 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 by the Centers for Medicare and Medicaid (CMS) on October 10, 2014 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): quality assessment and performance improvement minutes and audits, complaint logs, and patient discharge/transfer data.

Integration with Community Resources

The Center plans to work closely with its patients to educate them on the availability of primary care services offered by local providers, including the broad array of services offered by South Nassau Communities Hospital (the Center's back-up hospital). A formal outreach program will be developed to inform members of the local community, including local physicians, of the services available and benefits derived from outpatient gastroenterology treatment.

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. In addition, patients will be treated on the basis of need for gastroenterology procedures, without discrimination due to ability to pay. The Center will use a sliding fee scale and is committed to providing care for those who are uninsured or unable to pay.

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

The applicant submitted a draft lease for the proposed site, as summarized below:

Premises:	Approximately 11,900 gross square feet in an existing building located at 623 Stewart Avenue, Garden City , (Nassau County), NY
Landlord:	SiriShield, LLC.
Lessee:	Star Suites, LLC.
Term:	15 years with two (2) five- year renewal options
Rental:	\$357,000 annually (\$29,750 /month or \$30 per sq. ft.) with a 1% annual rate increase
Provisions:	Triple Net Lease, lessee pays all fees associated with the leased asset

SiriShield, LLC is owned by three proposed Star Suites, LLC members—Dr. Christopher Demetriou (33.34%), Dr. Sridevi Bhumi (33.33%) and Dr. Steven Rubin (33.33%). The applicant provided an affidavit stating that, in terms of economic relationship, the lease will be treated as an arm's length arrangement. However, the Department deems the lease agreement to be non-arm's length. The applicant submitted letters from two NYS licensed realtors attesting to the rent being of fair market value.

Administrative Services Agreement

The applicant submitted a draft Administrative Services Agreement with Frontier Healthcare Management Services, LLC, summarized below:

Facility/Operator:	Star Suites, LLC.
Administrator:	Frontier Healthcare Management Services, LLC.
Administrator Fee:	\$130,000 annual fee with a 1.5% annual increase
Term:	2 years with unlimited automatic (1) year renewals.
Service Provided:	All administrative services as detailed in the administrative services agreement, which includes: staffing/scheduling; accounting; ordering/purchasing; compliance with policies and procedures, and medical staff By-laws/rules; medical staff application and credentialing; accreditation; physical plant/materials management; nursing and administration.

While Frontier Healthcare Management Services, LLC 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 one of the applicant members and the administrative service agreement provider. Frontier Healthcare Management Services, LLC is a wholly owned subsidiary of Frontier Health Associates, LLC.

Billing Services Agreement

The applicant submitted a draft Billing Services Agreement with Frontier Healthcare Billing Services, LLC, summarized below:

Facility/Operator:	Star Suites, LLC.
Administrator:	Frontier Healthcare Billing Services, LLC.
Billing Fee:	\$22.50 per technical and professional claim processed with an annual cost of living increase of 1.5%
Term:	2 years with unlimited automatic one-year renewals.
Service Provided:	Claims processing and accounts receivable management services

While Frontier Healthcare Billing Services, LLC. 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 one of the applicant members and the billing service agreement provider. Frontier Healthcare Billing Services, LLC is a wholly owned subsidiary of Frontier Health Associates, LLC.

Total Project Cost and Financing

Total project costs, estimated at \$4,605,260, are broken down as follows:

Renovation & Demolition	\$2,079,085
Design Contingency	\$207,908
Construction Contingency	207,908
Architect/Engineering Fees	104,000
Construction Manager Fees	52,000
Other Fees	384,831
Movable Equipment	1,456,000
Interim Interest Expense	86,349
CON Application Fee	2,000
CON Processing Fee	<u>25,179</u>
Total Project Cost	\$4,605,260

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

The applicant's financing plan appears as follows:

Cash Equity (Applicant)	\$460,525
Bank Loan for Leasehold Improvements (5% for a 5-year term)	\$2,744,735
Bank Loan for M/E (4.50% for a 5-year term)	<u>\$1,400,000</u>
Total	\$4,605,260

JP Morgan Chase Bank has provided a letter of interest for both loans at the stated terms.

Operating Budget

The applicant has submitted their first and third year operating budgets, in 2016 dollars, as summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Procedure</u>	<u>Total</u>	<u>Per Procedure</u>	<u>Total</u>
Revenues				
Medicaid	\$677.65	\$132,141	\$677.31	\$134,784
Medicare	\$778.55	\$568,338	\$779.17	\$579,704
Commercial	\$1,016.01	<u>\$2,944,385</u>	\$1,016.35	<u>\$3,004,327</u>
Total Revenues		\$3,644,864		\$3,718,815
Expenses				
Operating	\$404.83	\$1,578,834	\$409.31	\$1,628,225
Capital	<u>\$277.82</u>	<u>\$1,083,482</u>	<u>\$252.82</u>	<u>\$1,005,718</u>
Total Expenses	\$682.65	\$2,662,316	\$662.13	\$2,633,943
Net Income or (Loss)		<u>\$982,548</u>		<u>\$1,084,872</u>
Utilization (procedures)		3,900		3,978

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

	<u>Year One</u>	<u>Year Three</u>
Medicaid	5.00%	5.00%
Medicare	18.72%	18.70%
Commercial	74.31%	74.31%
Charity	<u>1.97%</u>	<u>1.99%</u>
Total	100.00%	100.00%

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 commercial payor rates reflecting adjustments based on experience in the region. The applicant indicated that they are committed to serving all persons in need of surgical care without regard to ability to pay or other personal characteristics. They have submitted their Charity Care Program documenting their intent to partner with local community agencies and various FQHCs to market the Center's Charity Care Program, and to establish contracts with Medicaid Managed Care Plans
- Utilization projections are based on the current caseloads of Drs. Bhumi, Demetriou and Rubin who are board-certified gastroenterologists. The applicant indicated that none of the projected procedures would come from any hospital. The procedures are currently being performed in the physicians' private office-based practices, which are located in the same community that the FASC will serve. Each physician has submitted letters in support of their utilization projections.
- Expense assumptions are based upon staffing, operating and capital costs as determined based on the experience of 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 73.05% of the projected utilization or 2,849 procedures in year one, and 78.84% or 2,818 procedures in year three.

The budgets are reasonable.

Capability and Feasibility

The total project cost of \$4,605,260 will be satisfied by the proposed members' equity contribution of \$460,525 with the balance of \$4,144,735 to be financed at the above stated terms.

Working capital requirement is estimated at \$438,080 based on two months of third year expenses. The applicant has submitted a letter of interest from JP Morgan Chase to finance \$219,040 of the working capital with loan for a 5-year term at an estimated 4% interest rate. The remaining \$219,040 will be provided from the proposed 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 Star Suites, LLC's pro-forma balance sheet that shows operations will start with \$679,566 in equity.

Star Suites, LLC projects net income of \$982,548 and \$1,084,872 in the first and third years, respectively. Revenues for Medicare and Medicaid are based on current and projected reimbursement rates for the respective payors. The payment rates for commercial payors were estimated at 150% of the Medicaid case rate. The budgets are reasonable.

The applicant recognizes the need to address the eventual change over to Managed Care Organizations. They are not yet in a position to execute and negotiate contracts or letters of intent with MCOs at this time, but plan on contracting with Affinity Health Plans and Healthfirst, upon approval of this application.

BFA Attachment D is the financial summaries of the proposed members' affiliated D&TCs, which shows the facilities have maintained an average positive net asset position, positive working capital position and a positive income from operations for the period shown, with the exception of Long Island Digestive Endoscopy Center. Long Island Digestive had a negative working capital position due to the financial statements being presented on a cash basis, which excluded the Accounts Receivable of \$3,089,989. Including the Accounts Receivable, the facility would have had a positive working capital position.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statement of Proposed Members of Star Suites, LLC
BFA Attachment B	Pro Forma Balance Sheet of Star Suites, LLC
BFA Attachment C	Frontier Health Associates ownership interest in other NYS FASC facilities
BFA Attachment D	2013-2014 Certified and 2015 internal financial statements for affiliated NYS FASC facilities.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a single-specialty freestanding ambulatory surgical center specializing in gastroenterology to be located at 623 Stewart Avenue, Garden City, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161009 B

Star Surgical Suites

APPROVAL CONTINGENT UPON:

Approval with an expiration of the operating certificate five years from the date of its issuance is recommended, 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 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 of a signed agreement with an outside, independent entity, acceptable to the Department, to provide annual reports to DOH following the completion of each full year of operation. Reports will be due within 60 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. Each report is for a full operational year and is not calendar year based. For example, if the Operating Certificate Effective Date is June 15, 2018, the first report is due to the Department no later than August 15, 2019. Reports must include:
 - a. Actual utilization including procedures;
 - b. Breakdown of visits by payor source;
 - c. Percentage of charity care provided by visits;
 - d. Number of patients who needed follow-up care in a hospital within seven days after ambulatory surgery;
 - e. Number of emergency transfers to a hospital;
 - f. Number of nosocomial infections recorded;

- g. A brief list of all efforts made to secure charity cases; and
 - h. A brief description of the progress of contract negotiations with Medicaid managed care plans. [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, acceptable to the Department, as described in BAEFP Drawing Submission Guidelines DSG-03. [AER]
 13. Submission of a photocopy of an amended and executed Administrative Service Agreement, acceptable to the Department. [CSL]
 14. Submission of a photocopy of the applicant's amended and completed Articles of Organization, acceptable to the Department. [CSL]
 15. Submission of a photocopy of an executed facility contract of sale, deed or lease agreement, acceptable to the Department. [CSL]
 16. Submission of a photocopy of completed and executed Articles of Organization and Operating Agreement of Frontier Healthcare Associates, LLC, acceptable to the Department. [CSL]
 17. Submission of a photocopy of the Billing Services Agreement of the applicant and completed Exhibit A- Business Associate 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 submission of annual reports to the Department, as prescribed by the related contingency, each year, for the duration of the limited life approval of the facility. [RNR]
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 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]
8. Construction must start on or before June 1, 2016 and construction must be completed by December 1, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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



**Project # 161001-B
Northern Medical Center, Inc.**

Program: Diagnostic and Treatment Center **County:** Orange
Purpose: Establishment and Construction **Acknowledged:** January 12, 2016

Executive Summary

Description

Northern Medical Center, Inc. (NMC), an existing not-for-profit corporation, requests approval to establish and construct an Article 28 diagnostic and treatment center (D&TC) to be located in leased space at 14 Jason Place, Middletown (Orange County). The D&TC will occupy approximately 10,000 square feet of space on one floor of the building.

The applicant intends to provide internal medicine, family medicine, pediatrics, physical therapy, psychiatry, acupuncture, herbal medicine, and integrative medicine. The stated purpose of the D&TC is to provide culturally and linguistically sensitive primary care services through innovative approaches that treat the entire person utilizing best practices from allopathic medicine, traditional Chinese Medicine and other integrative approaches.

OPCHSM Recommendation
Contingent Approval

Need Summary

Proposed services to be certified are: Medical Services-Primary Care, Medical Services-Other Medical Specialties and Dental Services. The applicant projects 4,901 visits 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

Project costs of \$1,647,823 will be met as follows: Fundraising of \$108,522 and Equity of \$1,539,301 via the landlord. The projected budget is as follows:

Revenues	\$3,442,169
Expenses	<u>3,217,850</u>
Excess of Revenues over Expenses	\$224,319

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 documentation of contributions to be used as the source of financing, acceptable to the Department. [BFA]
3. Submission of an executed building lease acceptable, to the Department. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
6. Submission of proof of site control, acceptable to the Department. [CSL]
7. Submission of a photocopy of the Board Resolution adopting the applicant's bylaws, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed and amended bylaws, acceptable to the Department. [CSL]
9. Submission of the applicant's updated organizational chart, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Medical Director's agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's Administrative Service 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. Construction must start on or before May 1, 2016 and construction must be completed by November 1, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

Council Action Date

April 14, 2016

Need Analysis

Background and Analysis

The primary service area of the proposed facility encompasses Middletown, Otisville and Cuddebackville in Orange County, which includes the zip codes of 10940, 10963 and 12729. The secondary service area includes all of Orange County. The population of Orange County in 2010 was 372,813. Per projection data from the Cornell Program on Applied Demographics, the population of Orange County is estimated to grow to 413,327 by the year 2025.

The Middletown Service Area is designated a Medically Underserved Area/Population (Source-HRSA):

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 shows that the PQI rates are significantly higher for the service area than for New York State as a whole.

Hospital Admissions per 100,000 Adults for Selected PQIs

PQI Rates-2014	Service Area ¹	New York State
All	2,216	1,387

Source: DOH Health Data, 2015

¹ Includes zip codes: 10940, 10963 and 12729

The number of projected visits is 4,901 for Year 1 and 18,859 for Year 3.

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 additional access to primary care services, dental and specialty medical services to Middletown and the surrounding communities of Orange County.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Northern Medical Center, Inc. (NMC) requests approval to establish and construct a not-for-profit Article 28 diagnostic and treatment center at 14 Jason Place in Middletown (Orange County).

NMC intends to provide culturally and linguistically sensitive primary care medicine through innovative approaches that treat the entire person and utilize the best practices from allopathic medicine, as well as from traditional Chinese medicine and other integrative approaches. The facility will offer internal and pediatric medicine, physical therapy, acupuncture and herbal medicine, psychiatry, and integrative medicine. Additionally, NMC plans to offer education programs on health promotion and disease prevention to the local community.

Proposed Operator	Northern Medical Center, Inc.
Site Address	14 Jason Place Middletown, NY (Orange County)
Services	Medical Services – Primary Medical Medical Services – Other Medical Specialty Dental
Hours of Operation	Monday 1 pm – 5 pm, and earlier by appointment Tuesday through Thursday 9 am to 7 pm Friday 9 am – 5 pm Saturday 9 am – 1 pm, and later by appointment
Staffing (1st/ 3rd Year)	10.2 FTEs / 26.4 FTEs
Medical Director(s)	Damon J. Noto, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Orange Regional Medical Center 5 miles/ 15 minutes away

Character and Competence

The proposed initial Board of Directors for Northern Medical Center is:

Name

Yiyuan Joseph Zhao, PhD
Viviana Galli, MD
Cynthia Z. Liu, MD

Y. Joseph Zhao, PhD, is the Senior Vice President of Fei Tian College. He received his PhD from Stanford University in 1989 and was a tenured full professor at the University of Minnesota before joining Fei Tian College in 2012, where he now serves as Senior Vice President. In that role, his responsibilities include obtaining accreditation for the college, strategic planning and fundraising. The experience and skills honed in that position share many similarities with the process for healthcare facility accreditation. Prior to his current administrative position, Dr. Zhao specialized in computer modeling of dynamic systems, optimization of system operations, and data analysis. Dr. Zhao also has extensive experience in the operations of non-profit organizations.

Viviana Galli, MD, is a board-certified psychiatrist with more than 20 years of experience in child, adolescent, adult, and adult substance abuse in university, military, and community health settings. Dr. Galli obtained her MD degree from the University of Buenos Aires, Facultad de Medicina in 1980. Dr. Galli has served as the Medical Director of Outpatient Drug and Alcohol Services at the Blanchfield Army Community Hospital, Ft. Campbell, and Medical Director of the Inpatient Mental Health Unit and New Directions at the Bon Secours Community Hospital. Dr. Galli is also a certified acupuncturist and holds a Suboxone certificate. Currently, she practices child, adolescent, and adult psychiatry for the Orange County Mental Health Clinic in Port Jervis, NY.

Cynthia Z. Liu, MD, PhD, is a board certified pathologist, and has been the Assistant Director of the Hematopathology and Molecular Pathology Laboratories at New York University (NYU) Langone Medical Center since 2004, in charge of daily operations. Previously, Dr. Liu served as the Director of Flow Cytometry Laboratory at Bellevue Hospital Center. Since September 2011, she has been the Director of Hematopathology Fellowship, in the Department of Pathology at Langone Medical Center, where she played a leading role in obtaining program accreditation. For the past six years, she has been the primary person responsible for NYU Hematopathology Quality Assurance. Additionally, since June 2015, she has served as the Medical Director of NeoGenomics Laboratories in Kingston, New York.

Disclosure information was similarly submitted and reviewed for the Medical Director, Damon J. Noto, MD. Dr. Noto will also serve as the Administrator of the Center. Dr. Noto is a practicing physician who was educated at the Mount Sinai School of Medicine and completed a completed a Spine and Joint Fellowship at New England Baptist Hospital. He is dually board certified in Pain Medicine and Physical Medicine and Rehabilitation and has owned and managed a private practice, The Spine and Joint Center, in Hackensack, New Jersey for over eight (8) years. Dr. Noto's advanced studies include anti-aging medicine, nutrition, exercise and training in acupuncture and traditional Chinese medicine. Dr. Noto disclosed one open malpractice case.

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, contingent approval is recommended.

Financial Analysis

Lease Rental Agreement

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

Premises:	10,000 square feet located at 14 Jason Place, Middletown, New York.
Lessor:	Fei Tian College
Lessee:	Northern Medical Center, Inc.
Term:	5 years with a one five-year renewal option, plus one additional five-year renewal option
Rental:	\$120,000 (\$12.00 per sq. ft.) in year one with a 3% increase each year thereafter
Provisions:	The lessee shall be responsible for utilities, real estate taxes and maintenance

The applicant has submitted an affidavit indicating that the lease arrangement will be a non-arm's length lease arrangement. The landlord and the tenant have a pre-existing relationship in that a member of the Board of Directors is an administrator of the college. The applicant has submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

Total Project Cost and Financing

Total project cost, which is for renovations and the acquisition of moveable equipment, is estimated at \$1,647,823, further broken down as follows:

Renovation and Demolition	\$1,303,641
Site Development	73,680
Temporary Utilities	8,363
Asbestos Abatement or Removal	4,658
Design Contingency	4,560
Construction Contingency	97,867
Fixed Equipment	26,000
Other Fees (Consultant)	13,500
Moveable Equipment	84,019
Telecommunications	20,532
CON Fee	2,000
Additional Processing Fee	<u>9,003</u>
Total Project Cost	\$1,647,823

Project costs are based on a construction start date of October 1, 2016, and a six-month construction period.

The applicant's financing plan appears as follows:

Fundraising	\$108,522
Equity (Landlord)	<u>1,539,301</u>
Total	\$1,647,823

Department staff has reviewed documentation provided by the landlord, which indicates sufficient equity.

Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, during the first and third years of operation, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Visit</u>	<u>Total</u>	<u>Per Visit</u>	<u>Total</u>
Revenues	\$132.30	\$1,795,358	\$130.71	\$3,442,169
Expenses				
Operating	\$106.41	\$1,443,993	\$115.38	\$3,038,644
Capital	<u>\$10.85</u>	<u>147,217</u>	<u>\$6.80</u>	<u>179,206</u>
Total Expenses	\$117.26	\$1,591,210	\$122.18	\$3,217,850
Excess of Revenues over Expenses		<u>\$204,148</u>		<u>\$224,319</u>
Utilization (Visits)		13,570		26,335

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	11.0%	13.0%
Medicaid Fee For Service	5.0%	3.0%
Medicare Managed Care	7.0%	10.0%
Medicare Fee For Service	3.0%	3.0%
Commercial Managed Care	30.0%	30.0%
Commercial Fee For Service	23.0%	20.0%
Private Pay	20.0%	20.0%
Charity Care	1.0%	1.0%

Expense and utilization assumptions are based on the demographic analysis of patient need in the proposed service area and the associated staffing requirements needed to address these needs.

The payer mix is consistent with the demographics of the area.

Capability and Feasibility

Project costs of \$1,647,823 will be met as follows: Equity (Landlord) of \$1,539,301 and Fundraising of \$108,522. The applicant has submitted bank account records of the landlord, Fei Tian College, which indicates the availability of sufficient funds for the equity contribution. The applicant has not received any proceeds relative to the fundraising. As a contingency of approval, the applicant must submit documentation acceptable to the Department of Health, of contributions to be used as the source of financing.

Working capital requirements are estimated at \$536,308, which is equivalent to two months of third year expenses. The applicant will meet the working capital requirements via equity via a pledge from Dragon Springs Buddhist, Inc. The applicant provided an executed pledge agreement that states that Dragon Springs Buddhist, Inc. is committed in providing the funds. The applicant has submitted bank accounts records of Dragon Springs Buddhist, Inc. indicating sufficient funds for the equity contribution. BFA Attachment A is the pro forma balance sheet of Northern Medical Center, Inc. as of the first day of operation, which indicates a positive net asset position of \$644,830.

The submitted budget indicates an excess of revenues over expenses of \$204,148 and \$224,319 during the first and third years, respectively. Revenues are based on current reimbursement methodologies for primary care services. The submitted budget appears reasonable.

Subject to the noted contingencies, the applicant has demonstrated the capability to proceed in a financial feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Pro Forma Balance Sheet of Northern Medical Center, Inc.

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a diagnostic and treatment center to be located at 14 Jason Place, Middletown, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161001 B

Northern Medical Center, Inc.

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. [PMU]
2. Submission of documentation of contributions to be used as the source of financing, acceptable to the Department. [BFA]
3. Submission of an executed building lease acceptable, to the Department. [BFA]
4. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
5. The submission of State Hospital Code (SHC) Drawings for review and approval, as described in BAEFP Drawing Submission Guidelines DSG-03 Outpatient Facilities. [AER]
6. Submission of proof of site control, acceptable to the Department. [CSL]
7. Submission of a photocopy of the Board Resolution adopting the applicant's bylaws, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed and amended bylaws, acceptable to the Department. [CSL]
9. Submission of the applicant's updated organizational chart, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's Medical Director's agreement, acceptable to the Department. [CSL]
11. Submission of a photocopy of the applicant's Administrative Service 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. Construction must start on or before May 1, 2016 and construction must be completed by November 1, 2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

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



Project # 152263-B
USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis

Program: Diagnostic and Treatment Center **County:** Erie
Purpose: Establishment and Construction **Acknowledged:** November 4, 2015

Executive Summary

Description

USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis, a New York limited liability company, requests approval to establish and construct a 13-station Article 28 end-stage renal dialysis (ESRD) center. The proposed center will occupy 6,900 square feet of space located at 2861 Harlem Road, Cheektowaga (Erie County). The applicant will lease the space from Benderson Harlem Associates, L.P. pursuant to an arm's length lease agreement. The center will provide only outpatient hemodialysis service.

The proposed members of USRC West Cheektowaga, LLC and their ownership interests are:

U.S. Renal Care, Inc. (USRC)	55%
LEDP II, LLC	45%
Heather Wheat, M.D. (20%)	
Kristen Matteson, M.D. (20%)	
Arundathi Namassivaya, M.D. (20%)	
Richard Steinacher, M.D. (20%)	
Maria C.V. Del Castillo, M.D. (20%)	

U.S. Renal Care, Inc. currently has indirect ownership in the following three New York ESRD centers located in Erie County: USRC Cheektowaga, Inc. d/b/a U.S. Renal Care Cheektowaga Dialysis (13 stations); USRC Tonawanda, Inc. d/b/a U.S. Renal Care Tonawanda Dialysis (13 stations); and USRC

Williamsville, Inc. d/b/a U.S. Renal Care Williamsville Dialysis (13 stations).

OPCHSM Recommendation
Contingent Approval

Need Summary

There is currently an unmet need for 42 chronic dialysis stations in Erie County; this project would meet some of the unmet need for dialysis services.

Program Summary

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

Financial Summary

The total project costs of \$1,818,147 will be met with \$181,815 of members' equity, \$345,000 via a landlord contribution, and an intercompany loan from USRC for \$1,291,332 at an interest rate of prime (3.50% as of February 5, 2016) with a five-year term. The projected budget is as follows:

	<u>Year Three</u>
Revenue	\$2,236,175
Expenses	<u>\$2,082,571</u>
Net Income	\$153,604

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 NYSE-CON upon mailing. [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 intercompany revolving credit agreement, 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 documentation of receipt of the construction allowance payment from the Landlord, acceptable to the Department of Health. [BFA]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
9. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
10. Submission of the applicant's amended and executed operating agreement, acceptable to the Department. [CSL]
11. Submission of a copy of the applicant's amended and executed Medical Director Agreement, acceptable to the Department. [CSL]
12. Submission of a copy of the applicant's amended and executed Administrative Service Agreement, acceptable to the Department. [CSL]
13. Submission of a copy of the applicant's amended and executed Company Agreement, acceptable to the Department. [CSL]
14. Submission of an amended and executed Operating Agreement of LEPD, II, LLC, acceptable to the Department. [CSL]
15. Submission of an amended and executed by-laws of U.S. Renal LEDP, II, 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 06/06/2016 and construction must be completed by 10/07/2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]

7. 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.
[AER]

Council Action Date

April 14, 2016

Need Analysis

Analysis

The population of Erie County in 2014 was 922,835. The table below shows the portion of the County population belonging to two groups statistically more likely to need end stage renal dialysis and compares it with the rest of the State.

	Erie County	New York State
Ages 65 and over:	16.5%	14.7%
Non-white:	23.6%	43.5%

Source: U.S. Census 2014

Capacity

The Department's methodology to estimate capacity for chronic dialysis stations is specified in Part 709.4 of Title 10 and is as follows:

- One free standing station represents 702 projected treatments per year. This is based on the expectation that the center will operate 2.5 patient shifts per day at 6 days per week, which is 15 patients per week, per station [(2.5 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 can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 216 free-standing chronic dialysis stations operating in Erie County and 13 in pipeline for a total of 229.
- Based upon DOH methodology, the 216 existing free standing stations in Erie County could treat a total of 972 patients annually. Including the additional 13 pipeline stations, the county could treat a total of 1,030 patients annually.

Need Projections

Erie County Residents		Actual		Projected	
		2014	2015	2019	
Need projected 5 years out from most current IPRO data available for Patients Treated in County		Total Patients Treated in County	Total County Residents in Treatment	Total Patients Treated in County ¹	Total County Residents in Treatment ¹
		1,320	1,219	1,531	1,372
Free-Standing Dialysis Stations		2014	2015	2019	
A	Stations Required to Treat ²	294	271	341	305
B	Existing Stations	216	216	216	216
C	Stations In Pipeline	13	13	13	13
D	Stations Requested this CON	13	13	13	13
E	w/Approval of This CON (B+C+D)	242	242	242	242
F	Unmet Need With Approval (A-E)	52	29	99	63

¹ Based upon an estimated 3% accrued annual increase

² Based upon DOH methodology (total patients/4.5)

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 applicant estimates that the facility will provide 2,151 chronic renal dialysis treatments in Year 1 and 6,406 dialysis treatments in Year 3 of operations.

Conclusion

This project will increase the number of approved free-standing dialysis stations in Erie County from 229 to 242. The additional stations will help to reduce the unmet need for dialysis services among County residents.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

USRC West Cheektowaga, LLC dba U.S. Renal Care West Cheektowaga Dialysis, an existing limited liability company, seeks approval to establish and construct a 13-station chronic renal dialysis center at 2861 Harlem Road in Cheektowaga (Erie County).

Proposed Operator	USRC West Cheektowaga, LLC
Doing Business As	U.S. Renal Care West Cheektowaga Dialysis
Site Address	2861 Harlem Road Cheektowaga, NY 14225 (Erie County)
Approved Services	Chronic Renal Dialysis (13 Stations)
Shifts / Hours / Schedule	Hours: 6:00 am to 8:00 pm Initially, clinic will be open 3 days/week (Monday/Wednesday/Friday). By the end of Year 2, the clinic anticipates to expand to 6 days/week (Tuesday/Thursday/Saturday)
Staffing (1st Year / 3rd Year)	7.5 FTEs increasing by 4.0 FTEs by the third year of operation
Medical Director(s)	Maria Concepcion V. Del Castillo, M. D.
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Catholic Health- Kenmore Mercy Hospital 8.98 miles / 15 minutes away

Character and Competence

The members of USRC West Cheektowaga, LLC are as follows:

<u>Name</u>	<u>Membership Interest</u>
U.S. Renal Care, Inc.	55.0%
<i>Directors & Officers</i>	
J. Christopher Brengard	
Stephen M. Pirri	
Thomas L. Weinberg	
James D. Shelton	
David P. Eldridge	

LEDP II, LLC**45.0%**

Heather Wheat, MD, *manager* (20%)
Kristen Matteson, MD, *manager* (20%)
Arundathi Namassivaya, MD (20%)
Richard Steinacher, DO (20%)
Maria Concepcion V. Del Castillo, MD (20%)

Disclosure information was also submitted and reviewed for the Medical Director. Dr. Maria Concepcion V. Del Castillo is board-certified in Internal Medicine and Nephrology and has extensive experience with the renal population. Dr. DelCastillo completed a Fellowship in Nephrology at North Shore University Hospital (Manhasset) and has admitting privileges at Millard Filmore Hospital, Kenmore Mercy Hospital, South Buffalo Mercy Hospital and Degraff Memorial Hospital.

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.

The members of LEDP II, LLC disclosed the following: In March 2007, Nephrology Associates of WNY, LLP became aware of a billing error involving the drug Aranesp. The Group investigated the billing error and completed a full audit. Subsequently, the Group self-reported to Medicare through the (Buffalo area) US Attorney General's Office and the matter was settled.

The officers of U.S. Renal Care (USRC) disclosed that U.S. Renal Care acquired Dialysis Corporation (DCA) in June 2010, however, in February 2010, DCA had been subpoenaed by the Office of the Inspector General of the U.S. Department of Health and Human Service (OIG) with respect to an investigation relating to alleged improper Medicare and Medicaid billing at certain DCA clinics. The investigation related to two qui tam suits with the Department of Justice and private litigants. USRC denied any impropriety or liability by DCA in both cases, but determined that it should settle those cases with the government and private litigants which it did in May 2013 and September 2014. Both suits have been dismissed. No non-DCA facilities owned by USRC were involved in the investigations and litigation.

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 (DFC) 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 indicates only 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 nine 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 is calculated 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, facilities are awarded stars as delineated below.

Facilities with the top 10% final scores are given 5 stars.

Facilities with the next 20% highest final scores are given 4 stars.

Facilities within the middle 40% of final scores are given 3 stars.

Facilities with the next 20% lowest final scores are given 2 stars.

Facilities with the bottom 10% final scores are given 1 star.

U.S. Renal Care, Inc. operates over 190 dialysis centers in the nation and has indirect ownership in three centers located in New York State's Erie County. As USRC will have a 55% membership interest in USRC West Cheektowaga, the Star Ratings for USRCs New York facilities are noted below. (A comprehensive list of Star Ratings for all USRC-operated centers is provided in **HSP Attachment A.**)

<u>New York Facilities operated by U.S. Renal Care (USRC)</u>	<i>(Refer to HSP Attachment A for a list of all of USRCs dialysis centers.)</i>	
USRC Cheektowaga, Inc. d/b/a U.S. Renal Care Cheektowaga Dialysis	2875 Union Rd Suite 13 C/D Cheektowaga NY 14225	★ ★ ● ● ●
USRC Williamsville, Inc. d/b/a U.S. Renal Care Williamsville Dialysis	7964 Transit Rd Suite 8-A Williamsville NY 14221	★ ★ ★ ● ●
USRC Tonawanda, Inc. d/b/a U.S. Renal Care Tonawanda Dialysis	3161 Eggert Rd Tonawanda NY 14150	★ ★ ★ ★ ●

(Information retrieved from <http://www.medicare.gov/dialysisfacilitycompare/#> on 3/4/16)

Recommendation

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

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Total Project Costs and Financing

Total project costs for renovation and moveable equipment are estimated at \$1,818,147 broken down as follows:

Renovation & Demolition	\$1,126,750
Design Contingency	\$6,900
Construction Contingency	\$112,675
Architect/Engineering Fees	\$69,000
Movable Equipment	\$447,546
Telecommunications	\$43,342
CON Fee	\$2,000
Additional Processing Fee	<u>\$9,934</u>
Total Project Cost	\$1,818,147

Project costs are based on a construction start date of June 6, 2016, with a four-month construction period.

The landlord is contributing \$345,000 toward construction of the center for building improvements related to demolition and renovation. The costs for bringing the center online will be borne as follows:

The applicant's financing plan appears as follows:

Equity	\$181,815
Intercompany Loan (prime [3.5% at 2/4/16], 5-year term)	\$1,291,332
Landlord financed portion (construction allowance)	<u>\$345,000</u>
Total	\$1,818,147

Equity of \$181,815 will be provided from the proposed members as follows: \$99,998 from USRC, and \$81,817 from LEDP II, LLC. USRC has provided a letter of interest for the Intercompany Loan. The landlord, Benderson Harlem Associates, L.P., has provided for a \$345,000 construction allowance in the lease agreement to cover part of the demolition and renovation costs associated with this project.

Lease Rental Agreement

The applicant submitted an executed lease rental agreement for the site, summarized below:

Date:	October 21, 2015
Premises:	6,900 sq. ft. in a building located at 2861 Harlem Road, Cheektowaga, NY
Lessor:	Benderson Harlem Associates, L.P.
Lessee:	USRC West Cheektowaga, LLC
Term:	10 years
Rental:	Years 1-5: \$151,800 per year (\$12,650 per month, \$22 per sq. ft.) Years 6-10: \$165,600 per year (\$13,800 per month, \$24.03 per sq. ft.)
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

An affidavit has been submitted stating that the lease is an arm's length lease. The applicant submitted letters from two NYS licensed realtors attesting to the reasonableness of the per square foot rental.

Administrative Services Agreement

The applicant submitted a draft administrative services agreement (ASA), as summarized below:

Facility:	USRC West Cheektowaga, LLC
Contractor:	U.S. Renal Care, Inc.
Services Provided:	Provide for benefit of and subject to direction of Licensed Operator: personnel training, monitoring & oversight; assist with compensation, benefits, personnel policies, and performance standards for administrative and ancillary health care staff; provide at cost of the Licensed Operator, supplies and inventory necessary for the clinic's operation under national and regional supply agreements; assist in purchasing drugs and medical supplies; patient billing/collecting functions; assist in report preparation and filing, contract negotiations, and reimbursement related audits; assist in maintenance of financial records; manage clinics funds: obtain appropriate commercial insurance coverage; recommend operational policies and procedures to establish appropriate standards of patient care; provide access to selected proprietary software; at the Licensed Operator's cost furnish all medical and office equipment, furniture and fixtures, maintain equipment and make necessary capital improvements; assist in development of quality assurance and review programs, maintain licenses and permits including Medicaid and Medicare provider numbers; assist in compliance with all applicable federal and state rules and regulations
Term:	10 years
Fee:	\$69,100 per year (\$5,758.33 per month)

While U.S. Renal Care Inc. will provide all of the above services, the Licensed Operator retains ultimate authority, responsibility, and control of the operations.

There is common ownership between the applicant and the ASA provider as shown on BFA Attachment B, post-closing organization chart.

Operating Budget

The applicant submitted an operating budget, in 2015 dollars, for Years One and Three of operations, summarized below:

	<u>Year One</u>		<u>Year Three</u>	
	<u>Per Treatment</u>	<u>Total</u>	<u>Per Treatment</u>	<u>Total</u>
<u>Revenues</u>				
Medicare FFS	\$250	\$167,296	\$250	\$514,320
Medicare MC	\$250	\$232,760	\$251	\$715,576
Commercial FFS	\$835	\$152,749	\$1,287	\$469,597
Commercial MC	\$750	\$145,475	\$750	\$447,235
Medicaid FFS	\$251	\$21,821	\$250	\$67,085
Private Pay	\$251	<u>\$7,274</u>	\$251	<u>\$22,362</u>
Total Revenues		\$727,375		\$2,236,175
<u>Expenses</u>				
Operating	\$429	\$922,455	\$261	\$1,674,604
Capital	<u>\$192</u>	<u>\$412,523</u>	<u>\$64</u>	<u>\$407,967</u>
Total Expenses	\$621	\$1,334,978	\$325	\$2,082,571
Net Income/(Loss)		<u>(\$607,603)</u>		<u>\$153,604</u>
Utilization (Treatments)		2,151		6,406

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

	<u>Year One</u>		<u>Year Three</u>	
	<u>Treatments</u>	<u>%</u>	<u>Treatments</u>	<u>%</u>
Medicare FFS	669	31.10%	2,057	32.11%
Medicare MC	931	43.28%	2,853	44.54%
Commercial FFS	183	8.51%	365	5.70%
Commercial MC	194	9.02%	596	9.30%
Medicaid FFS	87	4.04%	268	4.18%
Private Pay	29	1.35%	89	1.39%
Charity Care	<u>58</u>	<u>2.70%</u>	<u>178</u>	<u>2.78%</u>
Total	2,151	100.00%	6,406	100.00%

The following is noted with respect to the submitted budget:

- Revenues are based on the bundled ESRD rate of \$250 per treatment for Medicaid and Medicare patients, while the commercial rate is based on USRC's local contracts within the Buffalo market.
- Expenses are based on current market rates in the area and USRC's contracted rates and average clinical utilization for such services including: medication and medical supplies, utilities, equipment and professional fees.
- Utilization is based on USRC's standard utilization methodology for opening a new dialysis facility in a region, which includes conservative estimates during the initial start-up period.
- Breakeven utilization is 48.68% or 5,923 treatments.

The budget is reasonable.

Capability and Feasibility

Project costs of \$1,818,147 will be met via members' equity of \$181,815, an intercompany loan from USRC for \$1,291,332 at the above stated terms, and a \$345,000 construction allowance provided by the landlord.

Working capital requirements are estimated at \$347,095, which is equivalent to two months of Year Three expenses. The applicant indicated they will provide \$575,000 towards working capital, which is approximately \$227,905 over the estimated working capital equity requirement. The members will provide equity equivalent to their ownership percentages. USRC's equity portion is \$235,332 and will

come from operations. LEDP II, LLC equity portion is \$192,543 and will come from the members' personal net worth. The remaining \$147,125 will be provided through an intercompany loan from USRC at an interest rate of prime (3.5% as of February 5, 2016) with a five-year term. A letter of interest has been provided by USRC for the proposed working capital financing.

BFA Attachment A is the personal net worth statements of the members of LEDP II, LLC, which indicates sufficient liquid resources to cover all equity requirements associated with this CON.

BFA Attachment C is the 2013-2014 certified and internal financial statements of U.S. Renal Care, Inc. as of November 30, 2015, which indicate the entity maintained positive working capital and net asset positions for the period, and generated net income of \$48,652,324 in 2014 and \$42,065,066 through November 30, 2015. During 2013, US Renal Care, Inc. incurred a loss of \$428,918. The loss was due to a one-time transaction for early retirement of debt transaction expenses. Without this transaction, the facility would have achieved break even for 2013. As shown above, USRC has sufficient liquid resources available to cover their portion of both equity requirements and to provide the funding for both intercompany loans.

BFA Attachment D is the pro forma balance sheet of USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis as of the first day of operation, which indicates the operation will begin with a positive members' equity of \$575,000.

The submitted budget indicates a net loss of \$607,603 and a net income of \$153,604 for Year One and Year Three, respectively. Revenues are based on the current reimbursement methodologies for dialysis services. The Year One loss is due to the start-up of operations and will be covered by U.S. Renal Care, Inc. through a revolving credit agreement. The submitted budget is reasonable.

BFA Attachment E is the financial summaries of U.S. Renal Care, Inc.'s three affiliated New York dialysis centers for the period 2013 through November 30, 2015, which shows that each facility had a positive working capital positions, positive net asset positions and operating surpluses for the period 2013-2014. In 2015, USRC Tonawanda had a positive working capital position, positive net asset position and operating surpluses. USRC Williamsville, Inc. and USRC Cheektowaga, Inc. had negative working capital positions and operating deficits of \$255,084 and \$297,662, respectively; however, both entities had positive net asset positions for the period. The negative working capital positions were due to negative intercompany payables which misstated the current assets. The net losses were due to out-of-period allocated administrative costs of \$487,973 and \$855,382, respectively. Without these transactions, both companies would have had a positive working capital position and positive net income.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Net Worth Statements of the members' of LEDP II, LLC
BFA Attachment B Post- Closing Organizational Chart
BFA Attachment C U.S. Renal Care, Inc. & Subsidiaries 2013-2014 Certified and 1/1/2015-11/30/2015 Internal Financial Statements
BFA Attachment D Pro-Forma Balance Sheet of USRC West Cheektowaga, LLC d/b/a U.S. Renal Care West Cheektowaga Dialysis
BFA Attachment E Affiliated New York Dialysis Centers Financial Summary 2013 - 11/30/2015.
HSP Attachment A Star Rating Profile for all U.S. Renal Care, Inc Facilities

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a 13-station chronic renal dialysis center to be located at 2861 Harlem Road, Cheektowaga, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

152263 B

FACILITY/APPLICANT:

USRC West Cheektowaga, LLC d/b/a U.S.
Renal Care West Cheektowaga Dialysis

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 NYSE-CON upon mailing. [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 intercompany revolving credit agreement, 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 documentation of receipt of the construction allowance payment from the Landlord, acceptable to the Department of Health. [BFA]
7. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
8. Submission of an executed Administrative Services Agreement, acceptable to the Department. [HSP]
9. Submission of an executed Medical Director Agreement, acceptable to the Department. [HSP]
10. Submission of the applicant's amended and executed operating agreement, acceptable to the Department. [CSL]
11. Submission of a copy of the applicant's amended and executed Medical Director Agreement, acceptable to the Department. [CSL]
12. Submission of a copy of the applicant's amended and executed Administrative Service Agreement, acceptable to the Department. [CSL]
13. Submission of a copy of the applicant's amended and executed Company Agreement, acceptable to the Department. [CSL]
14. Submission of an amended and executed Operating Agreement of LEPD, II, LLC, acceptable to the Department. [CSL]
15. Submission of an amended and executed by-laws of U.S. Renal LEDP, II, 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 06/06/2016 and construction must be completed by 10/07/2016, presuming the Department has issued a letter deeming all contingencies have been satisfied prior to commencement. In accordance with 10 NYCRR Section 710.10(a), if construction is not started on or before the start date this shall constitute abandonment of the approval. It is the responsibility of the applicant to request prior approval for any changes to the start and completion dates. [AER]
7. 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. [AER]

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



Project # 152313-B
Queens Boulevard Extended Care Dialysis Center

Program: Diagnostic and Treatment Center **County:** Queens
Purpose: Establishment and Construction **Acknowledged:** November 30, 2015

Executive Summary

Description

Queens Boulevard Extended Care Dialysis Center, LLC, an existing New York limited liability company, requests approval to establish and construct a 15-station Article 28 chronic renal dialysis center. The proposed Center will be located in separate designated space at Queens Boulevard Extended Care Facility, a 280-bed Article 28 residential health care facility (RHCF) located at 61-11 Queens Boulevard, Woodside (Queens County). The dialysis center will occupy approximately 4,500 square feet on the ground floor of the RHCF. The facility will offer on-site dialysis services to the RHCF's patients and to community residents, with its primary service area being Queens County.

The proposed members of Queens Boulevard Extended Care Dialysis, LLC are Anthony Clemenza, Jr. (50%) and James Clemenza (50%). There is a relationship between Queens Boulevard Extended Care Dialysis Center, LLC and Queens Boulevard Extended Care Facility, which is operated by Queens Boulevard Extended Care Facility Management, LLC, in that Anthony Clemenza, Jr. and James Clemenza are members and managers of both entities.

The fit-out and equipping of the Center will be the responsibility of the applicant. The space is currently occupied by a 30-slot adult day health care program (ADHCP) operated by the RHCF, which will be relocated to an off-site location. A CON application to relocate the ADHCP will be

submitted upon approval of this application. The applicant will lease the space from Queens Boulevard Extended Care Facility Management, LLC.

OPCHSM Recommendation
Contingent Approval

Need Summary
Currently there is a need for 145 stations in Queens County. The addition of fifteen stations will improve the availability of dialysis services for the residents of Queens County.

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 \$2,023,108 will be financed with equity of \$202,311 from the proposed members' personal resources and a bank loan of \$1,820,797 at 4.5% interest for a seven-year term. A bank letter of interest has been provided. The projected budget is as follows:

Revenues:	\$3,652,482
Expenses:	<u>3,272,837</u>
Net Income:	\$379,645

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 NYSE-CON upon mailing. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a photocopy of the applicant's Medical Director Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed lease 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 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 07/01/2016, and must be completed by 06/30/2017, 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. [AES]

Council Action Date

April 14, 2016

Need Analysis

Analysis

The primary service area for the proposed facility is Queens County, which had an estimated population of 2,321,580 for 2014. The table below shows the portion of the county population belonging to two groups statistically more likely to need end stage renal dialysis and compares it with the rest of the state.

	Queens County	New York State
Ages 65 and over:	13.6%	14.7%
Non-white:	50.9%	29.1%

Source: U.S. Census 2015

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 can treat fewer patients per year. Statewide, the majority of stations are free standing, as are the majority of applications for new stations. As such, when calculating the need for additional stations, the Department bases the projected need on establishing additional free standing stations.
- There are currently 525 free standing chronic dialysis stations operating in Queens County and 170 in pipeline for a total of 695 stations.
- Based upon DOH methodology, the 525 existing free standing stations in Queens County could treat a total of 2,633 patients annually. Including the additional pipeline stations, the county could treat a total of 3,128 patients annually.

Projected Need

Queens County Residents	Actual		Projected	
	2014	2015	2019	
Need projected 5 years out from Most current IPRO data available for Patients Treated in County	Total Patients Treated in County	Total County Residents in Treatment	Total Patients Treated in County ¹	Total County Residents in Treatment ¹
	3,741	3,777	4,337	4,252
Free-Standing Dialysis Stations	2014	2015	2019	
A Stations Required to Treat ²	832	840	964	945
B Existing Stations	525	525	525	525
C Stations In Pipeline	170	170	170	170
D Stations Requested this CON	15	15	15	15
E w/Approval of This CON (B+C+D)	710	710	710	710
F Unmet Need With Approval (A-E)	122	130	254	235

¹ Based upon an estimated 3% accrued annual increase

² Based upon DOH methodology (total patients/4.5)

The data in the first row, "Stations Required to Treat," 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. "Total Patients Treated" is from IPRO data from 2015.

Conclusion

Queens County serves a population of 2,321,580 with a total of 695 stations, including pipeline stations. There continues to be a need for additional dialysis stations in Queens County. Approval of these fifteen stations will improve access to dialysis services in the area.

Recommendation

From a need perspective, approval is recommended.

Program Analysis

Project Proposal

Queens Boulevard Extended Care Dialysis, LLC seeks approval to establish and construct a fifteen station end-stage renal dialysis center on the ground floor of Queens Boulevard Extended Care Facility, an existing 280-bed residential health care facility located at 61-11 Queens Boulevard, in Woodside (Queens County).

Proposed Operator	Queens Boulevard Extended Care Dialysis, LLC
Site Address	61-11 Queens Boulevard Woodside, New York 11377 (Queens County)
Approved Services	Chronic Renal Dialysis (15 Stations)
Shifts/Hours/Schedule	Initial operation will be two (2) shifts per day Monday through Saturday from 6:00 am to 5:00 pm, with the projection of going to three (3) shifts per day in the fourth year of operations.
Staffing (1st Year / 3rd Year)	15.1 FTEs / 20.5 FTEs
Medical Director(s)	Tahir Hafeez, MD
Emergency, In-Patient and Backup Support Services Agreement and Distance	Expected to be provided by Forest Hills Hospital 3.5 miles / 15 minutes

Character and Competence

The members of the LLC are:

Name	Membership	Title
Anthony Clemenza, Jr.	50%	Manager/Member
James Clemenza	50%	Manager/Member

The proposed members have extensive experience operating health related facilities and associated programs. Messrs. Clemenza are also members of Queens Boulevard Extended Care Facility Management, LLC, the operator of Queens Boulevard Extended Care Facility, and as such, handle day-to-day operations to include: purchasing, maintenance, housekeeping, dietary, finance, and administration. Additionally, Mr. Anthony Clemenza also serves as In-house Counsel, coordinating the legal affairs of the facility.

Disclosure information was similarly submitted and reviewed for the proposed Medical Director, Tahir Hafeez, MD. Dr. Hafeez is board-certified in Internal Medicine and Nephrology and has roughly 20 years of experience in the care and treatment of dialysis patients.

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

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

Recommendation

From a programmatic perspective, contingent approval is recommended.

<h2>Financial Analysis</h2>

Lease Rental Agreement

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

Premises:	4,500 square feet located at 61-11 Queens Boulevard, Woodside, New York
Lessor:	Queens Boulevard Extended Care Facility Management, LLC
Lessee:	Queens Boulevard Extended Care Dialysis Center, LLC
Term:	5-year term with a 5-year renewal period
Rental:	\$103,500 annually (\$23.00 per sq. ft.)
Provisions:	Lessee shall be responsible for maintenance, utilities, insurance and real estate taxes.

The proposed lease is non-arm's length. The applicant has submitted an affidavit indicating there is common ownership between the lessor and lessee. Two NYS licensed realtors submitted letters attesting to the rent reasonableness.

Total Project Cost and Financing

Total project cost, which includes renovations and the acquisition of moveable equipment, is estimated at \$2,023,108 broken down as follows:

Renovation and Demolition	\$1,027,520
Design Contingency	102,551
Construction Contingency	102,752
Architect/Engineering Fees	92,477
Other Fees (Consultant)	25,220
Moveable Equipment	565,680
Financing Costs	19,164
Interim Interest Expense	74,489
CON Fee	2,000
Additional Processing Fee	<u>11,055</u>
Total Project Cost	\$2,023,108

Project costs are based on a construction start date of July 1, 2016, and a 12-month construction period.

The applicant's financing plan appears as follows:

Equity	\$202,311
Bank Loan (4.5% interest, 7-year term)	1,820,797

Investors Bank has provided a letter of interest for the financing at the stated terms.

Operating Budget

The applicant has submitted an operating budget, in 2016 dollars, which is summarized below:

	<u>Year One</u>	<u>Year Three</u>
Revenues:		
Medicaid Fee for Service	\$33,072	\$33,072
Medicare Fee for Service	1,380,388	1,941,170
Commercial Fee for Service	191,225	382,450
Commercial Managed Care	<u>985,608</u>	<u>1,314,144</u>
Total Revenues	\$2,590,293	\$3,670,836
Less: Bad Debt	<u>12,952</u>	<u>18,354</u>
Net Revenues	\$2,577,341	\$3,652,482
Expenses:		
Operating	\$2,116,861	\$2,923,301
Capital	<u>374,659</u>	<u>349,536</u>
Total Expenses	\$2,491,520	\$3,272,837
Net Income	\$85,821	\$379,645
Utilization (Treatments)	6,240	8,736
Cost Per Treatment	\$399.28	\$374.64

Utilization broken down by payor source during the first and third years is as follows:

	<u>Year One</u>	<u>Year Three</u>
Medicaid Fee for Service	2.50%	1.78%
Medicare Fee for Service	80.00%	80.36%
Commercial Fee for Service	2.50%	3.57%
Commercial Managed Care	15.00%	14.29%

Revenue assumptions are based upon current reimbursement methodologies by payor for chronic renal dialysis services. Expense and utilization assumptions are based on historical trends of other facilities that provide chronic renal dialysis services in Queens County.

Capability and Feasibility

Project costs of \$2,023,108 will be met via equity of \$202,311 from the proposed members and a bank loan of \$1,820,797 at 4.5% interest for a seven-year term. A bank letter of interest has been provided.

Working capital requirements are estimated at \$545,473, which is equivalent to two months of third year expenses. The applicant will finance \$272,736 at an interest rate of 4.125% for a five-year term. The remaining \$272,737 will be provided from equity. Investors Bank has provided a letter of interest in regard to the financing. BFA Attachment A is the personal net worth statements for the proposed members of Queens Boulevard Extended Care Dialysis Center, LLC, which indicates the availability of sufficient funds for the equity contribution to meet the purchase price and working capital requirement. BFA Attachment B is the pro forma balance sheet of Queens Boulevard Extended Care Dialysis Center, LLC as of the first day of operation, which indicates a positive net asset position of \$475,048.

The submitted budget indicates a net income of \$85,821 and \$379,645 during the first and third years, respectively. Revenues are based on current reimbursement rates for dialysis services.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A Personal net worth statement for the proposed members
BFA Attachment B Pro forma balance sheet

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish and construct a 15-station chronic renal dialysis center located at 61-11 Queens Boulevard, Woodside inside the Queens Boulevard Extended Care Facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

152313 B

FACILITY/APPLICANT:

Queens Boulevard Extended Care
Dialysis Center

APPROVAL CONTINGENT UPON:

1. Submission of a check for the amount enumerated in the approval letter, payable to the New York State Department of Health. Public Health Law Section 2802.7 states that all construction applications requiring review by the Public Health and Health Planning Council shall pay an additional fee of fifty-five hundredths of one percent of the total capital value of the project, exclusive of CON fees. A copy of the check must be uploaded into NYSE-CON upon mailing. [PMU]
2. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment, acceptable to the Department of Health. [BFA]
4. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
5. Submission of an executed transfer and affiliation agreement, acceptable to the Department, with a local acute care hospital. [HSP]
6. Submission of a photocopy of the applicant's Medical Director Agreement, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed Certificate of Amendment to the Articles of Organization, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed lease 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 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 07/01/2016, and must be completed by 06/30/2017, 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. [AES]

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



Project # 142145-E
Ross Acquisition, LLC
d/b/a Ross Center for Health and Rehabilitation

Program: Residential Health Care Facility
Purpose: Establishment

County: Suffolk
Acknowledged: October 8, 2014

Executive Summary

Description

Ross Acquisition, LLC d/b/a Ross Center for Nursing and Rehabilitation (Ross Center), a New York limited liability company, requests approval to be established as the new operator of Ross Health Care Center, a 135-bed, proprietary, Article 28 residential health care facility (RHCF) located at 839 Suffolk Avenue, Brentwood (Suffolk County). As part of this application, the certified bed capacity will be reduced 15 beds, bringing the total certified bed count to 120. Concurrently, a separate realty entity, Ross Realty Acquisition, LLC, will acquire the facility's real property. There will be no change in services provided.

On August 21, 2014, Ross Health Care Center, Inc., the current operator, entered into an Asset Purchase Agreement with Ross Acquisition, LLC for the sale and acquisition of the operating interests of the RHCF, to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. Concurrently, Ross Health Care Realty, LLC, the current real property owner, entered into a Contract of Sale with Ross Realty Acquisition, LLC for the sale and acquisition of the real property interest of the nursing facility. There is a relationship between Ross Acquisition, LLC and Ross Realty Acquisition, LLC in that the entities have several members in common. The applicant will lease the premises from Ross Realty Acquisition, LLC.

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

Table with 2 columns: Members, %
Current Operator: Ross Health Care Center, Inc.
Members: Agnes Zitter (50%), Marvin Ostreicher (25%), Mayer Laufer (25%)

Table with 2 columns: Members, %
Proposed Operator: Ross Acquisition, LLC
Members: Leopold Friedman (5%), Avi Philipson (20%), Deena Hersh (20%), Joel Leifer (55%)

BFA Attachment C presents the Current and Proposed Owners of the real property.

OPCHSM Recommendation
Contingent Approval

Need Summary

The decertification of 15 beds will help move the facility and planning region toward optimum utilization.

Program Summary

No negative information has been received concerning the character and competence of the proposed members of the applicant operator.

Financial Summary

The purchase price for the RHCF operating interests was originally \$1,875,000; however, as the result of the bed reduction, the seller and buyer agreed to revise the purchase price to \$0.00 (zero). Ross Realty Acquisition, LLC, will acquire the real property for \$15,000,000 funded by \$3,000,000 in members' equity and a loan for \$12,000,000 at 6% interest for a 30-year term.

There are no project costs associated with this application. The projected budget is as follows:

Revenues:	\$13,602,496
Expenses:	<u>\$13,320,287</u>
Gain:	\$282,209

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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission and programmatic review of plans showing the 15 beds to be decertified and the nursing units to be affected. [LTC]
8. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]
10. Submission of a photocopy of the applicant's executed Lease and Purchase Agreement of Real Property, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed copy of the Certificate of Assumed Name, acceptable to Department. [CSL]
12. Submission of a photocopy of the applicant's Asset 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

Project Description

Ross Acquisition, LLC, doing business as Ross Health Care Center, seeks approval to become the established operator of Ross Health Care Center, a 135-bed Article 28 residential health care facility (RHCF), located at 839 Suffolk Avenue, Brentwood, 11717, in Suffolk County.

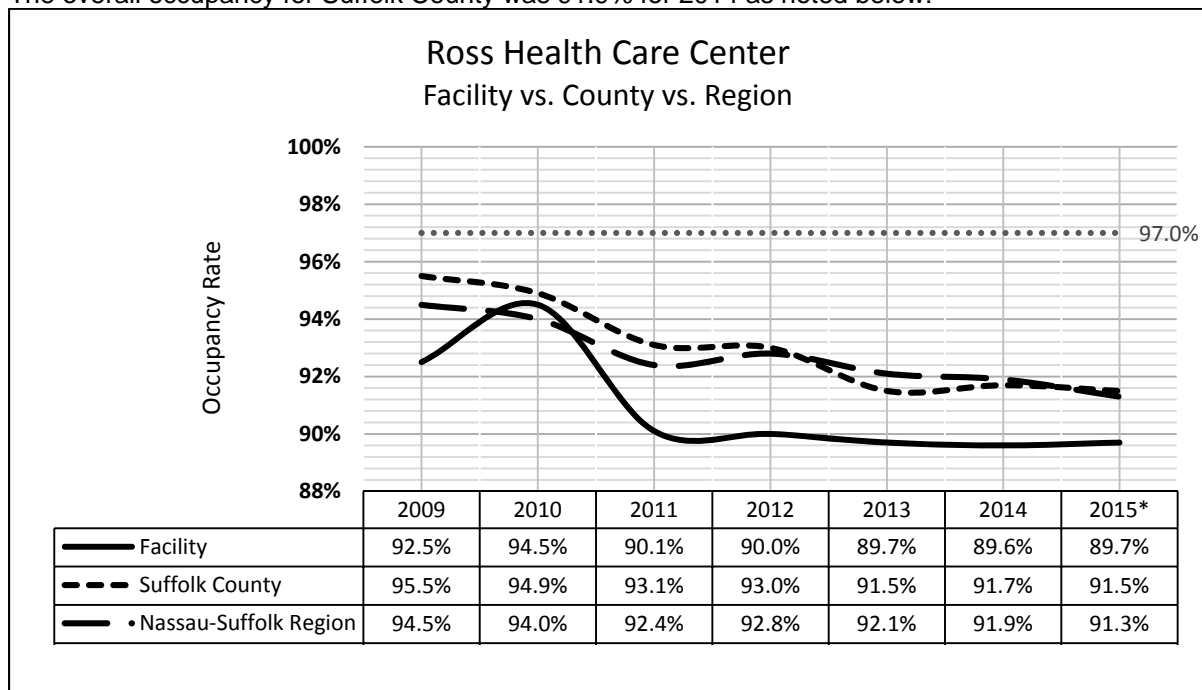
Analysis

The Need methodology indicates a need for 2,003 beds in the Nassau-Suffolk Region as noted below. However, as shown on the chart below, utilization has been below optimal (97%) for over seven years.

RHCF Need – Nassau-Suffolk Region

2016 Projected Need	16,962
Current Beds	15,352
Beds Under Construction	-393
Total Resources	14,959
Unmet Need	2,003

The overall occupancy for Suffolk County was 91.9% for 2014 as noted below:



*unaudited, based on weekly census

According to the applicant, the facility experienced low occupancy as a result of being a small facility relative to other facilities in the local planning area and the need for flexibility in pairing roommates due to an increase in short term rehabilitative stays.

The applicant intends to increase occupancy in the following ways:

- Decertify 15 beds;
- Keep in line with the Department's goals of providing long-term care in the most integrated setting as possible through:
 - Implementation of Institutional Special Needs Plan (I-SNP) services;
 - Development of new and enhancement of existing care programs, including its Wound Care Program and Short-Term Rehabilitation Services; and
 - Partnerships with hospitals, managed care plans and other long-term providers;

- Transform the care model to ensure residents served by the facility are those truly in need of level of care being provided at the RHCF; and
- Collaborate with the local area hospitals to ensure prompt discharge of hospital patients appropriate for RHCF care and implement state of the art programs to both reduce and avoid re-hospitalization, both at a significant cost saving to the Department.

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.

Ross Health Care Center’s Medicaid admissions of 33.0% in 2012 and 26.6% in 2013 exceeded the Suffolk County 75% rates of 21.1% in 2012 and 19.4% in 2013.

Conclusion

The decertification of 15 beds will help move the facility and planning region toward optimum utilization.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Ross Health Care Center	Ross Center for Nursing and Rehabilitation
Address	839 Suffolk Avenue Brentwood, NY 11717	Same
RHCF Capacity	135	120
ADHC Program Capacity	N/A	Same
Type of Operator	LLC	LLC
Class of Operator	Proprietary	Proprietary
Operator	Ross Health Care Center, Inc.	Ross Acquisition, LLC <div style="margin-left: 20px;"> <u>Members</u> Joel Leifer* 55% Deena Hirsh 20% Avi Philipson* 20% Leo Friedman* 5% </div>
		*Managing Members

Facilities Reviewed

Nursing Homes

Brooklyn Gardens Nursing & Rehabilitation Center	09/2014 to present
Chautauqua Nursing and Rehabilitation Center	01/2015 to present
DeWitt Rehabilitation and Nursing Center	06/2015 to present
Hendon Garden Nursing and Rehabilitation Center	11/2014 to present
Peninsula Nursing and Rehabilitation Center	01/2013 to present
Sapphire Center for Rehab and Nursing of Central Queens, LLC	01/2015 to present
Seagate Rehabilitation and Nursing Center	12/2014 to present
The Citadel Rehab and Nursing Center at Kingsbridge	02/2015 to present
The Pavilion at Queens for Rehabilitation and Nursing	01/2015 to present

Licensed Home Care Services Agency (LHCSA)

Ultimate Care, Inc.	02/2010 to present
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Out of State Facility Interests

Lakeview Rehabilitation and Care Center (NJ)	09/2015 to present
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Individual Background Review

Current ownership shares are shown in brackets.

Joel Leifer lists his current employment as Administrative Director for Atrium Center for Rehabilitation since 2010, and Staten Island Care Center since 2002. Mr. Leifer has recently acquired an out of state care facility interest. Mr Leifer has received Public Health and Health Planning Council approval to become an Operator of Cold Spring Nursing and Rehabilitation Center, however, the transaction has not been finalized.

Lakeview Rehabilitation and Care Center (NJ)	9/2015 to present
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Deena Hersh indicates that she has no employment history. Ms. Hersh discloses the following interests in health care facilities.

Chautauqua Nursing and Rehabilitation Center [25%]	01/2015 to present
Sapphire Center for Rehab and Nursing of Central Queens [35%]	01/2015 to present
Seagate Rehabilitation and Nursing Center [10%]	12/2014 to present
The Pavilion at Queens for Rehabilitation and Nursing [25%]	01/2015 to present

Avi Philipson discloses that he is currently a student in Jerusalem, Israel and discloses no employment history. Mr. Philipson discloses the following health care facility interest, of which he is a managing member.

Seagate Rehabilitation and Nursing Center [10%]	12/2014 to present
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Mr. Philipson has received Public Health and Health Planning Council approval to operate the facilities listed below, however, the transactions have not been finalized.

Cold Spring Hills Center for Nursing and Rehabilitation
St. Barnabas Center for Nursing and Rehabilitation,
The Plaza Rehab and Nursing Center.

Leo Friedman is the Chief Executive Officer, since 2006, of Advanced Care Staffing, Inc., a healthcare staffing agency. Mr. Friedman discloses the following ownership interests:

Brooklyn Gardens Nursing & Rehabilitation [board member]	09/2014 to present
DeWitt Rehabilitation and Nursing Center [3%]	06/2015 to present
Hendon Garden Nursing and Rehabilitation Center [20%]	11/2014 to present
Peninsula Nursing and Rehabilitation Center [25%]	01/2013 to present
The Citadel Rehab and Nursing Center at Kingsbridge [50%]	02/2015 to present
Ultimate Care, Inc.(LHCSA) [33.33%]	02/2010 to present

Mr. Friedman has pending ownership in the following facilities which have been approved by Public Health and Health Planning Council, but have not transferred as of this writing.

Cold Spring Hills Center for Nursing and Rehabilitation
Hudson Point Acquisition, LLC
Long Beach Nursing and Rehabilitation Center
St. Barnabas Center for Nursing and Rehabilitation
The Plaza Rehab and Nursing Center
Brooklyn Gardens Dialysis Center, LLC
Cassena Care Dialysis at Peninsula

Character and Competence Analysis

A review of operations for Brooklyn Gardens Nursing & Rehabilitation Center, Chautauqua Nursing and Rehabilitation Center, DeWitt Rehabilitation and Nursing Center, Hendon Garden Nursing and Rehabilitation Center, Peninsula Nursing and Rehabilitation Center, Sapphire Center for Rehab and Nursing of Central Queens, LLC, Seagate Rehabilitation and Health Care Center, The Citadel Rehab and Nursing Center at Kingsbridge, and The Pavilion at Queens for Rehabilitation and Nursing for the periods identified above revealed that there were no enforcements.

A review of the operations for Ultimate Care, Inc., for the period identified above, revealed there were no enforcements.

A review of the New Jersey Department of Health website as well as an affidavit submitted by the applicant for Lakeview Rehabilitation and Care Center for the period identified above revealed that there are no enforcements.

Project Review

This application proposes to establish Ross Acquisition, LLC as the new operator for Ross Center for Nursing and Rehabilitation. No changes in the program is proposed in this application. This application proposes a reduction of fifteen RHCF beds.

Sentosa Healthcare, LLC, whose members are directly related to the principles of this application, has common ownership with the real estate entity which will purchase the property. These members have also submitted affidavits stating that they will provide equity to the proposed operator, Ross Acquisition, LLC. However the applicants have responded that there will be no consulting and administrative services agreements with Sentosa or any other entity contemplated for the facility after the transfer of ownership.

No negative information has been received concerning the character and competence of the above applicants identified as new members.

Conclusion

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 applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted a draft asset purchase agreement to acquire the RHCF's operating interest. The terms are summarized below:

Date:	August 21, 2014
Seller:	Ross Health Care Center, Inc.
Purchaser:	Ross Acquisition, LLC d/b/a Ross Center for Health and Rehabilitation
Assets Transferred:	All rights, title and interest in the business assets lien free. The assets include: tangible assets used in the business; permitted records; applicable warranties; contracts and agreements including managed care and third party reimbursement contracts; intellectual property rights and trademarks; books and records relating to business operations; assignable licenses and permits including Medicare and Medicaid provider numbers; resident trust funds; goodwill and going concern value.
Excluded Assets:	Cash and cash equivalents, pre-closing accounts receivables; refunds and settlements prior to closing, any websites and e-mail addresses; records not applicable to the operations; refunds; charitable gift, grant, bequest or legacy.
Assumed Liabilities:	Those occurring after the Closing date.
Purchase Price:	\$0.00 (zero as revised due to bed reduction)
Payment:	\$140,625 escrow deposit paid at the time of signing (refund due).

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has no outstanding Medicaid Assessment liabilities as of February 15, 2016.

Purchase and Sale Agreement for the Real Property

The applicant has submitted an executed purchase and sale agreement related to the acquisition of the RHCF's real property. The closing will become effectuated upon PHHPC approval of this CON. The terms of the realty agreement are summarized below:

Date:	August 21, 2014
Seller Realty:	Ross Health Care Realty, LLC
Purchaser Realty:	Ross Realty Acquisitions, LLC
Asset Transferred Realty:	All rights, title and interest in the real property including: the land, buildings, structures and improvements, fixtures, easements and appurtenances known by the address 839 Suffolk Avenue, Brentwood, New York 11717 and further identified as Parcel # 0500138000100001001.
Purchase Price:	\$15,000,000
Payment of Purchase Price:	\$1,125,000 escrow deposit (paid at the time of signing) \$13,875,000 due at closing.

The purchase price is proposed to be satisfied as follows:

Equity (Ross Acquisitions, LLC Members)	\$3,000,000
Loan (30-year term, 6% interest)	<u>\$12,000,000</u>
Total	\$15,000,000

Greystone Funding Corporation has provided a letter of interest at the stated terms.

BFA Attachment B is the proposed members' net worth summaries for Ross Realty Acquisitions, LLC, which reveals sufficient resources to meet the equity requirements. However, liquid resources may not be available in proportion to ownership interests. Proposed realty members Bent Philipson (on behalf of Philipson Family LLC) and Benjamin Landa have provided affidavits stating their willingness to contribute resources disproportionate to their membership interest in the realty entity.

Lease Agreement

An executed lease has been submitted to lease the real property. The terms are summarized below:

Premises:	135-bed RHCf located at 839 Suffolk Avenue, NY 11717
Owner/Landlord:	Ross Realty Acquisitions, LLC
Lessee:	Ross Acquisitions, LLC
Term:	30 years
Rent:	Annual rent equal to the sum of the Lessor's debt service on the real property mortgage (assessed at \$863,353), plus an additional \$500,000 per year. Year one rent = \$1,363,353 (or \$113,613 per month)
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting that there is a relationship between the landlord and the tenant in that the entities have several members in common.

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first and third years of operations subsequent to the change in ownership. The first year budget is summarized below:

	Current Year		Year One	
	Per Diem	Total (135 Beds)	Per Diem	Total (120 Beds)
Revenues (RHCf Beds):				
Medicaid	\$255.72	\$9,164,132	\$252.91	\$8,554,013
Medicare	\$508.19	2,345,312	\$624.97	3,794,175
Commercial & Private Pay	\$398.98	1,473,029	\$425.00	1,474,308
Bad Debt		<u>(220,000)</u>		<u>(220,000)</u>
Total Revenues		\$12,762,473		\$13,602,496
Expenses:				
Operating	\$289.92	\$12,798,303	\$264.87	\$11,485,267
Capital	<u>\$10.82</u>	<u>477,717</u>	<u>\$42.32</u>	<u>1,835,020</u>
Total Expenses	\$300.74	\$13,276,020	\$307.19	\$13,320,287
Net Income (Loss)		<u>(\$513,547)</u>		<u>\$282,209</u>
Patient Days		44,144		43,362
Occupancy		89.59%		99%

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

- The current year reflects the facility's 2014 RHCf-4 cost report information.
- Medicaid revenues are based on the facility's current 2015 Medicaid FFS rate.
- Medicare revenues are based on the average daily rate experienced by the facility during 2015.
- Commercial and Private pay rates are based on the facility's current 2015 experience.
- Based on 135-beds, average utilization from 2011-2014 was 89.8%. Comparing historical occupancy using the proposed 120-beds, the 2011-2014 average utilization would be 101.13%. As of February 3, 2016, occupancy was 88.1% per the Division of Nursing Homes and ICF/IID Surveillance report.

- Utilization by payor source is as follows:

	<u>Current</u>	<u>Year One</u>	<u>Year Three</u>
Medicaid	81.18%	78%	75%
Medicare	10.46%	14%	14%
Commercial & Private Pay	<u>8.36%</u>	<u>8%</u>	<u>11%</u>
Total	100.00%	100%	100%

- Breakeven utilization is projected at 96.95 and 93.68% for the first and third years, respectively.

Capability and Feasibility

The originally purchase price for the operating assets was \$1,875,000; however, due to the bed reduction the purchase price was revised to \$0. Concurrently, Ross Realty Acquisition, LLC, will purchase the real property for \$15,000,000 funded by \$3,000,000 in members' equity and a loan at the above stated terms. Greystone Funding Corporation has provided a letter of interest. There are no project costs associated with this application.

The working capital requirement is estimated at \$2,220,048 based on two months of first year expenses. Funding will be as follows: \$1,110,024 from the members' equity with the remaining \$1,110,024 satisfied through a five-year loan at 6% interest rate. Greystone Funding Corporation has provided a letter of interest.

BFA Attachments A and B, proposed members' net worth summaries for the operating and realty entities, respectively, reveals sufficient resources to meet equity requirements overall. However, liquid resources may not be available in proportion to the proposed ownership interest in the operating and realty entities. Proposed realty members Bent Philipson (on behalf of Philipson Family LLC) and Benjamin Landa have provided affidavits stating they are willing to contribute resources to the operating entity to the extent required, as well as any needed equity to the realty entity, disproportionate to their membership interest in Ross Realty Acquisition, LLC. Further, Mr. Philipson and Mr. Landa have submitted affidavits stating that they recognize that any debt guarantee or equity payment made as part of this project does not grant them ownership interest in the operating entity, and it is understood that no operational control can be gained or exerted as a result of such arrangement.

The submitted budget projects net income of \$282,209 and \$836,188 in the first year and third years, respectively. Revenues are expected to increase by approximately \$840,023 concurrent with a slight decrease in overall utilization. It is expected that there will be an approximately 3% shift from Medicaid utilization to Medicare while maintaining the current Medicare rate. Expenses are projected to increase by \$44,267 in Year One. The budget was determined taking into consideration the proposed new owners' experience in operating similar-sized facilities. BFA Attachment D is Ross Acquisition, LLC d/b/a Ross Center for Nursing and Rehabilitation's pro forma balance sheet, which shows the entity will start with \$1,160,789 in equity (including a small amount of equipment/inventory). 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 NH revenues through the transition period.

BFA Attachment E, financial summary of Ross Health Care Center, indicates that the facility has a negative working capital position, a negative equity position and generated an average operating loss of \$415,768 for the 2013-2015 period. BFA Attachment F, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net income, positive working capital and positive net assets. Peninsula Nursing and Rehabilitation Center's working capital position turned positive in 2015 on \$1,785,655 operating net income. Seagate Rehabilitation and Nursing Center, which was acquired December 11, 2014, incurred a negative working capital position, but generated an operating surplus of \$2,932,562 as of October 31, 2015 (internal financial statements). The Pavilion at

Queens for Rehabilitation and Nursing, which was acquired December 5, 2014, had a negative working capital position due to a short-term loan to a related party, but generated an operating surplus of \$6,024,857 as of November 30, 2015 (internal financial statements).

Based on the preceding, 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	Ross Acquisition, LLC members' net worth summaries
BFA Attachment B	Ross Realty Acquisition, LLC members' net worth summaries
BFA Attachment C	Current and Proposed Ownership of Real Property
BFA Attachment D	Ross Acquisition, LLC d/b/a Ross Center for Health and Rehabilitation pro forma balance sheet
BFA Attachment E	Financial Summary, Ross Health Care Center
BFA Attachment F	Proposed members' ownership interest and Financial Summaries of Affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Ross Acquisition, LLC as the new operator of Ross Health Care Center, a 135-bed facility located at 839 Suffolk Avenue, Brentwood, and decertify 15 residential health care facility beds, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

142145 E

FACILITY/APPLICANT:

Ross Acquisition, LLC
d/b/a Ross Center for Health and Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed real property loan commitment, acceptable to the Department of Health. [BFA]
3. Submission of an executed asset purchase agreement, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission and programmatic review of plans showing the 15 beds to be decertified and the nursing units to be affected. [LTC]
8. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Certificate of Amendment of the Articles of Organization, acceptable to the Department. [CSL]

10. Submission of a photocopy of the applicant's executed Lease and Purchase Agreement of Real Property, acceptable to the Department. [CSL]
11. Submission of a photocopy of an executed copy of the Certificate of Assumed Name, acceptable to Department. [CSL]
12. Submission of a photocopy of the applicant's Asset 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



Project # 151054-E
River Valley Operating Associates, LLC
d/b/a The Grand Rehabilitation and Nursing at River Valley

Program: Residential Health Care Facility
Purpose: Establishment

County: Dutchess
Acknowledged: February 18, 2015

Executive Summary

Description

River Valley Operating Associates, LLC d/b/a The Grand Rehabilitation and Nursing at River Valley, a New York limited liability company, requests approval to be established as the operator of River Valley Care Center, Inc., a 160-bed Article 28 residential healthcare facility (RHCF) located at 140 Main Street, Poughkeepsie (Dutchess County). The RHCF also operates a 30-slot adult day health care program (ADHCP) at the same location. There will be no change in beds or services provided.

On September 15, 2014, the current operator of the RHCF, River Valley Care Center, Inc., entered into an Asset Purchase Agreement with River Valley Operating Associates, LLC for the sale and acquisition of the operating interests of River Valley Care Center, Inc., to be effectuated upon approval by the Public Health and Health Planning Council (PHHPC). The real estate ownership will not change.

The current and proposed operators are as follows:

Current Operator	
River Valley Care Center, Inc.	
Shareholders	%
Moshe Kalter	50%
Aaron Fogel	30%
Frady Kalter	10%
Esther Kalter	10%

Proposed Operator	
River Valley Operating Associates, LLC	
Members	%
Strauss Ventures, LLC	94%
Jeremy Strauss	(95%)
Meryl Strauss	(5%)
Jonathan Strauss	3%
Dan Muskin	3%

Jeremy Strauss has ownership interest in 16 RHCFs located throughout New York State. BFA Attachment D is the financial summaries, percent ownership interest, facility bed count and location of the various skilled nursing facilities in which Jeremy Strauss has an ownership interest.

OPCHSM Recommendation
Contingent Approval

Need Summary

This application will not result in a change to beds or services. River Valley Care Center's occupancy was 84.1% in 2012, 84.8% in 2013, and 87.4% in 2014. Current occupancy, as of February 20, 2016 is 99.4%, with one vacant bed.

Program Summary

No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with The Grand Healthcare System (The Grand). The Grand is a related party in that proposed member Jeremy Strauss is CEO a 95% owner and proposed member Meryl Strauss has the remaining 5% ownership interest.

Financial Summary

The purchase price for the acquisition of the operating interests of River Valley Care Center, Inc. is \$1,000,000 plus the assumption of liabilities. The applicant has already paid the \$1,000,000 toward the purchase. The projected budget is as follows:

Revenues	\$14,341,423
Expenses	<u>14,229,868</u>
Net Income	\$111,555

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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. 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]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; 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]
4. 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]
5. Submission of the proposed Administrative and Consulting Services Agreement between the facility and The Grand Healthcare System. [LTC]
6. Submission of a photocopy of the applicant's executed Certificate of Amendment of Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Assignment and Assumption of F.H.A. Replacement Reserve, 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

Project Description

River Valley Operating Associates, LLC, doing business as The Grand Rehabilitation and Nursing at River Valley, seeks approval to become the established operator of River Valley Care Center, a 160-bed Article 28 residential health care facility (RHCF) with 30 adult day health care slots, located at 140 Main Street, Poughkeepsie, 12601, in Dutchess County.

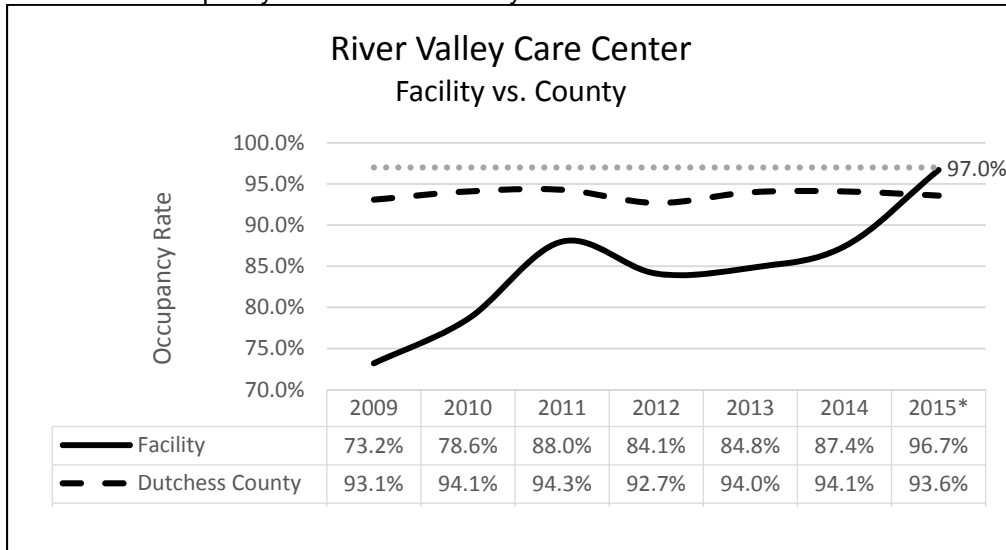
Analysis

The need methodology indicates a surplus of 23 beds in Dutchess County as indicated in the table below:

RHCF Need – Dutchess County

2016 Projected Need	1,903
Current Beds	1,926
Beds Under Construction	0
Total Resources	1,926
Unmet Need	-23

The overall occupancy for Dutchess County is 94.1% for 2014 as indicated in the following chart:



*unaudited, based on weekly census

The applicant attributes low occupancy at the facility prior to 2015 to ineffective management and systemic operational deficiencies. The current operator contracted with one of the proposed operators for operational consulting services beginning October 1, 2014.

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.

River Valley Care Center's Medicaid admissions for 2012 and 2013 are 54.4% and 58.8%, respectively. This facility exceeded Dutchess County 75% rates in 2012 and 2013 of 18.9% and 19.5%, respectively.

Conclusion

Approval of this application will result in maintaining a needed resource for the Medicaid population in the community.

Recommendation

From a need perspective, contingent approval is recommended.

<h2>Program Analysis</h2>

Facility Information

	Existing	Proposed
Facility Name	River Valley Care Center	The Grand Rehabilitation and Nursing at River Valley
Address	140 Main St Poughkeepsie, New York 12601	Same
RHCF Capacity	160	Same
ADHC Program Capacity	30	Same
Type of Operator	Business Corporation	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	River Valley Care Center Inc	River Valley Operating Associates LLC <u>Members</u> Strauss Ventures, LLC 94% Jeremy Strauss* (95%) Meryl Strauss (5%) Jonathan Strauss 3% Daniel Muskin 3% *Managing Member

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation	05/2011 to present
Brooklyn Center for Rehabilitation & Residential Care	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Dutchess Center for Rehabilitation	02/2006 to 11/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Guilderland Center Rehabilitation & Extended Care Facility	11/2014 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare	07/2014 to present

The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015

Adult Homes

Washington Center Adult Home (AH)	02/2014 to present
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	04/2011 to present
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Individual Background Review
Current ownership is shown in brackets.

Jeremy B. Strauss discloses employment as Executive Director of Dutchess Center for Rehabilitation since 2003. He is also the CEO of The Grand HealthCare System. Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation [2%]	05/2011 to present
Brooklyn Center for Rehabilitation & Residential HealthCare	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Dutchess Center for Rehabilitation	08/2004 to 11/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Guilderland Center Rehabilitation & Extended Care Facility [9%]	11/2014 to present
Holliswood Center for Rehabilitation [7.5%]	05/2013 to present
Queens Center for Rehabilitation [47%]	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare [29%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [24%] (formerly Chittenango Center for Rehabilitation and Health Care)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [24%] (formerly Rome Center for Rehabilitation and Health Care)	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
Washington Center Adult Home (AH) [30%]	02/2014 to present
Senior Care Emergency Ambulance Services, Inc. [23%]	05/2005 to present

Meryl Strauss discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. Ms. Strauss does not disclose health facility interests at the time of this filing.

Jonathan Strauss discloses employment as Vice President of The Grand HealthCare System and has been employed in healthcare since 2003. Mr. Strauss discloses the following health facility interests:

Dutchess Center for Rehabilitation [2%]	11/2015 to present
Queens Center for Rehabilitation [2.5%]	10/2015 to present

Daniel Muskin is a nursing home administrator in good standing in New York State. Mr. Muskin has been employed as Administrator at Queens Center for Rehabilitation & Health Care since July, 1997. Mr. Muskin does not disclose any health facility interests at the time of this filing.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
 - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
 - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Guilderland Center Rehabilitation & Extended Care Facility for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
 - A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
 - A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The enforcements above occurred shortly after Mr. Struass came onto the existing ownership structure at 9% in an attempt to help stabilize the facility and in conjunction with filing a full CON to introduce a new ownership group.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b)

Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.

- A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care) for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, and Steuben Center for Rehabilitation and Healthcare for the time periods indicated above reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc. reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Project Review

This application proposes to establish River Valley Operating Associates, LLC as the new operator of River Valley Care Center. The facility will be operated as The Grand Rehabilitation and Nursing at River Valley. No changes in the program or physical environment are proposed in this application.

Strauss Ventures, LLC was formed for the purpose of representing Jeremy and Meryl Strauss' ownership interest in healthcare related entities.

Jeremy Strauss is CEO and 95% owner of The Grand Healthcare System (The Grand), which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. Meryl Strauss owns the remaining 5% of the Grand. It is the intent of the proposed operators to contract with The Grand for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that The Grand does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by The Grand.

Guiderland Center Rehabilitation & Extended Care Facility (Guiderland Center) was designated as a CMS Special Focus Facility in July of 2015 based on a poor surveillance history. In October of 2014 Jeremy Strauss came into the existing ownership structure at 9% as allowed under PHL 2801a-(4)(b)(ii). Mr. Strauss became a member of the operating LLC, instead of a consultant, in order to have decision making power and authority over operations at the facility. He became active in facility operations in May of 2015 to help stabilize the facility and bring in additional resources, including consulting services from The Grand Healthcare System. In response to the Special Focus designation Mr. Strauss instituted numerous changes at the facility. These changes include but were not limited to: replacement of the administrator and director of nursing; replacement of the clinical staff; replacement of the RN Unit managers; and hired additional full time staff such as a staff educator, QAPI nurse, housekeeping director, maintenance director, and MDS coordinators. He also invested \$2.2 million to address conditions at the facility. This included: installing a state of the art wander guard and resident monitoring system; installing security cameras; new rehabilitation room; renovated resident common areas; replaced resident beds; replaced lighting throughout the building; and installed TVs and phones at each resident bedside. Mr. Strauss has submitted CON#151090 to establish a new ownership group at the facility which will make him the primary and managing member.

Conclusion

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 for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the purchase of the operations of River Valley Care Center, Inc., to be effectuated upon PHHPC approval of this CON application, as summarized below:

Date:	September 15, 2014 (Execution Date) / October 1, 2014 (Effective Date)
Seller:	River Valley Care Center, Inc.
Purchaser:	River Valley Operating Associates, LLC
Assets Acquired:	All inventory and supplies owned by Seller and used/held at the Facility; contracts, agreements, leases, undertakings, commitments and other arrangements; the name "River Valley Care Center" and all other trade names, logos, trademarks and service marks associated with the Facility; all menus, policies and procedure manuals and computer software; copies of all financial books/records in the possession of Seller relating to the Facility; copies of all resident/patient records; Seller's Medicare and Medicaid provider numbers and provider agreements for the facility; all accounts receivable, regardless of when billed, relating to services rendered by the Facility on and after the Effective Date; the lease and all cash, deposits and cash equivalents attributable to the operation of the Facility on and after the Effective Date.
Excluded Assets:	All cash, deposits, cash equivalents, short term investments attributable to the operation of the Facility prior to the Effective Date; all accounts receivable, regardless of when billed, relating to services rendered by the Facility prior to the Effective Date; all marketable securities and accrued interest/dividends as of the Effective Date, all insurance policies and Seller's rights under insurance policies, all tax credits, refunds, recovering and similar benefits of Seller relating to the Pre-Signing Tax Period and all personnel property of Seller, other than the inventory and supplies.
Assumed Liabilities:	Purchaser shall assume at the Closing all liabilities and obligations arising on and after the Effective Date with respect to the ownership and/or operation of the Facility and/or the Basic Assets on and after the Effective Date including, but not limited to, the Assumed Healthcare Program Liabilities, and taxes apportioned to Buyer and all liabilities for taxes for taxable periods commencing on or after the Effective Date relating to the real estate, the Seller's obligations with respect to the Buyer Employees to the extent assumed by Buyer and all liabilities for all environmental conditions.
Purchase Price:	\$1,000,000 plus the assumption of liabilities.
Payment of Purchase Price:	The purchaser has already paid the \$1,000,000 toward the purchase price.

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

Lease Rental Agreement

The applicant has submitted an executed lease agreement for the site that they will occupy, which is summarized below:

Premises:	The site located at 140 Main Street, Poughkeepsie, New York.
Lessor:	River Valley Realty Co. L.P.
Lessee:	River Valley Operating Associates, LLC
Term:	10 years
Rental:	Years 1-5: Annual rent of \$1,000,000 Years 6-10: Annual rent of \$1,250,000
Provisions:	Lessee shall be responsible for real estate taxes, maintenance and utilities.

The lease agreement is an arm's length lease arrangement.

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the current year and year one subsequent to change of ownership, summarized as follows:

RHCF	<u>Current Year (2014)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>Revenues</u>				
Medicaid MC	\$235.93	\$10,424,929	\$206.01	\$10,083,799
Medicare FFS	\$512.83	2,421,604	\$552.65	2,957,234
Private Pay	\$296.65	<u>628,304</u>	\$291.57	<u>685,199</u>
Total Revenues		\$13,474,837		\$13,726,232
<u>Expenses</u>				
Operating	\$283.21	\$14,451,184	\$216.52	\$12,265,186
Capital	<u>\$22.28</u>	<u>1,137,038</u>	<u>18.89</u>	<u>1,070,171</u>
Total Expenses	\$305.49	\$15,588,222	\$235.41	\$13,335,357
Net Income		<u>(\$2,113,385)</u>		<u>\$390,875</u>
Utilization (Pt Days)		51,027		56,648
Occupancy		87.38%		97.00%

Utilization by payor source for the RHCF beds for 2014 and the first year after the change in operator is as follows:

<u>Payor</u>	<u>Current (2014)</u>	<u>Year One</u>
Medicaid MC	86.40%	86.40%
Medicare FFS	9.45%	9.45%
Private Pay	4.15%	4.15%

The operating budget for the 30-slot ADHCP is as follows:

ADHCP	<u>Current (2014)</u>	<u>Year One</u>
Revenues	\$414,000	\$615,191
Expenses	<u>972,555</u>	<u>894,511</u>
Net Income	(\$558,535)	(\$279,320)
Utilization (Visits)	5,302	7,566
Cost Per Visit	\$183.43	\$118.23

The ADHCP visits were 100% Medicaid in 2014 and will be 100% Medicaid during the first and third year after the change in ownership.

The combined revenues and expenses for the RHCF and ADHCP services are as follows:

<u>Combined</u>	<u>Current (2014)</u>	<u>Year One</u>
Revenues	\$13,888,857	\$14,341,423
Expenses	16,560,777	14,229,868
Net Income	(\$2,671,920)	\$111,555

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's historical rate data by payor, as the applicant anticipates these rates will be held for a period of time going forward. The applicant states that their business model includes flexibility to transition to a Value Based Payment System prior to the end of the three year transition window.
- Expense assumptions are based on the facility's prior year expenses, taking into consideration the following projected expense reductions:
 - Salary and related employee benefits expenses are being reduced by \$1,223,960 and \$511,901, respectively, related to a reduction in FTEs. Aides/Orderlies will decrease by 17.8 FTEs, RNs will decrease by 6.0 FTEs, and environmental/food service staff will decrease by 10.3 FTEs. The staffing reductions are mitigated by an increase in FTEs for other direct care staff, including the addition of 1.5 FTEs for PT, 2 FTEs for OT, and 1 FTE for Speech Therapy.
 - Professional fees are being reduced by \$91,050.
 - Medical & surgical supplies expenses are being reduced by \$48,499.
 - Non-surgical supplies will be reduced by \$107,308.
- Utilization is projected to increase to 97% during the first year after the change in operator. The facility achieved occupancy of 84.8% in 2013 and 87.38% in 2014. The applicant indicated that the increase from 2013 to 2014 was attributable to the operational consulting services of Jeremy Strauss which began on October 1, 2014. Upon approval of the new operator, Jeremy Strauss will have an active role as a managing member of the facility and will ensure that the operational changes implemented to date that resulted in the increase in occupancy will continue going forward.
- Breakeven occupancy is 96.0% (56,064 nursing facility patient days).
- The facility is projecting to improve operations of the ADHCP via an increase in ADHCP visits.

Capability and Feasibility

The purchase price for the acquisition of the operating interests is \$1,000,000 plus the assumption of liabilities. The applicant has already paid the \$1,000,000 toward the purchase.

Working capital requirements are estimated at \$2,356,056, which appears reasonable based on two months of first year expenses. The applicant will finance \$1,178,028 at an interest rate of 5% for a five-year term. The applicant submitted a letter of interest in regard to the financing. The remaining \$1,178,028 will be met via equity from the proposed members. BFA Attachment A is the personal net worth statements of the proposed members of River Valley Operating Associates, LLC, which indicates the availability of sufficient funds to meet the working capital equity requirement. Jeremy Strauss provided an affidavit stating that he will contribute equity disproportionate to his ownership interest for the working capital portion. BFA Attachment C is the pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$2,178,028. Assets include \$816,521 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 positive \$1,361,507.

The submitted budget projects a net income of \$111,555 during the first year after the change in operator. The applicant indicated their business model includes flexibility to transition to a Value Based Payment System prior to 2020, however their budget revenue assumptions were based on the facility's historical experience, as they anticipate the various payor rates will continue for a period of time going forward. Projected utilization by payor conforms to historical experience. 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 B is the financial summary of River Valley Care Center, Inc. from 2012 through 2014. As shown, the entity had an average positive working capital position and an average negative net asset position from 2012 through 2014. Also, the entity incurred average net losses of \$3,426,999 from 2012 through 2014. The applicant indicated that the reason for the losses from 2012 through 2014 were the result of low occupancy. The low occupancy was attributed to the poor ratings in quality measures due to a number of survey deficiencies the facility received. To improve operations, the facility corrected all deficiencies and sought out services from a consulting firm, which began on October 1, 2014. Since the consulting firm's involvement, the applicant indicated that facility has seen an increase in occupancy up to 97.5% through June 30, 2015.

BFA Attachment E is the internal financial statements of River Valley Care Center as of September 30, 2015. As shown, the entity had a positive working capital position and a negative net asset position for the period. Also, the entity incurred a loss from operations of \$1,518,124 through September 30, 2015.

BFA Attachment D is the 2012-2014 financial summaries of Jeremy Strauss' affiliated nursing homes. As shown, the facilities have maintained a positive net asset position, positive working capital position and a positive income from operations for the period shown, with the exception of Queens Center for Rehabilitation, Dutchess Center, Bushwick Center, Chittenango Center and Richmond Center, which had negative working capital positions due to vacation and sick time accruals and pending CMI adjustments. Financial statements for Washington Center for Rehabilitation, Essex Center for Rehabilitation, Steuben Center for Rehabilitation and Guilderland Center Rehabilitation and Extended Care are not available as the facilities were newly acquired in 2014.

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	Personal net worth statement - proposed members
BFA Attachment B	Financial Summary - River Valley Care Center, Inc.
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Affiliated nursing facilities of proposed member Jeremy Strauss
BFA Attachment E	September 30, 2015 internal financial statements of River Valley Care Center
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish River Valley Operating Associates, LLC as the new operator of the 160-bed facility located at 140 Main Street, Poughkeepsie that is currently operated as the River Valley Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

151054 E

River Valley Operating Associates, LLC
d/b/a The Grand Rehabilitation and Nursing at
River Valley

APPROVAL CONTINGENT UPON:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. 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]
3. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - a. Reach out to hospital discharge planners to make them aware of the facility's Medicaid Access Program;
 - b. Communicate with local hospital discharge planners on a regular basis regarding bed availability at the nursing facility; 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]
4. 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]
5. Submission of the proposed Administrative and Consulting Services Agreement between the facility and The Grand Healthcare System. [LTC]
6. Submission of a photocopy of the applicant's executed Certificate of Amendment of Articles of Organization, acceptable to the Department. [CSL]
7. Submission of a photocopy of the applicant's executed Certificate of Assumed Name, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's amended Operating Agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the executed Assignment and Assumption of F.H.A. Replacement Reserve, 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



Project # 151090-E
 Guilderland Operator, LLC
 d/b/a The Grand Rehabilitation and Nursing at Guilderland

Program: Residential Health Care Facility
Purpose: Establishment

County: Albany
Acknowledged: March 5, 2015

Executive Summary

Description

Guilderland Operator, LLC d/b/a The Grand Rehabilitation and Nursing at Guilderland, a New York State limited liability company, seeks approval to be established as the operator of Guilderland Center Rehabilitation and Extended Care Facility, a 127-bed Article 28 residential health care facility (RHCF) located at 428 Rte. 146, Guilderland Center (Albany County). The facility is currently operated by Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC. There will be no change in services provided.

On October 21, 2013, the current operator of the RHCF entered into an Operations Purchase and Transfer Agreement (OPTA) with Guilderland Operator, LLC for the sale and acquisition of the operating interests of the facility, upon approval by the Public Health and Health Planning Council.

Ownership of the facility before and after the requested change are as follows:

<u>Current Operator</u>	
Guilderland Ctr Rehabilitation and Extended Care Facility Operating Company, LLC	
<u>Members</u>	<u>%</u>
Aaron Seligson	30.34%
Martin Rothman	30.33%
Patricia Bruder	30.33%
Jeremy Strauss	9.00%

<u>Proposed Operator</u>	
Guilderland Operator, LLC	
<u>Members</u>	<u>%</u>
Jonathan Strauss	2.5%
Strauss Ventures, LLC	97.5%
Jeremy Strauss (95.0%)	
Meryl Strauss (5.0%)	

The purchase price for the operations is \$2,300,000 plus the assumption of liabilities due the Department of Health (DOH) as of the date of closing. The liabilities are being paid back on a monthly basis at the agreed upon rate of \$4,607 per month. Outstanding DOH liabilities totaled \$2,371,938 as of February 9, 2016.

In conjunction with the OPTA, Guilderland Realty Holdings Corp., the RHCF's real property owner, entered into a Real Estate Purchase Agreement (REPA) with 428 Route 146, LLC for the real property interests of the nursing facility. The purchase price for the real estate is \$1,913,720 based on the buyer paying off the Citizen's Bank mortgage associated with the property in the amount due as of the Closing Date, presently valued at \$1,649,989 as of March 1, 2016, and the assumption of real estate taxes in arrears for 2003, 2005, 2006, 2007 and 2008. The taxes in arrears are being paid back to the County of Albany on a monthly basis at the agreed upon rate of \$44,170.40 per month until July 2016, at which time the remaining balance plus accrued interest is to be paid. As of March 1, 2016, the outstanding tax balance due was \$263,731.

The closing of the REPA will be concurrent with the closing of the OPTA. The applicant will lease the premises from 428 Route 146, LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant in that the members of each company have previous business relationships involving real estate transactions of other nursing homes.

Jeremy Strauss and Jonathan Strauss have ownership interest in several New York State RHCFS. BFA Attachments D and E present the ownership interest and financial summaries of the members' affiliated skilled nursing facilities.

OPCHSM Recommendation Contingent Approval

Need Summary

This application will not result in a change to beds or services. Guilderland Center's occupancy was 94.5% in 2011, 89.9% in 2012, 88.4% in 2013 and 77.8% in 2014. In October 2014, the proposed managing member, Jeremy Strauss, became a 9% member of the current operator. As a result, additional marketing initiatives were implemented and the facility has become more engaged with hospital discharge planners and community resources. Occupancy increased to 95.2% in 2015.

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 for approval as set forth in Public Health Law §2801-a(3).

Financial Summary

Guilderland Operator, LLC will acquire the operating interest in the RHCf for \$4,671,938 which will be financed as follows: \$725,000 from members' equity equal to their ownership percentage, a bank loan of \$1,575,000 at an interest rate of 5% for a 25-year term, and the assumption of approximately \$2,371,938 in DOH liabilities associated with the facility operations with a current monthly repayment rate of \$4,607.

428 Route 146, LLC will acquire the RHCf's real property for \$1,913,720 which will be financed as follows: \$263,731 from members' equity equal to their ownership percentage, plus the assumption of the current Citizens bank loan. The loan is valued at \$1,649,989 as of March 1, 2016, with a 7.7% interest rate and is scheduled to be paid off in May 2022.

There are no project costs associated with this proposal. The projected operating budget is as follows:

	<u>Current Year</u>	<u>Year One</u>
Revenues	\$6,647,872	\$8,675,231
Expenses	<u>\$8,313,112</u>	<u>\$8,334,188</u>
Gain/(Loss)	(\$1,693,151)	\$341,043

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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed permanent mortgage for the project provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. 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]
4. 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]
5. 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]
6. Submission of the proposed Administrative and Consulting Services Agreement between the facility and The Grand Healthcare System. [LTC]
7. Submission of a photocopy of the proposed and executed operating agreement of Strauss Ventures, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed proposed articles of organization of Strauss Ventures, LLC, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's certificate of assumed name filed with the State of New York, which is 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

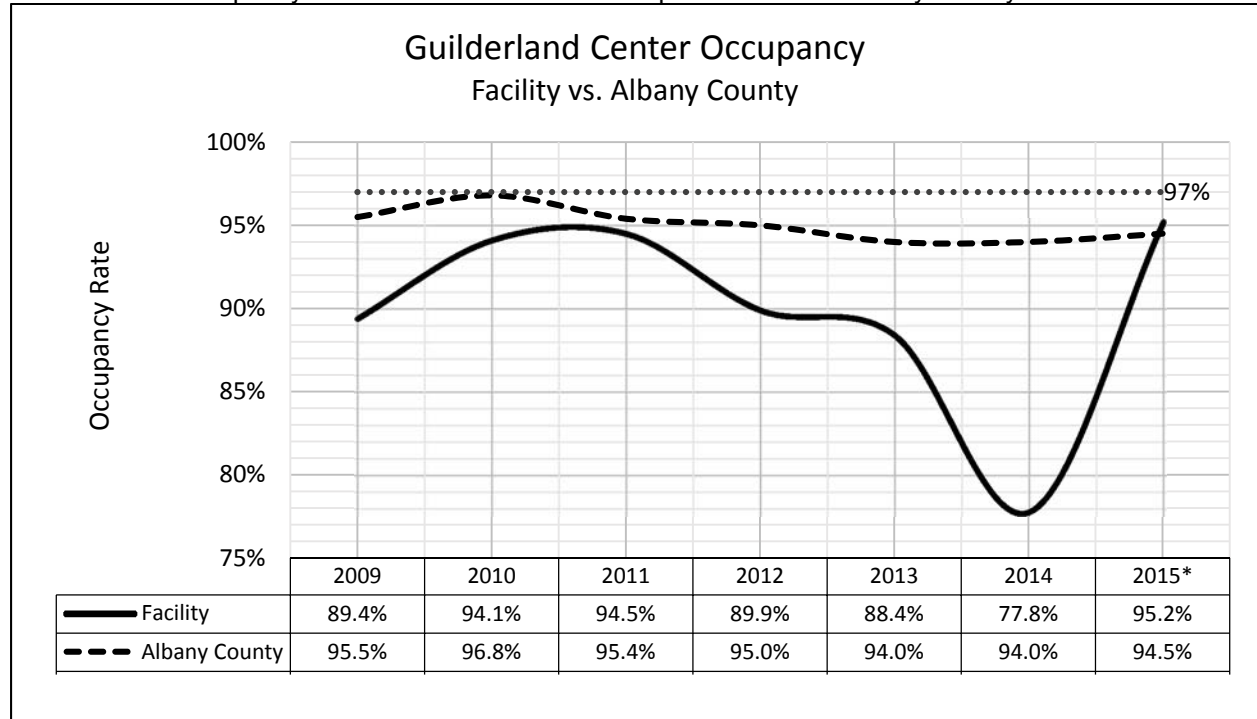
Analysis

There is currently a need for 25 beds in Albany County as indicated in the table below:

RHCF Need – Albany County

2016 Projected Need	1,844
Current Beds	1,819
Beds Under Construction	0
Total Resources	1,819
Unmet Need	25

The historical occupancy for Guilderland Center is compared to that of Albany County in the chart below:



**unaudited; facility reported data*

The applicant attributes the low occupancy during 2012 - 2014 to ineffective management and systematic deficiencies. In October 2014, the proposed managing member, Jeremy Strauss, became a 9% member of the current operator. As a result, additional marketing initiatives were implemented and the facility has become more engaged with hospital discharge planners and community resources. Occupancy increased to 95.2% in 2015.

In addition to the new marketing initiatives and increased engagement with hospital discharge planners and community resources, new programs are being implemented to serve higher acuity residents while also preventing avoidable hospital admissions and readmissions. New programs include: tracheostomy care, cardiac rehabilitation, enhanced wound care, IV therapy and complex clinical care services.

The following physical improvements have been made to the facility: 80 new electric beds, updated, state of the art rehabilitation room and flooring replacement of carpet in resident hallways. Staff competencies were assessed and where indicated, incompetent staff were terminated and replaced as appropriate. The following improvements are in process or will be created: installation of direct dial telephones, flat-screen televisions and furniture in resident rooms, upgrade of call bell system and replacement of dining

room furniture and equipment. The facility has hosted visits with hospital discharge planners from area hospitals to provide the opportunity to observe changes at the facility.

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.

Guilderland Center’s Medicaid admissions for 2012 and 2013 are 14.8% and 14.7%, respectively. This facility exceeded the Albany County 75% rates in 2012 and 2013 of 10.7% and 11.3%, respectively.

Conclusion

Contingent approval of this application will result in the continuation of a needed resource for the residents of Albany county.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Program Description

This application proposes to establish Guilderland Operator, LLC as the new operator of Guilderland Center Rehabilitation & Extended Care Facility. The facility will be operated as The Grand Rehabilitation and Nursing at Guilderland. No changes in the program or physical environment are proposed in this application.

	Existing	Proposed
Facility Name	Guilderland Center Rehabilitation & Extended Care Facility	The Grand Rehabilitation and Nursing at Guilderland
Address	428 Route 146 Guilderland Center, NY 12085	Same
RHCF Capacity	127	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Limited Liability Company	Limited Liability Company
Class of Operator	Proprietary	Proprietary
Operator	Guilderland Center Rehabilitation and Extended Care Facility Operating Co., LLC <u>Current Members</u> Aaron Seligson 30.33% Martin Rothman 30.33% Patricia Bruder 30.33% Jeremy Strauss <u>9.00%</u> 100.00%	Guilderland Operator, LLC <u>Members</u> Strauss Ventures, LLC 97.5% *Jeremy Strauss 95% Meryl Strauss 5% Jonathan Strauss 2.5% *Managing Member

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation	05/2011 to present
Brooklyn Center for Rehabilitation & Residential Care	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Dutchess Center for Rehabilitation	02/2006 to 11/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Guilderland Center	11/2014 to present
Holliswood Center for Rehabilitation	05/2013 to present
Queens Center for Rehabilitation	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015

Adult Home (AH)

Washington Center Adult Home	02/2014 to present
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Ambulance Company (EMS)

Senior Care Emergency Ambulance Services, Inc. (EMS)	04/2011 to present
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Individual Background Review

Jeremy B. Strauss discloses employment as Executive Director of Dutchess Center for Rehabilitation since 2003. He is also the CEO of The Grand HealthCare System. Mr. Strauss discloses the following health facility interests:

Boro Park Center for Rehabilitation [2%]	05/2011 to present
Brooklyn Center for Rehabilitation & Residential HealthCare	03/2007 to 12/2015
Bushwick Center for Rehabilitation	05/2011 to 12/2015
Corning Center for Rehabilitation	07/2013 to 02/2016
Dutchess Center for Rehabilitation	08/2004 to 11/2015
Essex Center for Rehabilitation	03/2014 to 12/2015
Fulton Center for Rehabilitation & Health Care	04/2012 to 12/2015
Guilderland Center	11/2014 to present
Holliswood Center for Rehabilitation [7.5%]	05/2013 to present
Queens Center for Rehabilitation [47%]	06/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to 12/2015
Steuben Center for Rehabilitation and Healthcare [29%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [24%] (formerly Chittenango Center for Rehabilitation and Health Care)	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [24%] (formerly Rome Center for Rehabilitation and Health Care)	05/2011 to present
Washington Center for Rehabilitation	02/2014 to 12/2015
Waterfront Center for Rehabilitation	01/2013 to 12/2015
Washington Center Adult Home (AH) [30%]	02/2014 to present
Senior Care Emergency Ambulance Services, Inc. [23%]	05/2005 to present

Meryl Strauss discloses that she has been retired since 1996. Her last employment is listed as a school teacher in Queens. Ms. Strauss does not disclose health facility interests at the time of this filing.

Jonathan Strauss discloses employment as Vice President of The Grand HealthCare System and has been employed in healthcare since 2003. Mr. Strauss discloses the following health facility interests:

Dutchess Center for Rehabilitation [2%]	11/2015 to present
Queens Center for Rehabilitation [2.5%]	10/2015 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
 - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
 - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Guilderland Center Rehabilitation & Extended Care Facility for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-026 issued on January 5, 2016 for surveillance findings on March 16, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
 - A Federal CMP of \$4,517.50 was assessed for the March 16, 2015 survey findings.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-16-110 was issued for surveillance findings on August 27, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; and 415.26 Administration.
 - A Federal CMP of \$16,477.50 was assessed for the August 27, 2015 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
 - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care) for the period identified above reveals the following:

- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Queens Center for Rehabilitation and Residential Health Care, and Steuben Center for Rehabilitation and Healthcare for the time periods indicated above reveals that there were no enforcements.

Senior Care Emergency Ambulance Services, Inc.
Washington Center Adult Home

Project Review

This application proposes to establish Guilderland Operator, LLC as the new operator of Guilderland Center Rehabilitation & Extended Care Facility. The facility will be operated as The Grand Rehabilitation and Nursing at Guilderland. No changes in the program or physical environment are proposed in this application.

Jeremy Strauss is CEO and 95% owner of The Grand Healthcare System (The Grand), which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. The current operator contracts with The Grand and it is the intent of the proposed operator to continue to contract with The Grand for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that The Grand does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by The Grand.

Jeremy Strauss came onto the existing ownership structure of Guilderland Center in October of 2014 as a 9% member as allowed under PHL 2801a-(4)(b)(ii). Coming in as a member of the operating LLC, instead of as a consultant, allowed Mr. Strauss to have decision making power and authority over operations at the facility. He became active in facility operations in May of 2015 and started initiating modifications to bring about positive institutional change. In July of 2015 the facility was designated Special Focus Program based on a poor surveillance history from previous years. Mr. Strauss continued to initiate change at the facility in order to address the Special Focus designation. These changes include but were not limited to: replacement of the administrator and director of nursing; replacement of the clinical staff; replacement of the RN Unit managers; and hired additional full time staff such as a staff educator, QAPI nurse, housekeeping director, maintenance director, and MDS coordinators. He invested \$2.2 million to address conditions at the facility. This included: installing a state of the art wander guard and resident monitoring system; installing security cameras; new rehabilitation room; renovated resident common areas; replaced resident beds; replaced lighting throughout the building; and installed TVs and phones at each resident bedside.

Conclusion

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 for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Operations Purchase and Transfer Agreement

The applicant has submitted an executed Operations Purchase and Transfer Agreement to acquire the operating interests of the RHCF. The agreement will become effective upon final PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	October 21, 2013
Transferor/Seller:	Guilderland Center Rehabilitation and Extended Care Facility Operating Company, LLC
Transferee/Purchaser:	Guilderland Operator, LLC
Purchased Assets:	All tangible assets, inventory and supplies, telephone, fax numbers, websites domain names, manufactures' and vendors' warranties, seller's rights in any agreements, business trade names, service/trademarks and logos, seller's book and records, seller's licenses, certificates and approvals to do business, resident funds held in trust in connection with the nursing home and all petty cash related to the nursing home, Medicaid and Medicare provider numbers and all goodwill and going concern values.
Excluded Assets:	All of the seller's cash, cash equivalents, bank deposits or similar cash items (other than petty cash), accounts receivable generated prior to the closing date, any rights to refunds, settlements, government grants, marketable securities and retroactive adjustments for periods ending on or prior to the closing date
Liabilities Assumed (Operations)	DOH liabilities estimated at \$2,371,938 as of February 9, 2016
Excluded Liabilities (Operations):	N/A
Purchase Price	\$2,300,000 cash plus assumption of DOH liabilities at amount stated above. (Purchase Price w/DOH liabilities as of February 9, 2016 = \$4,671,938)
Payment of Purchase Price:	\$200,000 at contract signing (held in escrow), \$2,100,000 cash due at closing plus the assumption of DOH liabilities due as of closing date.

The purchase price of the operations is proposed to be satisfied as follows:

Cash	\$725,000
Bank Loan (25 years at 5% interest)	\$1,575,000
Assumption of DOH Liability Repayment (payable at \$4,607 per month)	<u>\$2,371,938</u>
Total	<u>\$4,671,938</u>

BFA Attachment A is the net worth statement for the proposed owners, which shows sufficient resources to cover both the purchase price and the working capital equity requirements for this project.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. The facility has outstanding Medicaid liabilities totaling \$2,371,938 as of February 9, 2016.

Real Estate

The applicant has submitted an executed Real Estate Purchase Agreement related to the acquisition of the real property interests of the RHCF. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	October 21, 2013
Seller:	Guilderland Realty Holdings Corp.
Purchaser:	428 Route 146, LLC
Purchased Assets:	Seller's right, title and interest in all of the tangible and intangible assets associated with or used by the facility in the operations of the nursing home and located at 428 Route 146, Guilderland Center, NY.
Excluded Assets:	N/A
Liabilities Assumed:	Guilderland Realty's Citizens Bank loan and assumption of the facilities 2003 and 2005-2008 real estate taxes in arrears.
Excluded Liabilities:	N/A
Purchase Price:	\$1,913,720 based on the following: <ul style="list-style-type: none"> • Transfer of Guilderland Realty's Citizen Bank loan, which is \$1,649,989 as of March 1, 2016; and • Assumption of the 2003 and 2005-2008 real estate tax arrears, which is \$263,731 as of March 1, 2016.
Payment of Purchase Price:	Due at closing

The purchase price for the RHCF realty is proposed to be satisfied as follows:

Equity from members	\$263,731
Citizens Bank Loan (7.7% interest, principal to be paid off May 2022)	\$1,649,989
Total	\$1,913,720

Lease Agreement

The applicant has submitted an executed lease agreement, the terms of which are summarized as follows:

Date:	September 11, 2014
Premises:	A 127-bed RHCF located at 428 Route 146, Guilderland Center, NY
Lessor:	428 Route 146, LLC
Lessee:	Guilderland Operator, LLC
Term:	10 years
Rental:	\$850,000 per yr. (\$70,833.33 per month)
Provisions:	Lessee pays for all taxes, utilities, insurance and maintenance fees (Triple Net)

The applicant indicated the lease arrangement is an arm's length agreement; however, the applicant has submitted an affidavit attesting that there is a relationship between landlord and tenant in that the members of each company have previous business relationships involving real estate transactions of other nursing homes. Letters from two NYS realtors have been provided attesting to the reasonableness of the per square foot rental.

Operating Budget

The applicant has provided an operating budget, which is reasonable, in 2016 dollars, for the current year and year one subsequent to the change in ownership, summarized below:

	<u>Current Year (2014)</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
Revenues:				
Medicaid FFS	\$149	\$4,365,660	\$146	\$5,304,930
Medicare FFS	\$424	\$1,085,836	\$441	\$1,409,432
Medicare MC	\$336	\$175,806	\$441	\$491,139
Commercial FFS	\$353	\$648,687	\$372	\$600,601
Private Pay	\$181	\$343,972	\$336	\$869,129
Other Op Revenue		\$27,911		<u>(\$27,911)</u>
Total		\$6,647,872		\$8,650,996
Expenses:				
Operating	\$216	\$7,771,772	\$164	\$7,366,981
Capital	<u>\$15</u>	<u>\$541,340</u>	<u>\$22</u>	<u>\$967,207</u>
Total	\$231	\$8,313,112	\$186	\$8,334,188
Net income/loss		<u>(\$1,693,151)</u>		<u>\$316,808</u>
Utilization (days)				
Occupancy		77.8%		97.0%

The following is noted with respect to the submitted budget:

- Revenue assumptions are based on the facility's current payment rates. For Medicaid, the rate is based on the current operator's 2015 Medicaid Regional Pricing rate, which is applicable for Medicaid Managed Care payments during the transition period. The rates for all other payors were determined based on the facility's average 2014 per diem payment rates for the respective payors.
- Expense assumptions are based on the historical experience of the current operator.
- Utilization assumptions are based on the facility's current 2015 occupancy rates. The applicant indicated that occupancy was at 94.96 % as of 9/30/2015.
- Utilization by payor source is expected as follows for year one:

Medicaid Fee-For-Service	81.09%
Medicare Fee-For-Service	7.10%
Medicare Managed Care	1.45%
Commercial Fee-For-Service	5.10%
Private Pay	5.26%
- Breakeven utilization is projected at approximately 93.4% for Year One.

Capability and Feasibility

There are no project costs associated with this application. The purchase price of \$4,671,938 for operations will be met as shown above. Concurrently, 428 Route 146, LLC, will purchase the real property for \$1,913,720 will be funded as shown above.

Working capital requirements are estimated at \$1,389,031 based on two months of year one expenses, of which \$703,546 will be satisfied from the proposed members' equity and \$685,485 will be financed by a working capital loan at 5% interest for five years. Greystone has provided a letter of interest for the proposed working capital financing. BFA Attachment A is the net worth statement for the proposed owners of the RHCF, which shows sufficient resources available to cover the purchase price and working capital equity requirements for this project.

BFA Attachment B is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$3,003,546. It is noted that assets include \$2,300,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, the net asset position would be a positive members' equity position of \$703,546.

The submitted budget projects a net income of \$316,808 in Year One after the change in operator. The budget is reasonable.

The applicant states that their business model does not include flexibility to transition to a Value Based Payment System, as the timeframe for the implementation of a Value Based payment system remains uncertain. Therefore, for the current CON project their revenue assumptions are based on the historical rate data of the facility, as they believe these rates will be held for a period of time going forward.

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 C is the 2013 and 2014 certified and the 1/1/2015-9/30/2015 internal financial statements for Guilderland Center Rehabilitation and Extended Care Facility. The facility generated an average operating loss of \$991,595, and had both average negative net asset and working capital positions. The applicant indicated that the losses for 2013 and 2014 were due to low occupancy rates attributable to ineffective management and systemic deficiencies. In order to turn this around, the facility implemented new marketing initiatives and increased their engagement with hospital discharge planners and community resources. The facility has also implemented new programs in order to serve higher acuity residents and has focused on reducing preventable/avoidable hospital admissions and readmissions. The impact of the new initiatives can be seen in 2015, with the significant reduction in net losses, the working capital loss increase is due to the overall cost of implementing the new initiatives.

BFA Attachment E is the financial summaries of the members' affiliated nursing homes, which shows that the facilities have maintained a positive net asset position, positive working capital position and a positive income from operations for the period shown, with the exception of Queens Center for Rehabilitation and Bushwick Center, which had negative working capital positions due to vacation and sick time accruals and pending CMI adjustments.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Net Worth of Proposed Members of Guilderland
BFA Attachment B	Pro-forma Balance Sheets for Guilderland Operator, LLC d/b/a The Grand Rehabilitation and Nursing at Guilderland
BFA Attachment C	2013 and 2014 certified and 1/1/2015- 9/30/2015 internal financial statements for Guilderland Center Rehabilitation & Extended Care
BFA Attachment D	Ownership Interests of Mr. Jeremy and Mr. Jonathan Strauss's affiliated Nursing Homes
BFA Attachment E	Financial Summaries of Mr. Jeremy and Mr. Jonathan Strauss's affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Guilderland Operator, LLC as the new operator of Guilderland Center Rehabilitation and Extended Care Facility, a 127-bed facility located at 428 Route 146, Guilderland, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

151090 E

FACILITY/APPLICANT:

Guilderland Operator, LLC d/b/a The Grand
Rehabilitation and Nursing at Guilderland

APPROVAL CONTINGENT UPON:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed permanent mortgage for the project provided from a recognized lending institution at an interest rate acceptable to the Department of Health. Included with the submission must be a sources and uses statement and debt amortization schedule, for both new and refinanced debt. [BFA]
3. 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]
4. 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]
5. 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]
6. Submission of the proposed Administrative and Consulting Services Agreement between the facility and The Grand Healthcare System. [LTC]
7. Submission of a photocopy of the proposed and executed operating agreement of Strauss Ventures, LLC, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the executed proposed articles of organization of Strauss Ventures, LLC, which is acceptable to the Department. [CSL]

9. Submission of a photocopy of the applicant's certificate of assumed name filed with the State of New York, which is 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



Project # 152227-E
Pine Haven Operating, LLC d/b/a Pine Haven Home

Program: Residential Health Care Facility
Purpose: Establishment

County: Columbia
Acknowledged: October 21, 2015

Executive Summary

Description

Pine Haven Operating, LLC d/b/a Pine Haven Home, a New York limited liability company, requests approval to be established as the operator of Pine Haven Home, a 120-bed, Public County, Article 28 Residential Health Care Facility (RHCF) located at NY Route 217, Philmont (Columbia County). The County of Columbia is the current RHCF real property owner of the operator of the facility. There will be no change in beds or services provided.

On August 28, 2015, the County of Columbia entered into a Contract of Sale Agreement with 201 Main Street Realty, LLC for the sale and acquisition of the real estate on which Pine Haven Home is located. In addition, the County of Columbia entered into an Operations Transfer and Surrender Agreement with Pine Haven Operating, LLC for the acquisition of the operating interests of the RHCF. Both transactions are to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. The total purchase price for the property is \$6,500,000. There is a relationship between Pine Haven Operating, LLC and 201 Main Street Realty, LLC in that the entities have identical membership. The applicant will lease the facility from 201 Main Street Realty, LLC.

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

Proposed Operator	
Pine Haven Operating, LLC	
Members:	%
Jacob Sod	47.5%
Jonathan Bleier	47.5%
Bruce Peckman	5.0%

Proposed Realty Owner	
201 Main Street Realty, LLC	
Members:	%
Jacob Sod	47.5%
Jonathan Bleier	47.5%
Bruce Peckman	5.0%

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Pine Haven Home's occupancy was 94.5% in 2011, 93.7% in 2012, 91.8% in 2013 and 81.7% in 2014. Current occupancy, as of February 17, 2016, is 93.3%.

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

201 Main Street, LLC, will purchase the real estate for \$6,500,000 with proposed members' equity of \$325,000 and a bank loan for \$6,175,000 at 7% interest for a five-year term. The applicant has submitted a bank letter of interest from Capital Funding, LLC. The projected budget is as follows:

Revenues:	\$12,659,500
Expenses:	<u>11,893,929</u>
Gain:	\$765,571

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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed Amended Articles of Organization, acceptable to the Department. [CSL]
10. Submission of each applicant's executed Medicaid Affidavit, 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

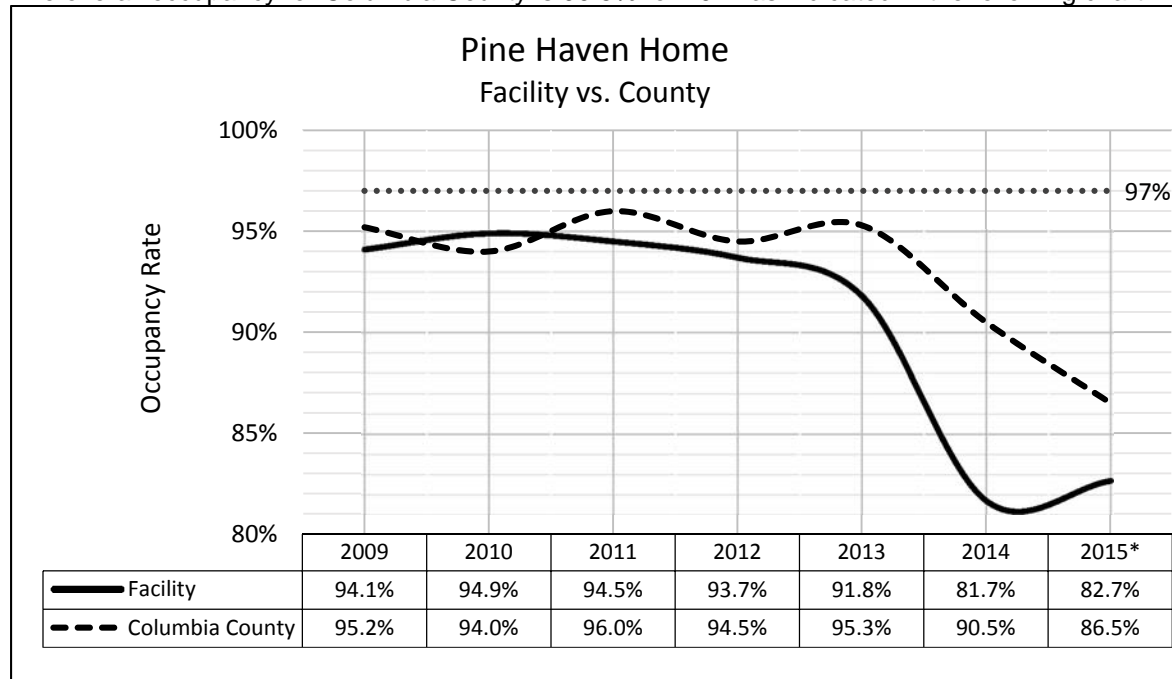
Analysis

The need methodology indicates a need for 52 additional beds in Columbia County.

RHCF Need – Columbia County

2016 Projected Need	667
Current Beds	596
Beds Under Construction	19
Total Resources	615
Unmet Need	52

The overall occupancy for Columbia County is 90.5% for 2014 as indicated in the following chart:



**unaudited; facility reported data*

The applicant attributes the decline in occupancy to the pending sale of the facility, a process which has been visible to the community given the county is the current operator. In 2014, Columbia County approved and released the RFP to privatize Pine Haven Home. During this time, there was opposition to the privatization on the part of the union representing county employees which generated negative press and a public campaign against the sale. The applicant states this resulted in community instability and decreased occupancy at the facility.

Once the contract of sale was executed on August 24, 2015, the proposed operator engaged in meaningful and positive dialogue with facility staff and began providing consulting services. Consulting services consisted of proposed improvements, updated billing practices, staff training and other critical assistance including implementation of a new admissions program and the hiring of additional admissions screeners as well as improved relationships with local hospitals and other upstream providers. The proposed operator's involvement in Pine Haven Home since late August 2015 has resulted in community stabilization and an increase in occupancy at the facility from 85.6% in August to 93.7% for the period of October 28, 2015 through February 17, 2016. Current CMI for the facility, effective July 1, 2015, is 1.1286 and, for the Medicaid-only population, 1.0924. This is a 22.9% increase from 0.9182 for the facility CMI and a 30.3% increase from 0.8385 for the Medicaid-only population as of July 1, 2013.

The applicant intends to increase occupancy in the following ways:

- Keep in line with the Department's goals of providing long-term care in the most integrated setting as possible through:
 - Development of new and enhancement of existing care programs, including its Wound Care Program and short-term rehabilitation services; and
 - Partnership with hospitals, managed care plans and other long-term providers;
- Transform the care model to ensure residents served by the facility are truly in need of the level of care being provided at the RHCF;
- Collaborate with the local area hospitals to ensure prompt discharge of hospital patients appropriate for RHCF care and implement state of the art programs to both reduce and avoid re-hospitalization, both at a significant cost savings to the Department;
- Hold meetings with local community leaders, hospitals and physicians to determine community and medical needs to develop specific programs and services for the facility;
- Employ the operator's internal corporate clinical team of experts to implement any and all of the identified needed specialties; and
- Utilize the operator's internal team of reimbursement experts to set up systems and procedures to guarantee the facility is up to date with the latest regulation and compliance rules.

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.

Pine Haven Home's Medicaid admissions of 14.5% in 2012 and 26.8% in 2013 did not exceed the Columbia County 75% rate of 30.8% in 2012 but did exceed the 75% rate of 25.9% in 2013.

Conclusion

Approval is recommended as there is a continued need to strengthen the existing resources for the residents of Columbia County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Pine Haven Home	Same
Address	NY Route 217 Philmont, NY. 12565	Same
RHCF Capacity	120	Same
ADHC Program Capacity	N/A	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Columbia	Pine Haven Operating, LLC
		<u>Members</u> Jonathan Bleier* 47.5% Jacob Sod* 47.5% Bruce Peckman 5.0% *Managing Members

Facilities Reviewed

Nursing Homes

Highfield Gardens Care Center of Great Neck	09/2010 to present
Westchester Center for Rehabilitation and Nursing	05/2013 to present
Greene Meadows Nursing and Rehabilitation Center	12/2015 to present

Pennsylvania CCRC and Nursing Home (PA)

Deer Meadows Retirement Community	12/2014 to present
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Pennsylvania Nursing Home (PA)

Sunnyview Nursing and Rehabilitation Center	05/2014 to present
Rosewood Rehabilitation and Nursing Center	09/2015 to present
Meadow View Nursing	01/2016 to present

Massachusetts Nursing Home (MA)

Timberlyn Nursing and Rehabilitation Center	12/2014 to present
Great Barrington Rehabilitation and Nursing Center	08/2015 to present

Connecticut Nursing Homes (CT)

Fairview Health of Greenwich	10/2012 to present
Fairview Health of Southport	10/2012 to present

Florida Nursing Home (FL)

Fort Meyers Rehab	12/2015 to present
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Minnesota Nursing Homes (MN)

Crystal Care Center	12/2013 to 01/2015
Angels Care Center	12/2013 to 01/2015

NYS Ambulatory Service (EMS)

Citywide Mobile Response	04/2005 to present
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Individual Background Review

Current facility ownership is shown in brackets.

Jonathan Bleier lists his employment as the Chief Financial Officer at Highfield Gardens Care Center, a skilled nursing facility located in Great Neck, NY. He has been employed at this facility in positions of increasing responsibility since June of 2005. Mr. Bleier discloses the following health facility ownership interests:

Highfield Gardens Care Center of Great Neck [16%]	09/2010 to present
Westchester Center for Rehabilitation and Nursing [54.96%]	05/2013 to present
Greene Meadows Nursing and Rehabilitation Center [37%]	12/2015 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present
Deer Meadows Retirement Community (PA)	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	09/2015 to present
Timberlyn Nursing and Rehabilitation Center (MA)	12/2014 to present
Great Barrington Rehabilitation and Nursing Center (MA)	08/2015 to present
Citywide Mobile Response (EMS) [25%]	06/2004 to present

Yaakov (Jacob) Sod lists his employment as the Vice President of Acquisitions at Fairview Healthcare Management, a management service company located in Southport, Connecticut. He also lists employment at Milrose Capital, an investment group located in Monsey, New York. Mr. Sod discloses the following health facility ownership interests:

Greene Meadows Nursing and Rehabilitation Center [10%]	12/2015 to present
Fairview Health of Greenwich (CT)	10/2012 to present
Fairview Health of Southport (CT)	10/2012 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present
Deer Meadows Retirement Community (PA)	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	09/2015 to present
Meadow View Nursing (PA)	01/2016 to present
Timberlyn Nursing and Rehabilitation Center (MA)	12/2014 to present
Great Barrington Rehabilitation and Nursing Center (MA)	08/2015 to present
Fort Meyers Rehab (FI)	12/2015 to present
Crystal Care Center (MN)	12/2013 to 01/2015
Angels Care Center (MN)	12/2013 to 01/2015

Bruce Peckman lists his employment as the Chief Executive Officer of Premiere Healthcare Management, LLC a healthcare consulting services company, since February 2015. Concurrently he is also the Chief Operating Officer at Highfield Gardens Care Center, a skilled nursing facility located in Great Neck, NY since 2006. Mr. Peckman discloses the following health facility ownership interests:

Westchester Center for Rehabilitation and Nursing [10%]	05/2013 to present
Greene Meadows Nursing and Rehab [4%]	12/2015 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for Highfield Gardens Care Center of Great Neck, Westchester Center for Rehabilitation and Nursing, and Greene Meadows Nursing and Rehabilitation for the time period indicated above reveals no enforcements.

An affidavit submitted by the applicant for Fairview Health in Greenwich, Connecticut indicates the following:

- An enforcement was of \$360 for class B violation of section 19a-527-1(b)(3) issued related to findings on 5/12/14.
- An enforcement was issued for a finding with a scope and severity level of G, at \$450 per day from 3/31/15 – 5/15/15 resulting in a total fine of \$12,285.

Since these enforcements are not recurrent in nature, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

An affidavit submitted by the applicant for Fairview Health of Southport, Connecticut indicates:

- A fine of \$260 was paid for smoking program violations found on 1/20/15.
- The facility was fined \$2,958 on 9/22/15 for findings related to care plan compliance, resident safety, door alarms, and elopement.

Since these enforcements are not repetitive in nature, the requirements for approval as set forth in Public Health Law §2801-1(3) have been met.

An affidavit submitted by the applicant indicates that Rosewood Rehabilitation and Nursing Center, Deer Meadows Retirement Community, Meadow View Nursing, and Sunnyview Nursing and Rehabilitation Center in Pennsylvania for the time period indicated above reveals no enforcements were disclosed.

A review of operations and a statement provided by the applicant regarding Angels Care Center, and Crystal Care Center in Minnesota for the period indicated above reveals no enforcements.

An affidavit submitted by the applicant for Timberlyn Nursing and Rehabilitation Center and Great Barrington Rehabilitation and Nursing Center in Massachusetts for the periods identified above reveals no enforcements were disclosed.

A statement provided by the applicant for Fort Myers Rehab in Florida for the time period indicated above reveals no enforcements.

A review of operations for Citywide Mobile Response for the time periods indicated above reveals no enforcements.

Project Review

This application proposes to establish Pine Haven Operating, LLC d/b/a Pine Haven Home as the operator of Pine Haven Home. Pine Haven Home is currently operated by Columbia County.

No changes in the program or physical environment are proposed in this application. The proposed operator indicated that after assuming operations they will perform a full analysis and inspection of the physical plant and equipment. Currently the proposed operators intend to perform cosmetic renovations to update the resident rooms, hallways and lobby.

The applicant states that there are no anticipated consulting and administrative services agreements for the facility after establishment of the new operator. Both Premier Healthcare Management, LLC and Fairview Healthcare are management entities that are owned by some of the proposed members of Pine Haven Operating, LLC. Jonathan Bleier is a member and manager of Premier Healthcare Management, LLC. Premier provides certain off-premises, back office operations, including but not limited to, billing and collections, third party payor negotiations, and purchasing services. Jacob Sod lists his employment as the Vice President of Acquisitions of Fairview Healthcare Management, a management service company located in Southport, Connecticut.

Conclusion

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).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Contract of Sale Agreement

The change in ownership of the realty will be effectuated in accordance with an executed contract of sale agreement, the terms of which are summarized below:

Date:	August 28, 2015
Seller :	Columbia County
Buyer:	201 Main Street Realty, LLC
Assets Acquired:	The property and all buildings, structures, facilities or improvements to the RHCF facility known as Pine Haven Home located on NY Route 217, Philmont, New York. All furniture, fixtures, equipment, permits, licenses, accounts receivable, and any other personal property attached or used in the operation or maintenance of the land/improvements/facility.
Excluded Assets:	The Fire Tower and Monument-Bell and Plaque to be removed by seller.
Assumption of Liabilities:	None
Purchase Price:	\$6,500,000
Additional Purchase Price:	At closing seller will pay an additional purchase price equal to an amount, which is 85% of the then current accounts receivable. (\$1,319,051 as of 10/31/2015.)
Payment of Purchase Price:	\$325,000 to be held in escrow with the remaining \$6,175,000 upon closing.

The real property will be purchased for \$6,500,000 with proposed members' equity of \$325,000 and a loan for \$6,175,000 financed at 7% interest with a five-year term. Capital Funding, LLC has provided a letter of interest for the loan.

Operations Transfer and Surrender Agreement

The change in ownership of the operations will be effectuated in accordance with an executed Operations and Transfer Agreement, the terms of which are summarized below:

Date:	August 28, 2015
Transferor:	Columbia County
Transferee:	Pine Haven Operating, LLC
Surrender:	Transferor will cease operation of the facility and surrender all rights in and to the facility for the Transferee to commence operation of the facility as of the closing date.
Transferred Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets from Transfer:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Transferred Liabilities:	Those associated with purchased assets.
Excluded Liabilities from Transfer:	Transferor shall retain any Medicaid and/or Medicare liabilities for the period prior to the closing, accrued expenses which were incurred in the ordinary course of business of the Facility, Liens affecting the Transferee's Assets other than Permitted Encumbrances, any liability or obligation of Transferor arising out of or based upon Transferor's ownership and operation of the Facility prior to the Closing.

The Operations Transfer and Surrender Agreement and the Contract of Sale Agreement will occur simultaneously to ensure smooth transition of operations of the facility. There is no purchase price for the operations. Employment of the facility's current employees will be up to the new operator.

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

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	NY Route 217, Philmont NY
Lessor:	201 Main Street Realty, LLC
Lessee:	Pine Haven Operating, LLC
Term:	5 years with a 3-year and a 2-year renewal for a total of 10 years. (Terms are structured in this manner as the Lessor intends to pursue a HUD mortgage, which may takes several years to finalize.)
Rental:	Amount equal to partial debt service of lessor due under the mortgage, which is \$715,000 per year.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. An affidavit has been submitted by the applicant attesting to the relationship between lessor and lessee.

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the current year (2014) and year one subsequent to change of ownership, summarized as follows:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
<u>Revenues</u>				
Medicare	\$530.91	\$2,140,632	\$590.90	\$3,012,400
Medicaid	\$202.27	5,472,231	\$235.88	7,415,500
Commercial	\$328.81	70,365	\$374.98	1,115,200
Private Pay/Other	\$331.19	1,485,395	\$375.39	1,116,400
Total Revenues		\$9,168,623		\$12,659,500
<u>Expenses</u>				
Operating	\$314.49	\$11,254,010	\$258.80	\$10,994,400
Capital	3.90	139,403	21.17	899,529
Total Expenses	\$318.39	\$11,393,413	\$279.97	\$11,893,929
Net Income (Loss)		(\$2,224,790)		\$765,571
Total Patient Days		35,785		42,483
Occupancy %		81.7%		97.0%

The following is noted with respect to the submitted budget:

- Medicare revenues are based on the federal Medicare PPS rates in effect for 2014 plus Medicare Part B revenues and increased by 2% per annum for inflation.
- Medicaid revenues include the facility's current operating and capital components based on the 2015 Medicaid rate plus assessments.

- Private Pay/Other revenues are projected based on the payment rates for similar facilities in the same geographical area and increased by 2.5% per annum for inflation.
- Expenses are based on the 2014 experience of the current operator increased by 2% per annum. No staffing reductions are anticipated. The proposed operators expect to realize cost savings totaling \$259,610 based their experience successfully negotiating group-pricing reductions with suppliers at their other related entities. The same benefits in purchasing will extend to such items as negotiated group policies for its liability insurance and workers compensation.
- Utilization by payer source for current year and year one, is based on historical experience is expected as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicare	11.27%	12.00%
Medicaid	75.60%	74.00%
Private Pay/Other	13.13%	14.00%

- Breakeven utilization subsequent to change of ownership is projected at 91.13% for year one.

Capability and Feasibility

There are no project costs associated with this application.

The real property will be purchased for \$6,500,000 with proposed realty members' equity of \$325,000 and a loan for \$6,175,000 financed at 7% interest with a five-year term. BFA Attachment A is a summary of the net worth of the proposed members, which indicates the availability of sufficient funds. A letter of interest has been submitted from Capital Funding, LLC for the loan.

Working capital requirements are estimated at \$1,982,322 based on two months of the first year budgeted expenses. Working capital will be met with a loan for \$633,000 at 5% for a 5-year term and members' equity of \$1,349,322. Capital Funding, LLC has submitted a letter of interest for the working capital loan. Proposed member, Jonathan Bleier, of Pine Haven Operating, LLC, has submitted an affidavit that states that he is willing to contribute resources disproportionate to his ownership percentages toward working capital requirements. BFA Attachment A is a summary of the net worth of the members of Pine haven Operating, LLC, which indicates the availability of sufficient funds for working capital. BFA Attachment B is the pro-forma balance sheet of Pine Haven Operating, LLC as of the first day of operations, which indicates positive members' equity of \$2,038,700.

The submitted budget indicates a net profit of \$765,571 for year one after the change in ownership. BFA Attachment E shows the variance between the current year net operating loss of \$2,224,790 and the first year budget net operating profit of \$765,571 is explained as follows:

- Revenue enhancements due to an increase in the current CMI, Medicare and Commercial Insurance rates and Medicare and Commercial days - \$1,284,148;
- Expense reductions due to no public union employee benefit contracts, group purchasing discounts, group therapy contracts, new vendors and group insurance policy savings - \$1,213,056; and
- The remaining \$493,157 is based on an increase in utilization.

DOH staff notes that the increase in utilization cannot be taken into account as fully recognized by the applicant, since it has not occurred prior to PHHPC approval. Therefore the budgeted revenues would decrease by \$493,157 resulting in a net profit in year one of \$272,414.

BFA Attachment F is a budget sensitivity analysis based on current utilization of the facility for a four month period as of January 20, 2016, which shows the budgeted revenues would increase by \$61,769 resulting in a net profit in year one of \$334,183 (based on the adjusted first year budgeted net profit). 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 NH revenues through the transition period.

BFA Attachment C is the financial summary of Pine Haven Home for audited years 2013 and 2014 and internal statements as of October 31, 2015, which indicates that the facility has experienced negative working capital, negative equity position, and generated an average annual net loss from 2013-2014 of \$3,353,723 and a loss of \$2,801,250 as of October 31, 2015. The negative working capital, negative equity, and net losses are due to employee county benefits and additional long-term liabilities owed to Columbia County.

BFA Attachment D, proposed members' affiliated RHCFS, shows positive operating income for the years shown.-

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.

Attachments

BFA Attachment A	Net Worth Statement for Pine Haven Operating, LLC
BFA Attachment B	Pro Forma Balance Sheet for Pine Haven Operating, LLC
BFA Attachment C	Pine Haven Home-Financial Summary, 2013- October 31, 2015
BFA Attachment D	Financial Summaries of Affiliated RHCFS
BFA Attachment E	Reconciliation of current RHCF Statement of Operations to First Year Budget Projection.
BFA Attachment F	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Pine Haven Operating, LLC as the new operator of Pine Haven Home, a 120-bed residential health care facility located on New York Route 217, Philmont, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

152227 E

FACILITY/APPLICANT:

Pine Haven Operating, LLC
d/b/a Pine Haven Home

APPROVAL CONTINGENT UPON:

1. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of a photocopy of the applicant's amended and executed Operating Agreement, acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's executed lease agreement, acceptable to the Department. [CSL]

9. Submission of a photocopy of the applicant's executed Amended Articles of Organization, acceptable to the Department. [CSL]
10. Submission of each applicant's executed Medicaid Affidavit, 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



Project # 152265-E
Highland Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Queens
Acknowledged: November 20, 2015

Executive Summary

Description

Highland Care Center, a 320-bed, proprietary, Article 28 residential health care facility (RHCF) located at 91-31 175th Street, Jamaica (Queens County), requests approval to transfer 77% of the ownership interest of the operation from the existing sole stockholder, Milton Ostreicher, to seven new stockholders. The corporation currently has 200 outstanding shares. One hundred fifty-four (154) shares are being sold for a purchase price of \$14,667.95 per share for a total purchase price of \$2,258,864.58. There will be 200 outstanding shares after completion of the proposed transaction. There will be no change in services as a result of the shareholder change.

Ownership of the proprietary business corporation before and after the requested change is as follows:

<u>Current Owner</u>		
<u>Stockholder:</u>	<u>Shares</u>	<u>%</u>
Milton Ostreicher	200	100%

<u>Proposed Owners</u>		
<u>Stockholders:</u>	<u>Shares</u>	<u>%</u>
Milton Ostreicher	46	23%
David Lichtschein	46	23%
Matthew Ostreicher	18	9%
Adam Ostreicher	18	9%
Rebecca Berger	18	9%
Lara Ostreicher Klein	18	9%
Marc Jason Ostreicher	18	9%
Jacklyn Erlichman	<u>18</u>	<u>9%</u>
	200	100%

Proposed new stockholder Matthew Ostreicher has ownership interest in two other New York State RHCFs. BFA Attachments C and D present the ownership interest and financial summaries of the proposed shareholder's affiliated RHCFs.

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 new shareholders. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.
The individual background review indicates the applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Financial Summary
There are no project costs associated with this transaction. The projected budget is as follows:

Revenues:	\$39,387,100
Expenses:	<u>\$35,655,801</u>
Gain:	\$3,731,299

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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of Shareholder Affidavits, fully executed and notarized and in accordance with 10 NYCRR §620.3(a)(2) for stockholders Jaclyn Erlichman, Lara Ostreicher, and Adam Ostreicher [CSL]
3. Submission of a copy of a fully executed proposed certificate of amendment to the Certificate of Incorporation of Highland Care Center, Inc., acceptable to the Department. [CSL]
4. Submission of a copy of a fully executed amendment to the By-laws of Highland Care Center, Inc., 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

April 14, 2016

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Highland Care Center	Same
Address	91-31 175 th Street Jamaica, NY 11432	Same
RHCF Capacity	320	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Highland Care Center Inc.	Same
	<u>Shareholder</u> Milton Ostreicher 100%	<u>Shareholders</u> * Milton Ostreicher 23% David Lichtschein 23% Matthew Ostreicher 9% Adam Ostreicher 9% Rebecca Berger 9% Lara Ostreicher Klein 9% Marc Jason Ostreicher 9% Jaclyn Erlichman 9% * Officer of Corporation

Facility Review

Meadow Park Rehab and Health Care	2/2006 to present
Brookhaven Rehabilitation and Health Care Center	2/2006 to present

Individual Background Review

David Lichtschein reports employment as clergy at Surf Manor Home for Adults since 2003. Mr. Lichtschein reports no health care facility interests.

Matthew Ostreicher reports employment as Director of Operations at Meadow Park Rehab and Health Care Center since 2001, Director of Purchasing at Beacon Rehabilitation and Nursing Center since 2006, and Consultant at Achieve Rehab and Nursing Facility since 2007. Matthew Ostreicher discloses 7.5% ownership interests in the following skilled nursing facilities.

Meadow Park Rehab and Health Care	1999 to present
Brookhaven Rehabilitation and Health Care Center	1999 to present

Adam Ostreicher is a New York State and New Jersey licensed attorney considered to be in good standing. Mr. Adam Ostreicher lists his employment since August of 2011 as Chief Operating Officer of Rytes Company which is a healthcare compliance and ethics consulting firm.

Rebecca Berger lists employment at the subject facility since September 2012 as a Cardio Rehab Assistant. Ms. Berger discloses no health facility interests.

Lara Ostreicher Klein has been employed as a Social Worker / Marketing at Highland Care Center since 2010. Ms. Klein holds a MSW from New York University School of Social Work. Ms. Ostreicher Klein discloses no health facility interests.

Dr. Marc Jason Ostreicher is a NYS licensed Medical Doctor in good standing. Dr. Marc Ostreicher reports employment as an attending physician at Five Town Medicine, PC Medical practice since July 2011. He discloses no ownership interests in health facilities.

Jaclyn Erlichman lists her employment as Admissions/Marketing at Highland Care Center, the subject facility since September 2011. Ms. Erlichman does not disclose any current interests in health facilities.

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the proposed applicants identified as new shareholders.

A review of the operations for Meadow Park Rehab and Health Care for the period identified above revealed that there were no enforcements.

A review of Brookhaven Rehabilitation and Health Care Center for the period identified above revealed the following:

- A federal CMP of \$28,925 was issued for a survey on 11/13/2006.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued April 3, 2009 for surveillance findings on 4/25/08. Deficiencies were found under 10 NYCRR 415.2 Quality of Care.

Project Review

This application proposes to transfer 76% ownership interest to seven new stockholders from the current sole stockholder. Milton Ostreicher has held ownership interest in this facility since 1990 and has been the sole shareholder subsequent to filing 90 day transfer notice in 2013. Milton Ostreicher will be the Officer of Highland Care Center Inc. Six of the applicants are the children of Milton Ostreicher; three of which are currently employed at the subject facility.

No changes in the program or physical environment are proposed in this application. The facility is in the process of completing a previously approved project to renovate and reconfigure the ground floor. The anticipated completion date is June 2016.

This application will not result in any new consulting or service agreements. The applicants have disclosed that Highland Care Center currently has consulting contracts currently in place with GHC Clinical Consultants LLC, Global Healthcare Fiscal Services Group LLC, and Global Healthcare Services Group LLC.

Conclusion

No negative information has been received concerning the character and competence of the proposed shareholders. All health care facilities are in substantial compliance with all rules and regulations. The individual background review indicates the applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Share Purchase Agreement

The applicant submitted executed share purchase agreements for the purchase of the stock, as detailed below:

Date: January 1, 2013			
Shareholders	Shares Purchased	%	Purchase Price
David Lichtschein	46	23%	\$674,725.44
Matthew Ostreicher	18	9%	\$264,023.19
Adam Ostreicher	18	9%	\$264,023.19
Rebecca Berger	18	9%	\$264,023.19
Lara Ostreicher Klein	18	9%	\$264,023.19
Marc Jason Ostreicher	18	9%	\$264,023.19
Jacklyn Erlichman	<u>18</u>	<u>9%</u>	<u>\$264,023.19</u>
Total Purchase Price	154	77%	\$2,258,864.58
Payment: Due in full no less than 2 days prior to closing			

BFA Attachment A is the personal net worth statements of the proposed new shareholders, which shows sufficient liquid resources overall to cover the purchase price. However, liquid resources may not be available in proportion to the proposed shareholders' ownership interest. Mr. Milton Ostreicher has provided a disproportionate share affidavit attesting to cover any potential equity shortfalls of the proposed new members.

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, for the first year subsequent to the change in the stock ownership, summarized below:

	Current Year (2014)		Year One	
	Per Diem	Total	Per Diem	Total
Revenues				
Medicaid Managed Care	\$273.79	\$21,833,880	\$291.49	\$25,758,100
Medicare Fee-For-Service	\$666.95	14,025,217	\$662.42	\$11,257,100
Commercial Fee-For-Service		\$0	\$291.42	\$1,650,900
Private Pay	\$323.26	2,700,844	\$315.00	\$713,800
Non-Operating Revenue		<u>\$7,499</u>		<u>\$7,200</u>
Total Revenues		\$38,567,440		\$39,387,100
Expenses				
Operating	\$310.79	\$33,916,396	\$300.96	\$34,096,600
Capital	<u>\$14.29</u>	<u>\$1,559,252</u>	<u>\$13.76</u>	<u>\$1,559,201</u>
Total Expenses	\$325.08	\$35,475,648	\$314.72	\$35,655,801
Net Income		\$3,091,792		\$3,731,299
Utilization (patient days)		109,130		113,293
Occupancy		93.43%		96.73%
Breakeven Occupancy				87.57%

The following is noted with respect to the submitted budget:

- Revenue assumptions for Medicaid, Medicare and Private Pay are based on the operator's current payment rates. The Medicaid rate for year one is based on the 2014 paid rate plus an estimated 6% add-on for cash receipts assessment. The facility has recently added commercial pay patients and payor rates to their payment structure going forward, and the projected rate is reasonable.
- Expense assumptions are based on the historical experience of the facility.
- Utilization by payor source during the current year (2014) and anticipated for the first year after the transfer of stock is summarized below:

	<u>Current Year</u>	<u>Year One</u>
Medicaid Managed Care	73%	78%
Medicare Fee-For-Service	19%	15%
Commercial Fee-For-Service	0%	5%
Private Pay	8%	2%

- Breakeven occupancy is 87.57% or 102,282 patient days.

The budget is reasonable.

Capability and Feasibility

The proposed new shareholders will purchase their respective shares for a total purchase price of \$2,258,864.58. David Lichtschein will pay \$674,725.44 for 46 shares and each of the remaining proposed shareholders will pay \$264,023.19 for the purchase of 18 shares each. Executed share purchase agreements have been submitted.

Working capital requirements are estimated at \$5,942,634 based on two months of first year expenses, and will be satisfied with \$2,971,317 from the proposed shareholders' equity, with the remaining \$2,971,317 to be financed via a working capital loan at 4.66% interest for three years. Tunic Capital, LLC has provided a letter of interest at the stated terms. BFA Attachment A is the personal net worth statements of the proposed new shareholders, which shows sufficient liquid assets overall to cover all aspects of the application. However, liquid resources may not be available in proportion to the proposed shareholders' ownership interest. Mr. Milton Ostreicher has provided a disproportionate share affidavit attesting to cover any potential purchase price or working capital equity shortfalls of the proposed new members. BFA Attachment A shows that Milton Ostreicher has sufficient liquid resources available to cover any equity shortfall of the proposed new stockholders.

The submitted budget indicates a net income of \$3,731,299 during the first year after the change in stock ownership. The submitted budget is 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 NH revenues through the transition period.

BFA Attachment B is the financial summary of Highland Care Center from 2013 through September 30, 2015. As shown, the facility had an average negative working capital position and an average negative net asset position for the period. The reason for the average negative working capital position is due to an increase in accounts payable associated with necessary renovations to the facility to improve the overall operations. Also, the facility achieved an average net income of \$1,719,225 from 2013 through September 30, 2015.

BFA Attachment D is the 2013-2015 financial summaries of Matthew Ostreicher's affiliated nursing homes, which indicates the following:

- Meadow Park had an average positive working capital position and an average negative net asset position for the period shown. The facility also achieved an average net loss of \$125,349 for the period shown. The 2013 loss is due to issues with the processing of the CMI rate for the facility. The loss was a one-time event that has been rectified.
- Brookhaven Rehab had an average negative working capital position and a positive net asset position for the period shown. The facility also achieved an average net income of \$1,347,210 for the period. The negative working capital position is due to a current liability of \$14,491,252 listed as Due to Realty. This liability should be classified as a long term liability, as this is the remaining debt left on their related company's purchase of the nursing home property bought in January 2015. The loan for the purchase was \$15,000,000 with a 9% interest rate. If this liability were classified correctly, the facility would have had a positive working capital position for the period shown.

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	Personal Net Worth Statements of Shareholders
BFA Attachment B	2013-9/30/2015 Certified and Internal Financial Summary- Highland Care Center
BFA Attachment C	Related Company Ownership of the members' of Highland Care Center
BFA Attachment D	Financial Summaries of the members' of Highland Care Center affiliated Nursing Homes
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer 76% ownership interest to (seven) 7 new stockholders from the (one) 1 existing stockholder, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152265 E

Highland Care Center

APPROVAL CONTINGENT UPON:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of Shareholder Affidavits, fully executed and notarized and in accordance with 10 NYCRR §620.3(a)(2) for stockholders Jaclyn Erlichman, Lara Ostreicher, and Adam Ostreicher [CSL]
3. Submission of a copy of a fully executed proposed certificate of amendment to the Certificate of Incorporation of Highland Care Center, Inc., acceptable to the Department. [CSL]
4. Submission of a copy of a fully executed amendment to the By-laws of Highland Care Center, Inc., 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]

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



**Project # 152380-E
Genesee Center Operating, LLC
d/b/a Genesee Center for Nursing and Rehabilitation**

Program: Residential Health Care Facility
Purpose: Establishment

County: Genesee
Acknowledged: December 28, 2015

Executive Summary

Description

Genesee Center Operating, LLC d/b/a Genesee Center for Nursing & Rehabilitation, a New York limited liability company, requests approval to be established as the operator of Genesee County Nursing Home, a 160-bed, public (county) Article 28 Residential Health Care Facility (RHCF) located at 278 Bank Street, Batavia (Genesee County). The facility also operates an on-site, 13-slot Adult Day Health Care Program (ADHCP). The County of Genesee is the current RHCF real property owner and operator of the facility. There will be no change in beds or services provided.

On September 10, 2015, the County of Genesee entered into a Contract of Sale with Batavian Realty, LLC for the sale and acquisition of the real property related to Genesee County Nursing Home. The Contract of Sale includes the 160-bed RHCF and on-site 13-slot ADHC program, plus the 80-bed Adult Home that the County also operates at 278 Bank Street, Batavia, NY. The Adult Home, Genesee County Assisted Living and Special Needs Residence, is certified for 80 Assisted Living Residence beds, which includes a 40-bed Special Needs program. A corresponding application for the change in ownership of the Adult Home is under review by the Division of Adult Care Facilities and Assisted Living (Project # 3050). The proposed new operator of the Adult Home is Genesee Center Operating II, LLC.

Concurrently on September 10, 2015, the County of Genesee entered into an Operations Transfer and Surrender Agreement with

Genesee Center Operating, LLC for the acquisition of the operating interests of the RHCF. Both transactions are to be effectuated upon Public Health and Health Planning Council (PHHPC) approval. The total purchase price for the property is \$15,200,000 broken down as follows: Realty-\$14,536,000, Adult Home-\$270,000 and ADHC-\$394,000. There is a relationship between Genesee Center Operating, LLC and Batavian Realty, LLC in that the entities have identical membership. The applicant will lease the RHCF facility from Batavian Realty, LLC.

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

Proposed Operator	
<u>Genesee Center Operating, LLC</u>	
<u>Members:</u>	<u>%</u>
Jacob Sod	35.0%
Jonathan Bleier	35.0%
Bernard Fuchs	30.0%

Proposed Property Owner	
<u>Batavian Realty, LLC</u>	
<u>Members:</u>	<u>%</u>
Jacob Sod	35.0%
Jonathan Bleier	35.0%
Bernard Fuchs	30.0%

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Genesee County Nursing Home's occupancy was 95.4% in 2012, 95.3% in 2013 and 96.6% in 2014. Current occupancy as of February 3, 2016, is 97.5%.

Program Summary

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.

Financial Summary

Batavian Realty, LLC will purchase the real estate for \$15,200,000 to be funded with \$2,280,000 equity from the proposed members and a bank loan for \$12,920,000 at 8% interest for a 20-year term. A letter of interest from Meridian Capital Group, LLC has been submitted by the applicant. The projected budget is as follows:

Revenues:	\$14,461,600
Expenses:	<u>14,365,763</u>
Gain:	\$95,837

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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of a photocopy of the applicant's signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's signed Operating Agreement, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's signed Certificate of Assumed Name, which is 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

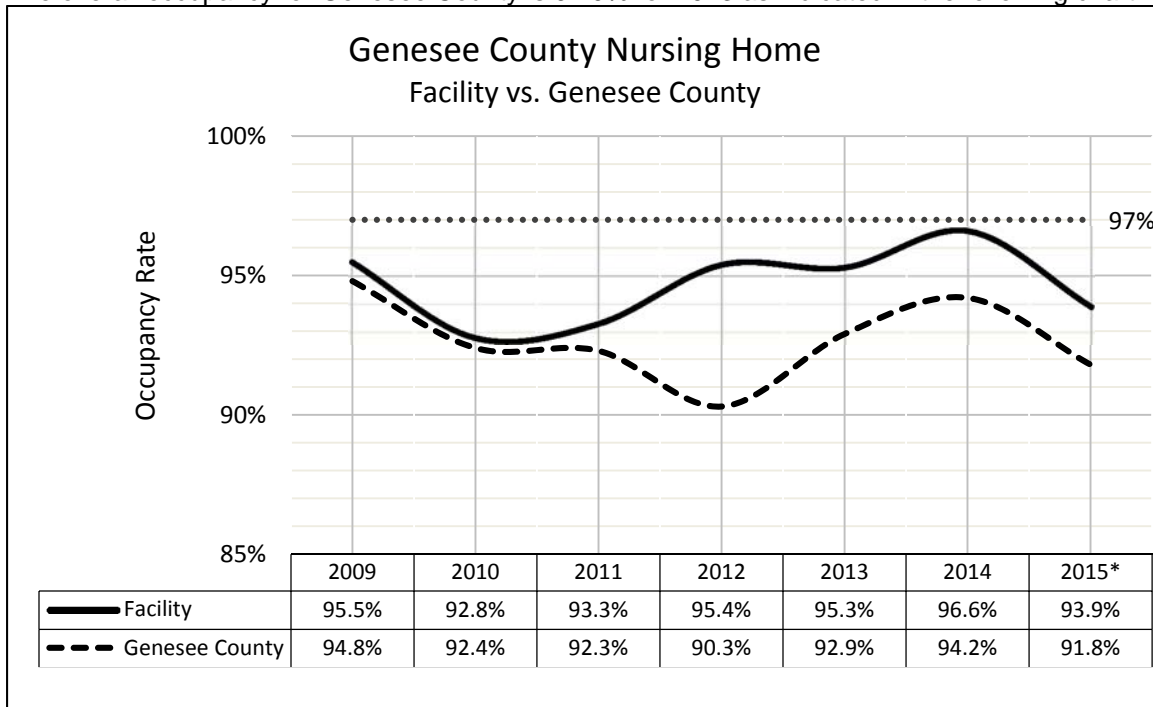
Analysis

The need methodology indicates a need for 57 additional beds in Genesee County.

RHCF Need – Genesee County

2016 Projected Need	545
Current Beds	488
Beds Under Construction	0
Total Resources	488
Unmet Need	57

The overall occupancy for Genesee County is 92.9% for 2013 as indicated in the following chart:



*unaudited, facility reported data

Current occupancy as of February 3, 2016 is 97.5%. The proposed operators intend to use their past experience to increase and maintain occupancy by:

- Meeting with local community leaders, hospitals and physicians to identify and develop short and long term nursing facility programs to address the needs of the community; and
- Utilize an internal team of Medicare, HMO and Medicaid reimbursement experts to set up systems and procedures to ensure maximization and appropriate coding.

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 has 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.

Genesee County Nursing Home's Medicaid admissions of 15.5% and 14.5% in 2012 and 2013, respectively, exceeded Genesee County's 75% rates of 9.9% and 8.1% in 2012 and 2013, respectively.

Conclusion

Approval of this application will maintain a resource for the Medicaid population in the community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Genesee County Nursing Home	Genesee Center for Nursing and Rehabilitation
Address	278 Bank Street Batavia, NY 14020	Same
RHCF Capacity	160	Same
ADHC Program Capacity	13	Same
Type of Operator	County	Limited Liability Company
Class of Operator	Public	Proprietary
Operator	County of Genesee	Genesee Center Operating, LLC <div style="margin-left: 20px;"> <u>Members</u> Jonathan Bleier* 35.0% Jacob Sod 35.0% Bernard Fuchs 30.0% *Managing Member </div>

Facilities Reviewed

Nursing Homes

Bensonhurst Center for Rehabilitation and Healthcare	01/2012 to present
Greene Meadows Nursing and Rehabilitation Center	12/2015 to present
Highfield Gardens Care Center of Great Neck	09/2010 to present
Hopkins Center for Rehabilitation and Healthcare	03/2011 to present
Hudson Pointe at Riverdale Center for Nursing and Rehab	03/2006 to 08/2010
The Pavillion at Queens Rehabilitation and Nursing	01/2015 to present
The Villages of Orleans Health and Rehabilitation Center	01/2015 to present
Westchester Center for Rehabilitation and Nursing	05/2013 to present

Pennsylvania CCRC and Nursing Home

Deer Meadows Retirement Community	12/2014 to present
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Pennsylvania Nursing Homes

Rosewood Rehabilitation and Nursing Center	09/2015 to present
Sunnyview Nursing and Rehabilitation Center	05/2014 to present
Meadow View Nursing	01/2016 to present

Massachusetts Nursing Homes

Great Barrington Rehabilitation and Nursing Center 08/2015 to present
Timberlyn Nursing and Rehabilitation Center 12/2014 to present

Connecticut Nursing Homes

Fairview Health of Greenwich 10/2012 to present
Fairview Health of Southport 10/2012 to present

Florida Nursing Home

Fort Meyers Rehab 12/2015 to present

Minnesota Nursing Homes

Angels Care Center 01/2013 to 01/2015
Crystal Care Center 01/2013 to 01/2015

NYS Ambulatory Service

Citywide Mobile Response (EMS) 04/2005 to present

Individual Background Review

Current facility ownership is shown in brackets.

Jonathan Bleier lists his employment as the Chief Financial Officer at Highfield Gardens Care Center, a skilled nursing facility located in Great Neck, NY. He has been employed at this facility in positions of increasing responsibility since June of 2005. Mr. Bleir discloses the following health facility ownership interests:

Highfield Gardens Care Center of Great Neck [16%]	09/2010 to present
Westchester Center for Rehabilitation and Nursing [54.96%]	05/2013 to present
Greene Meadows Nursing and Rehabilitation Center [37%]	12/2015 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present
Deer Meadows Retirement Community (PA)	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	09/2015 to present
Timberlyn Nursing and Rehabilitation Center (MA)	12/2014 to present
Great Barrington Rehabilitation and Nursing Center (MA)	08/2015 to present
Citywide Mobile Response (EMS) [25%]	06/2004 to present

Yaakov (Jacob) Sod lists his employment as the Vice President of Acquisitions at Fairview Healthcare Management, a management service company located in Southport, Connecticut. He also lists employment at Milrose Capital, an investment group located in Monsey, New York. Mr. Sod discloses the following health facility ownership interests:

Greene Meadows Nursing and Rehabilitation Center [10%]	12/2015 to present
Fairview Health of Greenwich (CT)	10/2012 to present
Fairview Health of Southport (CT)	10/2012 to present
Sunnyview Nursing and Rehabilitation Center (PA)	05/2014 to present
Deer Meadows Retirement Community (PA)	12/2014 to present
Rosewood Rehabilitation and Nursing Center (PA)	09/2015 to present
Meadow View Nursing (PA)	01/2016 to present
Timberlyn Nursing and Rehabilitation Center (MA)	12/2014 to present
Great Barrington Rehabilitation and Nursing Center (MA)	08/2015 to present
Fort Meyers Rehab (FL)	12/2015 to present
Crystal Care Center (MN)	12/2013 to 01/2015
Angels Care Center (MN)	12/2013 to 01/2015

Bernard Fuchs lists concurrent employment as Principal at Platinum Management (NY) LLC, the CEO of Kennedy Management, LLC which he lists as a healthcare company and Chief Investment Officer at Tiferes Investors LLC, an investment company located in Lawrence, New York. Mr. Fuchs discloses the following ownership interests in health facilities:

Greene Meadows Nursing and Rehabilitation [45%]	12/2015 to present
Hudson Pointe at Riverdale Center for Nursing and Rehab [50%]	01/2006 to 08/2010
Hopkins Center for Rehabilitation and Healthcare [3%]	03/2011 to present
Bensonhurst Center for Rehabilitation and Healthcare [5%]	01/2012 to present
The Villages of Orleans Health and Rehabilitation Center [100%]	01/2015 to present
The Pavillion at Queens Rehabilitation and Nursing [50%]	01/2015 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants.

A review of operations for Hopkins Center for Rehabilitation and Healthcare for the period identified above reveals

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued August 24, 2012 for surveillance findings on April 11, 2011. Deficiencies were found under 10 NYCRR (h)(1)(2) – Quality of Care: Accidents and 10 NYCRR 415.26 – Administration.
- The facility was fined \$10,000 pursuant to a Stipulation and Order for surveillance findings on February 29, 2012. Deficiencies were found under 10 NYCRR 415.3(c)(l)(ii) – Right to Refuse; Formulate Advanced Directives.

The enforcements indicated above are not recurrent in nature, therefore the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

A review of operations for Bensonhurst Center for Rehabilitation and Healthcare, Greene Meadows, Highfield Gardens Care Center of Great Neck, Hudson Pointe at Riverdale Center for Nursing and Rehabilitation, The Pavilion at Queens for Rehabilitation and Nursing, The Villages of Orleans Health and Rehabilitation Center, and Westchester Center for Rehabilitation and Nursing, for the time period indicated above, reveals no enforcements.

An affidavit submitted by the applicant for Fairview Health in Greenwich, Connecticut indicates the following:

- An enforcement was of \$360.00 for class B violation of section 19a-527-1(b)(3) issued related to findings on 5/12/14.
- An enforcement was issued for a finding with a scope and severity level of G, at \$450 per day from 3/31/15 – 5/15/15 resulting in a total fine of \$12,285.

Since these enforcements are not recurrent in nature, the requirements for approval have been met as set forth in Public Health Law §2801-1(3).

An affidavit submitted by the applicant for Fairview Health of Southport, Connecticut indicates:

- A fine of \$260 was paid for smoking program violations found on 1/20/15.
- The facility was fined \$2,958 on 9/22/15 for findings related to care plan compliance, resident safety, door alarms, and elopement.

Since these enforcements are not repetitive in nature, the requirements for approval as set forth in Public Health Law §2801-1(3) have been met.

An affidavit submitted by the applicant indicates that Rosewood Rehabilitation and Nursing Center, Deer Meadows Retirement Community, and Meadow View Nursing, Sunnyview Nursing and Rehabilitation Center in Pennsylvania for the time period reveals no enforcements were disclosed.

A review of operations and a statement provided by the applicant regarding Angels Care Center, and Crystal Care Center in Minnesota for the period indicated above reveals no enforcements were disclosed.

An affidavit submitted by the applicant for Timberlyn Nursing and Rehabilitation Center and Great Barrington Rehabilitation and Nursing Center in Massachusetts for the periods identified above reveals no enforcements were disclosed.

A statement provided by the applicant for Fort Myers Rehab in Florida for the time period indicated above reveals no enforcements.

A review of operations for Citywide Mobile Response for the time periods indicated above reveals no enforcements.

Project Review

This application proposes to establish Genesee Center Operating, LLC as the new operator of the 160-bed residential health care facility located at 278 Bank Street, Batavia which is currently operated as the Genesee County Nursing Home. The facility will be operated as Genesee Center for Nursing and Rehabilitation as a result of the transaction.

No changes in the program or physical environment are proposed in this application. The current program includes an onsite adult day health care program with a capacity of thirteen attendees. The facility is also currently licensed to provide outpatient physical, occupational, and speech/ language pathology.

The applicant states that there are no anticipated consulting and administrative services agreements for the facility after establishment of the new operator. Both Premier Healthcare Management, LLC and Fairview Healthcare are management entities that are owned by some of the proposed members of Pine Haven Operating, LLC. Jonathan Bleier is a member and manager of Premier Healthcare Management, LLC. Premier provides certain off-premises, back office operations, including but not limited to, billing and collections, third party payor negotiations, and purchasing services. Jacob Sod lists his employment as the Vice President of Acquisitions of Fairview Healthcare Management, a management service company located in Southport, Connecticut.

Conclusion

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).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Contract of Sale Agreement

The change in ownership of the realty will be effectuated in accordance with an executed contract of sale agreement, the terms of which are summarized below:

Date:	September 10, 2015
Seller :	Genesee County
Buyer:	Batavian Realty, LLC
Assets Acquired:	The property and all buildings, structures, facilities or improvements to the RHCf facility known as Pine Haven Home located at 278 Bank Street, Batavia, New York. All furniture, fixtures, equipment, permits, licenses, accounts receivable and any other personal property attached or used in the operation or maintenance of the land/improvements/facility.
Excluded Assets:	None
Assumption of Liabilities:	None
Purchase Price:	\$15,200,000
Payment of Purchase Price:	\$1,420,000 held in escrow with the remaining \$13,780,000 due upon closing.

The Contract of Sale is for the realty related to the 160-bed RHCf, the 13-registrant ADHC program, and the 80-bed Adult Home. The property will be purchased for \$15,200,000 funded with proposed member's equity of \$2,280,000 and a loan for \$12,920,000 financed at 8% interest for a 20-year term. Meridian Capital Group, LLC has provided a letter of interest for the loan.

Operations Transfer and Surrender Agreement

The change in ownership of the operations will be effectuated in accordance with an executed Operations and Transfer Agreement, the terms of which are summarized below:

Date:	September 10, 2015
Transferor:	Genesee County
Transferee:	Genesee Center Operating, LLC
Surrender:	Transferor will cease operation of the facility and surrender all rights in and to the facility for the Transferee to commence operation of the facility as of the closing date.
Transferred Assets:	All assets used in operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents;
Excluded Assets from Transfer:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Transferred Liabilities:	Those associated with purchased assets.
Excluded Liabilities from Transfer:	Transferor shall retain any Medicaid and/or Medicare liabilities for the period prior to the closing, accrued expenses which were incurred in the ordinary course of business of the Facility, Liens affecting the Transferee's Assets other than Permitted Encumbrances, any liability or obligation of Transferor arising out of or based upon Transferor's ownership and operation of the Facility prior to the Closing.

The Operations Transfer and Surrender Agreement and the Contract of Sale Agreement will occur simultaneously to ensure smooth transition of operations of the facility. Employment of the facility's current employees will be up to the new operator.

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

Lease Agreement

Facility occupancy is subject to a draft lease agreement, the terms of which are summarized as follows:

Premises:	278 Bank Street, Batavia, NY
Lessor:	Batavian Realty, LLC
Lessee:	Genesee Center Operating, LLC
Term:	5 years with a 3-year and a 2-year renewal for a total of 10 years. (The lease terms are structured in this manner as the Lessor intends to pursue a HUD mortgage, which may take several years to finalize.)
Rental:	Amount equal to debt service of lessor due under the mortgage and refinancing of the acquisition, which is \$1,318,800 per year.
Provisions:	Triple Net

The lease arrangement is a non-arm's length agreement. An affidavit has been submitted by the applicant attesting to the relationship between lessor and lessee.

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for current year (2014) and year one subsequent to change of ownership, summarized as follows:

	<u>Current Year</u>		<u>Year One</u>	
	<u>Per Diem</u>	<u>Total</u>	<u>Per Diem</u>	<u>Total</u>
<u>RHCF Revenues</u>				
Medicare	\$439.81	\$1,901,302	\$510.05	\$2,599,900
Medicaid	\$196.28	9,208,633	\$211.98	9,967,000
Commercial	\$350.98	160,400	\$357.04	809,000
Private Pay/Other	\$348.64	<u>1,640,332</u>	\$357.55	<u>810,200</u>
Total RHCF Revenues		\$12,910,667		\$14,186,100
 <u>RHCF Expenses</u>				
Operating	\$260.29	\$14,680,794	\$225.60	\$12,779,668
Capital	<u>13.34</u>	<u>752,145</u>	<u>25.77</u>	<u>1,460,126</u>
Total RHCF Expenses	\$273.63	\$15,432,939	\$251.37	\$14,239,794
 <u>ADHCP Revenues</u>				
Medicaid	<u>\$72.28</u>	\$114,567	<u>\$90.35</u>	\$249,500
Private Pay	\$72.28	<u>8,312</u>	\$90.35	<u>26,000</u>
Total ADHCP Revenues		\$122,879		\$275,500
 <u>ADHCP Expenses</u>				
Operating	\$65.45	\$111,269	\$36.48	\$111,269
Capital	<u>7.32</u>	<u>12,440</u>	<u>4.62</u>	<u>14,700</u>
Total ADHCP Expenses	\$72.77	<u>\$123,709</u>	\$41.10	<u>\$125,969</u>

Total Revenues	\$13,033,546	\$14,461,600
Total Expenses	<u>\$15,556,648</u>	<u>\$14,365,763</u>
Net Income (Loss)	<u>(\$2,523,102)</u>	<u>\$95,837</u>
Total Patient Days	56,401	56,647
ADHCP visits	1,700	3,050
RHCF Occupancy %	96.58%	97.36%

The following is noted with respect to the submitted budget:

- The first year Medicare rates are based on federal Medicare PPS in effect for 2015 plus Medicare Part B revenues and increased by 1% per annum for inflation.
- Medicaid revenues include the facility's current operating and capital components based on the 2015 Medicaid rate plus assessments.
- Commercial and Private Pay/Other rates are increased by 1.0% per annum for inflation.
- Expenses are based on the 2014 experience of the current operator for the RHCF and AHDCP. The net loss does not include the Adult Home, which is the difference between the audited 2014 total net loss and the current year.
- The difference between the 2014 net loss and first year budgeted net income is due to revenue enhancements through increase PPS rates by CMS as of 10/1/2015, an increase in CMI as shown in the 2016 Medicaid measurement, a reduction in union salaries and benefits, a reduction in expenses due to better negotiated contracts for purchased services and a change in vendors for better contract pricing.
- The first year budget takes into consideration the increased capital expenses due to the rental expense on the new mortgage through the lease payments.
- RHCF Utilization by payer source for current year and year one, based on historical experience, is expected as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicare	7.70%	9.00%
Medicaid	83.20%	83.00%
Private Pay/Other	9.10%	8.00%

- Breakeven utilization for the RHCF subsequent to the change of ownership is projected at 97.36% for year one.

Capability and Feasibility

There are no project costs associated with this application.

The real property will be purchased for \$15,200,000 with proposed members' equity of \$2,280,000 and a loan for \$12,920,000 financed at 8% interest with a 20-year term. A letter of interest has been submitted from Meridian Capital Group, LLC for the loan. Bernard Fuchs, proposed Genesee Center Operating, LLC and Batavian Realty, LLC member, has submitted an affidavit stating he is willing to contribute resources disproportionate to his ownership interest toward the real property purchase. BFA Attachment A is a summary of the net worth of the proposed members of Genesee Center Operating, LLC, which indicates the availability of sufficient funds.

Working capital requirements are estimated at \$2,394,294 based on two months of the first year budgeted expenses. Working capital will be met with a loan of \$1,170,000 and members' equity of \$1,224,294. A letter of interest has been submitted from Capital Finance, LLC for the working capital loan at 6% over 3 years. Bernard Fuchs, proposed operating and realty entity member, has submitted an affidavit stating he is willing to contribute resources disproportionate to his ownership interest toward the working capital requirements. Review of BFA Attachment A indicates the availability of sufficient funds for working capital. BFA Attachment B is the pro-forma balance sheet of Genesee Center Operating, LLC as of the first day of operations, which indicates positive members' equity of \$1,595,000.

The submitted budget indicates a net profit of \$95,837 for Year One after the change in ownership. BFA Attachment E shows the variance between the current year net operating loss of \$2,846,705 from 2014 audited financial statements and the first year budget net operating profit of \$95,837 is explained as follows:

- Revenue enhancements due to an increase in the current CMI, Medicare and Commercial Insurance rates and Medicare and Commercial days - \$1,154,421.
- Expense reductions due to no employee union contract, group purchasing, group therapy contracts, new vendors and group insurance policies - \$2,173,738.
- The remaining \$756,142 is based on an increase in additional capital expenses and is offset against the increases above.
- Loss allocated to Genesee County Adult Home - \$370,525.

BFA Attachment F is a budget sensitivity analysis based on the current utilization of the facility for a four month period as of October 31, 2015, which shows the budgeted revenues would decrease by \$88,649 resulting in a net profit in year one of \$7,188 (based on the adjusted first year budgeted net profit). 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 NH revenues through the transition period.

BFA Attachment C is the financial summary of Genesee County Nursing Facility for audited years 2013 and 2014 and the internal statements as of October 31, 2015, which indicates that the facility has experienced negative working capital, negative equity position and generated average annual net losses of \$3,575,653 from 2013-2014 and \$1,739,057 as of October 31, 2015. The negative working capital, net equity and net losses are due to county employee fringe benefit costs and additional long-term liabilities owed to Genesee County.

BFA Attachment D, proposed members' affiliated RHCFS, shows positive operating income for the years shown.

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.

Attachments

BFA Attachment A	Net Worth Statement for Genesee Center Operating, LLC
BFA Attachment B	Pro Forma Balance Sheet for Genesee Center Operating, LLC
BFA Attachment C	Genesee County Nursing Home-Financial Summary, 2013- October 31, 2015
BFA Attachment D	Financial Summaries of Affiliated RHCFS
BFA Attachment E	Reconciliation of current RHCFS Statement of Operations to First Year Budget Projection.
BFA Attachment F	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Genesee Center Operating, LLC as the new operator of the 160-bed residential health care facility located at 278 Bank Street, Batavia which is currently operated as the Genesee County Nursing Home, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152380 E

Genesee Center Operating, LLC
d/b/a Genesee Center for Nursing and
Rehabilitation

APPROVAL CONTINGENT UPON:

1. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
3. Submission of an executed building lease acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of a photocopy of the applicant's signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's signed Operating Agreement, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's signed Certificate of Assumed Name, which is 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



Project # 152381-E
Silver Lake Specialized Rehabilitation and Care Center

Program: Residential Health Care Facility
Purpose: Establishment

County: Richmond
Acknowledged: December 28, 2015

Executive Summary

Description

Silver Lake Specialized Rehabilitation and Care Center, LLC, a 278-bed Article 28 residential health care facility (RHCF) located at 275 Castleton Avenue, Staten Island (Richmond County), requests approval to transfer 41% ownership interest from one existing member to one new member. The consideration for the transfer is \$100 to be paid by Hershie Weingarten to Simone Kraus. There will be no change in services provided.

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

<u>Current Operator</u>	
Silver Lake Specialized rehabilitation and Care Center, LLC	
<u>Members</u>	<u>%</u>
Simone Kraus (Manager)	91%
Rosemarie Weingarten	9%

<u>Proposed Operator</u>	
Silver Lake Specialized rehabilitation and Care Center, LLC	
<u>Members</u>	<u>%</u>
Simone Kraus (Manager)	50%
Hershie Weingarten	41%
Rosemarie Weingarten	9%

BFA Attachment C provides the ownership interest and financial summary of the proposed new member's affiliated RHCF.

OPCHSM Recommendation
Approval

Need Summary

There will be no Need review for this project.

Program Summary

No negative information has been received concerning the character and competence of the proposed new member. No changes in the program or physical environment are proposed in this application. No administrative services or consulting agreements are proposed in this application.

Financial Summary

There are no project costs associated with this transaction. No budget analysis was necessary as this is a transfer of 41% ownership interest in the RHCF to a family member for \$100, the other current members are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

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 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

April 14, 2016

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Silver Lake Specialized Rehabilitation and Health Care Center	Same
Address	275 Castleton Avenue Staten Island, NY 10301	Same
RHCF Capacity	278	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Corporation	Same
Class of Operator	Proprietary	Same
Operator	Silver Lake Specialized Rehabilitation and Care Center, LLC <u>Members</u> Rosemarie Weingarten 9% Simone Kraus 91%	Same <u>Members</u> Rosemarie Weingarten 9% Hershie Weingarten 41% *Simone Kraus 50% * Managing Member

Facility Review

Pelham Parkway Nursing Home	4/14 to present
Silver Lake Specialized Care Center	3/06 to 6/08

Individual Background Review

Hershie Weingarten is a licensed attorney in the state of New York and Illinois in good standing. Mr. Weingarten is also a licensed real estate broker in Illinois. Mr. Weingarten reports that he is self-employed at Weingarten and Adler a law firm located in Chicago, Illinois, since 2003. Mr. Weingarten discloses the following interests in health care facilities:

Pelham Parkway Nursing Home	4/14 to present
Silver Lake Specialized Care Center	7/94 to 6/08

Character and Competence Analysis

A review of operations for Pelham Parkway Nursing Home, and Silver Lake Specialized Care Center for the periods identified above, revealed that there were no enforcements.

Project Review

This application proposes to transfer 41% ownership interest from one (1) existing member to one (1) new member. Simone Kraus, is transferring 41% of her membership interest in the company to her brother, Hershie Weingarten. Rosemarie Weingarten, Hershie Weingarten and Simone Kraus are relatives. This family has had holdings in this facility since the 1990's.

This facility is currently certified to provide care for 40 ventilator dependent individuals. No changes in the program or physical environment are proposed in this application. The applicant reports that no consulting and service agreements are contemplated as a result of this application.

Conclusion

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 applicant has met the standard for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, approval is recommended.

Financial Analysis

Assignment and Assumption Agreement

An executed Assignment and Assumption Agreement was submitted for the operations related to the RHCF as follows:

Date:	November 30, 2015
Assignor:	Simone Kraus
Assignee:	Hershie Weingarten
Rights assigned:	Assignment of 41% of the membership interests and assignor's rights to the assignee for the facility.
Consideration:	\$100 cash, already paid in full.

Capability and Feasibility

There are no project costs associated with this transaction. This application is a transfer of 41% ownership interest in the RHCF to a family member for \$100. BFA Attachment A is the personal net worth statement of Hershie Weingarten, the proposed member, which shows the availability of sufficient liquid resources.

No budget analysis was necessary as this is a transfer of the 41% ownership interest in the RHCF to a family member, the other current members are remaining in the ownership structure, and the facility is not proposing to change its business model, which has historically been profitable. The facility has no outstanding Medicaid liabilities.

BFA Attachment B is the 2013-2014 audited financial summary of Silver Lake Specialized Rehabilitation and Care Center and the internal financials of the RHCF as of September 30, 2015. As shown, the facility has experienced an average negative working capital position and maintained an average positive net asset position. The negative working capital is due to the facility lagging in paying their vendors. Recent improvements have been made in paying vendors and certain long standing vendors were replaced with those that offered more favorable pricing, which will decrease the negative working capital over time. Also, the facility achieved an average net income of \$1,006,338 as of September 30, 2015.

BFA Attachments C, financial summary of the proposed member's affiliated RHCF, shows the facility has maintained positive net income from operations for the periods shown.

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	Proposed New Member's Net Worth
BFA Attachment B	Financial Summary, Silver Lake Specialized Rehabilitation and Care Center
BFA Attachment C	Affiliated Residential Health Care Facility
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to transfer of 41% ownership interest from one (1) existing member to one (1) new member, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152381 E

Silver Lake Specialized Rehabilitation
and Care Center

APPROVAL CONTINGENT UPON:

N/A

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]

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

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Sarene Services, Inc. d/b/a Sarene Home Nursing Agency
Address: Medford
County: Suffolk
Structure: For-Profit Corporation
Application Number: 2412-L

Description of Project:

Sarene Services, Inc. d/b/a Sarene Home Nursing Agency, 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.

Sarene Services, Inc. d/b/a Serene Home Nursing Agency was previously approved as a home care services agency by the Public Health Council at its November 16, 2007 meeting and subsequently licensed 1549L001. At that time it was owned as follows: Salvatore Gerbino – 100 shares and Irene Manolias – 100 shares. On October 9, 2009, Salvatore Gerbino transferred 9% of his shares to Christopher Mackie. The ownership as of October 9, 2009 was as follows Salvatore Gerbino – 82 shares, Irene Manolias – 100 shares and Christopher Mackie – 18 shares.

In January 2013, by court order Salvatore Gerbino signed over all of his rights and shares of Sarene Services, Inc. back to the corporation in return for the settlement figure of \$88,000.00. Through a settlement agreement dated May 6, 2013, upon the execution of the agreement, Salvatore Gerbino shall execute a written resignation effectively resigning as a shareholder, officer, director, agent, and/or representative of Sarene Services, Inc. as of December 31, 2012. The settlement agreement required that the resignation be held in escrow by counsel for Salvatore Gerbino until such time as Indebtedness is paid in full.

The applicant has authorized 200 shares of stock, which are owned as follows:

Irene Manolias – 170 Shares Christopher W. Mackie – 30 Shares

The Board Member of Sarene Services, Inc. d/b/a Sarene Home Nursing Agency comprises the following individuals:

Irene Manolias – President Christopher W. Mackie – Vice President
President, Triple A Pools

Irene Manolias is exempt from character and competence review due to the fact that she was previously approved by the Public Health Council for this operator.

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A review Sarene Services, Inc. d/b/a Serene Home Nursing Agency (July 2009-Present) was conducted as part of this review.

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 applicant proposes to continue to serve the residents of the following counties from an office located at 3235 Route 112, Suite #2, Medford, New York 11763.

Nassau Suffolk

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Medical Social Services
Occupational Therapy	Physical Therapy	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: March 4, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Concepts of Health Care, Inc.
Address: Ballston Spa
County: Saratoga
Structure: For-Profit Corporation
Application Number: 151322

Description of Project:

Concepts of Health 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.

Concepts of Health Care, Inc. was previously approved by the Public Health Council at its January 19, 1990 meeting and subsequently licensed 0047L001.

The applicant has authorized 200 shares of stock, which will be owned as follows:

Elizabeth A. Doyle – 190 shares
Business Administrator, Concepts of Health Care, Inc.

10 shares remain unissued.

The Board of Directors of Concepts of Health Care, Inc. is comprised of:

Elizabeth A. Doyle – President/Vice President/Treasurer/Secretary
(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 the following counties from an office located at 10 Deerfield Place, Ballston Spa, New York 12020:

Albany	Fulton	Montgomery	Rensselaer
Saratoga	Schenectady	Schoharie	Warrant
Washington	Columbia	Greene	

The applicant proposes to provide the following health care services:

Nursing Home Health Aide Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 8, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Marks Homecare Agency Inc.
Address: Rego Park
County: Queens
Structure: For-Profit Corporation
Application Number: 152082

Description of Project:

Marks 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.

Marks Homecare Agency of NY, Inc. was previously approved by the Public Health and Health Planning Council at its June 7, 2012 meeting and subsequently licensed 1923L001. At that time, it was owned by Mariya Rudinskaya and Shakhnoza Madaminova with each individual owning 100 shares.

The applicant has authorized 200 shares of stock, which will be owned as follows:

Danielle Ganz, OT – 200 Shares
Occupational Therapist, Special Education Associates, Inc.

The following individual is the sole member of the Board of Directors Marks Homecare Agency Inc.:

Danielle Ganz – President/Chairman
(Previously Disclosed)

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 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 97-17 64th Road, 4th Floor, Rego Park, New York 11374:

Bronx	Kings	Nassau	New York
Queens	Richmond		

The applicant proposes to provide the following health care services:

Nursing	Home Health Aide	Personal Care	Medical Social Services
Occupational Therapy	Respiratory Therapy	Audiology	Speech-Language Pathology
Physical Therapy	Nutrition	Durable Medical Supplies and Equipment	
Homemaker	Housekeeper		

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 3, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Interim Healthcare of Syracuse, Inc.
Address: Syracuse
County: Onondaga
Structure: For-Profit Corporation
Application Number: 152162

Description of Project:

Interim Healthcare of Syracuse, Inc., a business corporation, requests approval for a change in stock ownership of a licensed home care services agency under Article 36 of the Public Health Law.

Interim Healthcare of Syracuse, Inc. was previously approved as a home care services agency by the Public Health Council at its September 23, 1994 meeting and subsequently licensed as 9669L001. At that time, Interim Healthcare of Syracuse, Inc. had authorized 200 shares of stock which were owned by Neil Bronstein.

The purpose of this application is to seek approval for a stock transfer from Neil Bronstein to Jason Byrnes and Mary Byrnes. Upon approval of this stock transfer, Jason Byrnes will own 150 shares and Mary Byrnes will own 50 shares.

The proposed Board of Directors of Interim Healthcare of Syracuse, Inc. is comprised of the following individuals:

Jason Byrnes – Board Member
Senior Account Executive,
Automated Graphic Systems

Mary Byrnes, HHA – Board Member
Web Designer, North Area Meals on Wheels

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a Home Health Aide and has no convictions or findings.

Interim Healthcare of Syracuse, Inc. has proposed to continue operating as a Franchise of Interim Healthcare, Inc.

The applicant proposes to serve the residents of the following counties from an office located at 3300 James Street, Suite 201, Syracuse, New York 13206:

Onondaga
Jefferson
Oswego

Cayuga
Madison
Tompkins

Cortland
Oneida

The applicant proposes to provide the following health care services:

Nursing

Home Health Aide

Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 8, 2016

Licensed Home Care Services Agency
Character and Competence Staff Review

Name of Agency: Interim Healthcare of Binghamton, Inc.
Address: Binghamton
County: Broome
Structure: For-Profit Corporation
Application Number: 152168

Description of Project:

Interim Healthcare of Binghamton, 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.

Interim Healthcare of Binghamton, Inc. was previously approved as a home care services agency by the Public Health Council at its September 23, 1994 meeting and subsequently licensed as 9668L001. At that time, Interim Healthcare of Binghamton, Inc. had authorized 200 shares of stock which were owned solely by Neil Bronstein.

The purpose of this application is to seek approval for a stock transfer from Neil Bronstein to Jason Byrnes and Mary Byrnes. Upon approval of this stock transfer, Jason Byrnes will own 150 shares and Mary Byrnes will own 50 shares.

The proposed Board of Directors of Interim Healthcare of Binghamton, Inc. is comprised of the following individuals:

Jason Byrnes – Board Member
Senior Account Executive,
Automated Graphic Systems

Mary Byrnes, HHA – Board Member
Web Designer, North Area Meals on Wheels

A search of the individuals named above revealed no matches on either the Medicaid Disqualified Provider List or the OIG Exclusion List.

A search of the individual named above on the New York State Home Care Registry revealed that the individual is certified as a Home Health Aide and has no convictions or findings.

Interim Healthcare of Binghamton, Inc. has proposed to continue operating as a Franchise of Interim Healthcare, Inc.

The applicant proposes to serve the residents of the following counties from an office located at 38 Front Street, Suite D, Binghamton, New York 13905:

Broome
Cortland

Chemung
Tioga

Chenango
Tompkins

The applicant proposes to provide the following health care services:

Nursing
Medical Social Services

Home Health Aide

Personal Care

Review of the Personal Qualifying Information indicates that the applicant has the required character and competence to operate a licensed home care services agency.

Contingency

Submission of any and all information requested by the Division of Legal Affairs, in a form and manner acceptable to the Department.

Recommendation: Contingent Approval
Date: March 8, 2016

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 3605 of the Public Health Law, on this 14th day of April, 2016, having considered any advice offered by the staff of the New York State Department of Health and the Establishment and Project Review Committee of the Council, and after due deliberation, hereby approves the following applications for licensure, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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


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

<u>NUMBER:</u>	<u>FACILITY:</u>
2412 L	Sarene Services, Inc. d/b/a Sarene Home Nursing Agency (Nassau and Suffolk Counties)
151322 E	Concepts of Health Care, Inc. (Albany, Saratoga, Washington, Fulton, Schenectady, Columbia, Montgomery, Schoharie, Greene, Rensselaer and Warren Counties)
152082 E	Marks Homecare Agency Inc. (Bronx, Queens, Kings, Richmond, Nassau, and New York Counties)

- 152162 E Interim Healthcare of Syracuse, Inc.
(Onondaga, Jefferson, Oswego, Cayuga, Madison,
Tompkins, Cortland and Oneida Counties)
- 152168 E Interim Healthcare of Binghamton, Inc.
(Broome, Cortland, Chemung, Tioga, Chenango and
Tompkins Counties)



MEMORANDUM

To: Public Health and Health Planning Council
From: Richard J. Zahnle , General Counsel
Date: March 18, 2016
Subject: Proposed Certificate of Amendment of the Certificate of Incorporation of New York Hospital Queens Foundation, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of New York Hospital Queens Foundation Inc. This not-for-profit corporation seeks approval to change its name to "The Foundation of New York-Presbyterian Queens." The purpose of the Corporation is to support and benefit, including to solicit funds for its sole member, New York-Presbyterian/Queens. Public Health and Health Planning Council approval for a change of corporate name is therefore required by the Not-For-Profit Law Corporation Law § 804 (a) and 10 NYCRR §600.11 (a) (1).

Also attached is a letter dated October 20, 2015 from Kimlee Rodan-Sanchez, Vice President and Chief Administrative Officer for the corporation which explains the intent and the meaning of the proposed name change.

The proposed Certificate of Amendment is in legally acceptable form.

 **New York- Presbyterian**

*Kimlee Roldan-Sanchez
Vice President and
Chief Administrative Officer*

*New York- Presbyterian
Healthcare System and
Regulatory Planning*

Mall
New York- Presbyterian/ Weill Cornell
525 East 68th Street
Box 208
New York, NY 10021

Office
Helmsley Medical Tower, 7th Floor
1320 York Avenue
New York, New York 10021

TEL 212 746-7905
FAX 212 746-7902

kir9001@nyp.org

October 20, 2015

VIA FEDERAL EXPRESS

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
Empire State Plaza
Corning Tower, Rm 1805
Albany, New York 12237

**Re: Consent to File Change of Name
The Foundation of New York- Presbyterian/Queens**

Dear Ms. Leonard:

On behalf of New York Hospital Queens Foundation, Inc. (the "Foundation"), I respectfully submit this request for a letter of consent from the Public Health and Health Planning Council to permit the filing with the Secretary of State of the enclosed Certificate of Amendment to the Certificate of Incorporation for the Foundation to have its name changed to "The Foundation of New York- Presbyterian/Queens". The purpose of the Foundation is to support and benefit, including to solicit funds for, its sole member, New York- Presbyterian/Queens. We request this change in the Foundation name to be consistent with the name of the hospital. See attached NYSDOH operating certificate for reference.

Enclosed for your review is an executed copy of the proposed Certificate of Amendment of the Certificate of Incorporation of the Foundation.

If you have any questions, please call me at 212-746-7905.

Sincerely,


Kimlee Roldan-Sanchez

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

NEW YORK HOSPITAL QUEENS FOUNDATION, INC.

(Under Section 803 of the Not-for-Profit Corporation Law of the State of New York)

The undersigned, Stephen S. Mills, certifies that he is the President of New York Hospital Queens Foundation, Inc. (the "Corporation"), a corporation formed and existing under the Not-for-Profit Corporation Law of the State of New York ("NPCL"), and does hereby further certify (this "Certificate") as follows:

1. The name of the Corporation is New York Hospital Queens Foundation, Inc. The name under which the Corporation was formed was BMA MEDICAL FOUNDATION, Inc.
2. The Certificate of Incorporation of the Corporation was filed by the New York State Secretary of State on February 25, 1987 pursuant to the Not-For-Profit Corporation Law of the State of New York (the "NFPCL").
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the NPCL. The Corporation is a charitable corporation under Section 201 of the NPCL.
4. Paragraph FIRST of the Certificate of Incorporation is hereby amended to effect a change in the name of the Corporation so that Paragraph FIRST reads in its entirety as follows:

"FIRST: The name of the Corporation is The Foundation of NewYork-Presbyterian/Queens."
5. This Amendment to the Certificate of Incorporation was authorized by the sole member of the Corporation entitled to vote thereon at a meeting duly held on September 3, 2015 in accordance with NPCL Section 802(a).
6. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The address to which the Secretary of State shall forward copies of process accepted on behalf of the Corporation is:

The Foundation of New York-Presbyterian/Queens
c/o New York-Presbyterian/Queens
56-45 Main Street
Flushing, New York 11355
Attention: President

IN WITNESS WHEREOF this Certificate has been signed and the statements made herein affirmed as true under penalties of perjury this 7 day of October, 2015.

By: 
Name: Stephen S. Mills
Title: President

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 14th day of April, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of New York Hospital Queens Foundation, Inc., dated October 7, 2015.



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: March 24, 2016

Subject: Forme Rehabilitation, Inc.
Proposed Certificate of Amendment to Certificate of Incorporation to change name to Forme Medical Center, Inc.

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of Forme Rehabilitation, Inc. This business corporation operates a Diagnostic and Treatment Center pursuant to Article 28 of the Public Health Law, and seeks approval to change its name to "Forme Medical Center, Inc." Public Health and Health Planning Council approval is required for this change of corporate name under 10 NYCRR §600.11(a)(4).

Also attached is a letter dated March 24, 2016 from Heidi Winslow, attorney for the corporation, which explains the intent and meaning of the proposed name change. Also attached is the existing Certificate of Incorporation and amendments thereto.

The department has no objection to the proposed name change and the proposed Certificate of Amendment is in legally acceptable form.

Attachments

**DELBELLO DONNELLAN WEINGARTEN
WISE & WIEDERKEHR, LLP**

Heidi Winslow
Partner
hw@ddw-law.com

COUNSELLORS AT LAW
THE GATEWAY BUILDING
ONE NORTH LEXINGTON AVENUE
WHITE PLAINS, NEW YORK 10601
(914) 681-0200
FACSIMILE (914) 684-0288

Connecticut Office
1111 SUNGARD STREET
STAMFORD, CT 06905
(203) 219-8896

March 24, 2016

Via Email: Colleen.Leonard@health.ny.gov

Department of Health
Corning Tower, Empire State Plaza
Albany, New York 12237
Attention: Colleen Leonard

Re: Request for the issuance of a "No Consent Letter" regarding a change of the name of Forme Rehabilitation, Inc., a New York corporation, to "Forme Medical Center, Inc."

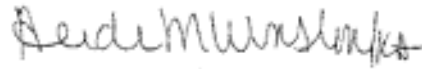
Dear Ms. Leonard:

We are counsel to Forme Rehabilitation, Inc., a New York corporation, that currently operates certain medical facilities within the State of New York, County of Westchester, pursuant to a Operating Certificate issued by the State of New York Department of Health, Department of Health Systems Management, for the operation of a Diagnostic and Treatment Center pursuant to Article 28 of the Public Health Law of the State of New York (the "Operating Certificate"). I enclose in this letter a copy of the Operating Certificate, and also a copy of a previously issued Assumed Name Certificate which permits Forme Rehabilitation, Inc. to conduct business as "Forme Urgent Care and Wellness Center".

My client seeks to change the name of Forme Rehabilitation, Inc. to "Forme Medical Center, Inc.". The reason for this request is that the entity has evolved to provide a much broader range of medical services, including an urgent care facility, rather than only rehabilitation center. In connection with such request, we hereby respectfully request that you provide us with a "No Consent Required" letter from the Department of Health indicating that your consent is not required in connection with such change of the legal name of this entity. We hereby further request your assistance in connection with the issuance of a new Operating Certificate in the name of Forme Medical Center, Inc. at such time as the New York Secretary of State processes the requested amendment to the Certificate of Incorporation of Forme Rehabilitation, Inc. changing the name of the entity.

Thank you very much for your assistance in this matter. If you have any questions or concerns, please contact either me or my paralegal, Ronni Anderek, at (914)681-0200.

Thank you,



Heidi M. Winslow, Esq.

Attach.

Cc: Mark Schweitzer

Via email Mark.Schweitzer@health.ny.gov

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF

FORME REHABILITATION, INC.

(Insert Name of Domestic Corporation)

Under Section 805 of the Business Corporation Law

FIRST: The name of the corporation is:

FORME REHABILITATION, INC,

If the name of the corporation has been changed, the name under which it was formed is:

SECOND: The date of filing of the certificate of incorporation with the Department of State is:

June 2, 1999

THIRD: The amendment effected by this certificate of amendment is as follows:

Paragraph 1 of the Certificate of Incorporation relating to the name of the Corporation is hereby amended to read in its entirety as follows:

"1. The name of the Corporation is FORME MEDICAL CENTER, INC"

Paragraph 2, clause A of the Certificate of Incorporation relating to the purpose of the Corporation, which includes the name of the Corporation, and the location of the Diagnostic and Treatment Center, is hereby amended to read in its entirety as follows:

"(A) The operation of a Diagnostic and Treatment Center as defined in Article 28 of the Public Health Law of the State of New York to be named "FORME MEDICAL CENTER, INC". The Diagnostic and Treatment Center shall be operated out of the following sites: 7-11 South Broadway, White Plains, NY 10601"

CERTIFICATE OF INCORPORATION
OF
FORME REHABILITATION, INC.

Pursuant to Section 402 of the Business Corporation Law
of the State of New York

1. The name of the Corporation is FORME REHABILITATION, INC.
2. The purposes for which this Corporation is formed are as follows:
 - (A) The operation of a Diagnostic and Treatment Center as defined in Article 28 of the Public Health Law of the State of New York to be named "FORME REHABILITATION, INC.". The Diagnostic and Treatment Center shall be operated out of the following site:
 - (i) 1075 Central Park Avenue, Scarsdale, Westchester County, New York.
 - (B) To do everything necessary, suitable or proper for the accomplishment, attainment or furtherance of, to do every other act or thing incidental to, appurtenant to, growing out of or in connection with the purposes, objects or powers set forth in this Certificate of Incorporation, whether alone or in association with others.
3. The office of the Corporation is to be located in the County of Westchester at 1075 Central Park Avenue, Scarsdale, New York.

4. The aggregate number of shares which the Corporation shall have authority to issue is Two Hundred (200) shares, all of which are to be common shares without par value.

5. No person shall own 10% or more of the stock of the Corporation who has not been approved for the ownership of such stock by the Public Health Council.


6. All stock certificates of the Corporation shall bear on the face thereof the following:

- (i) no person shall own 10 percent or more of the stock of the Corporation unless he/she has been approved for such ownership by the Public Health Council; and
- (ii) a statement that any transfer, assignment or other disposition of 10 percent or more of the stock or of 10 percent of the voting rights thereunder of the Corporation or the transfer, assignment or other disposition of the stock or voting rights of the Corporation which results in the ownership or control of more than 10 percent of the stock or voting rights thereunder of the Corporation by any person shall be subject to approval by the Public Health Council; and
- (iii) a statement that no stock or voting rights thereunder of the Corporation may be owned or controlled by another corporation.

7. The Secretary of State of the State of New York is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process served against the Corporation is: FORME REHABILITATION, INC., 1075 Central Park Avenue, Scarsdale, New York.

8. Corporate members, directors, officers and employees of the Corporation shall be indemnified to the fullest extent now or hereafter permitted by law in connection with actual or threatened action or proceeding (including civil, criminal, administrative or investigative proceedings) arising out of their service to the Corporation and to another organization at the request of the Corporation. The Board of Directors may also authorize the Corporation to purchase and maintain insurance on behalf of any such members, directors, officers or other persons insuring them, to the extent permitted by law against any liability asserted against or incurred by them at any such service to or on behalf of the Corporation. In any event, corporate members, directors, officers, and employees of the Corporation shall not be indemnified in the event of gross and/or willful misconduct.

IN WITNESS WHEREOF, I am a natural person over the age of eighteen years, I have signed this Certificate of Incorporation this ___ day of May, 1998, affirming that the statements made herein are true under the penalties of perjury.



David P. Glasel
c/o Sherrin & Glasel, LLP
74 No. Pearl Street
Albany, New York 12207

STATE OF NEW YORK }
COUNTY OF ALBANY } ss.:

On this _____ day of May, 1998 before me, the subscriber, personally appeared DAVID P. GLASEL to me personally known and known to me to be the same person described in and who executed the within instrument, and he acknowledged to me that he executed the same.

Notary Public

FILING RECEIPT

=====
ENTITY NAME : FORME REHABILITATION, INC.
=====

DOCUMENT TYPE : ASSUMED NAME CERTIFICATE
=====

FILER:

FILED: 11/05/2013
CASH#: 313388
FILM#: 20131105043

ROBERT BRAUMILLER, ESQ. C/O BLEAKLEY
PLATT & SCHMIDT, LLP
ONE NORTH LEXINGTON AVENUE
WHITE PLAINS NY 10601

PRINCIPAL LOCATION

5 RENAISSANCE SQUARE
SUITE 11-G
WHITE PLAINS
NY 10601



COMMENT:

ASSUMED NAME

FORME URGENT CARE AND WELLNESS CENTER

=====
SERVICE COMPANY : VANGUARD CORPORATE SERVICES

CODE: 52
BOX : 46

FEES 75.00

FILING : 25.00
COUNTY : 25.00
COPIES : .00
MISC : .00
HANDLE : 25.00

PAYMENTS: 75.00

CASH :
CHECK :
C CARD : 75.00

REFUND :

Facility Id.
Certificate No.

6152
9147200R

State of New York
Department of Health
Office of Health Systems Management
OPERATING CERTIFICATE



Effective Date
Expiration Date

06/15/2014
NONE

Diagnostic and Treatment Center

Forme Rehabilitation Inc

7-11 Broadway

White Plains, New York 10601

Operator: Forme Rehabilitation Inc
Operator Class: Proprietary Business Corporation

Has been granted this Operating Certificate pursuant to Article 28

of the Public Health Law for the service(s) specified:

Medial Social Services O/P
Primary Medical Care O/P
Therapy - Speech Language Pathology (S)

Podiatry (O/P)
Therapy - Physical O/P

Physical Medicine and Rehabilitation O/P
Therapy - Occupational O/P

Outpatient Surgery
Radiology - Diagnostic O/P

Other Authorized Locations

Diagnostic and Treatment Center Extension Clinic

Forme Rehabilitation, Inc
16-18 John Almonac Place
Eastchester, New York 10719

20140421

Deputy Commissioner
Office of Health Systems Management

Nisar R. Shah

Commissioner

This certificate must be conspicuously displayed on the premises

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 14th day of April, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of Forme Rehabilitation, Inc., dated as attached.



MEMORANDUM

To: Public Health and Health Planning Council
From: Richard J. Zahnleuter, General Counsel
Date: March 7, 2015
Subject: Proposed Dissolution of McCauley Living Services, Inc.

McCauley Living Services Inc., ("McCauley") 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 Certificate of Incorporation was filed with the New York State Department of State on July 30, 1976 under the name Mercy Craft Guild, Inc. It has since amended its name to McCauley Family Services, Inc. McCauley ceased its operations effective April 3, 2015 and surrendered its operating certificate to the Department of Health. McCauley has not carried on any business or activities since that time, has no assets or liabilities and has no reason to continue its existence.

Attached are a copy of the a letter from McCauley's attorney explaining the need for the proposed dissolution, the proposed Certificate of Dissolution, the proposed Plan of Dissolution, a resolution of the Board of Directors of Sisters of Mercy of the Americas Northeast Community, Inc. consenting to the dissolution, a summary of McCauley's Distribution of Assets and Liabilities and a proposed Verified Petition seeking the Attorney General's approval to file McCauley's Certificate of Dissolution.

The proposed Certificate of Dissolution is in legally acceptable form.

Attachments.



Iseman Cunningham
Riester & Hyde LLP
Attorneys and
Counselors at Law

9 Thurlow Terrace
Albany, New York 12203
T 518.462.3000 F 518.462.4199
Offices also in Poughkeepsie and Millbrook

www.icrh.com

December 17, 2015

Colleen M. Leonard
Executive Secretary
Public Health and Health Planning Council
Corning Tower, Room 1805
Albany, NY 12237

RE: McAuley Living Services, Inc. – Certificate of Dissolution

Dear Ms. Leonard:

We are attorneys for McAuley Living Services, Inc., to request approval of the enclosed original executed Certificate of Dissolution of the corporation. McAuley Living Services, Inc., formerly operated an adult home and assisted living program located on S. Manning Boulevard in the City of Albany, New York. The corporation surrendered its licenses (adult home, assisted living and home care services agency) earlier this year.

Please contact the undersigned if any additional information is required to obtain approval of the Certificate of Dissolution.

Very truly yours,

ISEMAN, CUNNINGHAM, RIESTER & HYDE, LLP


Carol A. Hyde
ch Hyde@icrh.com

enc.

cc: Jean M. McGinty, RSM

CERTIFICATE OF DISSOLUTION

OF

McAULEY LIVING SERVICES, INC.

Under Section 1003 of the New York Not-for-Profit Corporation Law

Filed by: Carol A. Hyde, Esq.
Iseman Cunningham Riester & Hyde, LLP
9 Thurlow Terrace
Albany, New York 12203
(518) 462-3000
(Drawdown: J8)

CERTIFICATE OF DISSOLUTION

OF

McAULEY LIVING SERVICES, INC.

Under Section 1003 of the New York Not-for-Profit Corporation Law

- FIRST:** The name of the corporation is McAuley Living Services, Inc. (the "Corporation"). The name under which the corporation was formed was Mercy Craft Guild, Inc.
- SECOND:** The certificate of incorporation of the Corporation was filed with the New York State Department of State on July 30, 1976.
- THIRD:** The sole member of the Corporation is Sisters of Mercy of the Americas Northeast Community, Inc. (the "Member").
- FOURTH:** The names and addresses of each of the directors and officers of the Corporation and the title of each are as follows:

Name	Officer or Director / Title	Address
Jean M. McGinty, RSM	Director/President	360 Whitehall Road Albany, NY 12208
Jane Somerville, RSM	Director/ Vice President	8 B Tierney Drive Delmar, NY 12054
Marilyn Murray, RSM	Director/ Secretary/Treasurer	890 Clarksville South Rd. Feura Bush, NY 12067

- FIFTH:** Dissolution of the Corporation was authorized by unanimous vote of the Board of Directors of the Corporation. Dissolution was then approved by the Member of the Corporation at a regularly scheduled meeting by at least two-thirds vote with a quorum present.
- SIXTH:** The Corporation elects to dissolve.
- SEVENTH:** At the time of dissolution, the Corporation is a charitable not-for-profit corporation.
- EIGHTH:** Prior to the delivery of this Certificate to the New York Department of State for filing, the Corporation will file with the Attorney General a verified petition for

Approval of the Certificate of Dissolution with the original certified Plan of Dissolution.

NINTH: When the Board authorized, and the Member approved, the Plan of Dissolution, the Corporation had no assets or liabilities and did not hold any assets required to be used for a restricted purpose.

TENTH: Prior to the filing of this Certificate with the New York State Department of State, the endorsement of the Attorney General will be attached.

IN WITNESS WHEREOF, the undersigned has signed this Certificate of Dissolution of McAuley Living Services, Inc., this 3 day of December, 2015

By: Jean M. McGinty, RSM.
Jean M. McGinty, RSM
President

PLAN OF DISSOLUTION

OF

McAULEY LIVING SERVICES, INC.

Under Section 1001 of the New York Not-for-Profit Corporation Law

The following **PLAN OF DISSOLUTION** (the "Plan") has been adopted by the Board of Directors of McAuley Living Services, Inc., a New York not-for-profit corporation (the "Corporation"):

1. Meeting; Notice; Recommendation. The Board of Directors of the Corporation by unanimous written consent in lieu of a meeting, having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the Corporation, and the Board having adopted, by unanimous vote, this Plan for a voluntary dissolution of the Corporation, does hereby resolve and recommend to Sisters of Mercy of the Americas Northeast Community, Inc., the sole member of the Corporation ("Member"), that the Corporation be dissolved in accordance with the Plan.
2. Approval of Plan. The Board shall submit this Plan to the Member for approval. This Plan shall become effective upon approval by the Member, in compliance with Section 1002(a) of the New York Not-for-Profit Law.
3. Consent. Approval of this Plan and dissolution of the Corporation is required to be obtained from the New York State Department of Health. The Corporation shall apply for such approval.
4. Assets; Liabilities. The Corporation has no assets or liabilities.
5. Dissolution. A Certificate of Dissolution shall be signed by any Director or Officer of the Corporation and all required approvals shall be attached thereto, in compliance with the provisions of the New York Not-for-Profit Corporation Law.

McAULEY LIVING SERVICES, INC.
Board of Directors Resolution

The undersigned, being all of the members of the Board of Directors of McAuley Living Services, Inc., a New York not-for-profit corporation (the "Corporation"), hereby adopt the following **PLAN OF DISSOLUTION** (the "Plan") by unanimous written consent in lieu of a meeting:

1. Meeting; Notice; Recommendation. The Board of Directors of the Corporation by unanimous written consent in lieu of a meeting, having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the Corporation, and the Board having adopted, by unanimous vote, this Plan for a voluntary dissolution of the Corporation, does hereby resolve and recommend to Sisters of Mercy of the Americas Northeast Community, Inc., the sole member of the Corporation ("Member"), that the Corporation be dissolved in accordance with the Plan.
2. Approval of Plan. The Board shall submit this Plan to the Member for approval. This Plan shall become effective upon approval by the Member, in compliance with Section 1002(a) of the New York Not-for-Profit Law.
3. Consent. Approval of this Plan and dissolution of the Corporation is required to be obtained from the New York State Department of Health. The Corporation shall apply for such approval.
4. Assets; Liabilities. The Corporation has no assets or liabilities.
5. Dissolution. A Certificate of Dissolution shall be signed by any Director or Officer of the Corporation and all required approvals shall be attached thereto, in compliance with the provisions of the New York Not-for-Profit Corporation Law.

Marilyn K. Murray, RSM 12/2/15
Marilyn Murray, RSM Date

Jane Somerville, RSM 12/2/15
Jane Somerville, RSM Date

Jean M. McGinty, RSM 12/2/15
Jean M. McGinty, RSM Date

**RESOLUTION
OF THE
BOARD OF DIRECTORS
OF
SISTERS OF MERCY OF THE AMERICAS NORTHEAST COMMUNITY, INC.**

The undersigned, being the Secretary of Sisters of Mercy of the Americas Northeast Community, Inc. (the "Member"), which is the sole member of McAuley Living Services, Inc. (the "Corporation"), does hereby certify that the following resolutions were approved by at least two-thirds vote with a quorum present, on 12/2/15, at a regularly scheduled meeting of the Board of Directors of the Member:

WHEREAS, the present condition of the Corporation has been duly examined by the Board of Directors of the Corporation, and after due examination, a plan for the dissolution of Corporation (the "Plan"), has been approved by the Board of Directors of the Corporation, a copy of which Plan is attached hereto;

WHEREAS, the Board of Directors of the Corporation recommends dissolution of the Corporation to the Member and submits the Plan to the Member for review and approval;

NOW THEREFORE, IT IS

RESOLVED, that the Board of Directors of the Member, after due consideration of the Plan, hereby approves (i) the Plan and (ii) the dissolution of the Corporation; and be it further

RESOLVED, that the dissolution of the Corporation be effected in accordance with the Plan; and be it further

RESOLVED, that the officers of the Corporation and each of them (each an "Authorized Officer"), are hereby authorized to execute, enter into, acknowledge and deliver such agreements, documents, instruments, certificates and statements as may be necessary or appropriate to effectuate the dissolution of the Corporation and these Resolutions and which may contain such other terms and conditions as are not inconsistent herewith that the Authorized Officer thinks reasonable and advisable, and to consummate the transactions contemplated hereunder, and to do and perform such other and further acts and things, and to take such other steps, as may be necessary, advisable, convenient, and proper to carry out fully the intent and purpose of these Resolutions; and be it further

RESOLVED, that, to the extent necessary to implement these Resolutions and the transactions contemplated hereunder, governmental approvals are required under applicable law, the Corporation and the Authorized Officers, respectively, are authorized and directed to use reasonably commercial efforts to obtain such approvals; and be it further

RESOLVED, that the actions of the Officers and Directors of the Corporation heretofore taken in the negotiation and execution of documents for the dissolution contemplated hereunder and all previous resolutions are hereby approved and ratified as of the date of these Resolutions; and be it further

RESOLVED, that this Resolution is effective immediately.


Patricia Flynn, RSM, Secretary

Dated: 12/2/15

PLAN OF DISSOLUTION

OF

McAULEY LIVING SERVICES, INC.

Under Section 1001 of the New York Not-for-Profit Corporation Law

The following **PLAN OF DISSOLUTION** (the "Plan") has been adopted by the Board of Directors of McAuley Living Services, Inc., a New York not-for-profit corporation (the "Corporation"):

1. Meeting; Notice; Recommendation. The Board of Directors of the Corporation by unanimous written consent in lieu of a meeting, having considered the advisability of voluntarily dissolving the Corporation, and it being the unanimous opinion of the Board that dissolution is advisable and in the best interests of the Corporation, and the Board having adopted, by unanimous vote, this Plan for a voluntary dissolution of the Corporation, does hereby resolve and recommend to Sisters of Mercy of the Americas Northeast Community, Inc., the sole member of the Corporation ("Member"), that the Corporation be dissolved in accordance with the Plan.
2. Approval of Plan. The Board shall submit this Plan to the Member for approval. This Plan shall become effective upon approval by the Member, in compliance with Section 1002(a) of the New York Not-for-Profit Law.
3. Consent. Approval of this Plan and dissolution of the Corporation is required to be obtained from the New York State Department of Health. The Corporation shall apply for such approval.
4. Assets; Liabilities. The Corporation has no assets or liabilities.
5. Dissolution. A Certificate of Dissolution shall be signed by any Director or Officer of the Corporation and all required approvals shall be attached thereto, in compliance with the provisions of the New York Not-for-Profit Corporation Law.



McAuley Living Services
 Statistical Report
 June 2015

Days

30

181

	Month of June				Year To Date			
	Actual	Budget	Variance	Prior Yr	Actual	Budget	Variance	Prior Yr
<u>RESIDENT DAYS</u>								
PRIVATE PAY	-	-	-	274	140	-	140	1,261
MEDICAID / SSI	-	-	-	953	780	-	780	5,946
SSI BED HOLD DAYS	-	-	-	18	10	-	10	396
	-	-	-	1,245	930	-	930	7,603
<u>AVERAGE DAILY CENSUS</u>								
PRIVATE PAY	-	-	-	9.1	0.8	-	0.8	7.0
MEDICAID / SSI	-	-	-	31.8	4.3	-	4.3	32.9
SSI BED HOLD	-	-	-	0.6	0.1	-	0.1	2.2
	-	-	-	41.5	5.1	-	5.1	42.0
<u>OCCUPANCY %</u>								
	0.0%		0.0%	86.5%	10.7%		10.7%	87.5%
<u>ADMISSIONS</u>								
PRIVATE PAY	-	-	-	2	-	-	-	6
MEDICAID	-	-	-	-	-	-	-	6
	-	-	-	2	-	-	-	12
<u>DISCHARGES</u>								
PRIVATE PAY	-	-	-	1	5	-	5	1
MEDICAID	-	-	-	1	17	-	17	13
	-	-	-	2	22	-	22	14
<u>MEDICAID CONVERSIONS</u>								
	-	-	-	-	-	-	-	-

-----X
In the Matter of the Application of:
McAuley Living Services, Inc.

VERIFIED PETITION

For Approval of Certificate of Dissolution pursuant to
Section 1002 of the Not-for-Profit Corporation Law.

-----X
TO: THE ATTORNEY GENERAL OF THE STATE OF NEW YORK
Office of the Attorney General, Charities Bureau
The Capitol
Albany, NY 12224-0341

Petitioner, McAuley Living Services, Inc., by Jean M. McGinty, RSM, President of the corporation for its Verified Petition alleges:

1. McAuley Living Services, Inc. (the "Corporation"), whose principal address is located in the County of Albany, was incorporated pursuant to New York's Not-for-Profit Corporation Law on July 30, 1976. A copy of the Corporation's Certificate of Incorporation and all amendments are attached hereto as Exhibit A.

2. The names, addresses and titles of the Corporation's officers and/or directors are as follows:

<u>Name</u>	<u>Title</u>	<u>Address</u>
Jean M. McGinty, RSM	Director/President	360 Whitehall Road Albany, NY 12208
Jane Somerville, RSM	Director/ Vice President	8 B Tierney Drive Delmar, NY 12054
Marilyn Murray, RSM	Director/ Secretary/Treasurer	890 Clarksville South Rd. Feura Bush, NY 12067

3. The purposes for which the Corporation was organized are as set forth in Paragraph 3 of its Certificate of Incorporation as amended, attached hereto as Exhibit A.

4. The Corporation is a charitable corporation.

5. The Board of Directors, by unanimous written consent executed in lieu of a meeting, adopted approved a Plan of Dissolution and authorized the execution of a Certificate of Dissolution, subject to receipt of the approval of Sisters of Mercy of the Americas, Northeast Community, Inc., the sole member of the Corporation. A copy of such Board of Directors resolution consenting to the Plan of Dissolution is attached hereto as Exhibit B.

6. Sisters of Mercy of the Americas, Northeast Community, Inc., the sole member of the

Corporation, approved the dissolution of the Corporation at a meeting of its Board of Directors held on December 2, 2015, by at least a two-thirds vote with a quorum present. A copy of the resolution, certified by the Secretary of the Board of Directors of the member is attached hereto as Exhibit C.

7. A certified copy of the Corporation's Plan of Dissolution is attached hereto as Exhibit D.

8. The Corporation has no assets or liabilities, and its final report showing zero assets has been filed with the Attorney General.

9. Approval of the dissolution of the Corporation must be obtained from the following governmental body, and a copy of the approval is attached as Exhibit E:

New York State Department of Health

10. With this Petition, the original Certificate of Dissolution is being submitted to the Attorney General for approval pursuant to Not-for-Profit Corporation Law Section 1003.

IN WITNESS WHEREFORE, the Corporation has caused this Petition to be executed this ___ day of March, 2016.


Jean M. McGinty, RSM
President

Verification


STATE OF NEW YORK)
)SS.:
COUNTY OF ALBANY)

Jean M. McGinty, RSM, being duly sworn, deposes and says:

I am the President of McAuley Living Services, Inc., the corporation named in the above Petition and make this verification at the direction of its Board of Directors. I have read the foregoing Petition and know the contents thereof to be true of my own knowledge, except those matters that are stated on information and belief and as to those matters I believe them to be true.


(Signature)

Sworn to before me this
3rd day of March, 2016.


Notary Public

SHERRILL L. MCGILL
NOTARY PUBLIC-STATE OF NEW YORK
No. 01MC6182201
Qualified in Saratoga County
My Commission Expires February 19, 2020

090324000 884

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
McAULEY LIVING SERVICES, INC.

Under Section 803 of the Not-for-Profit Corporation Law

RECEIVED
2009 MAR 24 PM 1:54

PH 4:27

Filed by:

Rachel Ryan, Esq.
Isern, Cunningham, Riester & Hyde, LLP
9 Thurlow Terrace
Albany, NY 12203

Drawdown #J8

mk

Zoe's

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED MAR 24 2009

TAX \$ _____

BY: *mk*

Albany

8

969

JUDICIAL CONSENT

I, HON. JOSEPH C. TERESI, J.S.C., a Justice of the Supreme Court of the State of New York for the Third Judicial District, do hereby approve the within Certificate of Amendment of the Certificate of Incorporation for McAuley Living Services, Inc. pursuant to Section 804(a)(ii) of the Not-for-Profit Corporation Law and consent that the same be filed.

Dated: 3/24/09

Albany

Joseph C. Teresi
Justice of the Supreme Court
Third Judicial District

THE ATTORNEY GENERAL HAS NO OBJECTION
TO THE GRANTING OF JUDICIAL APPROVAL
HEREON, ACKNOWLEDGES RECEIPT OF
STATUTORY NOTICE AND DEMANDS SERVICE
OF THE FILED CERTIFICATE. SAID NO OBJECTION
IS CONDITIONED ON SUBMISSION OF THE
MATTER TO THE COURT WITHIN 30 DAYS HEREAFTER.

Patrick Murphy 3/20/09
ASSISTANT ATTORNEY GENERAL DATE

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 the official seal of the
Department of State, at the City of Albany, on
March 25, 2009.

Paul LaPointe

Paul LaPointe
Special Deputy Secretary of State

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
McAULEY LIVING SERVICES, INC.**

Under Section 803 of the Not-for-Profit Corporation Law

We, the undersigned, being the President and Secretary of McAuley Living Services, Inc., do hereby certify:

1. The name of the corporation is McAuley Living Services, Inc. The name under which the corporation was formed was Mercy Craft Guild, Inc.
2. The Certificate of Incorporation of McAuley Living Services, Inc. was filed by the New York Department of State on July 30, 1976.
3. McAuley Living Services, Inc. is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law, and is a Type B corporation under Section 201 of said law. The corporation shall hereafter continue to be a Type B corporation under Section 201 of the Not-for-Profit Corporation Law.
4. Paragraph "3" of the Certificate of Incorporation of McAuley Living Services, Inc., which sets forth the purposes of the corporation, is hereby amended to read as follows:
 - "3. The purposes for which the corporation is formed are:
 - (a) To operate exclusively for religious or charitable purposes; to promote the alleviation of human suffering by benevolent work; and to perform corporal and spiritual works of mercy in accordance with the mission and philosophy of the Sisters of Mercy of the Americas Northeast Community, Inc.; and
 - (b) To establish and operate an Adult Home as defined in Section 2(25) of the New York Social Services Law.

- (c) To establish and operate an assisted living program as defined in Section 461-l of the New York Social Services Law.
- (d) To own and operate a Home Care Services Agency under Article 36 of the New York Public Health Law; and
- (e) To do any lawful act or thing incidental to or connected with any of the foregoing purposes or in advancement thereof, provided that the corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained."

5. Paragraph "6" of the Certificate of Incorporation, which sets forth the identity of the sole member of the corporation, is hereby amended to read as follows:

- "6. The Sisters of Mercy of the Americas Northeast Community, Inc. is the sole member of the corporation. As such, the Sisters of Mercy of the Americas Northeast Community, Inc. shall be entitled to all rights and powers of a member under the laws of the State of New York, this Certificate of Incorporation and the Bylaws of the corporation."

6. Paragraph "7" of the Certificate of Incorporation, which sets for the reserved powers of the corporation and the manner in which said reserved powers are exercised, is hereby amended to read as follows:

- "7. In addition to any other requirements under New York law, this Certificate of Incorporation or the Bylaws of the corporation, the following powers shall be expressly reserved to Sisters of Mercy of the Americas Northeast Community, Inc. as the sole member of the corporation. Action by the corporation shall not be taken until the Sisters of Mercy of the Americas Northeast Community, Inc. has exercised its reserved powers. The Sisters of Mercy of the Americas Northeast Community, Inc. shall exercise powers reserved to it in the manner required by its governance documents. The following powers shall be reserved to and exercised by the Sisters of Mercy of the Americas Northeast Community, Inc.:

- (a) Adopt, amend or restate the Certificate of Incorporation of the corporation;
- (b) Adopt, amend or restate the Bylaws of the corporation;

- (c) Establish or dissolve organizational relationships by the corporation, including without limitation, subsidiary corporations, partnerships, joint ventures, mergers, consolidations, reorganizations and dissolutions;
- (d) Appoint, fix the number of and remove, with or without cause, the Directors of the corporation;
- (e) Appoint and remove the President of the corporation;
- (f) Adopt, amend and interpret the philosophy and mission of the corporation;
- (g) Approve and amend the capital and operating budgets of the corporation;
- (h) Authorize debt and financial transactions by the corporation in excess of amount to be fixed by the Sisters of Mercy of the Americas Northeast Community, Inc. from time to time;
- (i) Adopt and amend the strategic plan of the corporation;
- (j) Evaluate the corporation;
- (k) Approve the sale, acquisition, lease, transfer, mortgage, pledge or other devise or alienation of real or personal property of the corporation in excess of an amount to be fixed by the Sisters of Mercy of the Americas Northeast Community, Inc. from time to time.
- (l) Approve settlements of litigation when such settlements exceed available insurance coverage(s) or self-insurance funds(s)."

7. Paragraph "8" of the Certificate of Incorporation, which sets forth the conditions upon which the accomplishments of the purposes of the corporation are to be promoted and conducted, is hereby amended to read as follows:

"8. The accomplishment of the purposes of the corporation must be promoted and conducted in a manner consistent with the philosophies and missions of the corporation, the Sisters of Mercy of the Americas Northeast

Community, Inc. and the ethical and moral teachings of the Roman Catholic Church.”

8. Paragraph “9” of the Certificate of Incorporation which sets forth the address to which the Secretary of State may send process served upon him as agent of the corporation is hereby amended and renumbered as paragraph “10” and a new paragraph “9” is added to identify the location of the office of the corporation within the State of New York (which paragraph was inadvertently deleted by a prior amendment) so that paragraphs “9” and “10” of the Certificate of Incorporation will read as follows:

“9 The office of the corporation shall be located in the City and County of Albany, State of New York.

10. The Secretary of the State of New York is hereby designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Sisters of Mercy of the Americas Northeast Community, Inc., 15 Highland View Road, Cumberland, Rhode Island 02864.”


9. The Secretary of the State of New York is hereby designated as the agent of the corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the corporation served upon him as agent of the corporation is Sisters of Mercy of the Americas Northeast Community, Inc., 15 Highland View Road, Cumberland, Rhode Island 02864.

10. This Amendment to the Certificate of Incorporation of McAuley Living Services, Inc. was authorized by the affirmative vote of Sisters of Mercy of the Americas, Albany Regional Community, the sole member of said corporation. Said sole member was entitled to vote thereon and this Amendment to the Certificate of Incorporation of McAuley Living Services, Inc. was further authorized by written approval of the Sisters of Mercy of the Americas, Albany Regional Community (the sole member of McAuley Living Services, Inc.) in

accordance with the provision of Article IV, Section 3(a)(1) of the Bylaws of McAuley Living Services, Inc. Said written approval of the Sisters of Mercy of the Americas, Albany Regional Community was authorized by unanimous written consents of the entire Board of Directors of Sisters of Mercy of the Americas, Albany Regional Community to this Amendment, and said consents were submitted in lieu of a meeting of said Board of Directors of Sisters of Mercy of the Americas, Albany Regional Community.

11. This Amendment to the Certificate of Incorporation was further authorized by the unanimous vote of the Directors of the Corporation present and voting at a regular meeting of the Directors of the Corporation held on the 8th day of June, 2006.

IN WITNESS WHEREOF, the undersigned have signed this Certificate this 31st day of May, 2007.


Richard Iannello
President


Sr. Jane Somerville, R.S.M.
Secretary



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower

The Governor Nelson A. Rockefeller Empire State Plaza

Albany, New York 12237

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 9, 2009

Ms. Rachel Ryan
Iseman, Cunningham, Riester & Hyde, LLP
9 Thurlow Terrace
Albany, New York 12203

Re: McAULEY Living Services, Inc

Dear Ms. Ryan:

Pursuant to the provisions of Section 460-a of the Social Services Law, due inquiry and investigation having been made, approval is hereby given this:

9th day of March, 2009

to the filing of the annexed photocopy of the:

Certificate of Amendment of the Certificate of Incorporation
of
McAULEY Living Services, Inc

on the condition that the purposes included in the certificate as filed are consistent with the following purposes: to establish, maintain and operate an adult home program as defined in Section 2(25) of the New York State Social Services Law, to establish and operate an assisted living program as defined in Section 461-1 of the New York State Social Services Law, to own and operate a Home Care Services Agency under Article 36 of the New York Public Health Law, provided, that the corporation is not formed to engage in any act or activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

You may file this letter with the proposed Certificate of Amendment with the NYS Department of State. Please send me a copy of the filing receipt for our files. Thank you

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy Warner', written over a faint, larger version of the signature.

Guy Warner
Director
Bureau of Licensure and Certification

Encl.
cc: J. Meloveck
M. Hart
M. Stone

CERTIFICATE OF INCORPORATION,

OF

THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned hereby certifies:

1. The name of the corporation is THE MERCY CRAFT GUILD, INC..

2. 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.

3. The purposes for which the corporation is formed are:

(a) to provide and operate programs of social and recreational activities for the elderly, to include but not be limited to the establishment of a craft studio and handcraft shop, the net earnings of which shall be applied solely for the purposes of the corporation, but allowing commissions to producers of handcrafts who provide products on consignment, but not for the pecuniary profit or gain of its members, directors, or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law; and the corporation shall not engage in any activities envisioned in Section 404, paragraphs b thru p of the Not-for-Profit Corporation Law or Section 747 of the Executive Law.

(b) to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof.

4. The said corporation is organized exclusively for charitable purposes, no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, directors or officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these Articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation contributions to which are deductible under Section 170 (c)(2) of

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the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue or Tax Law). Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all liabilities of the corporation, dispose of all the assets of the corporation exclusively for the purposes of the corporation in such a manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue Law) as the Board of Directors shall determine.

5. The corporation is a Type B corporation under section 201 of the Not-for-Profit Corporation Law.

6. The office of the corporation shall be located in the City and County of Albany, State of New York.

7. The territory in which the corporation's activities are principally to be conducted are in the State of New York.

8. The names and addresses of the initial directors are:

Elizabeth Dovidio	634 New Scotland Avenue, Albany, NY
Mary Amata McDermott	634 New Scotland Avenue, Albany, NY
Barbara Roman	634 New Scotland Avenue, Albany, NY

9. The post office address to which the Secretary of State shall mail a copy of any notice required by law is 634 New Scotland Avenue, Albany, New York.

10. 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.

11. The subscriber below is of the age of nineteen years or over.

12. This certificate of incorporation is not for the incorporation of an existing unincorporated association or group in operation previous to this filing.

IN WITNESS WHEREOF, the undersigned incorporator, being at least nineteen years of age, has made, subscribed and acknowledged this certificate on this 28th day of July 1976.

Elizabeth Dovidio
(Elizabeth Dovidio)

STATE OF NEW YORK)
COUNTY OF ALBANY) SS:

On this 28th day of July, 1976, before me personally came Elizabeth Dovidio, to me known and known to me to be the person described in and who executed the foregoing certificate of incorporation and she duly acknowledged to me that she did execute the same.

Angela DiBernardo

Angela DiBernardo
Notary Public, State of New York
Qualified in Albany County
My Commission Expires March 30, 1978

I, John H. Penrod, a Justice of the Supreme Court of the State of New York, Third Judicial District, do hereby approve the foregoing Certificate of Incorporation of THE MERCY CRAFT GUILD, INC., and consent that the same be filed.

Dated: July 29, 1976
Supreme Court, Albany County
Albany, New York

John H. Penrod

Justice, Supreme Court
Third Judicial District

John J. Castellani
JOS. P. CASTELLANI
ASST. NOTARY
State of N.Y., 7-29-76
Warren of N.Y. Co.

CERTIFICATE OF INCORPORATION,

OF

THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

The undersigned hereby certifies:

1. The name of the corporation is THE MERCY CRAFT GUILD, INC..

2. 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.

3. The purposes for which the corporation is formed are:

(a) to provide and operate programs of social and recreational activities for the elderly, to include but not be limited to the establishment of a craft studio and handcraft shop, the net earnings of which shall be applied solely for the purposes of the corporation, but allowing commissions to producers of handcrafts who provide products on consignment, but not for the pecuniary profit or gain of its members, directors, or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law; and the corporation shall not engage in any activities envisioned in Section 404, paragraphs b thru p of the Not-for-Profit Corporation Law or Section 747 of the Executive Law.

(b) to do any other act or thing incidental to or connected with the foregoing purposes or in advancement thereof.

4. The said corporation is organized exclusively for charitable purposes, no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, directors or officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article 3 hereof. No part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in any political campaign on behalf of any candidate for public office. Notwithstanding any other provisions of these Articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income tax under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue Law) or (b) by a corporation contributions to which are deductible under Section 170 (c) (2) of

A332555

the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue or Tax Law). Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all liabilities of the corporation, dispose of all the assets of the corporation exclusively for the purposes of the corporation in such a manner, or to such organization or organizations organized and operated exclusively for charitable, educational or scientific purposes as shall at the time qualify as an exempt organization under Section 501 (c) (3) of the Internal Revenue Code of 1954 (or any corresponding provision of any future United States Internal Revenue Law) as the Board of Directors shall determine.

5. The corporation is a Type B corporation under section 201 of the Not-for-Profit Corporation Law.

6. The office of the corporation shall be located in the City and County of Albany, State of New York.

7. The territory in which the corporation's activities are principally to be conducted are in the State of New York.

8. The names and addresses of the initial directors are:

Elizabeth Dovidio	634 New Scotland Avenue, Albany, NY
Mary Amata McDermott	634 New Scotland Avenue, Albany, NY
Barbara Roman	634 New Scotland Avenue, Albany, NY

9. The post office address to which the Secretary of State shall mail a copy of any notice required by law is 634 New Scotland Avenue, Albany, New York.

10. 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.

11. The subscriber below is of the age of nineteen years or over.

12. This certificate of incorporation is not for the incorporation of an existing unincorporated association or group in operation previous to this filing.

IN WITNESS WHEREOF, the undersigned incorporator, being at least nineteen years of age, has made, subscribed and acknowledged this certificate on this 28th day of July 1976.

Elizabeth Dovidio
(Elizabeth Dovidio)

STATE OF NEW YORK)
COUNTY OF ALBANY) SS:

On this 28th day of July 1976, before me personally came Elizabeth Dovidio, to me known and known to me to be the person described in and who executed the foregoing certificate of incorporation and she duly acknowledged to me that she did execute the same.

Angela DiBernardo

Angela DiBernardo
Notary Public, State of New York
Qualified in Albany County
My Commission Expires March 30, 1978

I, *John H. Penrod*, a Justice of the Supreme Court of the State of New York, Third Judicial District, do hereby approve the foregoing Certificate of Incorporation of THE MERCY CRAFT GUILD, INC., and consent that the same be filed.

Dated: July 29, 1976
Supreme Court, Albany County
Albany, New York

John H. Penrod

Justice, Supreme Court
Third Judicial District

*John J.
Jos. P. CASTELLANI
ASST. NOTARY
State of N.Y., 7-29-76
Warrior of NY Co.*



STATE OF NEW YORK
DEPARTMENT OF LAW

ALBANY, N. Y. 12224

LOUIS J. LEFKOWITZ
ATTORNEY GENERAL

Telephone: 474-7206

July 29, 1976

John J. Crimmins, Esq.
39 Philip Street
Albany, New York 12207

Dear Mr. Crimmins:

Re: The Mercy Craft Guild, Inc.


Due and timely service of the notice of application for the approval of the proposed certificate of incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General

By


JOSEPH R. CASTELLANI
Assistant Attorney General

A332555 / 5

CERTIFICATE OF INCORPORATION

OF
THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE NOT-FOR-PROFIT CORPORATION LAW

STATE OF NEW YORK
DEPARTMENT OF STATE
TAX \$ *none*
FILING FEE \$ *50*

FILED JUL 30 1976

M. J. Malone
Secretary of State

P O 1 Albany
Type B

FILER

JOHN J. CRIMMINS, III
CATHOLIC CHARITIES
39 PHILIP STREET
ALBANY, NEW YORK ~~XXXX~~
12207

CERTIFICATE OF AMENDMENT
OF
THE CERTIFICATE OF INCORPORATION OF

THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE
NOT-FOR-PROFIT CORPORATION LAW

We, the undersigned, the President and Secretary, respectively,
of The Mercy Craft Guild, Inc., hereby certify:

1. The name of the corporation is The Mercy Craft Guild, Inc.
2. The Certificate of Incorporation of said corporation was filed in the Office of the Department of State on July 30, 1976.
3. The Mercy Craft Guild, Inc. is a corporation as defined in sub-paragraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law and is a Type B Corporation under Section 201 of said law and will continue to be a Type B Corporation under Section 201 upon the filing of this Certificate of Amendment.
4. Paragraph 3(a) of the Certificate of Incorporation reads as follows:
 - (a) to provide and operate programs of social and recreational activities for the elderly, to include but not be limited to the establishment of a craft studio and handcraft shop, the net earnings of which shall be applied solely for the purposes of the corporation, but allowing commissions to

producers of handcrafts who provide products on consignment, but not for the pecuniary profit or gain of its members, directors, or officers, except as permitted under Article 5 of the Not-for-Profit Corporation Law; and the corporation shall not engage in any activities envisioned in Section 404, paragraphs b thru p of the Not-for-Profit Corporation Law or Section 747 of the Executive Law.

5. Paragraph 3(a) of the Certificate of Incorporation is amended to read as follows:

(a) to provide and operate programs of social and recreational activities for the elderly, to include but not be limited to the establishment of a craft studio and handcraft shop, the net earnings of which shall be applied solely for the purposes of the corporation, but allowing commissions to producers of handcrafts who provide products on consignment, but not for the pecuniary profit or gain of its members, directors, or officers, and the corporation shall not engage in any activities envisioned in Section 404, paragraphs b thru p of the Not-for-Profit Corporation Law or Section 747 of the Executive Law.

6. Paragraph 9 of the Certificate of Incorporation reads as follows:

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 634 New Scotland Avenue, Albany, New York.

7. Paragraph 9 of the Certificate of Incorporation is amended to read as follows:

The post office address to which the Secretary of State shall mail a copy of any notice required by law is 790 Madison Avenue, Albany.

New York 12208.

8. The above amendments to the Certificate of Incorporation were authorized by a vote of a majority of all members entitled to vote thereon at a meeting of the members.

9. Prior to the delivery of this Certificate of Amendment to the Department of State for filing, the consent of a Justice of the Supreme Court for the Third Judicial District will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate and affirm its contents to be true under penalties of perjury this 13 day of March, 1979.

Elizabeth A. Donohue
President

Mary Ann Amato McDonnell
Secretary

CONSENT OF JUSTICE OF THE SUPREME COURT

The undersigned, a Justice of the Supreme Court of the State of New York, sitting in the Third Judicial District, wherein is located the principal office of The Mercy Craft Guild, Inc., hereby approves the within Certificate of Amendment of the Certificate of Incorporation of The Mercy Craft Guild, Inc. and the filing thereof.

James D. Weber
Justice of the Supreme Court

DATED:

April 17, 1979

4



STATE OF NEW YORK
DEPARTMENT OF LAW

ROBERT ABRAMS
ATTORNEY GENERAL

ALBANY, N.Y. 12224
(518) 472-7206

April 5, 1979

Charles J. Tobin, III, Esq.
Tobin & Dempf, Esqs.
100 State Street
Albany, New York 12207

Dear Mr. Tobin:

Re: The Mercy Craft Guild, Inc.

Due and timely service of the notice of application for the approval of the proposed certificate of amendment of the certificate of incorporation of the above organization is hereby admitted.

The Attorney General does not intend to appear at the time of application.

Very truly yours,

ROBERT ABRAMS
Attorney General

By *John E. Lynch*
JOHN E. LYNCH
Assistant Attorney General

RECEIVED
APR 9 1979

TOBIN & DEMPFF

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CERTIFICATE OF AMENDMENT
 OF
 THE CERTIFICATE OF INCORPORATION OF
 THE MERCY CRAFT GUILD, INC.
 UNDER SECTION 402 OF THE
 NOT-FOR-PROFIT CORPORATION LAW

DATED: _____

LAW OFFICES
 TOBIN AND DEMPFF
 100 STATE STREET
 ALBANY, N. Y. 12207

JOB
 TOBIN

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 Albany, Albany Co.
 not add: 534 New Scotland
 Ave,
 Albany, NY

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 STATE OF NEW YORK
 DEPARTMENT OF STATE
 APR 18 1979
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CERTIFICATE OF AMENDMENT
OF
THE CERTIFICATE OF INCORPORATION
OF
THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE
NOT-FOR-PROFIT CORPORATION LAW

We, the undersigned, the President and Secretary, respectively, of The Mercy Craft Guild, Inc., hereby certify:

1. The name of the corporation is The Mercy Craft Guild, Inc.
2. The Certificate of Incorporation of said corporation was filed in the Office of the Department of State on July 30, 1976. A Certificate of Amendment to the Certificate of Incorporation was filed in the Office of the Department of State on April 18, 1979.

3. The Mercy Craft Guild, Inc. is a corporation as defined in sub-paragraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law and is a Type B Corporation under Section 201 of said law and will continue to be a Type B Corporation under Section 201 upon the filing of this Certificate of Amendment.

4. Paragraph 2 of the Certificate of Incorporation reads as follows:

2. The corporation is a corporation as defined in subpara-

16006736

graph (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.

5. Paragraph 2 of the Certificate of Incorporation is amended to read as follows:

2. 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.

6. The above amendment to the Certificate of Incorporation was authorized by a vote of a majority of all members entitled to vote thereon at a meeting of the members.

7. Prior to the delivery of this Certificate of Amendment to the Department of State for filing, the consent of a Justice of the Supreme Court for the Third Judicial District will be endorsed upon or annexed hereto.

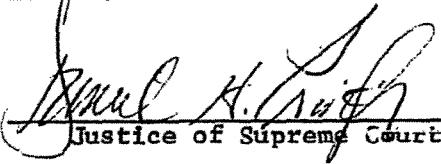
IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate and affirm its contents to be true under penalties of perjury this 9th day of AUGUST, 1979.

Elizabeth A. Sander
President

Lucas Dean Roche
Secretary

CONSENT OF JUSTICE OF THE SUPREME COURT

The undersigned, a Justice of the Supreme Court of the State of New York, sitting in the Third Judicial District, wherein is located the principal office of The Mercy Craft Guild, Inc., hereby approves the within Certificate of Amendment of the Certificate of Incorporation of The Mercy Craft Guild, Inc. and the filing thereof.


Justice of Supreme Court

DATED: *September 7, 1979*
Albany New York

4606736 -4

CERTIFICATE OF AMENDMENT
OF
THE CERTIFICATE OF INCORPORATION
OF

THE MERCY CRAFT GUILD, INC.

UNDER SECTION 402 OF THE
NOT-FOR-PROFIT CORPORATION LAW

DATED: _____, 1979

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STATE OF NEW YORK
DEPARTMENT OF STATE.

FILED SEP 17 1979
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FILING FEE \$ 30
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COPY \$ _____
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REFUND \$ _____
BY: _____

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Albany

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NFP Type B

Not. Add - The Corp 790 Madison Ave
Albany NY *attn!*

TOD TOBIN, ESQ

LAW OFFICES
TOBIN AND DEMPF
100 STATE STREET
ALBANY, N. Y. 12207

L

CERTIFICATE OF AMENDMENT

OF

THE CERTIFICATE OF INCORPORATION OF

THE MERCY CRAFT GUILD, INC.

UNDER SECTION 803 OF THE
NOT-FOR-PROFIT CORPORATION LAW

We, the undersigned, the President and Secretary, respectively, of
The Mercy Craft Guild, Inc., hereby certify:

1. The name of the corporation is The Mercy Craft Guild, Inc.
2. The Certificate of Incorporation of said corporation was filed in the Office of the Department of State on July 30, 1976. The corporation was formed under the Not-For-Profit Corporation Law.
3. The Mercy Craft Guild, Inc. is a corporation as defined in subparagraph (a) (5) of Section 102 (Definitions) of the Not-For-Profit Corporation Law and is a Type B Corporation under Section 201 of said law and will continue to be a Type B Corporation under Section 201 upon the filing of this Certificate of Amendment.
4. The Certificate of Incorporation of The Mercy Craft Guild, Inc. is hereby amended to effect a change in the Corporate Name pursuant to Section 801(b) (1) of the Not-For-Profit Corporation Law. Paragraph 1 of the Certificate of Incorporation is hereby amended to read as follows:
 - (a) The name of the corporation is
MERCY LIFE CENTER, INC.
5. Paragraph 9 of the Certificate of Incorporation is amended to read as follows:

6410508

The post office address to which the Secretary of State shall mail a copy of any ~~PROCESS~~ is 634 New Scotland Avenue, Albany, New York 12208. The Secretary of State of New York is hereby designated the agent of the corporation upon whom process against it may be served.

6. The above amendments to the Certificate of Incorporation were authorized by a vote of a majority of the entire Board of Directors voting in person at a meeting duly called and held for that purpose on the 2nd day of JULY, 1986. There are no members eligible to vote.

7. Prior to the delivery of this Certificate of Amendment to the Department of State for filing, the consent of a Justice of the Supreme Court for the Third Judicial District will be endorsed upon or annexed hereto.

IN WITNESS WHEREOF, the undersigned have executed and signed this Certificate and affirm its contents to be true under penalties of perjury this 8th day of August, 1986.

Elizabeth A. Dovisio
Elizabeth A. Dovisio, President

Barbara A. Roman
Barbara A. Roman, Secretary

2

CONSENT OF JUSTICE OF THE SUPREME COURT

The undersigned, a Justice of the Supreme Court of the State of New York, sitting in the Third Judicial District, wherein is located the principal office of The Mercy Craft Guild, Inc., hereby approves the within Certificate of Amendment of the Certificate of Incorporation of The Mercy Craft Guild, Inc. and the filing thereof.

Edward J. Conway
Justice of the Supreme Court

DATED:

9-27-86
[Signature]

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JE P. 1130/76

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CERTIFICATE OF AMENDMENTS
OF
THE CERTIFICATE OF INCORPORATION OF
THE MERCY CRAFT GUILD, INC.

STATE OF NEW YORK
DEPARTMENT OF STATE

FILED OCT 8 1985

AMT. OF CHECK: *40*
FILING FEE: *30*
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DATED:

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790 members
Albany
incorporated
10/10/85

LAW OFFICES
TOBIN AND DEMPFF
100 STATE STREET
ALBANY, N. Y. 12207

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CERTIFICATE OF AMENDMENT
OF
THE CERTIFICATE OF INCORPORATION
OF
MERCY LIFE CENTER, INC.

(Under Section 803 of the Not-For-Profit Corporation Law)

The undersigned hereby certify:

1. The name of the corporation is:

MERCY LIFE CENTER, INC.

~~The name under which the corporation was formed is Mercy Craft Guild, Inc.~~

2. The Certificate of Incorporation of Mercy Life Center, Inc. was filed by the Department of State on the 30th day of July, 1976, under Section 402 of the Not-for-Profit Corporation Law of the State of New York.

3. Mercy Life Center, Inc. is a corporation as defined in sub-paragraph (a) (5) of Section 102 of the Not-For-Profit Corporation Law and is a Type B corporation under Section 201 of that law. The corporation shall hereafter continue to be a Type B corporation as defined in Section 201 of the Not-For-Profit Corporation Law.

4. The Certificate of Incorporation is amended as follows:

(a) The identity of the sole member of the corporation is changed, by eliminating the present Paragraph 6 of the certificate and substituting the following Paragraph 6 in lieu thereof:

"6. The Religious Sisters of Mercy, Albany, is the sole member of the corporation. As such, the Religious Sisters of Mercy, Albany shall be entitled to all rights and powers of a member under the laws of the State of New York, this Certificate of Incorporation and the Bylaws of the corporation."

(b) The reserved powers of the sole member of the corporation, and the manner in which said reserved powers are exercised, are amended, by eliminating the present Paragraph 7 of the certificate and substituting the following Paragraph 7 in lieu thereof:

"7. In addition to any other requirements under New York law, this Certificate of Incorporation or the Bylaws of the corporation, the following powers shall be expressly reserved to Religious Sisters of Mercy, Albany as the sole member of the Corporation. Action by the corporation shall not be taken until the Religious Sisters of Mercy, Albany has exercised its reserved powers. The Religious Sisters of Mercy, Albany shall exercise the powers reserved to it in the manner required by its governance documents. The following powers

shall be exercised by the Religious Sisters of
Mercy, Albany:

- (a) adoption, amendment or restatement of the Articles or Certificate of Incorporation of the corporation;
- (b) adoption, amendment or restatement of the Bylaws of the corporation;
- (c) establishment or dissolution of organizational relationships by the corporation, including, without limitation, subsidiary corporations, and significant partnerships, joint ventures, and mergers;
- (d) appointment and removal of the directors of the corporation;
- (e) appointment and removal of the chief executive officer of the corporation;
- (f) adoption, amendment, and official interpretation of the philosophy and mission of the corporation;
- (g) adoption and amendment of the budgets of the corporation;
- (h) authorization of significant financial transactions by the corporation;
- (i) adoption and amendment of the strategic plan of the corporation;
- (j) evaluation of the corporation; and
- (k) in the event the governing documents of the corporation require the recommendation of the board of directors of the corporation for an action, such action may be authorized by Religious Sisters of Mercy, Albany without a recommendation by the board of directors following appropriate dialogue between the board of directors and Religious Sisters of Mercy, Albany."

(c) Paragraph 9 of the certificate is amended to: (1)
amend the conditions upon which the accomplishment of the

purposes of the corporation are to be promoted and conducted; and
(2) renumber said paragraph (there being no Paragraph 8 in the
original Certificate of Incorporation), by eliminating the
present Paragraph 9 and substituting the following Paragraphs 8
and 9 in lieu thereof:

"8. The accomplishment of the purposes of the
corporation must be promoted and conducted in a manner
consistent with the philosophies and missions of the
corporation, and the Religious Sisters of Mercy, Albany
and the ethical and moral teachings of the Roman
Catholic Church.

9. The office of the corporation shall be located in
the City and County of Albany, State of New York."

5. The above amendments to the Certificate of
Incorporation were authorized by vote of the majority of the
entire Board of Directors of the corporation, approved by the
vote of MercyCare Corporation, the sole corporate member of the
corporation, and by Eastern Mercy Health System, the sole
corporate member of MercyCare Corporation, and ratified by the
Religious Sisters of Mercy, Albany, (the religious sponsor of the
corporation).

6. The Secretary of State is designated as the agent of
the corporation upon whom process against it may be served. The
post office address to which the Secretary of State shall mail a
copy of any process against the corporation served upon him is
634 New Scotland Avenue, Albany, New York 12208.

7. Prior to the delivery of this Certificate of Amendment 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 or annexed hereto.

8. Notice to the attorney general, as required by law, has been given.

IN WITNESS WHEREOF, we have executed this certificate this 7 day of December, 1990.

Sister Elizabeth Dovidio, President
Sister Elizabeth Dovidio, President

Sister Mary Coons, Secretary
Sister Mary Coons, Secretary

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

Sister Elizabeth Dovidio, being duly sworn, depose and state that I am the President of Mercy Life Center, Inc., the corporation named in and described in the foregoing Certificate and that I have read the foregoing Certificate and know the contents thereof to be true, except as to those matters, therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

Sister Elizabeth Dovidio, President
Sister Elizabeth Dovidio, President

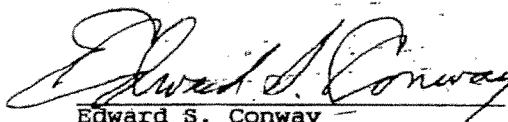
Sworn to before me this 7 day of December, 1990.

George A. Bellator
Notary Public
State of New York
GLADYS C. TOLLESON
Notary Public, State of New York
Qualified in Albany County
No. 39005
Commission Expires March 30 1991

5

JUDICIAL CONSENT

I, Edward S. Conway, a Justice of the Supreme Court of the State of New York, of the Third Judicial District, do hereby approve the foregoing Certificate of Amendment of the Certificate of Incorporation of Mercy Life Center, Inc. and consent the same be filed.



Edward S. Conway
Justice Supreme Court
Third Judicial District

Dated: February 5, 1991

6

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 14th day of April, 2016, approves the filing of the Certificate of Dissolution of McAuley Living Services, Inc., dated December 3, 2015.



Project # 151260-E
North Manor Operations Associates LLC
d/b/a Nanuet Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Rockland
Acknowledged: June 4, 2015

Executive Summary

Description

Northern Manor Operations Associates, LLC d/b/a Nanuet Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Northern Manor Multicare Center, Inc., a 231-bed Article 28 residential healthcare facility (RHCF) located at 199 N. Middletown Road, Nanuet (Rockland County). The facility is certified for 203 RHCF beds, 28 Ventilator Dependent beds, and a 100-slot off-site adult day health care program (ADHCP) located at One Prospect Park West, Brooklyn (Kings County), which is also part of this change in ownership request. There will be no change in services provided.

On June 1, 2015, Northern Manor Multicare Center, Inc. entered into an Asset Purchase Agreement with North Manor Operations Associates, LLC for the sale and acquisition of the operating interests of the RHCF. In conjunction with the Asset Purchase Agreement, North Manor Realty Associates, LLC, whose sole member is Daryl Hagler, entered into a land sale contract with Northern Manor Multicare Center, Inc. for the sale and acquisition of the RHCF's real property. The applicant will lease the premises from North Manor Realty Associates, LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and the tenant in that the landlord and the tenant have previous business relationships involving real estate transactions of other nursing homes.

Northern Manor Multicare Center, Inc., a voluntary not-for-profit corporation, currently operates the RHCF and ADHCP. The proposed new operator is as follows:

<u>Proposed</u>		
North Manor Operations Associates, LLC		100%
<u>Members</u>		
Jeffrey Sicklick		1%
KR Northern Holding Co., LLC		99%
Kenneth Rozenberg	(95%)	
Beth Rozenberg	(5%)	

OPCHSM Recommendation
Contingent Approval

Need Summary
Utilization has been consistently at or near the Department's planning optimum and is expected to continue going forward with the change in ownership.

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. No changes in the program or physical environment are proposed in this application. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers Health Care (Centers) is a

related party in that proposed member Kenneth Rozenberg is CEO and has a 50% ownership interest in Centers.

Financial Summary

The purchase price for the acquisition of the operating interests is \$18,126,692 and will be met with equity of \$4,539,173 from the proposed members' personal resources and a loan of \$13,587,519 at 5% interest for a ten-year term and 25-year amortization period. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment if

refinancing is not available. The purchase price for the real estate interests is \$10,000,000 and will be met with a loan for \$9,900,000 at 5% interest for a ten-year term and 25-year amortization period, and a \$100,000 down payment of equity. Daryl Hagler has submitted an affidavit indicating that he will fund the balloon payment if refinancing is not available. The projected budget is as follows:

Revenues	\$35,133,252
Expenses	<u>31,781,418</u>
Net Income	\$ 3,351,834

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 working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the operating interests, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the real estate interests, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of completed and executed Operating Agreement of KR Northern Holding CO., LLC, 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

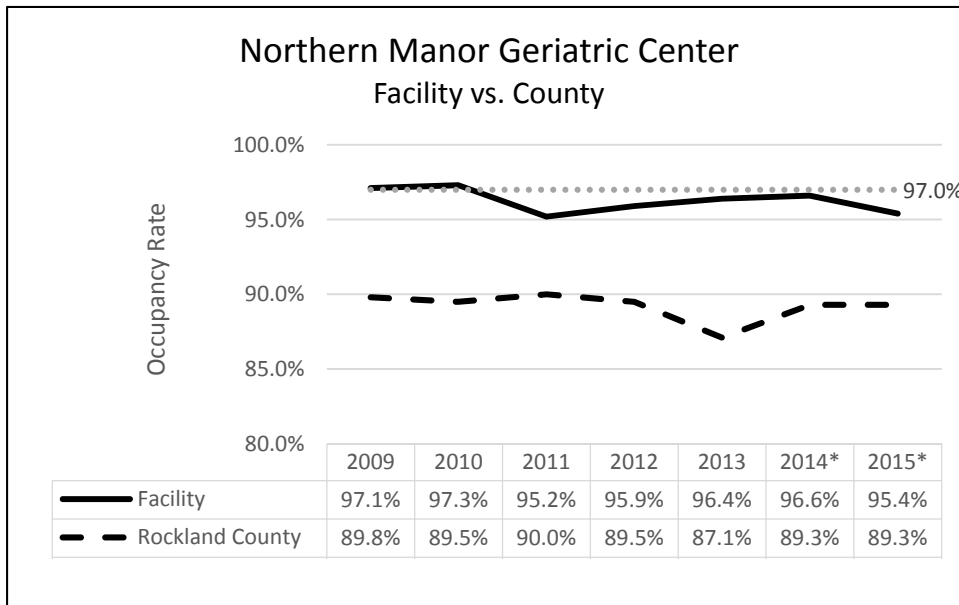
Analysis

As calculated by the need need methodology, there is currently a surplus of one bed in Rockland County.

RHCF Need – Rockland County

2016 Projected Need	1,635
Current Beds	1,676
Beds Under Construction	-40
Total Resources	1,636
Unmet Need	-1

The overall occupancy for Rockland County was 87.1% for 2013, as indicated in the following chart:



**unaudited; based off weekly census*

Current occupancy, as of June 10, 2015 is 96.1%, with 8 vacant beds. With the recent closing of Summit Park Nursing Care Center, Rockland County's current occupancy is 95.3%.

Access

Regulations indicate that the Medicaid patient admissions standard shall be 75% of the annual percentage of all Medicaid admissions for the long term care planning area in which the applicant facility is located. Such planning area percentage shall not include residential health care facilities that have an average length of stay 30 days or fewer. If there are four or fewer residential health care facilities in the planning area, the applicable standard for a planning area shall be 75% of the planning area percentage of Medicaid admissions, or of the Health Systems Agency area Medicaid admissions percentage, whichever is less. In calculating such percentages, the Department will use the most current data which have been received and analyzed by the Department.

An applicant will be required to make appropriate adjustments in its admission policies and practices so that the proportion of its own annual Medicaid patient's admissions is at least 75% of the planning area percentage or the Health Systems Agency percentage, whichever is applicable.

Northern Manor Geriatric Center's Medicaid admissions for both 2012 and 2013 was 82.5% and 75.0%, respectively, which exceeded Rockland County 75% rates in 2012 and 2013 of 24.4% and 26.5%, respectively.

Conclusion

Approval of this application will result in preserving a needed resource for the Medicaid population and community it serves.

Recommendation

From a need perspective, contingent approval is recommended.

<h2 style="margin: 0;">Program Analysis</h2>
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Facility Information

	Existing	Proposed
Facility Name	Northern Manor Geriatric Center	Nanuet Center for Rehabilitation and Nursing
Address	199 N Middletown Road Nanuet, New York 10954	Same
RHCF Capacity	231 (incl. 28 vent)	Same
ADHC Program Capacity	100	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Northern Manor Geriatric Center, Inc.	North Manor Operations Associates LLC <u>Members</u> Jeffrey Sicklick 1% KR Northern Holding Co, LLC 99% Kenneth Rozenberg (95%) Beth Rozenberg (5%)

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Bufflalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care;	07/2008 to present
Stonehedge Health & Rehabilitation Center - Chittenango)	
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care;	07/2008 to present

Stonehedge Health & Rehabilitation Center - Rome)	02/2006 to present
University Nursing Home	02/2014 to present
Washington Center for Rehabilitation and Health Care	08/2011 to present
Waterfront Center for Rehabilitation and Health Center	02/2006 to present
Williamsbridge Manor Nursing Home	

Rhode Island Nursing Homes

Banister Center for Rehab	02/2016 to present
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Dialysis Centers

Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present

Adult Home (AH)

Washington Center Adult Home	02/2014 to present
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Certified Home Health Agency (CHHA)

Alpine Home Health Care	07/2008 to present
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Licensed Home Care Services Agency (LHCSA)

Amazing Home Care	05/2006 to present
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Ambulance Company (EMS)

Senior Care Emergency Ambulance Services, Inc.	02/2006 to present
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Managed Long Term Care Company (MLTC)

Centers Plan for Health Living	01/2013 to present
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Individual Background Review

Current facility ownership % shown in brackets [].

Kenneth Rozenberg is a New York licensed nursing home administrator in good standing, and a licensed paramedic in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Bufflalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present

Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present
Holliswood Center for Rehabilitation (RECeivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (REC)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (REC)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (REC)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (REC)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (REC)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (REC) [100%]	08/2013 to present
Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

Note: DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report.

Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.

Beth (Kosowsky) Rozenberg retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Bufflalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present
Washington Center Adult Home (AH) [10%]	02/2014 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
 - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
 - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
 - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
 - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Stueben Center for Rehabilitation and Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought into the operating structure to help stabilize the facility as he operates another RHCF in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

Project Review

This application proposes to establish North Manor Operations Associates, LLC as the new operator of Northern Manor Geriatric Center. The facility will be operated as Nanuet Center for Rehabilitation and Nursing. The facility currently operates 231 RHCF beds, 28 of which are certified for ventilator dependent resident care. While located in Rockland County, the facility operates a 100 slot ADHCP program located in Brooklyn. It is the intent of the proposed operator to continue operation of the 100 slot ADHCP. No changes in the program or physical environment are proposed in this application.

The member LLC, KR Northern Holding Company, was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Nanuet Center for Rehabilitation and Nursing (Northern Manor Geriatric Center), Monsey Center for Rehabilitation and Nursing (Northern Metropolitan Residential Health Care Facility), and Haverstraw Center for Rehabilitation and Nursing.

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operator to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for Kenneth Rozenberg to contract with Centers for the facilities in which he has ownership interest. He uses Centers as a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities with which they contract.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence – Background because the transaction is currently being processed to effectuate the establishment of ownership.

Conclusion

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 for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Transfer Agreement

The applicant has submitted an executed asset purchase agreement for the transfer of the operation, which is summarized below:

Date:	June 1, 2015
Premises:	The RHCf located at 199 North Middletown Road, Nanuet, New York
Seller:	Northern Manor Multicare Center, Inc.
Purchaser:	North Manor Operations Associates, LLC
Assets Acquired:	Business and operation of the Facility except for Excluded Assets; all leasehold improvements, furniture, fixtures and equipment owned or leased by Seller; all inventory, supplies and other articles of personal property; all transferable contracts, agreements, leases, undertakings, commitments and other arrangements; resident funds held in trust; the name "Northern Manor" and any other trade names, logos, trademarks and service marks associated with the Facility; all security deposits and prepayments, if any, for future services held by Seller; all menus, policies and procedures manuals and computer software; all telephone numbers and telefax numbers used by the Facility; copies of all financial books and records in the possession of Seller or its agents relating to the Facility; all resident/patient records relating to the Facility; all employee and payroll records, goodwill, Seller's Medicare and Medicaid provider numbers and provider agreements; all rate increases and/or lump sum or other payments, resulting from rate appeals, audits or otherwise, with respect to third party payments from any source; and all other assets of Seller relating to the Facility and its programs, howsoever designated or wherever located, including, but not limited to, cash, deposits, grant applications, grant awards and the right to use the Premises, other than the Excluded Assets as hereinafter defined.
Excluded Assets:	All union contracts, collective bargaining agreements and all pension plans and all rights and interests of Seller under and pursuant to this Agreement and any documents executed in connection with the Closing Date hereafter defined.
Assumed Liabilities:	The purchaser will assume the trade payables.
Purchase Price:	\$18,126,692
Payment of Purchase Price:	\$10,000 paid as down payment; \$18,116,692 due at Closing

The applicant's financing plan appears as follows:

Equity via proposed members	\$4,539,173
Loan (5% interest, ten-year term, 25-year amortization period)	\$13,587,519

BFA Attachment A is the net worth summary for the proposed members of North Manor Operations Associates, LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement.

Greystone has provided a letter of interest for the loan at the stated terms. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available.

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 Seller of its liability and responsibility. As of February 16, 2016, the facility had outstanding Medicaid liabilities totaling \$413,222 related to cash receipts assessment overpayments and OMIG audit rates and related interest.

Land Purchase Agreement

The applicant has submitted an executed land purchase agreement for the site they will occupy, which is summarized below:

Date:	June 1, 2015
Premises:	The parcel of land located at 199 North Middletown Road, Nanuet, New York
Seller:	Northern Manor Multicare, Inc.
Purchaser:	North Manor Realty Associates, LLC
Purchase Price:	\$10,000,000
Payment of Purchase Price:	\$100,000 down payment paid; \$9,900,000 balance due at Closing.

The financing plan for the balance due on the real estate consist of a bank loan for \$9,900,000 at 5% interest for a ten-year term and 25-year amortization period. A bank of letter of interest at the stated terms has been provided. Daryl Hagler, who is the owner of the real estate entity, has indicated that he will refinance the loan when the balloon payment becomes due and has submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available. BFA Attachment F is the personal net worth statement of Daryl Hagler, which indicates the availability of sufficient funds for the balloon payment if refinancing is not available.

Lease Rental Agreement (nursing home)

The applicant has submitted an executed lease rental agreement for the nursing home site they will occupy, which is summarized below:

Date:	June 1, 2015
Premises:	The site located at 199 North Middletown Road, Nanuet, New York
Lessor:	North Manor Realty Associates, LLC
Lessee:	North Manor Operations Associates, LLC
Term:	10 years
Rental:	\$1,500,000 annually
Provisions:	The lessee shall be responsible for maintenance, utilities and real estate taxes.

The lease agreement is a non-arm's length lease arrangement. The applicant has submitted an affidavit attesting to that there is a business relationship between the landlord and the tenant.

Lease Rental Agreement (ADHCP)

The site of the ADHCP is currently being leased under the following:

Date:	August 1, 2012
Premises:	One Prospect Park West, Brooklyn, New York
Lessor:	1 Prospect Park ALF, LLC
Lessee:	Northern Manor Multicare Center, Inc.
Term:	Initial five year commencing October 1, 2012 with a single five-year renewal term commencing October 1, 2017 and terminating on September 30, 2022.
Rental:	Year 1-3: \$369,725 annually Year 4-6: \$385,800 annually Year 7-9: \$401,875 annually Year 10: \$417,950 annually

The applicant has submitted an executed lease assignment for the site where the ADHCP is located, summarized below:

Date	June 1, 2015
Premises	One Prospect Park West, Brooklyn, New York
Assignor	Northern Manor Multicare Center, Inc.
Assignee	North Manor Operations Associates, LLC

Operating Budget

The applicant has submitted an operating budget, in 2015 dollars, during the first year after the change in operator, summarized below:

RHCFC:	Current Year (2014)		Year One	
	Per Diem	Total	Per Diem	Total
Revenues:				
Medicaid (Geriatric)	\$265.92	\$14,428,480	\$239.78	\$12,821,756
Medicaid (Vent)	\$616.52	4,545,021	\$616.12	4,390,471
Medicare (Geriatric)	\$473.68	4,657,667	\$600.00	5,605,800
Medicare (Vent)	\$1,043.00	855,146	\$819.89	1,001,906
Private (Geriatric)	\$450.12	2,952,795	\$495.00	4,482,720
Private (Vent)	\$213.00	\$75,360	\$855.00	116,280
Total Revenues		\$27,514,469		\$28,418,933
Expenses:				
Operating	\$316.72	\$25,109,177	\$310.55	\$24,954,343
Capital	19.21	1,523,054	38.47	3,091,043
Total Expenses	\$335.93	\$26,632,231	\$349.02	\$28,045,386
Net Income		\$882,238		\$373,547
Utilization (total)		79,279		80,356
RHCF patient days		70,651		71,872
Vent patient days		8,628		8,484
Occupancy				95.30%
Breakeven				94.88%

RHCF utilization broken down by payor source for the current year (2014) and first year is as follows:

	Current Year	Year One
Medicaid	77.74%	75.41%
Medicare	13.72%	13.15%
Private	8.54%	11.44%

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

- The increase in reimbursement rates for Medicare (Vent) and Medicare (Geriatric) reflects the applicant's experience capturing patients with increased acuity levels. The projected Private (Geriatric) and Private (Vent) rates reflect increases that will be negotiated and implemented by the proposed operator. The Medicaid (Geriatric) rate is decreasing in the first year as it is based on the 1/1/15 Statewide Pricing Rate issued by the New York State Department of Health.
- The applicant projected an increase in patient days as a result of referrals from hospital discharge planners as well as marketing initiatives and community outreach efforts. The applicant indicated that the members are experienced, seasoned operators of a number of RHCs in New York State and that this experience will facilitate the development of new relationships with hospital discharge planners, as well as strengthen existing relationships.
- Expense assumptions are based on historical experience except for the following expense reductions:
 - Salaries and wages are projected to decrease by \$275,188 due to a reduction of management and administrative staff (a reduction of 4.8 FTEs) and select direct care staff (RNs will be reduced by 3.1 FTE and Aides/Orderlies by 10.6). The staffing reductions will be mitigated by increases in other direct care staff, including 7.1 FTEs for Activities Program staff and an additional 1.6 FTEs for Social Workers and Psychologists.
 - Professional fees are projected to decrease by \$191,335.
 - Non-medical and non-surgical supplies are projected to decrease by \$130,961.
- The increase in capital expenses is due to rent expenses that the proposed operator will be obligated to pay for the facility pursuant to the submitted lease agreement.
- The applicant has indicated that patient care will not suffer as a result of the cost reductions.

ADHCP:

	<u>Current Year (2014)</u>	<u>Year One</u>
Revenues	\$4,431,571	\$6,714,319
Expenses	<u>3,985,389</u>	<u>3,736,032</u>
Net Income	\$446,182	\$2,978,287

Visits	30,850	51,462
Cost Per Visit	\$129.19	\$72.60

The ADHCP revenues are based on current Medicaid and Private Pay reimbursement rates. The projected increase in visits is based upon the applicant's expectation that, following the change in ownership, the ADHCPs utilization will resume to its 2013 level. The applicant indicated that the decrease in utilization that occurred in 2014 was attributed to an investigation by the NYS Office of the Attorney General. Corrective action was undertaken by the facility and the ADHCP has continued to operate at the modest utilization levels.

ADHCP utilization broken down by payor source for the current year (2014) and first year is as follows:

	<u>Current Year</u>	<u>Total</u>
Medicaid	32.98%	39.89%
Private	67.02%	60.11%

The combined revenues and expenses for the entire facility during the first year after the change in operator is as follows:

	<u>Current Year (2014)</u>	<u>Year One</u>
Revenues	\$32,173,116	\$35,133,252
Expenses	<u>30,617,620</u>	<u>31,781,418</u>
Net Income	\$1,555,496	\$3,351,834

Capability and Feasibility

The purchase price for the acquisition of the operating interests is \$18,116,692 and will be met with \$4,539,173 of equity from the proposed members and a loan for \$13,587,519 at 5% interest for a ten-year term and 25-year amortization period. The purchase price for the real estate interests is \$10,000,000 and will be met via a down payment of \$100,000 (paid) and a loan for \$9,900,000 at 5% interest for a ten-year term and 25-year amortization period. Letters of interest for the respective operating and realty interest financings have been submitted. The applicant and landlord have each submitted affidavits attesting that they will fund their respective balloon payments from their personal resources if acceptable financing is not available at the time of refinancing.

Working capital requirements are estimated at \$5,296,903, which is equivalent to two months of first year expenses. The applicant will finance \$2,648,451 at an interest rate of 5% for a five-year term. The applicant submitted a letter of interest regarding the financing. The remaining \$2,648,452 will be met via equity from the proposed members' personal resources. BFA Attachment A is the personal net worth statements of the proposed members of Northern Manor Operations Associates, LLC, which indicates the availability of sufficient funds for the equity contribution.

BFA Attachment C is a pro forma balance sheet as of the first day of operation, which indicates a positive net asset position of \$7,187,595.

The submitted budget indicates a net income of \$3,351,834 during the first year subsequent to the change in operator. 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 NH revenues through the transition period.

BFA Attachment B is a financial summary of Northern Manor Multicare Center for the period 2012 through 2014. As shown, the facility had an average negative working capital position and an average negative net asset position. The applicant as indicated that the reason for the average negative working capital position and the average negative net asset position was the result of a Medicaid audit liability of over \$6,000,000 that was paid in 2013. Also, the entity achieved average net income of \$1,000,042 from 2012 through 2014. The applicant has indicated that the reason for the loss in 2013 was the result of the Medicaid audit liability of over \$6,000,000 that was paid in 2013.

BFA Attachment D is the 2012-2014 financial summaries of the RHCs in which the proposed members have ownership interests. The facilities have maintained an average positive net asset position and had positive income from operations for the period shown. Some of the facilities had a negative working capital position in 2014 due to CMI and capital reimbursement changes, and vacation and sick time accruals. The applicant has indicated that the reason for the losses for Bushwick (2013) and Chittenango Center (2012) was the result of a capital audit take-back. Financial statements for Washington Center for Rehabilitation and Indian River Rehabilitation and Health Care are not available as the facilities were newly acquired in 2014.

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

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Personal Net Worth Statements of Proposed Members
BFA Attachment B	Financial Summary- Northern Manor Multicare Center
BFA Attachment C	Pro Forma Balance Sheet
BFA Attachment D	Financial Summaries of members' affiliated RHCFs
BFA Attachment E	Applicant's Ownership Interest in affiliated RHCFs
BFA Attachment F	Personal Net Worth Statement of Daryl Hagler
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish North Manor Operations Associates LLC as the new operator of the 231-bed residential health care facility located at 199 North Middletown Road, Nanuet, currently operated as Northern Manor Geriatric Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

151260 E

North Manor Operations Associates LLC
d/b/a Nanuet Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed working capital loan commitment, acceptable to the Department of Health. [BFA]
2. Submission of an executed loan commitment for the operating interests, acceptable to the Department of Health. [BFA]
3. Submission of an executed loan commitment for the real estate interests, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of completed and executed Operating Agreement of KR Northern Holding CO., LLC, 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



Project # 152295-E
North River Operations Associates LLC
d/b/a Haverstraw Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Rockland
Acknowledged: November 23, 2015

Executive Summary

Description

North River Operations Associates, LLC d/b/a Haverstraw Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Northern Riverview Health Care Center, a 180-bed Article 28 Residential Health Care Facility (RHCF) with two respite beds located at 87 South Route 9W, Haverstraw (Rockland County). There will be no change in the number of beds or licensed services.

On June 1, 2015, the current operator of the RHCF, Northern Riverview Health Care Center, Inc., entered into an Asset Purchase Agreement (APA) with North River Operations Associates, LLC, for the sale and acquisition of the operations of Northern Riverview Health Care Center upon approval by the Public Health and Health Planning Council. In conjunction with the APA, North River Realty Associates, LLC, whose members are Daryl Hagler and Jonathan Hagler, entered into a Land Sale Contract with Northern Riverview Health Care Center, Inc. for the sale and acquisition of the RHCF's real property. The applicant will lease the premises from North River Realty Associates, LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and the tenant in that the landlord and tenant have previous business relationships involving real estate transactions of other nursing homes.

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

<u>Current Operator</u>	
Northern Riverview Health Care Center, Inc. Not-For-Profit Corporation (100%)	

<u>Proposed Operator</u>	
North River Operations Associates, LLC	100%
<u>Members</u>	
KR Northern Holding Co., LLC	99%
Kenneth Rozenberg (95%)	
Beth Rozenberg (5%)	
Jeffrey Sicklick	1%

The applicant members have ownership interest in numerous New York State (NYS) RHCFs. BFA Attachment D presents the ownership interest and financial summary of the proposed members' affiliated RHCFs.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Northern Riverview Health Care Center's occupancy was 95.5% in 2011, 92.0% in 2012, 95.0% in 2013, and 97.5% in 2014. Unaudited 2015 occupancy is 96.6% and current occupancy as of March 9, 2016 is 98.9%.

Program Summary

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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers Health Care (Centers) is a related party in that proposed member Kenneth Rozenberg is CEO and has a 50% ownership interest in Centers.

Financial Summary

There are no project costs associated with this proposal. The purchase price for the acquisition of the operating interests is \$18,909,208 and will be met with equity of \$4,734,802 from the proposed members' personal resources and a loan for \$14,174,406 at 5% for a ten-year term and 25-year amortization period. The purchase price for the real estate interests is \$7,500,000 and will be met with a loan for \$7,490,000 at 5% interest for a ten-year term and 25-year amortization period, and a \$10,000 down payment of equity. The projected budget is as follows:

Revenues:	\$18,667,153
Expenses:	<u>17,821,605</u>
Gain:	\$845,548

Recommendations

Health Systems Agency

There will be no HSA recommendation for this project.

Office of Primary Care and Health Systems Management

Approval contingent upon:

1. Submission of a commitment signed by the applicant which indicates that, within two years from the date of the council approval, the percentage of all admissions who are Medicaid and Medicare/Medicaid eligible at the time of admission will be at least 75 percent of the planning area average of all Medicaid and Medicare/Medicaid admissions, subject to possible adjustment based on factors such as the number of Medicaid patient days, the facility's case mix, the length of time before private paying patients became Medicaid eligible, and the financial impact on the facility due to an increase in Medicaid admissions. (RNR)
2. Submission of a plan to continue to enhance access to Medicaid residents. At a minimum, the plan should include, but not necessarily be limited to, ways in which the facility will:
 - 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 the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care [LTC]
5. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. (BFA)
6. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. (BFA)
7. Submission of a photocopy of the applicant's signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's signed Operating Agreement, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's signed Lease Agreement, which is acceptable to the Department. [CSL]
10. Submission of a photocopy of a signed Certificate of Amendment to the Articles of Organization of KR Northern Holding Co., LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of a revised and signed Operating Agreement for KR Northern Holding Co., LLC, which is 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

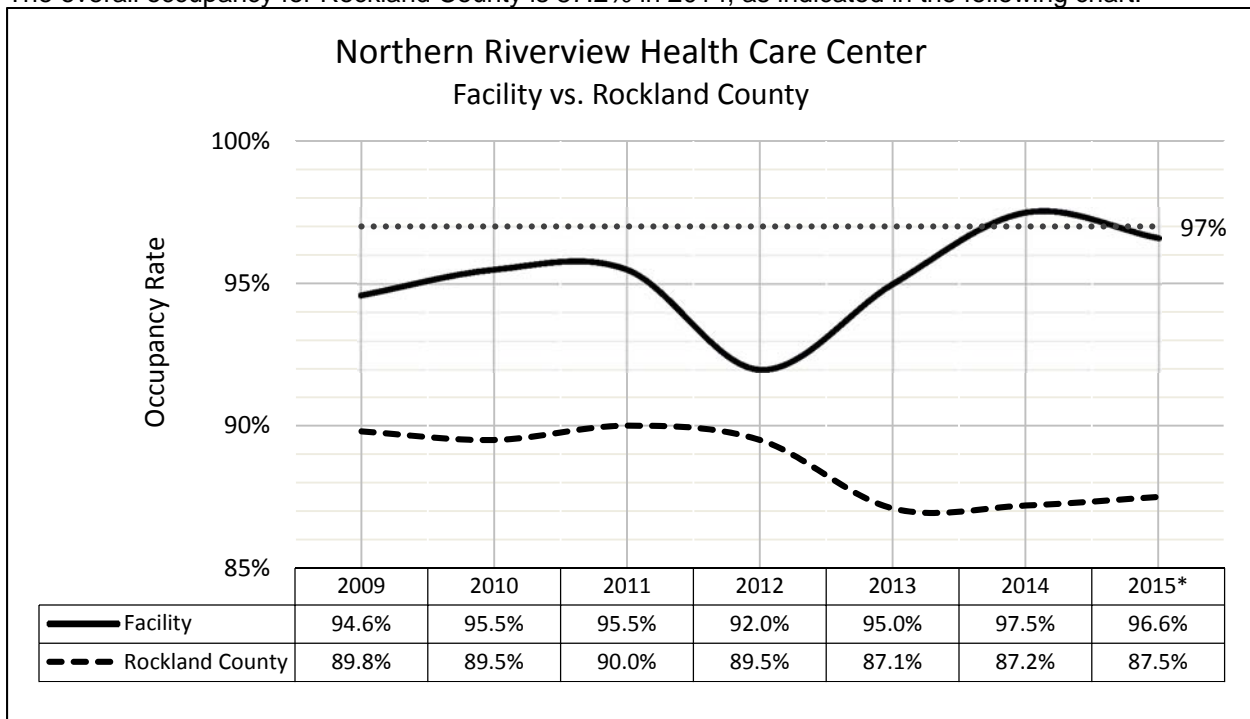
Analysis

The current need methodology indicates a need for 320 additional beds in Rockland County.

RHCF Need – Rockland County

2016 Projected Need	1,635
Current Beds	1,355
Beds Under Construction	-40
Total Resources	1,315
Unmet Need	320

The overall occupancy for Rockland County is 87.2% in 2014, as indicated in the following chart:



*unaudited/facility reported data

Subsequent to the submission of this application, Summit Park Nursing Care Center, located in Rockland County, closed. As a result, Rockland County's occupancy is currently 95.3%. Northern Riverview Health Care Center's occupancy was 95.5% in 2011, 92.0% in 2012, 95.0% in 2013, and 97.5% in 2014. Occupancy for 2015 is approximately 96.6%. Current occupancy as of March 9, 2015 is 98.9%. Current CMI for the facility is 1.31 and, for the Medicaid-only population, 1.25. The proposed operator will implement new programs to serve a more diverse, higher acuity resident population and will include the following services: tracheostomy care, cardiac rehabilitation, enhanced wound care, complex clinical care and IV therapy.

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.

Northern Riverview Health Care Center's Medicaid admissions of 78.4% and 71.1% in 2012 and 2013, respectively, exceeded Rockland County's 75% rates of 24.4% and 26.5% in 2012 and 2013, respectively.

Conclusion

Approval is recommended to maintain the existing resources for the residents of Rockland County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Northern Riverview Health Care Center	Haverstraw Center for Rehabilitation and Nursing
Address	87 South Route 9W Haverstraw, New York 10927	Same
RHCF Capacity	180	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Northern Riverview Health Care Center, Inc.	North River Operations Associates, LLC <u>Members</u> Jeffrey Sicklick 1% KR Northern Holding Co, LLC 99% Kenneth Rozenberg (95%) Beth Rozenberg (5%)

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Buffalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present

Hope Center for HIV and Nursing Care	04/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	07/2008 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	07/2008 to present
University Nursing Home	02/2006 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	02/2006 to present
 <u>Rhode Island Nursing Homes</u>	
Banister Center for Rehab	02/2016 to present
 <u>Dialysis Centers</u>	
Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present
 <u>Adult Homes</u>	
Washington Center Adult Home (AH)	02/2014 to present
 <u>Certified Home Health Agency</u>	
Alpine Home Health Care (CHHA)	07/2008 to present
 <u>Licensed Home Care Services Agency</u>	
Amazing Home Care (LHCSA)	05/2006 to present
 <u>Ambulance Company</u>	
Senior Care Emergency Ambulance Services, Inc. (EMS)	02/2006 to present
 <u>Managed Long Term Care Company</u>	
Centers Plan for Health Living (MLTC)	01/2013 to present

Individual Background Review
Current facility ownership is shown in brackets.

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Buffalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present

Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present
Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

Holliswood Center for Rehabilitation (Receivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (Receivership)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (Receivership)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (Receivership)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (Receivership)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (Receivership)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (Receivership) [100%]	08/2013 to present

Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report. Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.

Beth (Kosowsky) Rozenberg retired in 1995 as a teacher from Park East Day School in New York, NY.

Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Bufflalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present

The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present
Washington Center Adult Home (AH) [10%]	02/2014 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
 - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
 - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
 - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
 - A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
 - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Steuben Center for Rehabilitation and Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought into the operating structure to help stabilize the facility as he operates another RHCF in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

Project Review

This application proposes to establish North River Operations Associate, LLC as the new operator of Northern Riverview Health Care Center. The facility will be operated as Haverstraw Center for Rehabilitation and Nursing. No changes in the program or physical environment are proposed in this application.

The member LLC, KR Northern Holding Company, was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Nanuet Center for Rehabilitation and Nursing (Northern Manor Geriatric Center), Monsey Center for Rehabilitation and Nursing (Northern Metropolitan Residential Health Care Facility), and Haverstraw Center for Rehabilitation and Nursing.

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operators to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for the facilities in which Kenneth Rozenberg has an ownership interest in to contract with Centers. Centers is used as a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities they contract with.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence – Background because the transaction is currently being processed to effectuate the establishment of ownership.

Conclusion

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 for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the operating interests of the RHC. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	June 1, 2015
Purchaser:	North River Operations Associates, LLC
Seller:	Northern Riverview Health Care Center, Inc.
Purchased Assets:	All assets used in the operation of the facility. Equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$18,909,208
Payment of Purchase Price:	\$10,000 cash deposit held in escrow \$18,899,208 due at time of Closing.

The applicant's financing plan appears as follows:

Equity via proposed members	\$4,734,802
Loan (5% interest, 10-year term, 25-year amortization period)	\$14,174,406

BFA Attachment A is the net worth summary for the proposed members of North River Operations Associates, LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement. Greystone has provided a letter of interest for the loan at the stated terms. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available.

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

Land Purchase Agreement

The applicant has submitted an executed land purchase agreement for the site they will occupy, which is summarized below:

Date:	June 1, 2015
Premises:	The parcel of land located at 87 South Route 9W, Haverstraw, New York
Seller:	Northern Riverview Health Care Center, Inc.
Purchaser:	North River Realty Associates, LLC
Purchase Price:	\$7,500,000
Payment of Purchase Price:	\$10,000 down payment paid; \$7,490,000 balance due at Closing.

The financing plan for the balance due on the real estate consist of a bank loan for \$7,490,000 at 5% interest for a ten-year term and 25-year amortization period. A bank of letter of interest at the stated terms has been provided. Daryl Hagler, who is the majority owner of the real estate entity, has submitted an affidavit stating that he will refinance the loan when the balloon payment becomes due if refinancing is not available. BFA Attachment B, net worth of Daryl Hagler, reveals sufficient resources for stated levels of equity.

Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	May 30, 2015
Premises:	A 180-bed RHCf located at 87 South Route 9W, Haverstraw, New York 10927
Landlord:	North River Realty Associates, LLC
Tenant:	North River Operations Associates, LLC
Terms:	10 years
Rental:	\$1,200,000 annually (\$100,000 per month)
Provisions:	Taxes, insurance, maintenance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members of each have previous business relationships involving real estate transactions of other RHCfs. North River Realty Associates, LLC members are Daryl Hagler (99%) and Jonathan Hagler (1%).

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
<u>Revenues</u>				
Medicaid	\$262.84	\$13,959,703	\$245.17	\$13,089,381
Medicare	\$532.68	4,049,966	\$532.68	4,071,167
Commercial	\$361.25	513,695	\$361.25	516,226
Private Pay	\$514.75	<u>985,235</u>	\$514.75	<u>990,379</u>
Total Revenues		\$19,508,599		\$18,667,153
<u>Expenses</u>				
Operating	\$220.71	\$14,136,724	\$237.42	\$15,286,537
Capital	<u>18.52</u>	<u>1,185,818</u>	<u>39.37</u>	<u>2,535,068</u>
Total Expenses	\$239.23	\$15,322,542	\$276.79	\$17,821,605
Net Income		<u>\$4,186,057</u>		<u>\$845,548</u>
Total Patient Days		64,050		64,385
Occupancy		97.5%		98.00%
Breakeven				93.56%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 payor and 2014 RHCf-4 cost report information. Historical utilization for base year 2014 was 97.5%.
- For budget Year One, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate. All other revenues assume current payment rates for the respective payors. Commercial and Private Pay rates are anticipated to remain the same in Year One.
- Expenses are increasing in year one due to added staff including 6.9 FTE RNs, 21.0 FTE Technician & Specialists, 2.6 FTE Aides/Orderlies, and 5.0 FTE Environment and Food Service staff. The increase will be offset by savings in other areas related to staff reductions in Management and

Supervision (2.3 FTEs), Clerical (5.3 FTEs), LPNs (2.7 FTEs) and Social Workers (2.7 FTEs). The applicant intends to implement new programs to serve a more diverse resident population including tracheostomy care, cardiac rehabilitation, enhanced wound care, complex clinical care, and IV therapy. By offering these additional services, the applicant anticipates the facility will be able to care for higher acuity residents while also helping to prevent unnecessary hospitalizations.

- Overall utilization is 97.5% and 98.0% for Current Year and Year One, respectively, while utilization by payor source is as follows:

	<u>Current Year and Year One</u>
Medicaid	82.92%
Medicare	11.87%
Private/Other	5.21%

- Breakeven utilization is 93.56% or 61,469 patient days for the first year.

Capability and Feasibility

There are no project costs associated with this application. The purchase price for the acquisition of the operating interests is \$18,909,208 and will be met with \$4,734,802 equity from proposed members and a bank loan for \$14,174,406 at 5% for a ten-year term and 25-year amortization. Greystone has provided a letter of interest for the financing at the stated terms. Proposed North River Operations Associates, LLC member Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the loan comes due. BFA Attachment F is the interest and amortization schedule for the ten-year term.

The working capital requirement is \$2,970,268 based on two months of the first year's expenses. Working capital will be satisfied with \$1,485,134 equity from proposed members and the remaining \$1,485,134 will be financed through a bank loan for five years at 5% interest. Greystone has provided a letter of interest for the working capital financing. Kenneth Rozenberg has provided an affidavit attesting that he will provide additional equity disproportionate to his membership interest for working capital. BFA Attachment A, net worth of the proposed members of North River Operations Associates, LLC, reveals sufficient resources for stated levels of equity. BFA Attachment F is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$6,219,936. It is noted that assets include \$18,909,208 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be a negative \$12,689,272.

The submitted budget indicates that net income of \$845,548 will be generated for the first year. 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 NH revenues through the transition period.

BFA Attachment C, financial summary of Northern Riverview Health Care Center, indicates that the facility has maintained positive working capital, positive equity position and generated an average annual net operating profit of \$4,008,175 for the 2013-2014 period shown, and a net operating profit of \$2,406,149 as of June 30, 2015.

BFA Attachments D, financial summary of the proposed members' affiliated RHCs, shows the facilities have maintained positive net income from operations for the periods shown.

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	North River Operations Associates, LLC, Proposed Members Net Worth
BFA Attachment B	North River Realty Associates, LLC, Daryl Hagler Net Worth
BFA Attachment C	Financial Summary, Northern Riverview Health Care Center
BFA Attachment D	Affiliated Residential Health Care Facilities
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Mortgage Amortization Schedule
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish North River Operations Associates LLC as the new operator of the 180-bed facility located at 87 South Route 9W, Haverstraw, which is currently operated as Northern Riverview Health Care Center, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152295 E

North River Operations Associates LLC
d/b/a Haverstraw Center for Rehabilitation and
Nursing

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 the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care [LTC]
5. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. (BFA)
6. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. (BFA)
7. Submission of a photocopy of the applicant's signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department. [CSL]
8. Submission of a photocopy of the applicant's signed Operating Agreement, which is acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's signed Lease Agreement, which is acceptable to the Department. [CSL]

10. Submission of a photocopy of a signed Certificate of Amendment to the Articles of Organization of KR Northern Holding Co., LLC, which is acceptable to the Department. [CSL]
11. Submission of a photocopy of a revised and signed Operating Agreement for KR Northern Holding Co., LLC, which is 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



Project # 152296-E
North Met Operations Associates LLC
d/b/a Monsey Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Rockland
Acknowledged: December 30, 2015

Executive Summary

Description

North Met Operations Associates, LLC d/b/a Monsey Center for Rehabilitation and Nursing, a New York limited liability company, requests approval to be established as the new operator of Northern Metropolitan Residential Health Care Facility Inc., a 120-bed Article 28 Residential Health Care Facility (RHCF) located at 225 Maple Avenue, Monsey (Rockland County). The facility also operates a 46-slot on-site Adult Day Health Care Program (ADHCP), which is part of this request. There will be no change in services provided.

On June 1, 2015, Northern Metropolitan, Inc. entered into an Asset Purchase Agreement (APA) with North Met Operations Associates, LLC for the sale and acquisition of the operating interest of Northern Metropolitan Residential Health Care Facility Inc. The real estate will remain unchanged. The applicant will lease the premises from Ledri Realty Associates, LLC, an unrelated party, via assignment of the current lease agreement.

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

<u>Current Operator</u> Northern Metropolitan Residential Health Care Facility Inc. (100%)

<u>Proposed Operator</u>	
North Met Operations Associates, LLC	100%
<u>Members</u>	
KR Northern Holding Co., LLC	99%
Kenneth Rozenberg	(95%)
Beth Rozenberg	(5%)
Jeffrey Sicklick	1%

The applicant members have ownership interest in numerous New York State (NYS) RHCFs. BFA Attachment C presents the ownership interest and financial summary of the proposed members' affiliated RHCFs.

OPCHSM Recommendation
Contingent Approval

Need Summary
There will be no changes to beds or services as a result of this project. Northern Metropolitan Residential Health Care Facility's occupancy was 89.4% in 2012, 88.0% in 2013, and 89.4% in 2014. Current occupancy, as of January 27, 2016 is 96.7%.

Program Summary
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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care (Centers). Centers is a related party in that proposed member Kenneth

Rozenberg is CEO and has a 50% ownership interest.

Financial Summary

There are no project costs associated with this proposal. The purchase price for the operations is \$8,709,661 and will be met with \$2,184,915 from the proposed members' equity and a bank loan for \$6,524,746 at 5% for a 10-year term and 25-year amortization. Greystone Has provided a letter of interest for the financing at the stated terms. Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment should acceptable refinancing not be available at the time the loan comes due. The projected budget is as follows:

Revenues:	\$16,933,007
Expenses:	<u>13,902,627</u>
Gain:	\$ 3,030,380

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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed Assignment and Assumption of the lease agreement, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of the applicant's signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department.
9. Submission of a photocopy of the applicant's signed Operating Agreement, which is acceptable to the Department. [CSL]
10. Submission of photocopies of the signed modification of lease dated March 31, 1981 and stipulation of settlement dated September 14, 1995 (referenced in section 1.1.18 of the Asset Purchase Agreement), and a signed assignment of the lease, all of which must be acceptable to the Department. [CSL]

11. Submission of a photocopy of a signed Certificate of Amendment to the Articles of Organization of KR Northern Holding Co., LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of a revised and signed Operating Agreement for KR Northern Holding Co., LLC, which is 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

Background and Analysis

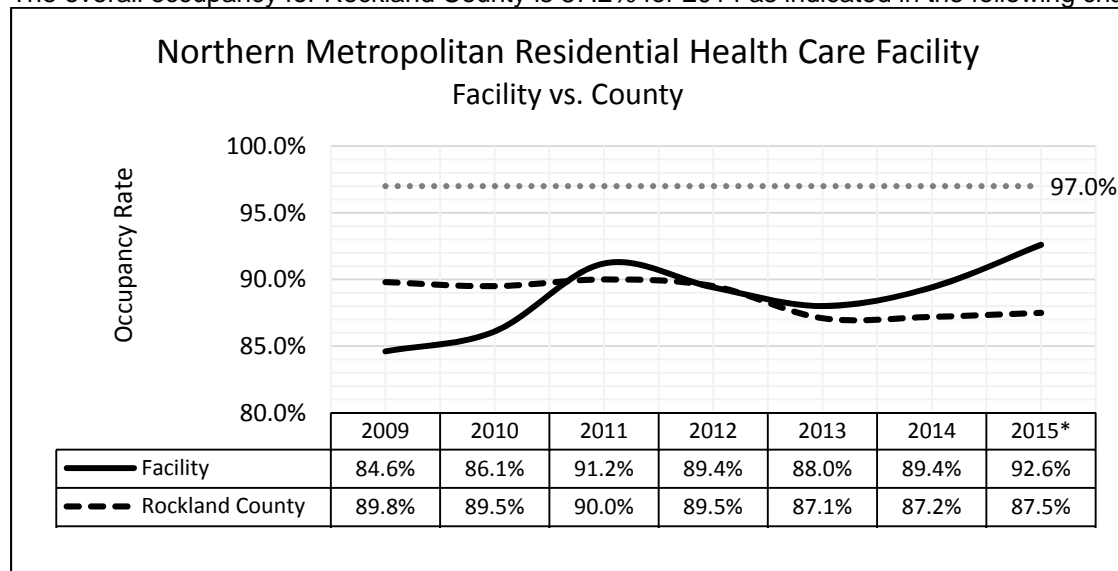
North Met Operations Associates LLC d/b/a Monsey Center for Rehabilitation and Nursing, seeks approval to become the established operator of Northern Metropolitan Residential Health Care Facility, an existing 120-bed Article 28 residential health care facility (RHCF), located at 225 Maple Avenue, Monsey, 10952, in Rockland County. In addition, the applicant seeks approval to become the operator of the 46-slot adult day health care program currently operated at the facility.

The need methodology indicates a need for 320 additional beds in Rockland County.

RHCF Need – Rockland County

2016 Projected Need	1,635
Current Beds	1,355
Beds Under Construction	-40
Total Resources	1,315
Unmet Need	320

The overall occupancy for Rockland County is 87.2% for 2014 as indicated in the following chart:



*unaudited, facility reported data

With the recent closing of Summit Park Nursing Care Center, Northern Metropolitan Residential Health Care Facility has received new admissions and is currently at 97% occupancy. Rockland County is at 95.3%. In addition to the recent influx of admissions, the applicant noted additional plans to increase and sustain occupancy at the Department's planning optimum. New programs to serve a more diverse resident population, higher acuity residents, and prevent unnecessary hospitalizations include the following services: tracheostomy care, cardiac rehabilitation, enhanced wound care, complex clinical care and IV therapy.

The applicant also plans to make cosmetic improvements throughout the facility as well as perform the following renovations:

- New lobby including hospitality and lounge areas;
- New multi-purpose room which will include:
 - A new therapy suite and solarium, with indoor/outdoor space;
 - A new synagogue; and

- Additional guest suites on the ground floor, which will be available for overnight stays for family members. The guest suites will have a significant impact on Orthodox Jewish residents, which make up approximately 60% of the residents in the facility, and whose family members are unable to travel during weekly religious observances.

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.

Northern Metropolitan Residential Health Care Facility’s Medicaid admissions of 67.7% in 2012 and 71.1% in 2013 exceeded Rockland County 75% rates of 24.4% and 26.5% in 2012 and 2013, respectively.

Conclusion

With the recent closure of a nursing home in the planning area, approval of this application will result in maintaining a necessary community and Medicaid resource in Rockland County.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Northern Metropolitan Residential Health Care Facility	Monsey Center for Rehabilitation and Nursing
Address	225 Maple Avenue Monsey, New York 10952	Same
RHCF Capacity	120	Same
ADHC Program Capacity	46	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Northern Metropolitan Residential Health Care Facility Inc	North Met Operations Associates LLC <u>Members</u> Jeffrey Sicklick 1% KR Northern Holding Co, LLC 99% Kenneth Rozenberg (95%) Beth Rozenberg (5%)

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Bufflalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	07/2008 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	07/2008 to present
University Nursing Home	02/2006 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	02/2006 to present

Rhode Island Nursing Homes

Banister Center for Rehab	02/2016 to present
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Dialysis Centers

Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present

Adult Homes

Washington Center Adult Home (AH)	02/2014 to present
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Certified Home Health Agency

Alpine Home Health Care (CHHA)	07/2008 to present
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Licensed Home Care Services Agency

Amazing Home Care (LHCSA)	05/2006 to present
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	02/2006 to present
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Managed Long Term Care Company

Centers Plan for Health Living (MLTC)	01/2013 to present
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Individual Background Review

Current facility ownership is shown in brackets.

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Buffalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present
Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present
Holliswood Center for Rehabilitation (Receivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (Receivership)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (Receivership)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (Receivership)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (Receivership)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (Receivership)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (Receivership) [100%]	08/2013 to present
Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report. Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.

Beth (Kosowsky) Rozenberg retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present

Banister Center for Rehab (RI) [5%]

02/2016 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Buffalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present
Washington Center Adult Home (AH) [10%]	02/2014 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 11, 2012 survey findings.

- A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
- A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
 - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
 - A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took

steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
 - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Stueben Center for Rehabilitation and

Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought into the operating structure to help stabilize the facility as he operates another RHC in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

Project Review

This application proposes to establish North Met Operations Associates, LLC as the new operator of Northern Metropolitan Residential Health Care Facility. The facility will be operated as Monsey Center for Rehabilitation and Nursing. No changes in the program or physical environment are proposed in this application.

The member KR Northern Holding Company, LLC was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Nanuet Center for Rehabilitation and Nursing (Northern Manor Geriatric Center), Monsey Center for Rehabilitation and Nursing (Northern Metropolitan Residential Health Care Facility), and Haverstraw Center for Rehabilitation and Nursing.

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operators to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for the facilities in which Kenneth Rozenberg has ownership interest to contract with Centers. Centers is a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities they contract with.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence – Background because the transaction is currently being processed to effectuate the change in ownership.

Conclusion

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 for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the operating interests of the RHC. The agreement will become effectuated upon Public Health and Health Planning Council approval of this CON. The terms of the agreement are summarized below:

Date:	June 1, 2015
Purchaser:	North Met Operations Associates, LLC
Seller:	Northern Metropolitan, Inc.
Purchased Assets:	All assets used in the operation of the facility. Facilities; equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents. The 46 slot adult day health care program.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$8,709,661
Payment of Purchase Price:	\$10,000 cash deposit \$8,699,661 due at closing.

The applicant's financing plan appears as follows:

Equity via proposed members	\$2,184,915
Loan (5% interest, 10-year term, 25-year amortization period)	\$6,524,746

BFA Attachment A is the net worth summary for the proposed members of North Met Operations Associates, LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement. Greystone has provided a letter of interest for the loan at the stated terms. Proposed member Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment should acceptable refinancing not be available at the time the loan comes due.

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

Lease Agreement

Facility occupancy is subject to an executed lease agreement and the assignment and assumption of the lease to the proposed operators. The terms of the executed lease agreement are summarized as follows:

Date:	January 17, 1972
Premises:	A 120-bed RHCF located at 225 Maple Avenue, Monsey, New York 10952
Landlord:	Ledri Realty Associates, LLC
Tenant:	Northern Metropolitan Residential Health Care Facility Inc.
Terms:	20 years with two (2) 20-year renewals
Rental:	\$228,000 annually (\$19,000 per month)
Provisions:	Taxes, insurance, maintenance and utilities.

The lease arrangement is an arm's length agreement.

Assignment and Assumption of the Lease Agreement

Facility occupancy is subject to a draft assignment and assumption of the lease agreement, the terms of which are summarized as follows:

Assignor:	Northern Metropolitan Residential Health Care Facility, Inc.
Assignee:	North Met Operations Associates, LLC
Rights assigned:	All rights assigned under the Asset Purchase Agreement and upon approval by the New York State Department of Health, assignor has agreed to assignee all rights under the lease agreement dated January 17, 1972.
Extension:	Assignor has agreed to extend the original lease to September 30, 2035.

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

RHCF

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
Revenues				
Medicaid	\$266.00	\$7,945,137	\$243.84	\$7,740,457
Medicare	\$548.38	2,858,736	\$372.09	3,324,600
Commercial	\$301.12	973,219	\$301.08	1,034,346
Private Pay	\$441.91	370,321	\$418.93	441,045
Total Revenues		\$12,147,413		\$12,540,448
Expenses				
Operating	\$323.97	\$12,684,113	\$283.41	\$11,793,099
Capital	19.61	767,670	24.66	1,026,047
Total Expenses	\$343.58	\$13,451,783	\$308.07	\$12,819,146
RHCF Net Income(Loss)		<u>(\$1,304,370)</u>		<u>(\$278,698)</u>
Total Patient Days		39,152		41,611
Occupancy %		89.4%		95.0%
Breakeven %				97.1%

ADHCP

	<u>Current Year</u>	<u>Year One</u>
Revenues		
Medicaid	\$2,911,961	\$2,405,545
Private Pay	<u>642,767</u>	<u>1,987,014</u>
Total Revenues	\$3,554,728	\$4,392,559
Expenses		
Operating	\$839,716	\$900,706
Capital	<u>1,800</u>	<u>182,775</u>
Total Expenses	\$841,516	\$1,083,481
ADCHP Net Income	<u>\$2,713,212</u>	<u>\$3,309,078</u>
Visits	20,894	26,790
Total (RHCF & ADHCP) Net Income	<u>\$1,408,842</u>	<u>\$3,030,380</u>

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 payor and 2014 RHCF-4 cost report information. Historical utilization for base year 2014 was 89.4%.
- For budget year one, Medicaid revenues are projected based on the current operating and capital components of the facility's 2015 Medicaid FFS rate. All other revenues assume current payment rates for the respective payors. Private Pay rates are anticipated to increase in year one based on forecasted increases and expectations per negotiated contracts, which are more in line with Medicare rates.
- Expenses will be reduced by \$891,014 in the first year due to a reduction in Administrative, LPNs and Aides/Orderlies staff salaries and benefits (\$739,809) which will not interrupt patient care, a reduction in service fees and contracts through better negotiations (\$48,293), and a reduction in management expenses (\$102,912).
- The increase in ADHCP utilization is anticipated due to an increase in marketing and outreach efforts and an increase in the days of operation from six to seven days per week. The additional need for ADHC services has been created by the recent closure of Summit Park Nursing Care Center, which operated an ADHCP.
- Overall utilization for the RHCF is 89.4% and 95.0% for current year and year one, respectively, while utilization by payor source is as follows:

	<u>Current Year and Year One</u>
Medicaid	76.29%
Medicare	13.31%
Private/Other	10.40%

- Utilization by payor source for the ADCHP for current year and year one is as follows:

	<u>Current Year and Year One</u>
Medicaid	55.21%
Private	44.79%

- Breakeven utilization for the RHCF is 97.11% for the first year.

Capability and Feasibility

There are no project costs associated with this application.

The purchase price for the acquisition of the operating interests is \$8,709,661 and will be met with \$2,184,915 equity from the proposed members and a bank loan for \$6,524,746 at 5% for a ten-year term and 25-year amortization. Greystone has provided a letter of interest for the financing at the stated terms. Proposed member Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment should acceptable refinancing not be available at the time the loan comes due. BFA Attachment E is the interest and amortization schedule for the ten-year term.

The working capital requirement is \$2,317,105 based on two months of the first year's expenses. Working capital will be satisfied with \$1,158,553 equity from the proposed members and the remaining \$1,158,552 to be financed through a bank loan for five years at 5% interest. Greystone has provided a letter of interest for the working capital financing. Kenneth Rozenberg has provided an affidavit attesting that he will provide additional equity disproportionate to his membership interest for working capital. BFA Attachment A, net worth of the proposed members of North Met Operations Associates, LLC, reveals sufficient resources for the stated levels of equity. BFA Attachment D is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$3,343,468. It is noted that assets include \$8,709,661 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be negative \$5,366,193.

The submitted budget indicates that net income of \$3,030,380 will be generated for the first year. BFA Attachment E is the budget sensitivity analysis based on current utilization of the facility as of September 30, 2015, which shows the budgeted RHCF revenues would decrease by \$1,145,257 resulting in a net profit in year one of \$1,885,123. 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 NH revenues through the transition period.

BFA Attachment B, financial summary of Northern Metropolitan Residential Health Care Facility, indicates that the facility has maintained average positive working capital, positive equity position and generated an average annual net operating income of \$1,627,851 for the 2013-2014 period shown, and a net operating income of \$749,335 as of September 30, 2015.

BFA Attachments C, financial summary of the proposed members affiliated RHCFs, shows the facilities have maintained positive net income from operations for the periods shown.

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	North Met Operations Associates, LLC, Proposed Members Net Worth
BFA Attachment B	Financial Summary, Northern Metropolitan Residential Health Care Facility
BFA Attachment C	Proposed Members' Affiliated Residential Health Care Facilities
BFA Attachment D	Pro Forma Balance Sheet
BFA Attachment E	Budget Sensitivity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish North Met Operations Associates LLC as the new operator of the 120-bed facility located at 225 Maple Avenue, Monsey currently operated as Northern Metropolitan Residential Health Care Facility, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

152296 E

North Met Operations Associates LLC
d/b/a Monsey Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed Assignment and Assumption of the lease agreement, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of the applicant's signed Certificate of Amendment of Articles of Organization, which is acceptable to the Department.
9. Submission of a photocopy of the applicant's signed Operating Agreement, which is acceptable to the Department. [CSL]

10. Submission of photocopies of the signed modification of lease dated March 31, 1981 and stipulation of settlement dated September 14, 1995 (referenced in section 1.1.18 of the Asset Purchase Agreement), and a signed assignment of the lease, all of which must be acceptable to the Department. [CSL]
11. Submission of a photocopy of a signed Certificate of Amendment to the Articles of Organization of KR Northern Holding Co., LLC, which is acceptable to the Department. [CSL]
12. Submission of a photocopy of a revised and signed Operating Agreement for KR Northern Holding Co., LLC, which is 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



Project # 161109-E
Abraham Operations Associates LLC
d/b/a Allerton Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Bronx
Acknowledged: March 7, 2016

Executive Summary

Description

Abraham Operations Associates LLC d/b/a Allerton Center for Rehabilitation and Nursing, a New York limited liability company, is requesting to be established as the new operator of Beth Abraham Health Services, a 448-bed, voluntary not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 612 Allerton Avenue, Bronx (Bronx County). There will be no change in the number of beds or licensed services.

Beth Abraham Health Services and Schnurmacher Center for Rehabilitation and Nursing, a 200-bed RHCF located in Westchester County, are members of the CenterLight Health System, a not-for-profit New York State Managed Long Term Care organization that provides long-term healthcare services throughout the Bronx, Kings (Brooklyn), New York (Manhattan), Queens, Richmond (Staten Island), Nassau, Suffolk, Rockland and Westchester counties. A change in ownership request for Schnurmacher Center for Rehabilitation and Nursing is concurrently being reviewed under CON 161110.

On February 19, 2016, Beth Abraham Health Services, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Abraham Operations Associates LLC for the sale and acquisition of the operating interest of the facility upon Public Health and Health Planning Council approval.

In conjunction with the APA, Beth Abraham Health Services, the real property owner, entered into a Land Sale Contract with Light

Property Holdings Associates LLC, for the sale and acquisition of the RHCF's real property. The applicant will lease the premises from Light Property Holdings Associates LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and the tenant in that the landlord and tenant have previous business relationships involving real estate transactions of other nursing homes.

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

<u>Current Operator</u>	
Beth Abraham Health Services	
Not-For-Profit Corporation (100%)	

<u>Proposed Operator</u>	
Abraham Operations Associates LLC	100%
<u>Members</u>	
Light Operational Holdings Associates LLC	98%
Kenneth Rozenberg (95%)	
Beth Rozenberg (5%)	
Jeffery Sicklick	2%

The applicant members have ownership interest in numerous New York State (NYS) RHCFs. BFA Attachment D presents the ownership interests and financial summaries of the proposed members' affiliated RHCFs acquired prior to 2015.

The following CON applications for Kenneth Rozenberg, Beth Rozenberg and Jeffery Sicklick are concurrently under review: CON 152295-

Northern Riverview Health Care Center, Inc., CON 152296-Northern Metropolitan Residential Health Care Facility, CON 151260-Northern Manor Multicare Center, Inc., and CON 161110-Schnurmacher Center for Rehabilitation & Nursing Services.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Beth Abraham Health Services' occupancy was 96.7% in 2012, 97.7% in 2013 and 96.8% in 2014.

Program Summary

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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers Health Care (Centers) is a related party in that proposed member Kenneth Rozenberg is the CEO and 50% owner.

Financial Summary

There are no project costs associated with this proposal.

The purchase price for the acquisition of the operating interests is \$30,305,600 and will be met with \$5,100,000 equity held in escrow, \$6,301,400 equity from the proposed members' personal resources and a loan for \$18,904,200 at 5% for a ten-year term and 25-year amortization period. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment if acceptable refinancing is not available. The purchase price for the real estate interests is \$25,000,000 and will be met with a loan for \$25,000,000 at 5% interest for a ten-year term and 25-year amortization period. Daryl Hagler, managing member of Light Property Holdings Associates LLC, has submitted an affidavit indicating that he will fund the balloon payment if refinancing is not available after the ten-year period. The projected budget is as follows:

Revenues:	\$54,244,218
Expenses:	<u>53,566,087</u>
Gain:	\$678,131

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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of the applicant's executed and amended agreement of lease, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed and amended Operating Agreement of Light Operational Holding Associates LLC, acceptable to the Department. [CSL]

11. Submission of a photocopy of the executed and amended Agreement for the Sale of Real Property, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed and amended Asset Purchase 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

Project Description

Abraham Operations Associates, LLC, doing business as Allerton Center for Rehabilitation and Nursing, seeks approval to become the established operator of Beth Abraham Health Services, an existing 448-bed Article 28 residential health care facility (RHCF), located at 612 Allerton Avenue, Bronx, 10467 in Bronx County.

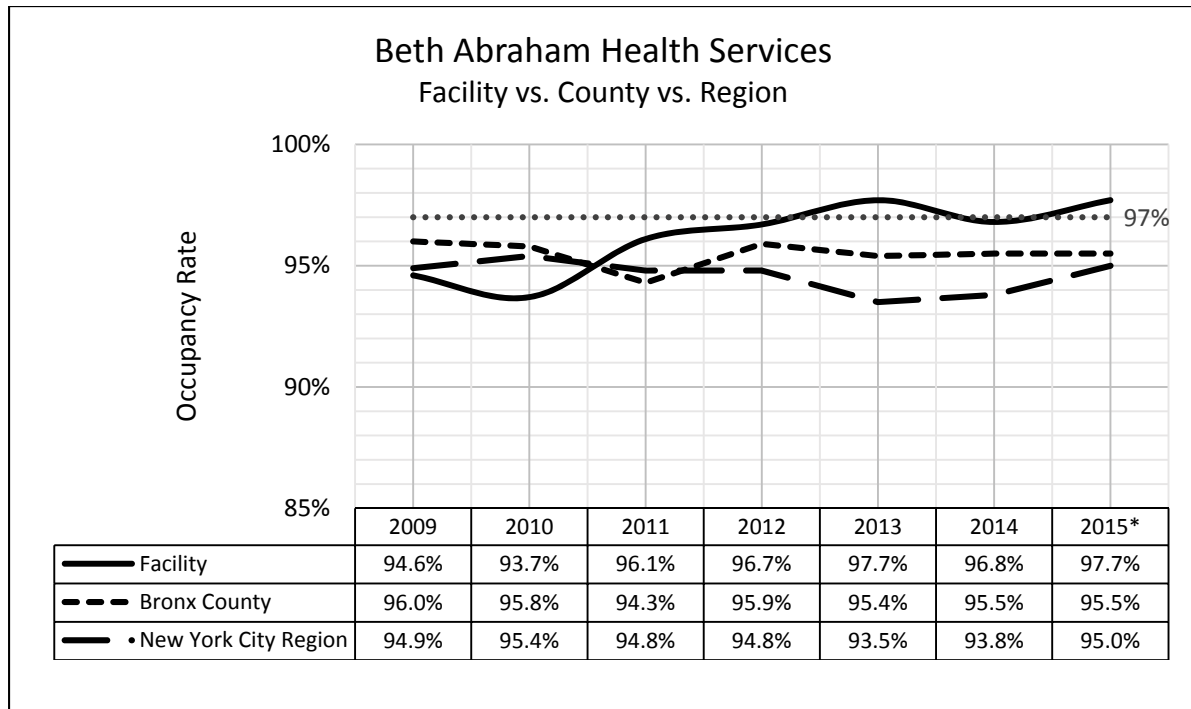
Analysis

The need methodology indicates a need for 41,589 beds in the New York City Region.

RHCF Need – New York City Region

2016 Projected Need	51,071
Current Beds	41,769
Beds Under Construction	-180
Total Resources	41,589
Unmet Need	9,482

The overall 2014 occupancy for Bronx County and the New York City Region is 95.5% and 93.8%, respectively, as indicated in the following chart:



*unaudited, facility reported data

The facility provided daily census for 2015 yielding 97.7% occupancy. The facility's self-reported occupancy thus far in 2016 is 95.7%, with current occupancy as of March 14, 2016 at 95.8%. The facility has maintained strong occupancy with rates close to or exceeding the Department's planning optimum of 97%. The proposed operators expect that the combination of the facility's existing operations and the applicant's experience as a seasoned operator of numerous RHCFs in New York State will ensure that these high rates of occupancy will be sustained upon the change of ownership.

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 has 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.

Beth Abraham Health Services' Medicaid admissions of 23.3% and 17.0% in 2013 and 2014, respectively, did not exceed Bronx County's 75% rates of 29.8% in 2013 and 29.1% in 2014. The facility will be required to follow the contingency plan noted below.

Conclusion

Approval of this application will result in maintaining a needed resource in the community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Beth Abraham Health Services	Allerton Center for Rehabilitation and Nursing
Address	612 Allerton Avenue Bronx, New York 10467	Same
RHCF Capacity	448	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Beth Abraham Health Services	Abraham Operations Associates, LLC 100% <u>Members</u> Jeffrey Sicklick 2% Light Operational Holdings Associates, LLC 98% Kenneth Rozenberg (95%) Beth Rozenberg (5%)

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Bufflalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Hope Center for HIV and Nursing Care	04/2015 to present
Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	07/2008 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	07/2008 to present
University Nursing Home	02/2006 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	02/2006 to present

Rhode Island Nursing Homes

Banister Center for Rehab	02/2016 to present
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Dialysis Centers

Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present

Adult Homes

Washington Center Adult Home (AH)	02/2014 to present
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Certified Home Health Agency

Alpine Home Health Care (CHHA)	07/2008 to present
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Licensed Home Care Services Agency

Amazing Home Care (LHCSA)	05/2006 to present
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	02/2006 to present
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Managed Long Term Care Company

Centers Plan for Health Living (MLTC)	01/2013 to present
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Individual Background Review

Current facility ownership is shown in brackets.

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Buffalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present
Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present
Holliswood Center for Rehabilitation (Receivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (Receivership)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (Receivership)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (Receivership)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (Receivership)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (Receivership)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (Receivership) [100%]	08/2013 to present
Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report. Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.

Beth (Kosowsky) Rozenberg retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Buffalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present

Washington Center Adult Home (AH) [10%]	02/2014 to present
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Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
 - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
 - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
 - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
 - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Steuben Center for Rehabilitation and Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought into the operating structure to help stabilize the facility as he operates another RHCF in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

Project Review

This application proposes to establish Abraham Operations Associates, LLC as the new operator of Beth Abraham Health Services. The facility will be operated as Allerton Center for Rehabilitation and Nursing. No changes in the program or physical environment are proposed in this application.

The member LLC, Light Operational Holdings Associates, was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Allerton Center for Rehabilitation and Nursing (Beth Abraham Health Services) and Tibbits Center for Rehabilitation and Nursing (Schnurmacher Center for Rehabilitation and Nursing).

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operators to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for facilities in which Kenneth Rozenberg has an ownership interest to contract with Centers. They use Centers as a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities they contract with.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence background because the transaction is currently being processed to effectuate the establishment of ownership.

Conclusion

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 for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the operating interests of the RHC. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	February 19, 2016
Purchaser:	Abraham Operations Associates LLC
Seller:	Beth Abraham Health Services
Purchased Assets:	All assets used in the operation of the facility. Equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$30,305,600
Payment of Purchase Price:	\$5,100,000 cash deposit held in escrow \$25,205,600 due at time of Closing.

The applicant's financing plan appears as follows:

Equity held in escrow	\$5,100,000
Equity via proposed members	\$6,301,400
Loan (5% interest, 10-year term, 25-year amortization period)	\$18,904,200

BFA Attachment A is the net worth summary for the proposed members of Abraham Operations Associates LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement.

Greystone has provided a letter of interest for the loan at the stated terms. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has

submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available.

The applicant has submitted an original affidavit, which is acceptable to the Department, in which the applicant agrees, notwithstanding any agreement, arrangement or understanding between the applicant and the transferor to the contrary, to be liable and responsible for any Medicaid overpayments made to the facility and/or surcharges, assessments or fees due from the transferor pursuant to Article 28 of the Public Health Law with respect to the period of time prior to the applicant acquiring its interest, without releasing the transferor of its liability and responsibility. As of March 16, 2016, the facility had an outstanding Medicaid overpayment liability of \$393,492 related to a recent retroactive rate adjustment.

Land Purchase Agreement

The applicant has submitted an executed land purchase agreement for the site they will occupy, which is summarized below:

Date:	February 19, 2016
Premises:	The parcel of land located at 612 Allerton Avenue, Bronx, New York
Seller:	Beth Abraham Health Services
Purchaser:	Light Property Holdings Associates LLC
Purchase Price:	\$25,000,000
Payment of Purchase Price:	\$25,000,000 due at Closing.

The financing plan for the real estate consists of a bank loan for \$25,000,000 at 5% interest for a ten-year term and 25-year amortization period. A bank of letter of interest at the stated terms has been provided by Greystone. Daryl Hagler, who is the majority owner of the real estate entity, has submitted an affidavit stating that he will refinance the loan when the balloon payment becomes due if refinancing is not available. BFA Attachment B, net worth of Daryl Hagler, reveals sufficient resources for stated levels of equity.

Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	December 31, 2015
Premises:	A 448-bed RHC located at 612 Allerton Avenue, Bronx, New York 10467
Landlord:	Light Property Holdings Associates LLC
Tenant:	Abraham Operations Associates LLC
Terms:	10 years
Rental:	\$6,000,000 annually (\$500,000 per month)
Provisions:	Taxes, insurance, maintenance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members of each have previous business relationships involving real estate transactions of other RHCs. Light Property Holdings Associates LLC members are Daryl Hagler (99%) and Jonathan Hagler (1%).

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
Revenues				
Medicaid	\$310.13	\$43,118,430	\$314.00	\$44,197,698
Medicare	\$603.35	5,345,686	\$691.90	6,205,625
Commercial	\$366.09	836,890	\$365.00	687,660
Private Pay	\$342.39	2,776,114	\$365.00	3,153,235
Other*		<u>5,851,432</u>		<u>0</u>
Total Revenues		\$57,928,552		\$54,244,218
Expenses				
Operating	\$310.42	\$49,135,325	\$270.23	\$43,304,203
Capital	<u>\$38.43</u>	<u>6,084,084</u>	<u>\$64.04</u>	<u>10,261,884</u>
Total Expenses	\$348.85	\$55,219,409	\$334.27	\$53,566,087
Net Income(Loss)		<u>\$2,709,143</u>		<u>\$678,131</u>
Total Patient Days		158,286		160,249
Occupancy		96.8%		98.0%
Breakeven				96.8%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 payor and 2014 RHCF-4 cost report information. Historical utilization for base year 2014 was 96.8% occupancy.
- For budget year one, Medicaid revenues are projected based on the current operating and capital components of the facility's 2016 Medicaid FFS rate. All other revenues assume current payment rates for the respective payors. Commercial rates are conservative and Private Pay rates have been increased by 6.6% for year one.
- For budgeted year one, Medicare includes the Part B therapy revenues.
- Other* revenues represent vending machine commissions, rentals, rebates and discounts, medical records abstract fees and activities income.
- Expenses are decreasing in year one due to reduction in salaries and benefits from unnecessary management, food service and aide staff, with an offset increase in needed areas such as therapists and LPNs
- Overall utilization is 96.8% and 98.0% for current year and year one, respectively, while utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid	84.9%	84.4%
Medicare	9.5%	10.0%
Private/Other	5.6%	5.6%

- Breakeven utilization is 96.77 % or 158,245 inpatient days for the first year.

Capability and Feasibility

There are no project costs associated with this application.

The purchase price for the acquisition of the operating interests is \$30,305,600 and will be met with \$5,100,000 held in escrow, \$6,301,400 equity from the proposed members and a bank loan for \$18,904,200 at 5% for a ten-year term and 25-year amortization. Greystone has provided a letter of interest for the financing at the stated terms. Proposed Abraham Operations Associates LLC member, Kenneth Rozenberg, has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the loan comes due. BFA Attachment F is the interest and amortization schedule for the ten-year term.

The working capital requirement is \$8,927,681 based on two months of the first year's expenses. Working capital will be satisfied with \$4,463,840 equity from proposed members and the remaining \$4,463,841 will be financed through a bank loan for five years at 5% interest. Greystone has provided a letter of interest for the working capital financing. Kenneth Rozenberg has provided an affidavit attesting that he will provide additional equity disproportionate to his membership interest for working capital. BFA Attachment A, net worth of the proposed members of Abraham Operations Associates LLC, reveals sufficient resources for stated levels of equity. BFA Attachment E is the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$15,865,241. It is noted that assets include \$30,305,600 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be a negative \$14,440,359.

The submitted budget indicates that net income of \$678,131 will be generated for the first year. BFA Attachment G is the budget sensitivity analysis based on current utilization of the facility as of December 31, 2015, which shows the budgeted revenues would increase by \$5,173,392 resulting in a net income in year one of \$5,851,523. 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 NH revenues through the transition period.

BFA Attachment C, financial summary of Beth Abraham Health Services, indicates that the facility has maintained positive working capital, positive equity position and generated an average annual net operating income of \$1,833,332 for the 2013-2014 period shown, and net operating income of \$3,730,934 as of December 31, 2015.

BFA Attachments D, financial summary of the proposed members' affiliated RHCFS, shows the facilities have maintained positive net income from operations for the periods shown. In 2015, Kenneth Rozenberg and Beth Rozenberg obtained final PHHPC approval for membership interest in Hope Center for HIV & Nursing Care, a 66-bed RHCF located in the Bronx, and Kenneth Rozenberg and Jeffery Sicklick obtained final PHHPC approval for membership interest in Buffalo Center for Rehabilitation & Nursing, a 200-bed RHCF located in Buffalo. Kenneth Rozenberg has a 10% membership interest in Northwoods Rehab & Nursing Center at Moravia, a 40-bed RHCF located in Moravia. In 2016, the following RHCF applications for Kenneth Rozenberg, Beth Rozenberg and Jeffery Sicklick are pending; CON 152295-Northern Riverview Health Care Center, Inc., a 180-bed RHCF located in Haverstraw; CON 152296-Northern Metropolitan Residential Health Care Facility, 120-bed RHCF located in Monsey; and CON 151260-Northern Manor Multicare Center, Inc., a 23-bed RHCF located in Nanuet.

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Abraham Operations Associates LLC, Proposed Members Net Worth
BFA Attachment B	Light Property Holdings Associates LLC, Daryl Hagler Net Worth
BFA Attachment C	Financial Summary, Beth Abraham Health Services
BFA Attachment D	Affiliated Residential Health Care Facilities
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Mortgage Amortization Schedules
BFA Attachment G	Budget Sensitivity Analysis
BFA Attachment H	Equity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Abraham Operations Associates LLC d/b/a Allerton Center for Rehabilitation and Nursing as the new operator of Beth Abraham Health Services, a 448-bed, voluntary not-for-profit RHCf located in Bronx County, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161109 E

Abraham Operations Associates LLC
d/b/a Allerton Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
 2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
 3. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
 4. 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]
 5. 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]
 6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
 8. Submission of a photocopy of the applicant's executed and amended agreement of lease, acceptable to the Department. [CSL]
 9. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]

10. Submission of a photocopy of the executed and amended Operating Agreement of Light Operational Holding Associates LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed and amended Agreement for the Sale of Real Property, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed and amended Asset Purchase 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. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



Project # 161110-E
Schnur Operations Associates LLC
d/b/a Tibbits Center for Rehabilitation and Nursing

Program: Residential Health Care Facility
Purpose: Establishment

County: Westchester
Acknowledged: March 7, 2016

Executive Summary

Description

Schnur Operations Associates LLC d/b/a Tibbits Center for Rehabilitation and Nursing, a New York limited liability company, is requesting to be established as the new operator of Schnurmacher Center for Rehabilitation and Nursing, a 200-bed, voluntary not-for-profit, Article 28 Residential Health Care Facility (RHCF) located at 12 Tibbits Avenue, White Plains (Westchester County). There will be no change in the number of beds or licensed services.

Schnurmacher Center for Rehabilitation and Nursing and Beth Abraham Health Services, a 448-bed RHCF located in the Bronx, are members of the CenterLight Health System, a not-for-profit, New York State Managed Long Term Care organization that provides long-term healthcare services throughout the Bronx, Kings (Brooklyn), New York (Manhattan), Queens, Richmond (Staten Island), Nassau, Suffolk, Rockland and Westchester counties. A change in ownership request for Beth Abraham Health Services is concurrently being reviewed under CON 161109.

On February 19, 2016, Schnurmacher Center for Rehabilitation and Nursing, the current operator of the RHCF, entered into an Asset Purchase Agreement (APA) with Schnur Operations Associates LLC for the sale and acquisition of the operating interest of the facility.

In conjunction with the APA, Schnurmacher Center for Rehabilitation and Nursing, the real property owner, entered into a Land Sale

Contract with Light Property Holdings II Associates LLC for the sale and acquisition of the RHCF's real property. The applicant will lease the premises from Light Property Holdings II Associates LLC. The applicant has submitted an affidavit attesting that there is a relationship between landlord and the tenant in that the landlord and tenant have previous business relationships involving real estate transactions of other nursing homes.

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

<u>Current Operator</u>	
Schnurmacher Center for Rehabilitation and Nursing (Not-for-Profit)	100%

<u>Proposed Operator</u>	
Schnur Operations Associates, LLC	100%
<u>Members</u>	
Light Operational Holdings Associates LLC	98%
Kenneth Rozenberg (95%)	
Beth Rozenberg (5%)	
Jeffrey Sicklick	2%

The applicant members have ownership interest in numerous New York State (NYS) RHCFs. BFA Attachment D presents the ownership interests and financial summaries of the proposed members' affiliated RHCFs acquired prior to 2015.

The following CON applications for Kenneth Rozenberg, Beth Rozenberg and Jeffery Sicklick are concurrently under review: CON 152295-Northern Riverview Health Care Center, Inc., CON 152296-Northern Metropolitan Residential Health Care Facility, CON 151260-Northern Manor Multicare Center, Inc., and CON 161109-Beth Abraham Health Services.

OPCHSM Recommendation
Contingent Approval

Need Summary

There will be no changes to beds or services as a result of this project. Schnurmacher Center for Rehabilitation and Nursing's occupancy was 97.6% in 2012, 98.5% in 2013 and 97.5% in 2014.

Program Summary

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. It is the intent of the new operators to enter into an administrative and consulting services agreement with Centers Health Care. Centers Health Care (Centers) is a related party in that proposed member Kenneth Rozenberg is the CEO and 50% owner.

Financial Summary

There are no project costs associated with this proposal.

The purchase price for the acquisition of the operating interests is \$12,454,400 and will be met with \$2,100,000 equity held in escrow, \$2,588,900 equity from the proposed members' personal resources and a loan for \$7,765,500 at 5% for a ten-year term and 25-year amortization period. Kenneth Rozenberg has submitted an affidavit indicating that he will fund the balloon payment if acceptable refinancing is not available.

The purchase price for the real estate interests is \$10,000,000 and will be met with a loan for \$10,000,000 at 5% interest for a ten-year term and 25-year amortization period. Daryl Hagler, managing member of Light Property Holdings II Associates LLC, has submitted an affidavit indicating that he will fund the balloon payment if refinancing is not available after the ten-year period. The projected budget is as follows:

Revenues	\$20,544,800
Expenses	<u>20,138,790</u>
Gain	\$406,010

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 bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of the applicant's executed and amended agreement of lease, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]
10. Submission of a photocopy of the executed and amended Operating Agreement of Light Operational Holding Associates LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed and amended Agreement for the Sale of Real Property, acceptable to the Department. [CSL]

12. Submission of a photocopy of the applicant's executed and amended Asset 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

Council Action Date
April 14, 2016

Need Analysis

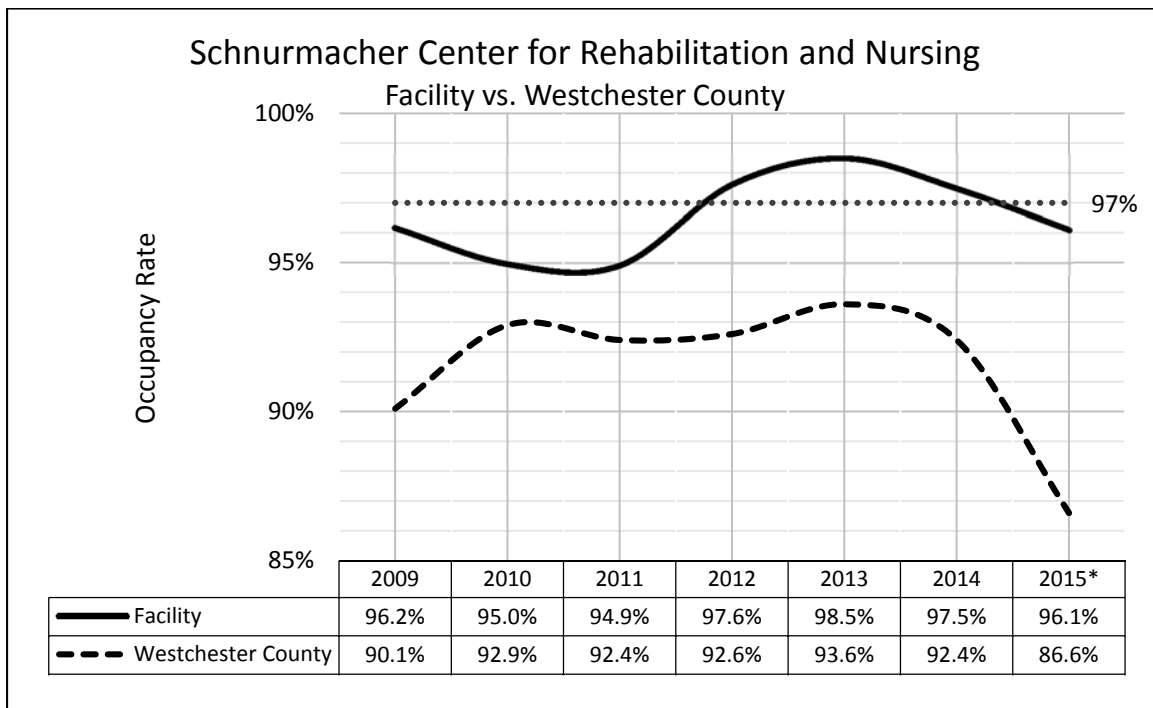
Analysis

The need methodology indicates a need for 498 additional beds in Westchester County.

RHCF Need – Westchester County

2016 Projected Need	6,716
Current Beds	6,066
Beds Under Construction	152
Total Resources	6,218
Unmet Need	498

The overall occupancy for Westchester County is 92.4% for 2014 as indicated in the following chart:



*unaudited, facility reported data

The facility provided daily census for 2015 indicating a 96.1% occupancy. Occupancy thus far in 2016 is 96.8%. The facility has maintained strong occupancy with rates close to or exceeding the Department's planning optimum of 97%. The proposed operators expect that the combination of the facility's existing operations and the applicant's experience as a seasoned operator of numerous RHCs in New York State will ensure that these high rates of occupancy will be sustained upon the change of ownership.

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 has 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.

Schnurmacher Center for Rehabilitation and Nursing's Medicaid admissions of 24.5% and 24.5% in 2013 and 2014, respectively, exceeded Westchester County's 75% rates of 21.5% in 2013 and 18.5% in 2014.

Conclusion

Approval of this application will result in maintaining a needed resource for the Medicaid population in the community.

Recommendation

From a need perspective, contingent approval is recommended.

Program Analysis

Facility Information

	Existing	Proposed
Facility Name	Schnurmacher Center for Rehabilitation and Nursing	Tibbits Center for Rehabilitation and Nursing
Address	12 Tibbits Avenue White Plains, New York 10606	Same
RHCF Capacity	200	Same
ADHC Program Capacity	N/A	Same
Type of Operator	Not for Profit Corporation	Limited Liability Company
Class of Operator	Voluntary	Proprietary
Operator	Schnurmacher Center for Rehabilitation and Nursing	Schnur Operations Associates, LLC <u>Members</u> Jeffrey Sicklick 2% Light Operational Holdings Associates, LLC 98% Kenneth Rozenberg* (95%) Beth Rozenberg (5%) *Managing Member

Facilities Reviewed

Nursing Homes

Boro Park Center for Rehabilitation and Healthcare	05/2011 to present
Bronx Center for Rehabilitation and Health Care	02/2006 to present
Brooklyn Center for Rehabilitation and Residential HC	05/2007 to present
Buffalo Center for Rehabilitation and Nursing (formerly Delaware Nursing & Rehabilitation Center)	06/2014 to present
Bushwick Center for Rehabilitation and Health Care (formerly Wartburg Lutheran Home for the Aging)	06/2008 to present
Corning Center for Rehabilitation	07/2013 to present
Daughters of Jacob Nursing Home Company Inc.	08/2013 to present
Dutchess Center for Rehabilitation and Healthcare	02/2006 to present
Essex Center for Rehabilitation and Health Care	03/2014 to present
Fulton Center for Rehabilitation and Healthcare	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare	11/2010 to present
Hope Center for HIV and Nursing Care	04/2015 to present

Indian River Rehabilitation and Nursing Center	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia	11/2014 to present
Queens Center for Rehabilitation and Residential Health Care	02/2006 to present
Richmond Center for Rehabilitation and Specialty Healthcare	04/2012 to present
Steuben Center for Rehabilitation and Healthcare	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care)	07/2008 to present
The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care)	07/2008 to present
University Nursing Home	02/2006 to present
Washington Center for Rehabilitation and Health Care	02/2014 to present
Waterfront Center for Rehabilitation and Health Center	08/2011 to present
Williamsbridge Manor Nursing Home	02/2006 to present

Rhode Island Nursing Homes

Banister Center for Rehab	02/2016 to present
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Dialysis Centers

Bronx Center for Renal Dialysis	01/2011 to present
Bushwick Center for Renal Dialysis	06/2014 to present

Adult Homes

Washington Center Adult Home (AH)	02/2014 to present
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Certified Home Health Agency

Alpine Home Health Care (CHHA)	07/2008 to present
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Licensed Home Care Services Agency

Amazing Home Care (LHCSA)	05/2006 to present
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Ambulance Company

Senior Care Emergency Ambulance Services, Inc. (EMS)	02/2006 to present
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Managed Long Term Care Company

Centers Plan for Health Living (MLTC)	01/2013 to present
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Individual Background Review

Current facility ownership is shown in brackets.

Kenneth Rozenberg is a New York licensed nursing home administrator, in good standing, and licensed paramedic, in good standing. He has been employed as CEO of Bronx Center for Rehabilitation and Health Care since January 1998. Mr. Rozenberg is the CEO of Centers Health Care, formerly Centers for Specialty Care Group, in which he has a 50% ownership interest. Mr. Rozenberg discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [97%]	05/2011 to present
Bronx Center for Rehabilitation and Health Care [95%]	10/1997 to present
Brooklyn Center for Rehabilitation and Residential Health Care [95%]	05/2007 to present
Buffalo Center for Rehabilitation and Nursing [90%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [98%]	05/2011 to present
Corning Center for Rehabilitation [58%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare [30%]	08/2004 to present
Essex Center for Rehabilitation and Health Care [90%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [81%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [70%]	04/2013 to present
Hope Center for HIV and Nursing Care [95%]	04/2015 to present
Indian River Rehabilitation and Nursing Center [9%]	12/2014 to present
Northwoods Rehabilitation and Nursing Center at Moravia [10%]	11/2014 to present

Queens Center for Rehabilitation and Residential Health Care [48%]	10/2004 to present
Richmond Center for Rehabilitation and Specialty Healthcare [95%]	04/2012 to present
Steuben Center for Rehabilitation and Healthcare [63%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [62%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [62%]	05/2011 to present
University Nursing Home [95%]	08/2001 to present
Washington Center for Rehabilitation and Healthcare [90%]	02/2014 to present
Waterfront Center for Rehabilitation [81%]	12/2012 to present
Williamsbridge Manor Nursing Home [95%]	11/1996 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present
Holliswood Center for Rehabilitation (Receivership)	11/2010 to 04/2013
Stonehedge Health & Rehabilitation Center – Rome (Receivership)	07/2008 to 04/2011
Stonehedge Health & Rehab Center – Chittenango (Receivership)	07/2008 to 04/2011
Wartburg Lutheran Home for the Aging (Receivership)	06/2008 to 05/2011
Waterfront Center for Rehabilitation (Receivership)	08/2011 to 12/2012
Delaware Nursing & Rehab Center (Receivership)	06/2014 to 12/2015
Daughters of Jacob Nursing Home Company Inc. (Receivership) [100%]	08/2013 to present
Washington Center Adult Home (AH) [60%]	02/2014 to present
Center Plan for Health Living (MLTC) [60%]	01/2013 to present
Alpine Home Health Care (CHHA) [100%]	07/2008 to present
Amazing Home Care (LHCSA) [33%]	05/2006 to present
Senior Care Emergency Ambulance Services, Inc. (EMS) [40%]	06/2005 to present

DOH has received notices for the transfer of all of Kenneth Rozenberg's interest in Dutchess Center, Queens Center, and Northwoods at Moravia. The above interests do not reflect these changes as they were not finalized at the time of this report. Daughters of Jacob Nursing Home Company is being shown as still under receivership with Kenneth Rozenberg as sole receiver. CON #132128 to establish DOJ Operations Associates, LLC received final PHHPC approval on 3/2/2015 but the transaction has yet to be finalized.

Beth (Kosowsky) Rozenberg retired in 1995 as a teacher from Park East Day School in New York, NY. Ms. Rozenberg discloses the following health facility interests:

Bronx Center for Rehabilitation and Health Care [5%]	09/2013 to present
Hope Center for HIV and Nursing Care [5%]	04/2015 to present
University Nursing Home [5%]	11/2002 to present
Williamsbridge Manor [5%]	12/2004 to present
Banister Center for Rehab (RI) [5%]	02/2016 to present

Jeffrey N. Sicklick is a nursing home administrator in good standing in the states of New York and New Jersey. Mr. Sicklick has been employed as Administrator at Bronx Center for Rehabilitation & Health Care since October, 1997. Mr. Sicklick discloses the following health facility interests:

Boro Park Center for Rehabilitation and Healthcare [1%]	05/2011 to present
Buffalo Center for Rehabilitation and Nursing [10%]	12/2015 to present
Bushwick Center for Rehabilitation and Health Care [2%]	05/2011 to present
Corning Center for Rehabilitation [9%]	07/2013 to present
Dutchess Center for Rehabilitation and Healthcare	08/2004 to 11/2015
Essex Center for Rehabilitation and Health Care [5%]	03/2014 to present
Fulton Center for Rehabilitation and Healthcare [9%]	04/2012 to present
Holliswood Center for Rehabilitation and Healthcare [2.5%]	05/2013 to present
Queens Center for Rehabilitation and Residential Health Care	06/2007 to 10/2015
Richmond Center for Rehabilitation and Specialty Healthcare [3%]	04/2012 to present
Steuben Center for Rehab [3%]	07/2014 to present
The Grand Rehabilitation and Nursing at Chittenango [8%]	05/2011 to present
The Grand Rehabilitation and Nursing at Rome [8%]	05/2011 to present
Washington Center for Rehabilitation and Healthcare [10%]	02/2014 to present
Waterfront Center for Rehabilitation [19%]	01/2013 to present

Character and Competence - Analysis

No negative information has been received concerning the character and competence of the above applicants identified as new members.

A review of operations of Bronx Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-07-079 issued October 23, 2007 for surveillance findings on April 27, 2007. Deficiencies were found under 10 NYCRR 415.12 Quality of Care and 415.12(i)(1), Quality of Care: Nutrition.
- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-11-047 issued August 25, 2011 for surveillance findings on April 16, 2010. Deficiencies were found under 10 NYCRR 415.12 (h)(2) Quality of Care: Accidents and Supervision and 415.26 Administration.
 - A federal CMP of \$36,450 was assessed for the April 16, 2010 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation.

A review of operations of Essex Center for Rehabilitation and Health Care for the period identified above reveals the following:

- The facility was fined \$6,000 pursuant to a Stipulation and Order for surveillance findings on August 9, 2015. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Concern; 415.26 Administration; and 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of operations of Fulton Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$52,000 pursuant to a Stipulation and Order NH-16-004 issued April 23, 2015 for surveillance findings on June 11, 2012, May 15, 2012, and November 21, 2013. Deficiencies were found under 10 NYCRR 415.12 Quality of Care: Highest Practical Potential; 415.12(i)(1) Quality of Care: Nutrition; 415.12(h)(1) Quality of Care: Accidents/Supervision; 415.12(m)(2) Quality of Care: Medication Errors; 415.12(i)(1) Quality of Care: Nutrition; 415.12(c)(2) Quality of Care: Pressure Sores; 415.26 Administration; 415.27(a-c) Quality Assurance; 415.3(e)(2)(ii)(b) Notification of Changes; and 415.4(b)(1)(2)(3) Investigative/Report Allegations.
 - A federal CMP of \$975 was assessed for the June 16, 2012 survey findings.
 - A federal CMP of \$11,895 was assessed for the May 15, 2013 survey findings.
 - A federal CMP of \$10,000 was assessed for the November 21, 2013 survey findings.
- The facility was fined \$10,000 pursuant to a Stipulation and Order NH-12-39 issued on September 17, 2012 for surveillance findings on March 24, 2014. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Fulton Center was a former County facility that had a high turnover of the facility's County employed staff after the current operators took over in April of 2012. The current operators had a period of transition after takeover where they had to hire and train new staff at the facility in order to maintain staffing levels needed.

A review of operations of Northwoods Rehabilitation and Nursing Center at Moravia for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-066 issued January 13, 2016 for surveillance findings on February 6, 2015. Deficiencies were found under 10 NYCRR 415.26 Administration.

A review of operations of Richmond Center for Rehabilitation and Specialty Healthcare for the period identified above reveals the following:

- The facility was fined \$18,000 pursuant to a Stipulation and Order issued for surveillance findings on April 24, 2012. Deficiencies were found under 10 NYCRR 415.4(b) Free from Abuse/Involuntary Seclusion; 415.4(b)(1)(ii) Investigate Report Allegations; 414.4(b) Develop/Implement Abuse/Neglect Policies; 415.11(c)(2)(i-iii) Care Planning; 415.12(f)(1) Mental/Psychological Difficulties; 415.12(h)(1)(2) Quality of Care: Accidents/Supervision; 415.26 Administration; 415.15(a) Medical Director; and 415.27 (a-c) Quality Assurance.
 - A federal CMP of \$27,528 was assessed for the April 24, 2012 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-16-041 issued January 13, 2016 for surveillance findings on October 24, 2013. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accident Free Environment.
- The facility was fined \$10,000 pursuant to a Stipulation and Order issued for surveillance findings on March 21, 2014. Deficiencies were found under 10 NYCRR 415.12(h)(2) Quality of Care: Accidents.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. Richmond Center has 300 certified beds with 72 of those beds servicing neurobehavioral residents in dedicated neurobehavioral units. This population can be difficult to serve and the initial survey findings in 2012 reflect a transition of this facility immediately after the current operators took over in April of 2012, with this initial enforcement occurring days after the official transition of ownership.

A review of the operations of The Grand Rehabilitation and Nursing at Chittenango (formerly Chittenango Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Chittenango) for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order NH-10-053 issued November 15, 2010 for surveillance findings on October 22, 2009. Deficiencies were found under 10 NYCRR 415.12(h)(1,2) Quality of Care: Accidents and Supervision and 415.26(b)(3)(4) Governing Body.
 - A federal CMP of \$5,200 was assessed for the October 22, 2009 survey findings.
- The facility was fined \$20,000 pursuant to a Stipulation and Order NH-12-010 issued February 17, 2012 for surveillance findings on January 20, 2011. Deficiencies were found under 10 NYCRR 415.12(c)(1)(2) Quality of Care: Pressure Sores and NYCRR 415.12(d)(1) and Quality of Care: Catheters.
- A federal CMP of \$3,250 was assessed for July 30, 2012 survey findings.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. State enforcements for surveys on October 22, 2009 and January 20, 2011 came when the facility was under receivership. The facility has experienced a state enforcement free period since permanent establishment of the current operators in May of 2011.

A review of the operations of The Grand Rehabilitation and Nursing at Rome (formerly Rome Center for Rehabilitation and Health Care; Stonehedge Health & Rehabilitation Center - Rome) for the period identified above reveals the following:

- A federal CMP of \$1,600 was assessed for May 18, 2011 survey findings.

A review of the operations of Washington Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$4,000 pursuant to a Stipulation and Order issued for surveillance findings on September 11, 2015. Deficiencies were found under 10 NYCRR 415.12(h)(1) Quality of Care: Accident Free Environment; 415.27(a-c) Administration: Quality Assessment and Assurance.

A review of the operations of Waterfront Center for Rehabilitation and Healthcare for the period identified above reveals the following:

- The facility was fined \$2,000 pursuant to a Stipulation and Order NH-13-014 issued April 24, 2013 for surveillance findings on September 27, 2011. Deficiencies were found under 10 NYCRR 415.12(h)(1)(2) Quality of Care: Accidents and Supervision.
 - A federal CMP of \$1,625 was assessed for the September 27, 2011 survey findings.
- The facility was fined \$2,000 pursuant to a Stipulation and Order issued for surveillance findings on May 23, 2012. Deficiencies were found under 10 NYCRR 415.12(c)(2) Quality of Care: Pressure Sores.
- The facility was fined \$24,000 pursuant to a Stipulation issued for surveillance findings on November 6, 2015. Deficiencies were found under 10 NYCRR 415.12(m)(2) Quality of Care: No Significant Med Errors; 415.12 Quality of Care: Highest Practicable Potential; 415.12(l)(1) Quality of Care: Unnecessary Drugs; 415.18(a) Pharmacy Services: Facility Must Provide Routine and Emergency Drugs in a Timely Manner; 415.18(c)(2) Pharmacy Services: the Drug Regimen of Each Resident Must be Reviewed at Least Once a Month by Licensed Pharmacist; 415.4(b)(2)(3) Investigate/Report Allegations/Individuals; 415.26 Administration; and 415.27(c)(2)(3)(v) Administration: Quality Assessment and Assurance.

An assessment of the underlying causes of the above enforcements determined that they were not recurrent in nature and the operator investigated the circumstances surrounding the violation, and took steps which a reasonably prudent operator would take to prevent the recurrence of the violation. The recent November 6, 2015 enforcement was mostly related to medication administration and a new eMAR. In response to this issue, the operator brought in Centers Health Care clinical consulting staff to help train facility staff and mitigate any potential harm. The operator also conducted a review of eMAR in all facilities operated and developed new audit tools based on the survey findings.

A review of Williamsbridge Manor Nursing Home for the period identified above reveals the following:

- The facility was fined \$1,000 pursuant to a Stipulation and Order NH-08- issued July 8, 2008 for surveillance findings of December 19, 2007. A deficiency was found under 10 NYCRR 415.12 Quality of Care.

A review of Alpine Home Health Care, for the periods identified above, reveals the following:

- A fine of \$1,000 was issued on February 3, 2015 for not responding to Emergency Preparedness survey.

The review of operations of Boro Park Center for Rehabilitation and Healthcare, Brooklyn Center for Rehabilitation and Residential Health Care, Buffalo Center for Rehabilitation and Nurisng, Bushwick Center for Rehabilitation and Health Care, Corning Center for Rehabilitation, Daughters of Jacob Nursing Home Company, Dutchess Center for Rehabilitation and Healthcare, Holliswood Center for Rehabilitation and Healthcare, Hope Center for HIV and Nursing Care, Indian River Rehabilitation and Nursing Center, Queens Center for Rehabilitation and Residential Health Care, Stueben Center for Rehabilitation and Healthcare, and University Nursing Home for the time periods indicated above reveals that there were no enforcements.

A review of Amazing Home Care, for the periods identified above, reveals that there were no enforcements.

The review of Senior Care Emergency Ambulance Services, Inc., for the periods identified above, reveals that there were no enforcements.

A review of operations for Center Plan for Health Living, for the periods identified above, reveals that there were no enforcements.

A review of operations for Washington Center Adult Home, for the periods identified above, reveals that there were no enforcements.

Indian River Rehabilitation and Nursing Center was declared a CMS Special Focus facility prior to Kenneth Rozenberg obtaining a 9% interest in the current operating LLC. Mr. Rozenberg was brought

into the operating structure to help stabilize the facility as he operates another RHCF in the County, Washington Center for Rehabilitation and Healthcare. Mr. Rozenberg has committed resources to help stabilize Indian River and the facility appears nearing graduation from its Special Focus designation.

Project Review

This application proposes to establish Schnur Operations Associates, LLC as the new operator of Schnurmacher Center for Rehabilitation and Nursing. The facility will be operated as Tibbits Center for Rehabilitation and Nursing. No changes in the program or physical environment are proposed in this application.

The member LLC, Light Operational Holdings Associates, was formed for the purpose of representing Kenneth and Beth Rozenberg's ownership interest in Allerton Center for Rehabilitation and Nursing (Beth Abraham Health Services) and Tibbits Center for Rehabilitation and Nursing (Schnurmacher Center for Rehabilitation and Nursing).

Kenneth Rozeberg is CEO and 50% owner of Centers Health Care (Centers), formerly Centers for Specialty Care Group, which provides administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services to health care facilities. It is the intent of the proposed operators to contract with Centers for general administrative services (payroll, billing, accounts payable) as well as clinical and administrative consulting services. It should be noted that Centers does not have any direct ownership interest in the operations of residential health care facilities in New York State, nor is it proposed through this application that it will have a direct ownership interest in this facility. Despite the common ownership of one of its members, the facility will be a wholly independent and distinct legal entity, in no way controlled by Centers.

It is common for facilities in which Kenneth Rozenberg has an ownership interest to contract with Centers. They use Centers as a resource to provide administrative and clinical support to his skilled nursing interests across the State. To accomplish this task Centers employs a regional office type approach with central corporate resources as well as local resources that can provide timely services and regionally knowledgeable clinical staff to facilities they contract with.

Kenneth Rozenburg and Jeffrey Sicklick were approved by the Public Health and Health Planning Council on December 4, 2014 to be established as operators of Triboro Center for Rehabilitation and Specialty Healthcare as members of DOJ Operations Associates, LLC (CON# 132128). These ownership interests were not included in the Character and Competence background because the transaction is currently being processed to effectuate the establishment of ownership.

Conclusion

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 for approval as set forth in Public Health Law §2801-a(3).

Recommendation

From a programmatic perspective, contingent approval is recommended.

Financial Analysis

Asset Purchase Agreement

The applicant has submitted an executed asset purchase agreement for the operating interests of the RHCf. The agreement will become effectuated upon PHHPC approval of this CON. The terms of the agreement are summarized below:

Date:	February 19, 2016
Purchaser:	Schnur Operations Associates LLC
Seller:	Schnurmacher Center for Rehabilitation and Nursing
Purchased Assets:	All assets used in the operation of the facility. Equipment; supplies and inventory; prepaid expenses; documents and records; assignable leases, contracts, licenses and permits; telephone numbers, fax numbers and all logos; resident trust funds; deposits; accounts and notes receivable; cash, deposits and cash equivalents.
Excluded Assets:	Any security, vendor, utility or other deposits with any Governmental Entity; any refunds, debtor claims, third-party retroactive adjustments and related documents prior to closing, and personal property of residents.
Purchase Price:	\$12,454,400
Payment of Purchase Price:	\$2,100,000 cash deposit held in escrow \$10,354,400 due at time of Closing.

The applicant's financing plan appears as follows:

Equity held in escrow	\$2,100,000
Equity via proposed members	\$2,588,900
Loan (5% interest, 10-year term, 25-year amortization period)	\$7,765,500

BFA Attachment A is the net worth summary for the proposed members of Schnur Operations Associates LLC, which shows sufficient liquid assets to cover the equity requirement for the purchase agreement.

Greystone has provided a letter of interest for the loan at the stated terms. The applicant has indicated that they will refinance the loan when the balloon payment becomes due. Kenneth Rozenberg has submitted an affidavit stating that he will fund the balloon payment from his personal resources if refinancing is not available.

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

Land Purchase Agreement

The applicant has submitted an executed land purchase agreement for the site they will occupy, which is summarized below:

Date:	February 19, 2016
Premises:	The parcel of land located at 12 Tibbits Avenue, White Plains, New York
Seller:	Schnurmacher Center for Rehabilitation and Nursing
Purchaser:	Light Property Holdings II Associates LLC
Purchase Price:	\$10,000,000
Payment of Purchase Price:	\$10,000,000 due at Closing.

The financing plan for the real estate consists of a bank loan for \$10,000,000 at 5% interest for a ten-year term and 25-year amortization period. A bank letter of interest at the stated terms has been provided by Greystone. Daryl Hagler, who is the majority owner of the real estate entity, has submitted an affidavit stating that he will refinance the loan when the balloon payment becomes due if refinancing is not available. BFA Attachment B, net worth of Daryl Hagler, reveals sufficient resources for stated levels of equity.

Lease Agreement

Facility occupancy is subject to an executed lease agreement, the terms of which are summarized as follows:

Date:	December 31, 2015
Premises:	A 200-bed RHCf located at 12 Tibbits Avenue, White Plains, New York 10606
Landlord:	Light Property Holdings II Associates LLC
Tenant:	Schnur Operations Associates LLC
Terms:	10 years
Rental:	\$1,900,000 annually (\$158,333.33 per month)
Provisions:	Taxes, insurance, maintenance and utilities.

The lease arrangement is a non-arm's length agreement. The applicant has submitted an affidavit attesting to the relationship between the landlord and the operating entity in that the members of each have previous business relationships involving real estate transactions of other RHCfs. Light Property Holdings II Associates LLC members are Daryl Hagler (99%) and Jonathan Hagler (1%).

Operating Budget

The applicant has provided an operating budget, in 2016 dollars, for the first year subsequent to the change of ownership. The budget is summarized below:

	<u>Per Diem</u>	<u>Current Year</u>	<u>Per Diem</u>	<u>Year One</u>
Revenues				
Medicaid	\$260.49	\$15,734,125	\$237.06	\$14,384,800
Medicare	\$474.47	3,194,586	\$634.90	4,547,800
Commercial	\$359.19	907,303	\$350.00	754,950
Private Pay	\$453.65	676,386	\$450.00	857,250
Other*		<u>166,804</u>		<u>0</u>
Total Revenues		\$20,679,204		\$20,544,800
Expenses				
Operating	\$279.56	\$19,890,714	\$237.42	\$17,479,508
Capital	<u>16.13</u>	<u>1,147,755</u>	<u>39.37</u>	<u>2,659,282</u>
Total Expenses	\$295.69	\$21,038,469	\$276.79	\$20,138,790
Net Income(Loss)		<u>(\$359,265)</u>		<u>\$406,010</u>
Total Patient Days		71,151		71,905
Occupancy		97.5%		98.5%
Breakeven				96.6%

The following is noted with respect to the submitted budget:

- The current year reflects the facility's 2014 payor and 2014 RHCf-4 cost report information. Historical utilization for base year 2014 was 97.5% occupancy.
- For budget year one, Medicaid revenues are projected based on the current operating and capital components of the facility's 2016 Medicaid FFS rate. All other revenues assume current payment rates for the respective payors. Commercial and Private Pay rates are conservatively estimated for year one.
- For budgeted year one, Medicare includes the Part B therapy revenues.

- Other* revenues represent vending machine commissions, rentals, rebates and discounts, medical records abstract fees and activities income.
- Expenses are decreasing in year one due to a reduction in salaries and benefits from unnecessary management, food service and aide staff with an offset increase in needed areas such as therapists and LPNs.
- Overall utilization is 97.5% and 98.5% for current year and year one, respectively, while utilization by payor source is as follows:

	<u>Current Year</u>	<u>Year One</u>
Medicaid	84.9%	84.4%
Medicare	9.5%	10.0%
Private/Other	5.6%	5.6%

- Breakeven utilization is 96.55 % or 70,482 inpatient days for the first year.

Capability and Feasibility

There are no project costs associated with this application.

The purchase price for the acquisition of the operating interests is \$12,454,500 and will be met with \$2,100,000 held in escrow, \$2,588,900 equity from proposed members and a bank loan for \$7,765,500 at 5% for a ten-year term and 25-year amortization. Greystone has provided a letter of interest for the financing at the stated terms. Proposed Schnur Operations Associates LLC member, Kenneth Rozenberg, has submitted an affidavit stating that he will fund the balloon payment should acceptable financing not be available at the time the loan comes due. BFA Attachment F is the interest and amortization schedule for the ten-year term.

The working capital requirement is \$3,356,465 based on two months of the first year's expenses. Working capital will be satisfied with \$1,678,232 equity from proposed members and the remaining \$1,678,233 will be financed through a bank loan for five years at 5% interest. Greystone has provided a letter of interest for the working capital financing. Kenneth Rozenberg has provided an affidavit attesting that he will provide additional equity disproportionate to his membership interest for working capital. BFA Attachment A, net worth of the proposed members of Schnur Operations Associates LLC, reveals sufficient resources for stated levels of equity. BFA Attachment E provides the pro-forma balance sheet as of the first day of operation, which indicates a positive members' equity of \$6,366,733. It is noted that assets include \$12,454,000 in goodwill, which is not an available liquid resource, nor is it recognized for Medicaid reimbursement purposes. Excluding goodwill, members' equity would be a negative \$6,087,267.

The submitted budget projects net income of \$406,010 for the first year. BFA Attachment G is the budget sensitivity analysis based on current utilization of the facility as of December 31, 2015, which shows the budgeted revenues would increase by \$837,291 resulting in a net income in year one of \$1,243,301. 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 NH revenues through the transition period.

BFA Attachment C, financial summary of Schnurmacher Center for Rehabilitation and Nursing, indicates that the facility has maintained positive working capital, positive equity position and generated an average annual net operating loss of \$497,149 for the 2013-2014 period shown, and net operating income of \$555,467 as of December 31, 2015. The 2013-2014 operating loss was due to increases in corporate overhead expenses and losses from patient accounts.

BFA Attachments D, financial summary of the proposed members' affiliated RHCFS, shows the facilities have maintained positive net income from operations for the periods shown. In 2015, Kenneth Rozenberg and Beth Rozenberg obtained final PHHPC approval for membership interest in Hope Center for HIV & Nursing Care, a 66-bed RHCF located in the Bronx, and Kenneth Rozenberg and Jeffery Sicklick obtained final PHHPC approval for membership interest in Buffalo Center for Rehabilitation & Nursing, a 200-bed RHCF located in Buffalo. Kenneth Rozenberg has a 10% membership interest in Northwoods Rehab & Nursing Center at Moravia, a 40-bed RHCF located in Moravia. In 2016, the following RHCF applications for Kenneth Rozenberg, Beth Rozenberg and Jeffery Sicklick are pending; CON 152295-Northern Riverview Health Care Center, Inc., a 180-bed RHCF located in Haverstraw; CON 152296-Northern Metropolitan Residential Health Care Facility, 120-bed RHCF located in Monsey; and CON 151260-Northern Manor Multicare Center, Inc., a 23-bed RHCF located in Nanuet.

Based on the preceding and subject to noted contingencies, the applicant has demonstrated the capability to proceed in a financially feasible manner.

Recommendation

From a financial perspective, contingent approval is recommended.

Attachments

BFA Attachment A	Schnur Operations Associates, LLC, Proposed Members Net Worth
BFA Attachment B	Light Property Holdings II Associates, LLC, Daryl Hagler Net Worth
BFA Attachment C	Financial Summary, Schnurmacher Center for Rehabilitation and Nursing
BFA Attachment D	Affiliated Residential Health Care Facilities
BFA Attachment E	Pro Forma Balance Sheet
BFA Attachment F	Mortgage Amortization Schedules
BFA Attachment G	Budget Sensitivity Analysis
BFA Attachment H	Equity Analysis
BNHLC Attachment A	Quality Measures and Inspection Report

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, pursuant to the provisions of Section 2801-a of the Public Health Law, on this 14th day of April, 2016 having considered any advice offered by the Regional Health Systems Agency, the staff of the New York State Department of Health, and the Establishment and Project Review Committee of this Council and after due deliberation, hereby proposes to approve the following application to establish Schnur Operations Associates LLC d/b/a Tibbits Center for Rehabilitation and Nursing as the new operator of Schnurmacher Center or Rehabilitation and Nursing, a 200-bed, voluntary, not-for-profit RHCF located in Westchester County, and with the contingencies, if any, as set forth below and providing that each applicant fulfills the contingencies and conditions, if any, specified with reference to the application, and be it further

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

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

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

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

NUMBER:

FACILITY/APPLICANT:

161110 E

Schnur Operations Associates LLC
d/b/a Tibbits Center for Rehabilitation and
Nursing

APPROVAL CONTINGENT UPON:

1. Submission of an executed bank loan commitment for working capital, acceptable to the Department of Health. [BFA]
2. Submission of an executed bank loan commitment for the purchase of the operations, acceptable to the Department of Health. [BFA]
3. Submission of an executed bank loan commitment for the purchase of the realty, acceptable to the Department of Health. [BFA]
4. 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]
5. 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]
6. 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]
7. Submission of the proposed Consulting and Administrative Services Agreement between the facility and Centers Health Care. [LTC]
8. Submission of a photocopy of the applicant's executed and amended agreement of lease, acceptable to the Department. [CSL]
9. Submission of a photocopy of the applicant's executed and amended Operating Agreement, acceptable to the Department. [CSL]

10. Submission of a photocopy of the executed and amended Operating Agreement of Light Operational Holding Associates LLC, acceptable to the Department. [CSL]
11. Submission of a photocopy of the executed and amended Agreement for the Sale of Real Property, acceptable to the Department. [CSL]
12. Submission of a photocopy of the applicant's executed and amended Asset 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]
2. Within two years from the date of 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 as prescribed by the related contingency. Once the Medicaid patient admissions standard is reached, the facility shall not reduce its proportion of Medicaid patient admissions below the 75 percent standard unless and until the applicant, in writing, requests the approval of the Department to adjust the 75 percent standard and the Department's written approval is obtained. [RNR]
3. Submission of annual reports to the Department for at least two years demonstrating substantial progress with the implementation of the facility's Medicaid Access Plan as prescribed by the related contingency. Reports will be due within 30 days of the conclusion of each year of operation as identified by the Effective Date on the Operating Certificate issued at project completion. For example, if the Operating Certificate Effective Date is June 15, 2017, the first report is due to the Department no later than July 15, 2018. The Department reserves the right to require continued reporting beyond the two year period. [RNR]

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



MEMORANDUM

To: Public Health and Health Planning Council

From: Richard J. Zahnleuter, General Counsel

Date: March 18, 2016

Subject: Proposed Certificate of Amendment of the Certificate of Incorporation of North Shore-Long Island Jewish Health System Laboratories

Attached is the proposed Certificate of Amendment of the Certificate of Incorporation of North Shore-Long Island Health System Laboratories. This not-for-profit corporation seeks approval to change its name to "Northwell Health Laboratories." Public Health and Health Planning Council approval for a change of corporate name is therefore required by the Not-For-Profit Law Corporation Law § 804 (a) and 10 NYCRR §600.11 (a) (1).

Also attached is a letter dated March 1, 2016 from Lauren E. Campisi, Esq., Assistant Vice President in the Office of Legal Affairs for Northwell Health which explains the intent and the meaning of the proposed name change.

The proposed Certificate of Amendment is in legally acceptable form.



North Shore-LIJ Health System is now Northwell Health

Office of Legal Affairs

Lauren E. Campisi, Esq.
Assistant Vice President

March 1, 2016

Public Health and Health Planning Council ("Council")
New York State Department of Health
Corning Tower
Empire State Plaza
Albany, New York 12237

Re: Proposed Certificates of Amendment of the Certificate of Incorporation to change the name of North Shore-Long Island Jewish Health System Laboratories to Northwell Health Laboratories

Dear Council:

We respectfully submit this letter in support of our application to change the name of North Shore-Long Island Jewish Health System Laboratories ("Laboratories") to Northwell Health Laboratories, and we wish to explain the reasoning for the proposed change.

Effective January 1, 2016, North Shore-Long Island Jewish Health System, Inc., which is the sole member of Laboratories, changed its name to Northwell Health, Inc. The reason for the name change to Northwell was that we are a different organization today than we were in 1997, when North Shore Health System merged with Long Island Jewish Medical Center to form North Shore-LIJ Health System. At that time, we took the names of the two institutions and joined them together. Our organization has grown in many ways since that time. We now have 21 hospitals, a vast network of long-term care, rehabilitation, home care, hospice and a range of other services, about 450 outpatient physician practices, medical and nursing schools, and an internationally recognized research institute. As we approach our third decade, the depth and breadth of services that we provide is far different today, especially as we place a greater focus on promoting health and wellness. Our geographic service area has also grown significantly beyond Long Island over the past 18 years, as we have established a presence in Manhattan, Brooklyn, Westchester County, and even Boca Raton, FL.

The name Northwell Health was chosen because it recognizes our heritage with "north" and also represents our desire to guide consumers on their health care journey. The word "well" in Northwell signifies our commitment to promoting wellness and healthier lifestyles among the

communities we serve. "Health" reflects the quality healthcare for which we are known and which we want to continue to promote.

We submit this name change application for Laboratories to ensure the continued alignment of its name with the parent company's name, to avoid confusion, and to have a name that more accurately reflects the mission and services of the organization as it exists today.

Please do not hesitate to contact me should you have any questions or concerns regarding the above or our request in general. I can be reached at (516) 465-8389 or via email at lcampisi@northwell.edu

Sincerely,



Lauren E. Campisi

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM
LABORATORIES**

Under Section 803 of the New York Not-for-Profit Corporation Law

I, **THE UNDERSIGNED, Michael J. Dowling**, being the President of North Shore-Long Island Jewish Health System Laboratories, does hereby certify:

1. The name of the corporation is North Shore-Long Island Jewish Health System Laboratories (the "Corporation"). The Corporation was formed under the name North Shore Health System Laboratories.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on December 1, 1997 under the Not-for-Profit Corporation Law.
3. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the Not-for-Profit Corporation Law.
4. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to change the name of the Corporation to Northwell Health Laboratories.
5. To effectuate the amendment described in Paragraph 4 of this Certificate of Amendment, Paragraph **FIRST** of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

FIRST. The name of the corporation is Northwell Health Laboratories (the "Corporation").

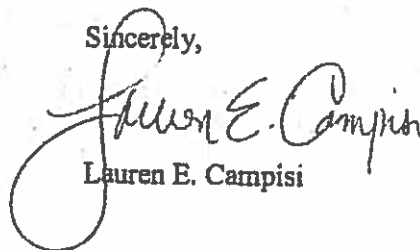
6. The Certificate of Incorporation of the Corporation is hereby amended, as authorized by Section 801 of the Not-for-Profit Corporation Law, to change the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him as agent of the Corporation.

communities we serve. "Health" reflects the quality healthcare for which we are known and which we want to continue to promote.

We submit this name change application for Laboratories to ensure the continued alignment of its name with the parent company's name, to avoid confusion, and to have a name that more accurately reflects the mission and services of the organization as it exists today.

Please do not hesitate to contact me should you have any questions or concerns regarding the above or our request in general. I can be reached at (516) 465-8389 or via email at lcampisi@northwell.edu

Sincerely,

A handwritten signature in black ink that reads "Lauren E. Campisi". The signature is fluid and cursive, with a large loop at the end of the name.

Lauren E. Campisi

7. To effectuate the amendment described in Paragraph 6 of this Certificate of Amendment, paragraph TENTH of the Certificate of Incorporation is hereby amended to read in its entirety as follows:

TENTH. 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 Northwell Health, Inc., 2000 Marcus Avenue, New Hyde Park, New York 11042, Attention: Office of Legal Affairs.

8. This amendment to the Certificate of Incorporation was authorized by vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law.
9. 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 Northwell Health, Inc., 2000 Marcus Avenue, New Hyde Park, New York 11042, Attention: Office of Legal Affairs.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment on this 29th day of February, 2016, and hereby affirm, under penalties of perjury, that the statements herein are true.



Michael J. Dowling
President

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF**

**NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM LABORATORIES
UNDER SECTION 803 OF THE NOT-FOR-PROFIT CORPORATION LAW**

FILED BY:

**NORTHWELL HEALTH, INC.
145 COMMUNITY DRIVE
GREAT NECK, NEW YORK 11021**

of any state official, department, board, agency or other body without such consent or approval first being obtained.

FOURTH. In furtherance of the foregoing purposes, the Corporation shall have all the general powers enumerated in Section 202 of the Not-for-Profit Corporation Law, together with the power to maintain a fund or funds of real or personal property for any corporate purposes. The Corporation shall have the right to exercise such other powers as now are, or may hereafter be, conferred by law upon a corporation organized for the purposes hereinabove set forth or necessary or incidental to the powers so conferred, or conducive to the furtherance thereof.

FIFTH. 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. Reasonable compensation, however, may be paid for services rendered to or for the Corporation in furtherance of one or more of its purposes. Notwithstanding any other provision of this Certificate of Incorporation, the Corporation is organized exclusively for charitable purposes, as specified in Section 501(c)(3) of the Code, 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 Code.

SIXTH. Except as specifically provided for in Article Third above, nothing contained herein shall authorize the Corporation, directly or indirectly, to engage in or include among its purposes any of the activities mentioned in Section 404(b) through (v) of the Not-for-Profit Corporation Law.

SEVENTH. No substantial part of the activities of the Corporation shall be devoted to carrying on propaganda, or otherwise attempting to influence legislation (except to the extent authorized by Section 501(h) of the Code, or the corresponding provision of any future United States internal revenue law, during any fiscal year or years in which the Corporation has chosen to utilize the benefits authorized by that statutory provision) and the Corporation shall not participate in or intervene (including the publishing or distributing of statements) in any political campaign on behalf of any candidate for public office.

EIGHTH. The office of the Corporation shall be located in Nassau County, State of New York.

NINTH. The names and addresses of the initial directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>
Daniel C. de Roulet	c/o North Shore Health System 150 Community Drive Great Neck, New York 11021

Alan I. Greene c/o North Shore Health System
150 Community Drive
Great Neck, New York 11021

Saul B. Katz c/o North Shore Health System
150 Community Drive
Great Neck, New York 11021

Robert Kaufman c/o North Shore Health System
150 Community Drive
Great Neck, New York 11021

Abraham Krasnoff c/o North Shore Health System
150 Community Drive
Great Neck, New York 11021

Ralph A. Nappi c/o North Shore Health System
150 Community Drive
Great Neck, New York 11021

Alan W. Warshow c/o North Shore Health System
150 Community Drive
Great Neck, New York 11021

John S.T. Gallagher c/o North Shore Health System
150 Community Drive
Great Neck, New York 11021

TENTH. The Secretary of State is hereby designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

North Shore Health System Laboratories
150 Community Drive
Great Neck, New York 11021
Attention: Vice President, Legal Affairs

ELEVENTH. In the event of dissolution, the assets and property of the Corporation remaining after payment of expenses and satisfaction of all liabilities shall be distributed as determined by the Board of Directors and as approved by a court of competent jurisdiction for the not-for-profit purposes of the Corporation and/or to such charitable and educational organizations as shall qualify under Section 501(c)(3) of the Code. Any of such assets not so distributed shall be disposed of for such purposes as approved by a Justice of the Supreme Court of the State of New York or such other court having jurisdiction over the Corporation.

IN WITNESS WHEREOF, this certificate has been executed the 24th day of September, 1997 and I affirm the statements contained herein are true under the penalty of perjury.



Harry E. Gindi
150 Community Drive
Great Neck, NY 11021



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

November 25, 1997

Ms. Adele N. Herman
North Shore Health Systems
150 Community Drive
Great Neck, New York 11021

Re: Certificate of Incorporation of North Shore Health System Laboratories

Dear Ms. Herman:

AFTER INQUIRY and INVESTIGATION and in accordance with action taken at a meeting of the Public Health Council held on the 21st day of November, 1997, I hereby certify that the Public Health Council consents to the filing of the Certificate of Incorporation of North Shore Health System Laboratories, dated September 24, 1997.

Sincerely,

Karen S. Westervelt
Executive Secretary

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CT-07

971201000 819

CT-07

CERTIFICATE OF INCORPORATION
OF
NORTH SHORE HEALTH SYSTEM LABORATORIES
UNDER SECTION 402 OF THE NOT FOR PROFIT CORPORATION LAW

Handwritten scribbles

dec

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 01 1997
TAX \$ _____
BY: *Dec*

DEC 1 2 1997

RECEIVED

NASS

NORTH SHORE UNIVERSITY HOSPITAL
150 COMMUNITY DRIVE
GREAT NECK, NY 11021

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971201000 850

Y. S. DEPARTMENT OF STATE
VISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0000

FILING RECEIPT

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1 COMPANY NAME : NORTH SHORE HEALTH SYSTEM LABORATORIES

DOCUMENT TYPE : DOMESTIC (NOT-FOR-PROFIT) CORPORATION TYPE: B COUNTY: NASS
SERVICE COMPANY : CT CORPORATION SYSTEM SERVICE CODE: 07

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FILED: 12/01/1997 DURATION: PERPETUAL CASH #: 971201000850 FILM #: 971201000E1

ADDRESS FOR PROCESS

THE CORPORATION
ATTN VICE PRES LEGAL AFFAIRS
GREAT NECK, NY 11021

REGISTERED AGENT



EXIST DA1

12/01/199

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FILER	FEE	PAYMENTS
NORTH SHORE UNIVERSITY HOSPITAL 150 COMMUNITY DRIVE GREAT NECK, NY 11021	120.00	120.00
	FILING : 75.00	CASH : 0.00
	TAX : 0.00	CHECK : 120.00
	CERT : 0.00	BILLED: 0.00
	COPIES : 20.00	
	HANDLING: 25.00	
		REFUND: 0.00

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-1025 (11/89)

F 981203000611

**CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF INCORPORATION
OF
NORTH SHORE HEALTH SYSTEM LABORATORIES
Under Section 803 of the Not-for-Profit Corporation Law**

The undersigned Patrick E. Brown, Esq., attorney-in-fact for NORTH SHORE HEALTH SYSTEM LABORATORIES (the "Corporation") hereby certifies that:

- A. The name of the Corporation is NORTH SHORE HEALTH SYSTEM LABORATORIES.
- B. The Certificate of Incorporation of the Corporation was filed by the Department of State on December 1, 1997 pursuant to Section 402 of the Not-for Profit Corporation Law
- C. The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 (Definitions) of the Not-for-Profit Corporation Law and is a Type B corporation under Section 201 (Purposes) of the Not-for-Profit Corporation Law. After the filing of this Certificate of Amendment, the Corporation shall remain a Type B corporation under Section 201 (Purposes) of the Not-for-Profit Corporation Law.
- D. The Corporation hereby amends Paragraph First of the Certificate of Incorporation which relates to the name of the Corporation and changes the name of the Corporation from North Shore Health System Laboratories to North Shore-Long Island Jewish Health System Laboratories Paragraph First of the Certificate of Incorporation shall read in its entirety as follows:

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The name of the Corporation is North Shore-Long Island Jewish Health System Laboratories.

E. The Corporation hereby amends Paragraph Third of the Certificate of Incorporation which relates to the purposes of the Corporation and adds Long Island Jewish Medical Center as one of the hospitals for which the Corporation provides laboratory services. Paragraph Third of the Certificate of Incorporation shall read in its entirety as follows

The purposes of the Corporation, which are exclusively charitable within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended from time to time (the "Code"), are as follows: (a) to provide diagnostic and clinical laboratory services for: North Shore University Hospital, Long Island Jewish Medical Center, North Shore University Hospital at Glen Cove, North Shore University Hospital at Plainview, North Shore University Hospital at Forest Hills, Huntington Hospital, Franklin Hospital Medical Center, Staten Island University Hospital, and Southside Hospital, each of which is a not-for-profit corporation organized and existing under the laws of the State of New York and an exempt organization under Section 501(c)(3) of the Code and described in Section 509(a)(1) or (a)(2) of the Code, and for such other not-for-profit corporations which are exempt organizations under Section 501(c)(3) of the Code and described in Section 509(a)(1), (a)(2) or (a)(3) of the Code, of which this Corporation, North Shore Health System or any of the aforementioned corporations, is or hereafter becomes the sole voting member, and (b) to conduct any and all lawful activities which may be necessary, useful or desirable for the furtherance, accomplishment, or attainment of the foregoing purposes. The objects and purposes provided for herein shall be subject to any approvals or consents of such regulatory bodies as may be required by law. The Corporation is not formed to engage in any act or

activity requiring the consent or approval of any state official, department, board, agency or other body without such consent or approval first being obtained.

F. The Corporation hereby amends Paragraph Tenth of the Certificate of Incorporation which relates to the service of process address and changes the name of the entity at the post office address to which the Secretary of State shall mail a copy of any process against the Corporation from North Shore Health System Laboratories to North Shore-Long Island Jewish Health System Laboratories. Paragraph Tenth of the Certificate of Incorporation shall read in its entirety as follows:

The Corporation hereby designates the Secretary of State of the State of New York as the agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any such process against the Corporation served upon him is:

North Shore-Long Island Jewish Health System Laboratories
150 Community Drive
Great Neck, New York 11021
Attention: Vice President, Legal Affairs

G. This Amendment of the Corporation's Certificate of Incorporation was authorized by a vote of the sole member of the Corporation in accordance with Section 802 of the Not-for-Profit Corporation Law of the State of New York.

IN WITNESS WHEREOF, this Certificate has been signed and the statements made herein are affirmed as true under the penalties of perjury this ^{5th} day of October, 1998



Patrick E. Brown, Esq.
Attorney-in-fact for North Shore Health
System Laboratories



STATE OF NEW YORK
DEPARTMENT OF HEALTH
CORNING TOWER BUILDING
ALBANY, N.Y. 12237

PUBLIC HEALTH COUNCIL

November 5, 1998

Patrick E. Brown, Esq.
Plunkett & Jaffe, P.C.
Attorneys at Law
111 Washington Avenue
Albany, New York 12210

Re: Certificate of Amendment of the Certificate of Incorporation of North Shore Health System Laboratories

Dear Mr. Brown:

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 Public Health Council consents to the filing of the Certificate of Amendment of the Certificate of Incorporation of North Shore Health System Laboratories, dated October 5, 1998.

Sincerely,

Donna Peterson for

Karen S. Westervelt
Executive Secretary

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STATE OF NEW YORK
DEPARTMENT OF STATE
INCORPORATION
OF
NORTH SHORE HEALTH SYSTEM LABORATORIES

STATE OF NEW YORK
DEPARTMENT OF STATE
FILED DEC 23 1998
TAXES BY STJ
NASSAU

BC

Dec 3 2 50 PM '98

ELIOT T. SPENCER, JR.
100 WEST 4TH AVENUE
ALBANY, NY 12240
(518) 462-1000

981203000646

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N. Y. S. DEPARTMENT OF STATE
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

FILING RECEIPT

ENTITY NAME: NORTH SHORE-LONG ISLAND JEWISH HEALTH SYSTEM LABORATORIES

DOCUMENT TYPE: AMENDMENT (DOMESTIC NFP)

COUNTY: NASS

PURPOSES PROCESS NAME PROVISIONS

SERVICE COMPANY: ** NO SERVICE COMPANY **

SERVICE CODE: 00

FILED:12/03/1998 DURATION:***** CASH#:981203000646 FILM #:981203000611

ADDRESS FOR PROCESS

THE CORPORATION

ATTN: VICE PRES. LEGAL AFFAIRS
GREAT NECK, NY 11021

150 COMMUNITY DRIVE

REGISTERED AGENT



FILER	FEE	65.00	PAYMENTS	65.00
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PLUNKETT & JAFFE, P.C.	FILING :	30.00	CASH :	0.00
111 WASHINGTON AVENUE	TAX :	0.00	CHECK :	65.00
	CERT :	0.00	BILLED:	0.00
ALBANY, NY 12210	COPIES :	10.00		
	HANDLING:	25.00		
			REFUND:	0.00
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State of New York }
Department of State }^{11:}

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 seal of the Department of State on DEC 04 1998



A handwritten signature in cursive script, appearing to read "J. Clark", written in black ink.

Special Deputy Secretary of State

RESOLUTION

RESOLVED, that the Public Health and Health Planning Council, on this 14th day of April, 2016, approves the filing of the Certificate of Amendment of Certificate of Incorporation of North Shore-Long Island Jewish Health System Laboratories, dated February 29, 2016.